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WHEN: Tuesday, October 23, 2012
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WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8858 of September 7, 2012**

## National Grandparents Day, 2012

**By the President of the United States of America**

**A Proclamation**

Throughout our history, grandparents have guided their children and grandchildren through trial and triumph. For many of us, our grandparents were among our earliest teachers and caregivers. They have added immeasurably to the strength of our families, and with compassion and wisdom, they have enriched our lives with the stories of those who came before us. On National Grandparents Day, we give thanks to those who helped raise us and pay tribute to a generation that still inspires us toward brighter horizons.

Our grandparents set the course of an American century. They have witnessed great milestones in our Nation's history, and from the battlefield to the factory floor to their neighborhoods, our grandparents' tireless pursuit of progress has paved the road that we travel today. Just as they helped shape the country we know and love, so have they shaped each of us into who we are as individuals. Our grandmothers and grandfathers have profoundly influenced every part of our society, and as their grandchildren, it is incumbent upon all of us to provide them with the care and support they so deeply deserve.

Today, we honor America's grandparents, and we celebrate their indelible contributions to family, community, and country.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 9, 2012, as National Grandparents Day. I call upon all Americans to take the time to honor their own grandparents and those in their community.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of September, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–22674
Filed 9–12–12; 8:45 am]
Billing code 3295–F2–P

# Presidential Documents

**Proclamation 8859 of September 7, 2012**

## National Days of Prayer and Remembrance, 2012

**By the President of the United States of America**

**A Proclamation**

Eleven years ago, America confronted one of our darkest days. The events of September 11, 2001, brought collapsing towers in Manhattan and billowing smoke at the Pentagon, wreckage on a Pennsylvania field, and deep ache to the soul of our Nation. Nearly 3,000 innocent people lost their lives that morning; still more gave theirs in service during the hours, days, and years that followed. All were loved, and none will be forgotten. On these days of prayer and remembrance, we mourn again the men, women, and children who were taken from us with terrible swiftness, stand with their friends and family, honor the courageous patriots who responded in our country's moment of need, and, with God's grace, rededicate ourselves to a spirit of unity and renewal.

Those who attacked us sought to deprive our Nation of the very ideals for which we stand—but in the aftermath of this tragedy, the American people kept alive the virtues and values that make us who we are and who we must always be. Today, the legacy of September 11 is one of rescue workers who rushed to the scene, firefighters who charged up the stairs, passengers who stormed the cockpit—courageous individuals who put their lives on the line to save people they never knew. It is also a legacy of those who stood up to serve in our Armed Forces. In the 11 years since that day, more than 2 million American service members have gone to war. They have volunteered, leaving the comforts of home and family to defend the country they love and the people they hold dear. Many have returned with dark memories of distant places and fallen friends; too many will never return at all. As we mark these solemn days, we pay tribute to the men and women who made the ultimate sacrifice in faraway lands, to heroes who died in the line of duty here at home, and to all who keep faith with the principles of service and sacrifice that will always be the source of America's strength.

On September 11, 2001, in our hour of grief, a Nation came together. No matter where we came from, what God we prayed to, or what race or ethnicity we were, we were united as one American family. This weekend, as we honor the memory of those we have lost, let us summon that spirit once more. Let us renew our sense of common purpose. And let us reaffirm the bond we share as a people: that out of many, we are one.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Friday, September 7 through Sunday, September 9, 2012, as National Days of Prayer and Remembrance. I ask that the people of the United States honor and remember the victims of September 11, 2001, and their loved ones through prayer, contemplation, memorial services, the visiting of memorials, the ringing of bells, evening candlelight remembrance vigils, and other appropriate ceremonies and activities. I invite people around the world to participate in this commemoration.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of September, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–22704
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# Rules and Regulations

Federal Register

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Thursday, September 13, 2012

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

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–2012–0968; Special Conditions No. 25–467–SC]**

## Special Conditions: Bombardier, Model CL–600–2B16 Airplane (CL–601–3A, CL–601–3R, and CL–604 Variants); Enhanced Flight Vision System

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

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Bombardier Model CL–600–2B16 airplanes, including variants CL–601–3A, CL–601–3R and CL–604. This airplane, as modified by Atlantic Aero, Inc., will have a novel or unusual design feature associated with an advanced, enhanced flight vision system (EFVS). The EFVS consists of a head-up display (HUD) system modified to display forward-looking infrared (FLIR) imagery. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is September 6, 2012. We must receive your comments by October 29, 2012.

**ADDRESSES:** Send comments identified by docket number FAA–2012–0968 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dale Dunford, FAA, Transport Standards Staff, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2239; facsimile 425–227–1320; email: *dale.dunford@faa.gov.*

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

### Background

On October 7, 2011, Atlantic Aero, Inc., applied for a supplemental type certificate (STC) for the installation and operation of a HUD and an EFVS in the Bombardier Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 variants). The original type certificate for the CL–600–2B16 is A21EA, dated April 30, 1987, and is now at revision 31, dated May 25, 2011.

The Model CL–600–2B16 is a 22-passenger, transport category airplane that operates with a crew of two. It is powered by two General Electric engines and has a maximum takeoff weight of 43,100 pounds for the CL–601–3A and 3R variants and 47,600 pounds for the CL–604 variant.

The electronic infrared image displayed between the pilot and the forward windshield represents a novel or unusual design feature in the context of Title 14, Code of Federal Regulations (14 CFR) 25.773. Section 25.773 was not written in anticipation of such technology. The electronic image has the potential to enhance the pilot's awareness of the terrain, hazards, and airport features. At the same time, the image may partially obscure the pilot's direct outside compartment view. Therefore, the FAA needs adequate safety standards to evaluate the EFVS to determine that the imagery provides the intended visual enhancements without undue interference with the pilot's outside compartment view. The FAA's intent is that the pilot will be able to use a combination of the information seen in the image and the natural view of the outside scene, as seen through the image, as safely and effectively as a pilot compartment view without an enhanced

vision system (EVS) image, and that it is compliant with § 25.773.

Although the FAA has determined that the existing regulations are not adequate for certification of EFVSs, it believes that EFVSs could be certified through application of appropriate safety criteria. Therefore, the FAA has determined that special conditions should be issued for certification of EFVSs to provide a level of safety equivalent to that provided by the standard in § 25.773.

**Note:** The term ''enhanced vision system'' (EVS) in this document refers to a system comprised of a head-up display (HUD), imaging sensor(s), and avionics interfaces that display the sensor imagery on the HUD, and overlay that imagery with alpha-numeric and symbolic flight information. However, the term has also been commonly used in reference to systems that display the sensor imagery, with or without other flight information, on a head-down display. For clarity, the FAA created the term ''enhanced flight vision system'' (EFVS) to refer to certain EVS systems that meet the requirements of the new operational rules—in particular, the requirement for a HUD and specified flight information—and which can be used to determine ''enhanced flight visibility.'' An EFVS can be considered a subset of a system otherwise labeled EVS.

On January 9, 2004, the FAA published revisions to operational rules in 14 CFR parts 1, 91, 121, 125, and 135 to allow aircraft to operate below certain altitudes during a straight-in instrument approach while using an EFVS to meet visibility requirements.

Prior to this rule change, the FAA issued Special Conditions No. 25–180–SC, which applied to an EVS installed on Gulfstream Model G–V airplanes. Those special conditions addressed the requirements for the pilot compartment view and limited the scope of the intended functions permissible under the operational rules at the time. The intended function of the EVS imagery was to aid the pilot during the approach and allow the pilot to detect and identify the visual references for the intended runway down to 100 feet above the touchdown zone. However, the EVS imagery alone was not to be used as a means to satisfy visibility requirements below 100 feet.

The recent operational rule change expands the permissible application of certain EVSs that are certified to meet the new EFVS standards. The new rule allows the use of an EFVS for operation below the minimum descent altitude or decision height to meet new visibility requirements of § 91.175(l). The purpose of these special conditions is not only to address the issue of the ''pilot compartment view,'' as was done by Special Conditions No. 25–180–SC, but also to define the scope of intended function consistent with § 91.175(l) and (m).

**Type Certification Basis**

Under the provisions of § 21.101, Atlantic Aero, Inc., must show that the Bombardier Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 variants), as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A21EA or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference are listed in Type Certificate Data Sheet No. A21EA, Revision 31, dated May 25, 2011, which covers all variants of the Bombardier CL–600–2B16 airplanes. In addition, the certification basis includes certain special conditions and exemptions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Model CL–600–2B16 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Model CL–600–2B16 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

**Novel or Unusual Design Features**

The Bombardier Model CL–600–2B16 will incorporate the following novel or unusual design feature: An EFVS that projects a video image derived from a FLIR camera through the HUD. The EFVS image is projected in the center of the ''pilot compartment view,'' which is governed by § 25.773. The image is displayed with HUD symbology and overlays the forward outside view. Therefore, § 25.773 does not contain appropriate safety standards for the EFVS display.

Operationally, during an instrument approach, the EFVS image is intended to enhance the pilot's ability to detect and identify ''visual references for the intended runway'' [see § 91.175(l)(3)] to continue the approach below decision height or minimum descent altitude. Depending on atmospheric conditions and the strength of infrared energy emitted and/or reflected from the scene, the pilot can see these visual references in the image better than they can be seen through the window without EFVS.

Scene contrast detected by infrared sensors can be much different from that detected by natural pilot vision. On a dark night, thermal differences of objects which are not detectable by the unaided eye are easily detected by many imaging infrared systems. On the other hand, contrasting colors in visual wavelengths may be distinguished by the unaided eye but not by an imaging infrared system. Where thermal contrast in the scene is sufficiently detectable, the pilot can recognize shapes and patterns of certain visual references in the infrared image. However, depending on conditions, those shapes and patterns in the infrared image can appear significantly different than they would with normal vision. Considering these factors, the EFVS image needs to be evaluated to determine that it can be accurately interpreted by the pilot.

The EFVS image may improve the pilot's ability to detect and identify items of interest. However, the EFVS needs to be evaluated to determine that the imagery allows the pilot to perform the normal flightcrew duties and adequately see outside the window through the image, consistent with the safety intent of § 25.773(a)(2).

Compared to a HUD displaying the EFVS image and symbology, a HUD that only displays stroke-written symbols is easier to see through. Stroke symbology illuminates a small fraction of the total display area of the HUD, leaving much of that area free of reflected light that could interfere with the pilot's view out the window through the display. However, unlike stroke symbology, the video image illuminates most of the total display area of the HUD (approximately 30 degrees horizontally and 25 degrees vertically), which is a significant fraction of the pilot compartment view. The pilot cannot see around the larger illuminated portions of the video image, but must see the outside scene through it.

Unlike the pilot's external view, the EFVS image is a monochrome, two-dimensional display. Many, but not all, of the depth cues found in the natural view are also found in the image. The quality of the EFVS image and the level of EFVS infrared-sensor performance could depend significantly on conditions of the atmospheric and external light sources. The pilot needs adequate control of sensor gain and image brightness, which can significantly affect image quality and transparency (i.e., the ability to see the outside view through the image). Certain system characteristics could create distracting and confusing display artifacts. Finally, because this is a sensor-based system intended to provide a conformal perspective corresponding with the outside scene, the system must be able to ensure accurate alignment. Therefore, safety standards are needed for each of the following factors:

- An acceptable degree of image transparency;
- Image alignment;
- Lack of significant distortion; and
- The potential for pilot confusion or misleading information.

Section 25.773, ''Pilot compartment view,'' specifies that ''Each pilot compartment must be free of glare and reflection that could interfere with the normal duties of the minimum flight crew * * *.'' In issuing § 25.773, the FAA did not anticipate the development of the EFVS and does not consider that § 25.773 adequately addresses the specific issues related to such a system. Therefore, the FAA has determined that special conditions are needed to address the specific issues particular to the installation and use of an EFVS.

**Discussion**

The EFVS is intended to present an enhanced view during the landing approach. This enhanced view would help the pilot see and recognize external visual references, as required by § 91.175(l), and to visually monitor the integrity of the approach, as described in FAA Order 6750.24D, ''Instrument Landing System and Ancillary Electronic Component Configuration and Performance Requirements,'' dated March 1, 2000.

Based on this approved functionality, users would seek to obtain operational approval to conduct approaches, including approaches to Type I runways, in visibility conditions much lower than those for conventional Category I.

The purpose of these special conditions is to ensure that the EFVS to be installed can perform the following functions:

- Present an enhanced view that aids the pilot during the approach.
- Provide enhanced flight visibility to the pilot that is no less than the visibility prescribed in the standard instrument approach procedure.
- Display an image that the pilot can use to detect and identify the ''visual references for the intended runway'' required by § 91.175(l)(3) to continue the approach with vertical guidance to 100 feet height above the touchdown-zone elevation.

Depending on the atmospheric conditions and the particular visual references that happen to be distinctly visible and detectable in the EFVS image, these functions would support its use by the pilot to visually monitor the integrity of the approach path.

Compliance with these special conditions does not affect the applicability of any of the requirements of the operating regulations (i.e., 14 CFR parts 91, 121, and 135). Furthermore, use of the EFVS does not change the approach minima prescribed in the standard instrument approach procedure being used; published minima still apply.

The FAA certification of this EFVS is limited as follows:

1. The infrared-based EFVS image will not be certified as a means to satisfy the requirements for descent below 100 feet height above touchdown.

2. The EFVS may be used as a supplemental device to enhance the pilot's situational awareness during any phase of flight or operation in which its safe use has been established.

An EFVS image may provide an enhanced image of the scene that may compensate for any reduction in the clear outside view of the visual field framed by the HUD combiner. The pilot must be able to use this combination of information seen in the image and the natural view of the outside scene, as seen through the image, as safely and effectively as the pilot would use a pilot compartment view without an EVS image that is compliant with § 25.773. This is the fundamental objective of the special conditions.

The FAA will also apply additional certification criteria, not as special conditions, for compliance with related regulatory requirements, such as §§ 25.1301 and 25.1309. These additional criteria address certain image characteristics, installation, demonstration, and system safety. Image-characteristics criteria include the following:

- Resolution
- Luminance
- Luminance uniformity
- Low-level luminance
- Contrast variation
- Display quality
- Display dynamics (e.g., jitter, flicker, update rate, and lag)
- Brightness controls

Installation criteria address visibility and access to EFVS controls and integration of EFVS in the cockpit.

The EFVS demonstration criteria address the flight and environmental conditions that need to be covered.

The FAA also intends to apply certification criteria relevant to high-intensity radiated fields (HIRF) and lightning protection.

**Applicability**

As discussed above, these special conditions are applicable to the Bombardier Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 variants). Should Atlantic Aero, Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A21EA to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

**Conclusion**

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Model CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 variants) airplanes modified by Atlantic Aero, Inc.

1. Enhanced flight vision system (EFVS) imagery on the head-up display (HUD) must not degrade the safety of flight or interfere with the effective use of outside visual references for required pilot tasks during any phase of flight in which it is to be used.

2. To avoid unacceptable interference with the safe and effective use of the pilot compartment view, the EFVS device must meet the following requirements:

a. The EFVS design must minimize unacceptable display characteristics or artifacts (e.g., noise, ''burlap'' overlay, running water droplets) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Automatic control of EFVS display brightness must be sufficiently effective, in dynamically changing background (ambient) lighting conditions, to prevent full or partial blooming of the display that would distract the pilot, impair the pilot's ability to detect and identify visual references, mask flight hazards, or otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high-workload phase of flight (e.g., low visibility instrument approach).

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the EFVS image on demand without removing the pilot's hands from the primary flight controls (yoke or equivalent) or thrust control.

d. The EFVS image on the HUD must not impair the pilot's use of guidance information, or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, windshear guidance, traffic alert and collision avoidance system (TCAS) resolution advisories, or unusual attitude recovery cues.

e. The EFVS image and the HUD symbols, which are spatially referenced to the pitch scale, outside view and image, must be scaled and aligned (i.e., conformal) to the external scene. In addition, the EFVS image and the HUD symbols, when considered singly or in combination, must not be misleading, cause pilot confusion, or increase workload. Airplane attitudes or crosswind conditions may cause certain symbols (e.g., the zero-pitch line or flight path vector) to reach field-of-view limits such that they cannot be positioned conformably with the image and external scene. In such cases, these symbols may be displayed but with an altered appearance, which makes the pilot aware that they are no longer displayed conformably (for example, ''ghosting'').

f. A HUD system used to display EFVS images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The safety and performance of the pilot tasks associated with the use of the pilot compartment view must not be degraded by the display of the EFVS image. Pilot tasks that must not be degraded by the EFVS image include:

a. Detection, accurate identification, and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

Use of EFVS for instrument approach operations must be in accordance with the provisions of § 91.175(l) and (m) and § 121.651 where applicable. Appropriate limitations must be stated in the operating limitations section of the airplane flight manual to prohibit the use of the EFVS for functions that have not been found to be acceptable.

Issued in Renton, Washington, on September 6, 2012.

**Ali Bahrami**

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

[FR Doc. 2012–22468 Filed 9–12–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2012–0896; Directorate Identifier 2010–SW–070–AD; Amendment 39–17173; AD 2012–17–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Various Restricted Category Helicopters

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

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

**SUMMARY:** We are adopting a new airworthiness directive (AD) for various restricted category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters with certain main rotor (M/R) blade assemblies installed, to require inspecting the grip plates, doublers, and upper and lower surfaces of the M/R blades in the area between blade stations 24.5 and 40 for an edge void, corrosion, or a crack. This AD is prompted by several reports of fatigue cracks on M/R blades installed on Bell Helicopter Textron, Inc. (Bell) Model 212 helicopters. These same part-numbered M/R blades may also be installed on certain FAA-approved modified restricted category helicopters. These actions are intended to detect an edge void, corrosion, or a crack on an M/R blade, which could lead to loss of the M/R blade and subsequent loss of control of the helicopter.

**DATES:** This AD becomes effective September 28, 2012.

We must receive comments on this AD by November 13, 2012.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov*. Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Examining the AD Docket:* You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/*. You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5170; email *7-avs-asw-170@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

## Discussion

This AD is prompted by several reports of fatigue cracks on M/R blades installed on Bell Model 212 helicopters. The cracks were found in the lower skin, doublers, and box beam at the M/R blade attachment bolt hole, and through the lower grip plate at blade station (BS) 36. Because the fatigue cracks were discovered on M/R blades installed on the Bell Model 212 helicopters, we issued AD No. 2010–03–03, Amendment 39–16186 (75 FR 5681, February 4, 2010) (AD 2010–03–03) for certain Bell Model 205B and 212 helicopters. That AD required visually inspecting the M/R blades for an edge void, corrosion, or a crack. After issuing that AD, we received another report of a fatigue crack on a M/R blade installed on a Model 212 helicopter. Further analysis by the manufacturer revealed that the inspections required by AD 2010–03–03 needed to be expanded and performed at an increased frequency, and on additional part-numbered M/R blades which can also be installed on other Bell model helicopters. We then issued AD No. 2011–23–02 (76 FR 68301, November 4, 2011) (AD 2011–23–02), which superseded AD 2010–03–03. AD 2011–23–02 retained the requirements of the superseded AD, increased the frequency and scope of the inspections required by that AD, and expanded the applicability to include the Model 205A–1 and 210 helicopters, additional M/R blade part numbers, and all helicopter serial numbers for the affected models.

Since the issuance of AD 2011–23–02, we have determined that the same part-numbered M/R blades can also be installed on certain FAA-approved modified restricted category helicopters. Therefore, we are mandating the inspection requirements for the applicable restricted category helicopters. The actions specified in this AD are intended to detect an edge void, corrosion, or a crack on an M/R blade, which could lead to loss of the M/R blade and subsequent loss of control of the helicopter.

## FAA's Determination

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

## Related Service Information

Bell has issued Alert Service Bulletin (ASB) No. 205B–08–51 dated January 11, 2011 (ASB 205B–08–51) for Model 205B helicopters, ASB No. 210–08–03 dated January 10, 2011 (ASB 210–08–03) for the Model 210 helicopters, and ASB No. 212–08–130 dated January 11, 2011 (ASB 212–08–130) for Model 212 helicopters, all revision B. The ASBs describe procedures to detect an edge void, corrosion, or a crack in the upper and lower grip plates, doublers, and blade skins of the M/R blade between blade stations 24.5 and 85.

## AD Requirements

This AD requires, within 25 hours time-in-service (TIS), and thereafter at intervals not to exceed 25 hours TIS, the following actions:

- Washing the upper and lower M/R blade surfaces using a solution of cleaning compound and water;
- Visually inspecting the upper and lower grip plates, doublers, and remaining surfaces of the M/R blade in an area from blade stations 24.5 to 40, including the entire width of the M/R blade chord width for an edge void, any corrosion, or a crack;
- Wiping each of the bond lines at the edges of both grip plates and each of the layered doublers with an alcohol-soaked cloth for their entire length and chord width and, using a 3x power or higher magnifying glass and a bright light, visually inspecting each of the bond lines on the upper and lower surfaces of the M/R blade for an edge void, any corrosion, or any edge delamination, as indicated by a crack in the paint finish.
- If there is an edge delamination or a crack in the paint finish, removing paint from areas in which an edge delamination along any bond line of a grip plate or doubler or a crack in the M/R blade paint finish is discovered to determine if an edge void or a crack exists in the M/R blade and, if there is not an edge void or a crack, refinishing the sanded area;
- Applying a light coat of preservative oil to all surfaces of the M/R blade;
- Replacing any M/R blade that has an edge void or any corrosion with an airworthy M/R blade or repairing the M/R blade if the damage is within the maximum repair damage limits;
- Replacing any M/R blade that has a crack in any grip plate or doubler with an airworthy M/R blade; and
- Replacing any M/R blade that has a crack in the M/R blade skin with an airworthy M/R blade, or repairing the M/R blade if the damage is within the maximum repair damage limits.

## Differences Between This AD and the Service Information

This AD applies to various restricted category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters; ASB 205B–08–51, ASB 210–08–03, and ASB 212–08–130 apply to Model 205B, 210, and 212 helicopters, respectively.

This AD also differs from the ASBs as follows:

- We do not include the requirement to inspect for a dark line along any of

the bond lines after wiping with an alcohol-soaked cloth to detect an edge void or edge delamination as stated in the ASBs. The alcohol is only being used as a cleaning agent for the purposes of this AD.

• This AD requires inspecting for an edge void, a crack, or any corrosion in an area from blade stations 24.5 to 40, including the entire width of the M/R blade chord, while the ASBs require inspecting from blade stations 24.5 to 85. This AD includes the inspections of the bondlines for their entire length and chord width for an edge delamination or for a crack in the paint finish, while the ASB inspections do not.

• The ASBs use the phrase ''bond lines between doublers, grip plates, and skin'' to describe the bond lines, and we use ''bond lines at the edges of both grip plates and each of the layer doublers.''

• The ASBs use the phrase ''cracks in the bond lines between doublers or grip plates'' to describe a separation of the doubler or grip plate along an edge, and we use the term ''edge delamination.''

## Costs of Compliance

We estimate that this AD will affect 25 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. Washing and visually inspecting each M/R blade requires one work hour at an average labor rate of $85 per hour, for a cost per helicopter of $85 and a total cost to the U.S. operator fleet of $2,125 per inspection cycle. If an edge void, corrosion, or a crack is found, replacing an M/R blade with an airworthy M/R blade requires approximately 24 work hours at an average labor rate of $85 per hour, and required parts cost $121,875, for a total cost for each M/R blade replacement of $123,915.

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

The short compliance time is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. In addition, the various restricted category helicopters are high usage aircraft, and they could reach 100 hours TIS within 60 days. Therefore, the actions described previously are required within 25 hours TIS, a short compliance time, and are to be repeated thereafter at intervals not to exceed 25 hours TIS, and this AD must be issued immediately.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in less than 30 days.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2012–17–10 Various Restricted Category Helicopters:** Amendment 39–17173; Docket No. FAA–2012–0896; Directorate Identifier 2010–SW–070–AD.

**(a) Applicability**

This AD applies to restricted category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters with a main rotor (M/R) blade, part number (P/N) 204–012–001–023 or –033; 210–015–001–101; 212–015–501–005, –111, –113, –115, –117, –119, or –121, installed, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as an edge void, corrosion, or a crack on an M/R blade. This condition could lead to loss of the M/R blade and subsequent loss of control of the helicopter.

**(c) Effective Date**

This airworthiness directive (AD) becomes effective September 28, 2012.

**(d) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(e) Required Actions**

(1) Within 25 hours time-in-service (TIS), and thereafter at intervals not to exceed 25 hours TIS:

(i) Wash the upper and lower surfaces of each affected M/R blade with a solution of cleaning compound (C–318) and water. Rinse thoroughly and wipe dry.

(ii) Using a 3x power or higher magnifying glass and a bright light, on each affected M/R blade, in an area from blade stations 24.5 to 40, including the entire width of the M/R blade chord, as depicted in Figure 1 to Paragraph (e) of this AD:

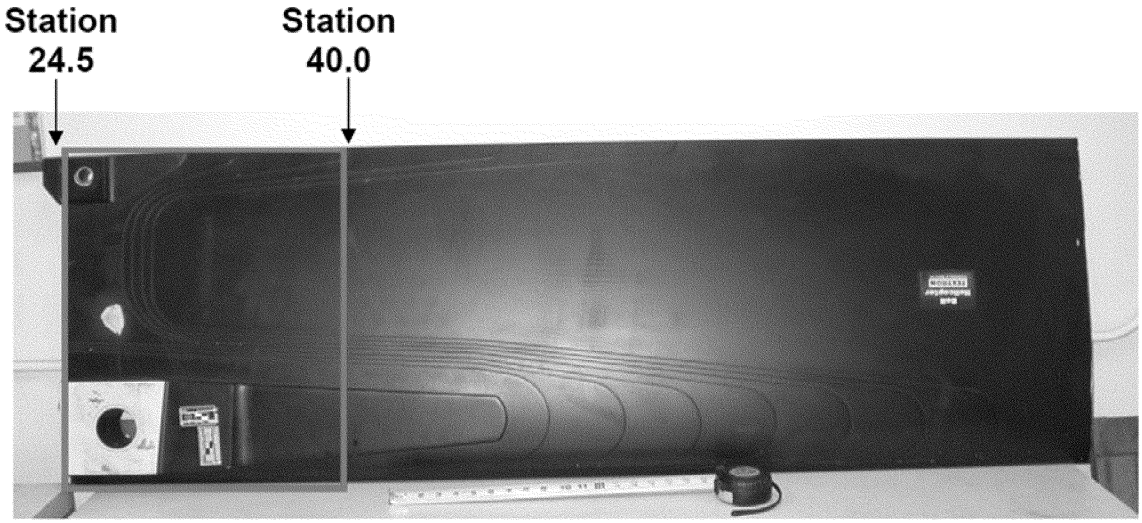


Figure 1 to Paragraph (e)

(A) Visually inspect the upper and lower grip plates and doublers of the M/R blade for an edge void, any corrosion, or a crack.

(B) Visually inspect the remaining upper and lower surfaces of the M/R blade for an edge void, any corrosion, or a crack.

**Note 1 to paragraphs (e)(1)(ii) and (e)(1)(iv):** The inspections required by paragraphs (e)(1)(ii) and (e)(1)(iv) of this AD do not require removal of the M/R blades from the M/R hub and can be accomplished while the M/R blades are installed on the helicopter.

**Note 2 to paragraph (e)(1)(ii):** Crack indications on an actual M/R blade are shown in Figure 2 to Paragraph (e) of this AD.

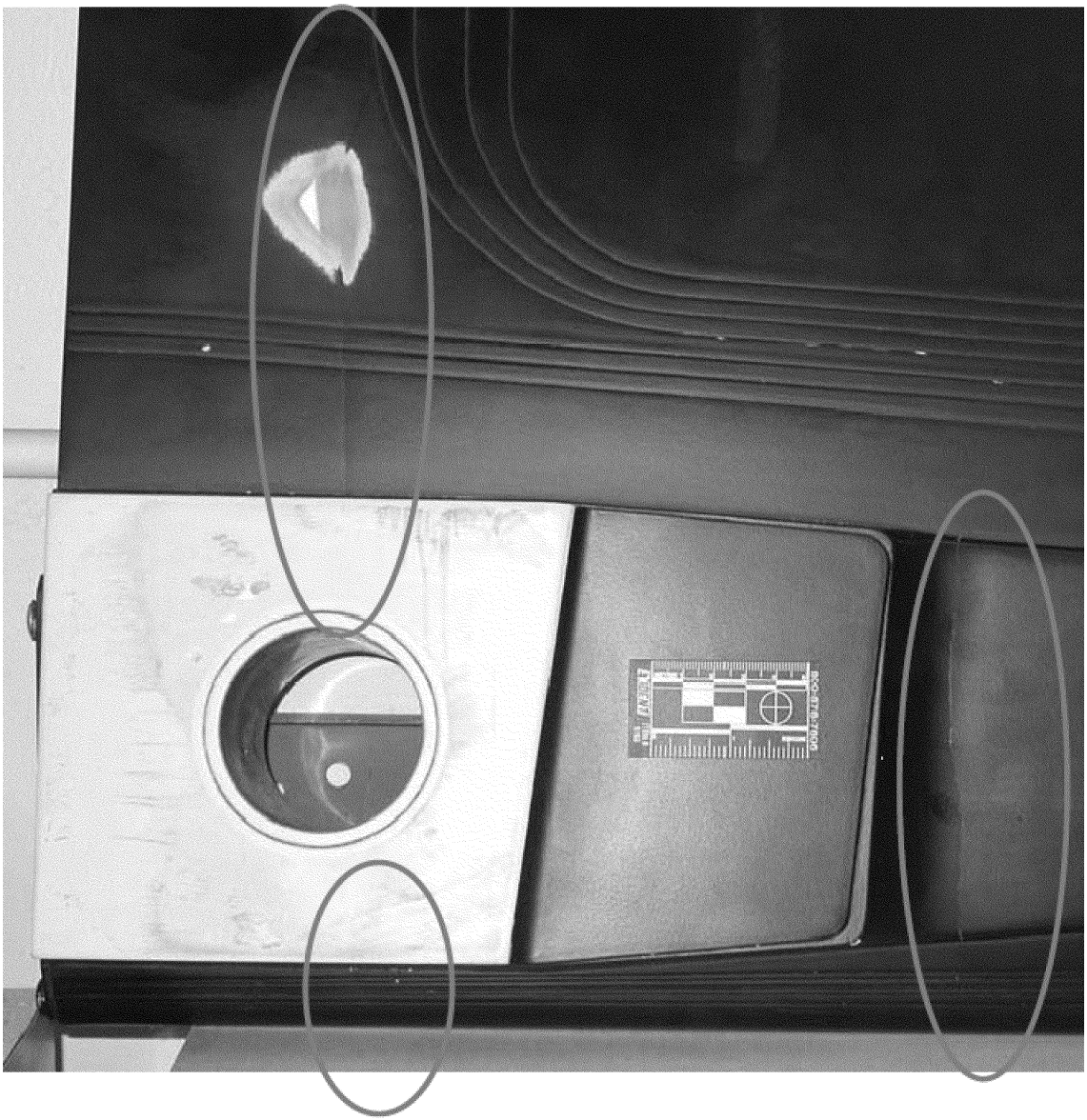

Figure 2 to Paragraph (e)

(iii) Wipe each of the bond lines at the edges of both grip plates and each of the layered doublers (bond lines) on the upper and lower surfaces of each affected M/R blade with an alcohol-soaked cloth (C–385) for their entire length and chord width. Wipe dry with a clean cloth.

(iv) Using a 3x power or higher magnifying glass and a bright light, visually inspect each of the bond lines on the upper and lower surfaces of the M/R blade for their entire length and chord width for an edge void, any corrosion, or any edge delamination, as indicated by a crack in the paint finish. An edge delamination is defined as a separation of the detail parts along an edge.

**Note 3 to paragraph (e)(1)(iv):** A crack in the paint finish which follows the outline of a grip plate or doubler may indicate a possible edge void.

(v) If there is any edge delamination along any bond line of a grip plate or doubler, or a crack in the paint finish, before further flight, remove the paint in the affected area by lightly sanding with 180–220 grit paper in a span-wise direction to determine if there is an edge void, or if the grip plate, doubler, or skin is cracked. If any parent material is removed during the sanding operation, replace the M/R blade with an airworthy M/R blade or repair the M/R blade if the amount of parent material removed is within the maximum repair damage limits. If there is no edge void or crack, refinish the sanded area.

**Note 4 to paragraphs (e)(1)(v) and (e)(2):** The maximum repair damage limits are contained in the applicable Component and Repair Overhaul Manual.

(vi) If there is no edge void, corrosion, or crack, apply a light coat of preservative oil (C–125) to all surfaces of each affected M/R blade.

(2) If an edge void, any corrosion, or a crack is discovered during any inspections in paragraph (e)(1) of this AD, before further flight, accomplish the following:

(i) If there is an edge void, determine the depth and length using a .0015 inch feeler gauge.

(ii) If there is an edge void in a grip plate or doubler near the outboard tip, tap inspect the affected area to determine the size and shape of the void.

(iii) Repair the M/R blade if the edge void is within the maximum repair damage limits or replace the M/R blade with an airworthy M/R blade.

(iv) If there is any corrosion, replace the M/R blade with an airworthy M/R blade or repair the M/R blade if the damage is within the maximum repair damage limits.

(v) If there is a crack in any grip plate or doubler, replace the M/R blade with an airworthy M/R blade.

(vi) If there is a crack in the M/R blade skin, replace the M/R blade with an airworthy M/R blade, or repair the M/R blade if the damage is within the maximum repair damage limits.

**(f) Special Flight Permits**

Special flight permits will be permitted for flights to an authorized inspection and repair facility provided the one-time ferry flight does not exceed 5 hours TIS and is for the accomplishment of an inspection only.

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

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5170; email *7-avs-asw-170@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(h) Additional Information**

Bell Helicopter Alert Service Bulletin (ASB) No. 205B–08–51 Revision B, dated January 11, 2011, for Model 205B helicopters, ASB No. 210–08–03 Revision B, dated January 10, 2011 for the Model 210 helicopters, and ASB No. 212–08–130 Revision B, dated January 11, 2011, for Model 212 helicopters, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/*. You may review a copy of this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**(i) Subject**

Joint Aircraft Service Component (JASC) Code: 6210: Main Rotor Blades.

Issued in Fort Worth, Texas, on August 21, 2012.

**Lance T. Gant,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2012–22564 Filed 9–12–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Parts 1 and 602

**[TD 9599]**

**RIN 1545–BJ71**

## Property Traded on an Established Market

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that apply to determine when property is traded on an established market (that is, publicly traded) for purposes of determining the issue price of a debt instrument. The regulations amend the current regulations to clarify the circumstances that cause property to be publicly traded. The regulations also amend the current regulations for reopenings of debt instruments, potentially abusive situations, and the definition of qualified stated interest. The regulations provide guidance to issuers and holders of debt instruments.

**DATES:** *Effective Date:* These regulations are effective on September 13, 2012.

*Applicability Dates:* For the applicability dates, see §§ 1.1273–1(c)(6)(ii), 1.1273–2(f)(10), 1.1274–3(b)(4)(ii), and 1.1275–2(k)(5).

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

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in these regulations relating to the furnishing of information under § 1.1273–2 to determine the issue price of a debt instrument was previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1353. The collection of information in these final regulations is in § 1.1273–2(f)(9) and is an increase in the total annual burden in the current regulations under § 1.1273–2. Under § 1.1273–2(f)(9), the issuer of a debt instrument is required to make the fair market value of property (which can be stated as the issue price of the debt instrument) available to holders in a commercially reasonable fashion within 90 days of the date that the debt instruments are issued, including by electronic publication. The issuer's determinations are binding on all holders of the debt instrument unless the holder explicitly discloses that its determinations are different from the issuer's determinations on a timely filed Federal income tax return for the taxable year that includes the acquisition date of the debt instrument. The disclosure must include how the holder determined the value or issue price that it is using. This information is required by the IRS to ensure consistent treatment between the issuer and the holders or to alert the IRS when inconsistent positions are being taken by the issuer and one or more holders. This information will be used for audit and examination purposes. The likely respondents are businesses or other for-profit institutions.

Estimated total annual reporting burden is 10,000 hours.

Estimated average annual burden per respondent is .5 hours.

Estimated average burden per response is 5 minutes.

Estimated number of respondents is 20,000.

Estimated total frequency of responses is 20,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

### Background

The issue price of a debt instrument is determined under section 1273(b) of the Internal Revenue Code (Code) or, in the case of certain debt instruments issued for property, under section 1274. Section 1273(b)(3) generally provides that in the case of a debt instrument issued for property and part of an issue some or all of which is traded on an established securities market (often referred to as ''publicly traded''), the issue price of the debt instrument is the fair market value of the debt instrument. Similarly, if a debt instrument is issued for stock or securities (or other property) that are publicly traded, the issue price of the debt instrument is the fair market value of the stock, securities, or other property. If a debt instrument issued for property is not publicly traded or is not issued for property that is publicly traded, the issue price of the debt instrument is usually determined under section 1274, which generally results in an issue price equal to the stated

principal amount of the debt instrument if the debt instrument provides for adequate stated interest.

Section 1.1273–2 of the Income Tax Regulations (the ''current regulations'') contains the rules that generally apply to determine the issue price of a debt instrument that is publicly traded or is issued for publicly traded property and when property (including a debt instrument issued for property) is publicly traded. In general, under § 1.1273–2(f) of the current regulations, property is traded on an established market (that is, publicly traded for purposes of section 1273(b)(3) and § 1.1273–2) if the property is exchange listed property, market traded property, property appearing on a quotation medium, or readily quotable property in the 60-day period ending 30 days after the issue date of the debt instrument.

The issue price of a debt instrument has important income tax consequences. As an initial matter, the difference between the issue price of a debt instrument and its stated redemption price at maturity measures whether there is any original issue discount (OID) associated with the instrument. A debt-for-debt exchange (including a significant modification of existing debt) in the context of a workout may result in a reduced issue price for the new debt, which generally would produce cancellation of indebtedness income for the issuer, a loss to the holder whose basis is greater than the issue price of the new debt, and OID that generally must be accounted for by both the issuer and the holder of the new debt. These consequences, exacerbated by the effects of the credit crisis on the debt markets in recent years, have focused attention on the definition of when property is traded on an established market for purposes of § 1.1273–2(f).

A notice of proposed rulemaking (REG–131947–10, 76 FR 1101) (proposed regulations) was published in the **Federal Register** on January 7, 2011. No public hearing was requested or held. However, written comments responding to the notice of proposed rulemaking were received from the public. These comments were considered and are available for public inspection at *http://www.regulations.gov* or upon request. After consideration of the comments, the proposed regulations are adopted as amended by this Treasury decision. The comments and the revisions are discussed in this preamble.

**Summary of Comments and Explanation of Provisions**

The increased liquidity and transparency of the debt markets in recent years has largely eliminated concerns about reliable information on sales and pricing being unavailable. The proposed regulations acknowledge this fact by updating and streamlining the ''publicly traded'' standard under the current regulations to reflect current market practice. To the extent that objective pricing information exists, the proposed regulations use that information to determine issue price for purposes of section 1273.

Although the final regulations substantially follow the framework established in the proposed regulations, comments received on the proposed regulations prompted several changes. The final regulations dispense with the category of exchange listed property because the small amount of debt that is listed rarely actually trades over the exchange. Moreover, although stock, commodities, and similar property are commonly listed on and traded over a board or exchange, such property typically will be the subject of frequent sales or quotes and would be covered in a separate category of publicly traded property. A debt instrument that is issued for stock, commodities, or similar exchange traded property is therefore tested under the rule for property where there is a sales price or quote within the 31-day period ending 15 days after the issue date of the debt instrument. Eliminating the category of property listed on an exchange also eliminates the need for the de minimis trading exception in the proposed regulations, which was intended to exclude property that is listed on an exchange but trades in a negligible quantity.

In response to commenters, the final regulations also expand and clarify the $50 million exception for small debt issues in the proposed regulations. Participants in the debt trading markets indicated that liquidity begins to noticeably diminish when an issue falls below $100 million. The final regulations therefore expand the small debt issue exception from $50 million to $100 million, which creates an automatic exclusion for debt that is the least likely to be publicly traded. The final regulations also clarify that the exception applies based on the outstanding stated principal amount of the debt instruments in an issue when the determination is made.

The other significant change made in the final regulations is to require that issue price be reported consistently by issuers and holders. In response to comments, the final regulations provide that an issuer's determination as to whether property is traded on an established market and, if it is, the fair market value of the property generally is binding on the holders of the debt instrument. Information on pricing and recent sales generally is easily accessible by the issuer of a debt instrument, making the issuer the logical person to determine issue price. The final regulations also require the issuer to make the fair market value of the property (which can be stated as the issue price of the debt instrument) available to holders in a commercially reasonable fashion, which can be a posting to a Web site or similar electronic publication, within 90 days of the date that the debt instruments are issued. If a holder makes a contrary determination that the property is or is not traded on an established market, or uses a fair market value that is different from the value determined by the issuer, the holder must file a statement with its income tax return that explicitly states that it is using a different determination, the reasons for the different determination and, if applicable, describes how fair market value was determined.

There also was a comment urging that the final regulations be accompanied by additional regulations, possibly under section 446(b), that would require a matching of the cancellation of debt income that often accompanies a debt-for-debt exchange (with the issue price of the new debt instrument determined under these rules) with the OID deductions that accrue subsequently on the new debt instrument. As an alternative, commenters suggested that the Treasury Department and IRS provide a special rule that treats the issue price of the new debt instrument in a debt-for-debt exchange as being equal to the lesser of the issue price determined under the principles of section 1274 and the adjusted issue price of the old debt instrument, whether or not the old debt instrument or the new debt instrument is publicly traded. The same commenters recommended that the suspension of the application of the applicable high yield discount obligation rules in section 163(e)(5) be extended, as they were in Notice 2010–11, [2010–4 IRB 326, January 25, 2010], or that similar relief be provided for all debt instruments issued in an exchange that meets certain conditions. These suggestions were not adopted because they are outside the scope of these regulations.

The remaining comments relate to specific aspects of the proposed regulations. For example, one commenter recommended that the final regulations specify that property falls within the de minimis trading exception if no actual sales of the property occur during the 31-day period ending 15 days

after the issue date. As previously noted, because the de minimis trading exception was not adopted in the final regulations and the existence of price quotations can be used to accurately determine the fair market value of a debt instrument, this comment was not adopted in the final regulations.

Several comments pertain to the rules for sales and price quotations. One commenter recommended that the final regulations provide that a sales price or quote for property must provide a reasonable basis to determine fair market value for the property to be treated as publicly traded. Another commenter recommended that if an available actual sales price or quote is from a date different than the issue date and the taxpayer has a reasonable basis to conclude that the fair market value as of the issue date is different from such sales price or quote, the taxpayer may use reasonable methods to modify such price or quote to arrive at the fair market value as of the issue date. Commenters also recommended that the final regulations clarify that a price quote must be a bona fide price quote to a third party to buy and sell, must be available to the issuer or the holder who is determining the issue price of the debt instrument in question, and must exist independently of any inquiry the issuer or the holder makes in connection with the issue price determination. The final regulations rely on sales information and price quotations from brokers, dealers, and pricing services, which are widely available to market participants that trade debt instruments. Recent financial information, whether in the form of sales or price quotes, is the most reliable objective information available on fair market value, and such information is readily available to participants in the debt trading markets. The final regulations are therefore responsive to the concerns expressed by commenters. Moreover, as discussed earlier in the preamble, the final regulations require the issuer to disclose the fair market value of property to the holders, which will ensure that the issue price is available to holders in most situations.

In addressing the provision in the proposed regulations that permits taxpayers to use any reasonable method, consistently applied, to determine the fair market value when there is more than one sales price or price quotation, commenters requested that the final regulations describe various factors that taxpayers may consider in establishing fair market value. In response to this comment, the final regulations provide a non-exclusive list of factors a taxpayer may consider to establish fair market value. However, a method that may be reasonable in one situation may not be so in another situation. In addition, in response to another comment on this provision in the proposed regulations, the final regulations provide that a method will be regarded as consistently applied as long as it is consistently applied to the same or substantially similar facts to determine the fair market value.

One commenter recommended that the final regulations clarify that a sales price exists within the meaning of proposed § 1.1273–2(f)(3)(i) only if the purchase and sale of the property occurs, and the sales price is reasonably available, during the testing period. The final regulations accept part of this suggestion by explicitly incorporating the 31-day time period in the description of when a sales price exists, but the suggestion that the sales price must be available in that same time period would be needlessly restrictive and is not adopted. The final regulations specifically provide that taxpayers are only required to search for executed sales for a reasonable period of time after the issue date (including a significant modification), but that time need not be within the 31 days surrounding the issue date. Here, too, the addition of the issuer-holder consistency rule described earlier in the preamble will considerably alleviate the burden of determining when a sale has occurred because the issuer is usually in the best position to know when its debt has been sold or modified.

In response to a comment, the final regulations add a second anti-abuse rule providing that if there is any sale or price quote a principal purpose of which is to cause the property to be traded on an established market or to materially misrepresent the value of property for federal income tax purposes, then the sale or price quote is disregarded.

Finally, a commenter recommended that the effective date of the final regulations be modified to provide that the new rules do not apply to any debt instrument issued or exchanged pursuant to a written binding agreement entered into by the taxpayer before the date that the final regulations are published in the **Federal Register**. The final regulations do not adopt this comment. However, to minimize their effect on pending transactions, the final regulations under § 1.1273–2(f) apply only to debt instruments issued on or after 60 days after the publication date of the final regulations.

*Other Provisions*

The proposed regulations expanded the definition of a qualified reopening under § 1.1275–2(k) to debt instruments that are issued for cash to unrelated persons, provided that the other requirements of the regulations are satisfied. Commenters requested that the qualified reopening rules in § 1.1275–2(k) be further liberalized. In response to these comments, the final regulations expand the definition of a qualified reopening to include an issuance that satisfies a 100 percent yield test for a reopening after six months. This change is consistent with the intent of the reopening rules, which prevent taxpayers from converting OID into market discount. In response to comments, the final regulations also make slight revisions to the rules used to determine the testing date for a qualified reopening.

Comments also were received on the proposed amendment to the regulations under section 1274 that address potentially abusive situations. One commenter suggested that the change to § 1.1274–3 be deferred and considered as part of a larger project addressing distorted gains from modifications, or, alternatively, that the proposed change be limited so that the recent sale rule continues to apply to a debt modification if all sales that are part of the recent sales transaction involve, in the aggregate, a large portion of the modified debt (for example, more than 50 percent by principal amount). Another commenter requested that the final regulations not apply if either a recent sale occurs or a binding contract providing for the recent sale is entered into prior to publication because investors may commit to buy pools of discount debt in reliance on existing law. Potential distortions created by distressed debt situations are the subject of a separate guidance project. In the meantime, the Treasury Department and the IRS believe that the proposed regulations reach the correct result in determining issue price under section 1274, and the final regulations do not adopt these suggestions. However, to minimize their effect on pending transactions, the final regulations under § 1.1274–3(b)(4) apply only to a debt instrument issued on or after 60 days after the publication date of the final regulations.

**Effective/Applicability Date**

The regulations generally apply to a debt instrument issued on or after November 13, 2012.

## Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the collection of information imposed on a taxpayer generally only applies if the outstanding stated principal amount of the debt is more than $100 million, which is anticipated to affect only a small number of small entities. Moreover, any economic impact is expected to be minimal because it should take a taxpayer no more than one-half hour to satisfy the information-sharing requirement in these regulations. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

## Drafting Information

These regulations were drafted by personnel in the Office of Associate Chief Counsel (Financial Institutions and Products) and the Treasury Department.

## List of Subjects

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

## PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.1271–0 is amended as follows:

■ 1. The introductory text for paragraph (b) is revised.

■ 2. Adding the entry for § 1.1273–1(c)(6).

■ 3. Revising the entries for § 1.1273–2(f)(2) through (7).

■ 4. Adding the entries for § 1.1273–2(f)(8) through (10).

■ 5. Adding the entry for § 1.1274–3(b)(4).

■ 6. Revising the entry for § 1.1275–2(k)(5).

The revisions and additions read as follows:

### § 1.1271–0 Original issue discount; effective date; table of contents.

* * * * *

(b) *Table of contents.* This section lists captioned paragraphs contained in §§ 1.1271–1 through 1.1275–7.

* * * * *

### § 1.1273–1 Definition of OID.

* * * * *

(c) * * *

(6) Business day convention.

* * * * *

### § 1.1273–2 Determination of issue price and issue date.

* * * * *

(f) * * *

(2) Sales price.

(3) Firm quote.

(4) Indicative quote.

(5) Presumption that price or quote is equal to fair market value.

(6) Exception for small debt issues.

(7) Anti-abuse rules.

(8) Convertible debt instruments.

(9) Issuer-holder consistency requirement.

(10) Effective/applicability dates.

* * * * *

### § 1.1274–3 Potentially abusive situations defined.

* * * * *

(b) * * *

(4) Debt-for-debt exchange.

* * * * *

### § 1.1275–2 Special rules relating to debt instruments.

* * * * *

(k) * * *

(5) Effective/applicability dates.

* * * * *

■ **Par. 3.** Section 1.1273–1 is amended by adding a new paragraph (c)(6) to read as follows:

### § 1.1273–1 Definition of OID.

* * * * *

(c) * * *

(6) *Business day convention*—(i) *Rule.* For purposes of this paragraph (c), if a scheduled payment date for stated interest falls on a Saturday, Sunday, or Federal holiday (within the meaning of 5 U.S.C. 6103) but, under the terms of the debt instrument, the stated interest is payable on the first business day that immediately follows the scheduled payment date, the stated interest is treated as payable on the scheduled payment date, provided no additional interest is payable as a result of the deferral.

(ii) *Effective/applicability date.* Paragraph (c)(6)(i) of this section applies to a debt instrument issued on or after September 13, 2012. A taxpayer, however, may rely on paragraph (c)(6)(i) of this section for a debt instrument issued before that date.

* * * * *

■ **Par. 4.** Section 1.1273–2 is amended by adding a sentence at the end of paragraphs (b)(1) and (c)(1) and revising paragraph (f) to read as follows:

### § 1.1273–2 Determination of issue price and issue date.

* * * * *

(b) * * *

(1) * * * See paragraph (f) of this section for rules to determine the fair market value of a debt instrument for purposes of this section.

* * * * *

(c) * * *

(1) * * * See paragraph (f) of this section for rules to determine the fair market value of property for purposes of this section.

* * * * *

(f) *Traded on an established market (publicly traded)*—(1) *In general.* Except as provided in paragraph (f)(6) of this section, property (including a debt instrument described in paragraph (b)(1) of this section) is traded on an established market for purposes of this section if, at any time during the 31-day period ending 15 days after the issue date—

(i) There is a sales price for the property as described in paragraph (f)(2) of this section;

(ii) There are one or more firm quotes for the property as described in paragraph (f)(3) of this section; or

(iii) There are one or more indicative quotes for the property as described in paragraph (f)(4) of this section.

(2) *Sales price*—(i) *In general.* A sales price exists if the price for an executed purchase or sale of the property within the 31-day period described in paragraph (f)(1) of this section is reasonably available within a reasonable period of time after the sale.

(ii) *Pricing information for a debt instrument.* For purposes of paragraph (f)(2)(i) of this section, the price of a debt instrument is considered

reasonably available if the sales price (or information sufficient to calculate the sales price) appears in a medium that is made available to issuers of debt instruments, persons that regularly purchase or sell debt instruments (including a price provided only to certain customers or to subscribers), or persons that broker purchases or sales of debt instruments.

(3) *Firm quote.* A firm quote is considered to exist when a price quote is available from at least one broker, dealer, or pricing service (including a price provided only to certain customers or to subscribers) for property and the quoted price is substantially the same as the price for which the person receiving the quoted price could purchase or sell the property. A price quote is considered to be available whether the quote is initiated by a person providing the quote or provided at the request of the person receiving the quote. The identity of the person providing the quote must be reasonably ascertainable for a quote to be considered a firm quote for purposes of this paragraph (f)(3). A quote will be considered a firm quote if the quote is designated as a firm quote by the person providing the quote or if market participants typically purchase or sell, as the case may be, at the quoted price, even if the party providing the quote is not legally obligated to purchase or sell at that price.

(4) *Indicative quote.* An indicative quote is considered to exist when a price quote is available from at least one broker, dealer, or pricing service (including a price provided only to certain customers or to subscribers) for property and the price quote is not a firm quote described in paragraph (f)(3) of this section.

(5) *Presumption that price or quote is equal to fair market value*—(i) *In general.* For purposes of this section, the fair market value of property will be presumed to be equal to its sales price or quoted price determined under paragraphs (f)(2) through (f)(4) of this section. If there is more than one sales price under paragraph (f)(2) of this section, more than one quoted price under paragraph (f)(3) or (f)(4) of this section, or both one or more sales prices under paragraph (f)(2) of this section and quoted prices under paragraph (f)(3) or (f)(4) of this section, a taxpayer may use any reasonable method, consistently applied to the same or substantially similar facts, to determine the fair market value. For example, to determine the fair market value under a reasonable method, a taxpayer may consider factors such as (but not necessarily limited to) the timing of each relevant sale or quote in relation to the issue date; whether the price is derived from a sale, a firm quote, or an indicative quote; the size of each relevant sale or quote; or whether the sales price or quote corresponds to pricing information provided by an independent bond or loan pricing service.

(ii) *Special rule for property for which there is only an indicative quote.* If property is described only in paragraph (f)(4) of this section, and the taxpayer determines that the quote (or an average of the quotes) materially misrepresents the fair market value of the property, the taxpayer can use any method that provides a reasonable basis to determine the fair market value of the property. A taxpayer must establish that the method chosen more accurately reflects the value of the property than the quote or quotes for the property to use the method provided in this paragraph (f)(5)(ii). For an equity or debt instrument, a volume discount or control premium will not be considered to create a material misrepresentation of value for purposes of this paragraph (f)(5)(ii).

(6) *Exception for small debt issues.* Notwithstanding any other provision in paragraph (f) of this section, a debt instrument will not be treated as traded on an established market if at the time the determination is made the outstanding stated principal amount of the issue that includes the debt instrument does not exceed US$100 million (or, for a debt instrument denominated in a currency other than the U.S. dollar, the equivalent amount in the currency in which the debt instrument is denominated).

(7) *Anti-abuse rules*—(i) *Effect of certain temporary restrictions on trading.* If there is any temporary restriction on trading a purpose of which is to avoid the characterization of the property as one that is traded on an established market for Federal income tax purposes, then the property is treated as traded on an established market. For purposes of the preceding sentence, a temporary restriction on trading need not be imposed by the issuer.

(ii) *Artificial pricing information.* If a principal purpose for the existence of any sale or price quotation is to cause the property to be traded on an established market or to materially misrepresent the value of property, that sale or price quotation is disregarded.

(8) *Convertible debt instruments.* A debt instrument is not treated as traded on an established market solely because the debt instrument is convertible into property that is so traded.

(9) *Issuer-holder consistency requirement*—(i) *General rule.* For purposes of this section, an issuer must determine whether property is traded on an established market and, if so, the fair market value of the property. An issuer is required to exercise reasonable diligence to determine whether purchases or sales have taken place, the quantity of purchases and sales, the price at which purchases or sales occurred, the existence of firm or indicative quotes, and any other relevant information using the rules provided in paragraph (f) of this section to determine the fair market value of the property. If an issuer determines that property is traded on an established market, the issuer is required to make that determination as well as the fair market value of the property (which can be stated as the issue price of the debt instrument) available to holders in a commercially reasonable fashion, including by electronic publication, within 90 days of the date that the debt instrument is issued. Each determination by an issuer is binding on a holder of the debt instrument unless the holder explicitly discloses that its determination is different from the issuer's determination (for example, the holder determines a different fair market value for the property or determines that the property is not traded on an established market). A holder must describe in the disclosure the reasons for its different determination and, if applicable, how the holder determined the fair market value. A holder's disclosure must be filed on a timely filed Federal income tax return for the taxable year that includes the acquisition date of the debt instrument. If an issuer for any reason does not make the fair market value or issue price of a debt instrument reasonably available to a holder, the holder must determine the fair market value of the property and issue price of the debt instrument using the rules provided in paragraph (f) of this section.

(ii) *Co-obligors.* If a debt instrument has more than one obligor, the obligors must designate one obligor (issuer) to determine whether property is traded on an established market and, if so, the fair market value of the property and issue price of the debt instrument and make the price available to holders using the rules provided in paragraph (f)(9)(i) of this section.

(10) *Effective/applicability dates*—(i) This paragraph (f) applies to a debt instrument issued on or after November 13, 2012.

(ii) For rules applying to a debt instrument issued before November 13, 2012, see paragraph (f) of this section as

contained in 26 CFR part 1, revised April 1, 2011.

* * * * *

■ **Par. 5.** Section 1.1274–3 is amended by adding a new paragraph (b)(4) to read as follows:

**§ 1.1274–3 Potentially abusive situations defined.**

* * * * *

(b) * * *

(4) *Debt-for-debt exchange*—(i) *Rule.* A debt instrument issued in a debt-for-debt exchange, including a deemed exchange under § 1.1001–3, will not be treated as the subject of a recent sales transaction for purposes of section 1274(b)(3)(B)(ii)(I) even if the debt instrument exchanged for the newly issued debt instrument was recently acquired prior to the exchange. Therefore, the issue price of the debt instrument will not be determined under section 1274(b)(3). However, if the debt instrument or the property for which the debt instrument is issued is publicly traded within the meaning of § 1.1273–2(f), the rules of § 1.1273–2 will apply to determine the issue price of the debt instrument.

(ii) *Effective/applicability date.* Paragraph (b)(4)(i) of this section applies to a debt instrument issued on or after November 13, 2012.

* * * * *

■ **Par. 6.** Section 1.1275–2 is amended by:

■ 1. Adding a sentence at the end of paragraph (d)(2)(ii)(C).

■ 2. Revising the first sentence of paragraph (k)(3)(i).

■ 3. Revising paragraphs (k)(3)(ii)(A), (k)(3)(iii)(A) and (k)(5).

■ 4. Redesignating paragraph (k)(3)(iv) as newly designated paragraph (k)(3)(vi).

■ 5. Adding new paragraphs (k)(3)(iv) and (k)(3)(v).

The revisions and additions read as follows:

**§ 1.1275–2 Special rules relating to debt instruments.**

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(C) * * * For a reopening of Treasury securities that occurs on or after September 13, 2012, a qualified reopening also is a reopening of Treasury securities that is described in paragraph (k)(3)(v) of this section.

* * * * *

(k) * * *

(3) * * *

(i) * * * A qualified reopening is a reopening of original debt instruments that is described in paragraph (k)(3)(ii), (k)(3)(iii), (k)(3)(iv), or (k)(3)(v) of this section. * * *

(ii) * * *

(A) The original debt instruments are publicly traded (within the meaning of § 1.1273–2(f)) as of the date on which the price of the additional debt instruments is established (or, if earlier, the announcement date);

* * * * *

(iii) * * *

(A) The original debt instruments are publicly traded (within the meaning of § 1.1273–2(f)) as of the date on which the price of the additional debt instruments is established (or, if earlier, the announcement date); and

* * * * *

(iv) *Non-publicly traded debt issued for cash.* A reopening is described in this paragraph (k)(3)(iv) if the additional debt instruments are issued for cash to persons unrelated to the issuer (as determined under section 267(b) or 707(b)) for an arm's length price and either the requirements in paragraphs (k)(3)(ii)(B) and (k)(3)(ii)(C) of this section for a reopening within six months are satisfied or the requirements in paragraph (k)(3)(iii)(B) of this section for a reopening with de minimis OID are satisfied. For purposes of paragraph (k)(3)(ii)(C) of this section, the yield test is satisfied if, on the date on which the price of the additional debt instruments is established (or, if earlier, the announcement date), the yield of the additional debt instruments (based on their cash purchase price) is not more than 110 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a de minimis amount of OID, the coupon rate).

(v) *100 Percent yield test for reopening after six months.* A reopening is described in this paragraph (k)(3)(v) if the additional debt instruments are issued more than six months after the issue date of the original debt instruments and either the requirements in paragraphs (k)(3)(ii)(A) and (k)(3)(ii)(C) of this section are satisfied or the additional debt instruments are issued for cash to persons unrelated to the issuer (as determined under section 267(b) or 707(b)) for an arm's length price and the requirements in paragraph (k)(3)(ii)(C) of this section are satisfied. For purposes of the preceding sentence, the yield test in paragraph (k)(3)(ii)(C) of this section is satisfied if, on the date on which the price of the additional debt instruments is established (or, if earlier, the announcement date), the yield of the additional debt instruments (based on their fair market value or cash purchase price, whichever is applicable) is not more than 100 percent of the yield of the original debt instruments on their issue date (or, if the original debt instruments were issued with no more than a de minimis amount of OID, the coupon rate).

* * * * *

(5) *Effective/applicability dates*—(i) Except as provided in paragraph (k)(5)(ii) of this section, this paragraph (k) applies to debt instruments that are part of a reopening if the reopening date is on or after March 13, 2001.

(ii) Paragraphs (k)(3)(ii)(A), (k)(3)(iii)(A), (k)(3)(iv) and (k)(3)(v) of this section apply to debt instruments that are part of a reopening if the reopening date is on or after September 13, 2012.

■ **Par. 7.** Section 1.1275–4 is amended by revising the first sentence in paragraph (b)(9)(i)(E) to read as follows:

**§ 1.1275–4 Contingent payment debt instruments.**

* * * * *

(b) * * *

(9) * * *

(i) * * *

(E) * * * If the debt instrument is exchange listed property (within the meaning of § 1.1273–2(f)(2) as contained in 26 CFR part 1, revised April 1, 2011), it is reasonable for the holder to allocate any difference between the holder's basis and the adjusted issue price of the debt instrument pro-rata to daily portions of interest (as determined under paragraph (b)(3)(iii) of this section) over the remaining term of the debt instrument.

* * * * *

## PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 8.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 9.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

**§ 602.101 OMB Control numbers.**

* * * * *

(b) * * *

| CFR part or section where identified and described | Current OMB control No. |
|---|---|
| * * * * * | |
| 1.1273–2(f)(9) ..... | 1545–1353 |
| * * * * * | |

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: August 17, 2012.

**Mark J. Mazur,**

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

[FR Doc. 2012–22526 Filed 9–12–12; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Part 4

**[Docket No. TTB–2011–0008; T.D. TTB–105; Re: Notice No. 122]**

**RIN 1513–AB84**

## Revision to Vintage Date Requirements

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

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

**SUMMARY:** This document adopts, as a final rule, a proposal to amend the Alcohol and Tobacco Tax and Trade Bureau wine labeling regulations to allow a vintage date to appear on a wine that is labeled with a country as an appellation of origin. This amendment will provide greater grape sourcing and wine labeling flexibility to winemakers, both domestic and foreign, while still ensuring that consumers are provided with adequate information as to the identity and quality of the wines they purchase.

**DATES:** *Effective Date:* This final rule is effective November 13, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division; telephone 202–453–1039, ext. 275.

**SUPPLEMENTARY INFORMATION:**

### Background on Wine Labeling

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

*Current Vintage Date Requirements*

Part 4 of the TTB regulations (27 CFR part 4) sets forth the standards promulgated under the FAA Act for the labeling and advertising of wine. Section 4.27 of the TTB regulations (27 CFR 4.27) sets forth rules regarding the use of a vintage date on wine labels. Section 4.27(a) provides that vintage wine is wine labeled with the year of harvest of the grapes and that the wine ''must be labeled with an appellation of origin other than a country (which does not qualify for vintage labeling).'' Rules regarding appellation of origin labeling are contained in § 4.25 of the TTB regulations (27 CFR 4.25).

In addition, § 4.27(a)(1) provides that for American or imported wines labeled with a viticultural area appellation of origin (or its foreign equivalent), at least 95 percent of the wine must have been derived from grapes harvested in the labeled calendar year. For American or imported wines labeled with an appellation of origin other than a country or viticultural area (or its foreign equivalent), § 4.27(a)(2) provides that at least 85 percent of the wine must have been derived from grapes harvested in the labeled calendar year.

The requirement that vintage wine must be labeled with an appellation of origin other than a country derives from T.D. ATF–53, published in the **Federal Register** (43 FR 37672) by TTB's predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), on August 23, 1978. Prior to that time the applicable regulations required that grapes used to make vintage wine must have been grown in the same ''viticultural area,'' a term then undefined by the regulations.

In amended Notice No. 304, a notice of proposed rulemaking preceding T.D. ATF–53 and published in the **Federal Register** (42 FR 30517) on June 15, 1977, ATF noted that the wine industry advocated that the then current requirement that 95 percent of the grapes used to make vintage wine be grown in the labeled appellation area be reduced to 75 percent. This mirrored the requirement that to bear an appellation of origin, at least 75 percent of the grapes used to make a wine must be grown in the appellation area indicated on the label. The industry position, according to ATF, was that ''vintage means only that the grapes were grown in the specified year, and that the place in which the grapes were grown is unimportant.'' ATF stated in that notice that it did not agree, commenting as follows:

> A good year in one part of California, for example, does not necessarily mean a good year in another part, any more than a good year in Burgundy means a good year in Bordeaux. For a vintage to be meaningful to consumers, they must have assurance that the grapes were grown in the place stated on the label. We believe that a 95 percent requirement provides greater assurance than a 75 percent requirement.

However, in T.D. ATF–53, the agency modified its position somewhat stating that it concurred with the industry position that a vintage date should refer only to the year of harvest. Accordingly, a new regulatory provision regarding appellations of origin, also adopted in T.D. ATF–53, required that the percentage of grapes required to come from the labeled appellation area depended upon whether the appellation was a viticultural area (85 percent), a State, county or foreign equivalent (75 percent), or a multicounty or multistate appellation (100 percent), but in each case without reference to vintage date usage. The rulemaking record for T.D. ATF–53 does not explain why ATF decided that vintage wine must be labeled with an appellation other than a country, but it does indicate that the agency believed that a vintage date should provide consumers information about harvest conditions.

In its most recent rulemaking action regarding vintage dating, TTB liberalized the requirements by reducing the percentage of wine derived from grapes required to be harvested in the labeled calendar year from 95 percent to 85 percent for wine labeled with an appellation of origin other than a country or a viticultural area (or its foreign equivalent). See T.D. TTB–45, published in the **Federal Register** (71 FR 25748) on May 2, 2006. The percentage remained at 95 for wines bearing a viticultural area (or its foreign equivalent) as an appellation of origin. Blending wine from different vintages could result in a more consistent product and provide a better value for consumers, according to the proponents of the earlier liberalization of vintage date labeling.

### European Commission Petition

The European Commission submitted a petition requesting TTB to amend § 4.27(a) to allow the use of a country appellation for vintage labeling. The

petitioner stated that the current regulation prohibiting a country appellation presents a significant difficulty for its member countries.

The petitioner noted that some of its member countries are much smaller in size than certain U.S. States, counties, and even certain American viticultural areas (AVAs). To illustrate this, it compared the areas of Malta (246 sq. km), Luxembourg (2,586 sq. km), and Austria (83,871 sq. km) with the Lodi AVA (2,230 sq. km) and the Ohio River Valley AVA (67,000 sq. km). The petitioner argued that there is no convincing rationale for a rule that allows vintage dating for a wine with an appellation of ''California'' (423,970 sq. km), but not for a wine labeled with the appellation ''Portugal'' (92,391 sq. km).

The petitioner also contrasted the vintage date rule in question with the general varietal (grape type) labeling rule contained in 27 CFR 4.23(a), under which the names of one or more grape varieties may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin as defined in § 4.25. Because § 4.25 includes countries within the definition of an appellation of origin, a wine labeled with a varietal designation may be labeled with a country appellation. The petitioner contended that these regulatory rules are inconsistent and that it would seem more logical to apply a coherent approach and allow vintage labeling for wines labeled with a country appellation.

Finally, the petitioner asserted that the language in Article 7(1) of the 2006 ''Agreement between the United States of America and the European Community on Trade in Wine'' supports the proposed change. (See *http://www.ttb.gov/agreements/us_ec_wine_agreement.shtml.*) TTB notes that Article 7 concerns names of origin, which include the country names of the Member States of the European Union. However, because the use of vintage dates is not specifically addressed in that provision, TTB does not consider this assertion to be particularly supportive of the proposed change.

**Notice of Proposed Rulemaking**

On November 4, 2011, TTB published Notice No. 122 in the **Federal Register** (76 FR 68373) proposing to amend § 4.27 to allow vintage labeling for wines labeled with a country as an appellation of origin. In addition, the proposed amendments to § 4.27 required a conforming amendment in § 4.34(b)(5) to remove the reference to the requirement that an appellation of origin for vintage wine shall be other than a country.

**Comments Received**

TTB received 26 comments in response to Notice No. 122, of which 22 comments favor the proposal, while 3 oppose it. One comment expresses no opinion on the proposal, but requests a revision that would permit wines to be labeled with multiple vintages, a suggestion which is beyond the scope of this rulemaking.

*Supporting Comments*

Comments in support of the proposal were submitted by foreign wineries and trade associations, the government of Australia, the European Commission (the petitioner), WineAmerica, one U.S. winery, and two individuals. Nearly all of the supporting comments state that the proposed revisions will provide valuable information to consumers about the age of wines labeled with a country as an appellation of origin.

Several comments contained very similar reasons for supporting the proposed rule. These comments assert that the 85% vintage labeling requirement for wines labeled with country appellations is consistent with EC and Australian rules. The comments also state that the proposal will provide consistency with TTB regulations at 27 CFR 4.23(a) and 27 CFR 4.25, which permit a wine labeled with a country appellation to bear a grape varietal name. In addition, these comments argue that the proposed revisions will eliminate ''the discrepancies that arise from the nature of appellations.'' Some comments also contend that for the purpose of vintage dating, large States such as Texas or Alaska and a country such as Italy should be treated equally. The comments also assert that the existing rules ''could be deemed a breach to the spirit'' of the WTO Agreement on Technical Barriers to Trade.

According to the supporting comment submitted by the U.S. winery, the winery's research found that more than 70 percent of wine drinkers consider the vintage date an indication of the wine's age and that a third of wine drinkers consider a wine without a vintage date to be of lower quality. The winery comments that it sometimes has to blend wine from different regions in order to maintain a consistent, high quality product, but that these wines are at a disadvantage in the marketplace because of these consumer attitudes towards vintage dating.

In its comment, WineAmerica, a national association of American wineries, also states that the current rules put wines with American appellations at a competitive disadvantage because they may not use vintage dates. WineAmerica reports that this disadvantage is so great that, in years when its members have to use out-of-state fruit, they often choose to obtain Certificates of Label Exemption for intra-state commerce only in order to sell American appellation wines with vintage dates. WineAmerica argues that the proposal will place these wines on equal footing with wines labeled with multi-state, state, and county appellations and is ''sensible regulatory reform'' needed by its members, which it describes as family-owned businesses located throughout the United States. WineAmerica asserts that, ''(I)f adopted, Notice No. 122 would benefit thousands of American businesses, allowing wineries in every state to truthfully disclose information about their products that consumers find useful.''

In its comment, the National Association of Beverage Importers (NABI), a U.S.-based trade group, states that the proposed revision may impact the market for bulk wine shipped to U.S. wineries from supplier nations. Allowing vintage dating on country appellation wines will elevate the value of these wines to their importers and to consumers. In addition, NABI states it disagrees with TTB's statement in Notice No. 122 that language in Article 7(1) of the 2006 agreement on trade in wine between the United States and the European Community (EC) is not particularly supportive of the proposal. According to NABI, the lack of a specific reference to vintage dates should not bar the powerful sense of fairness and equal treatment contained in the agreement. NABI states that it believes the agreement is significant for establishing the framework for accurately defining consumer information on wine imported from the EC and that ''[v]intage dating of country origin product is consistent with that framework.''

*Opposing Comments*

Opposition to the proposal came from the California Association of Winegrape Growers (CAWG), the Lodi District Grape Growers Association, and one U.S. winery. Both associations state that vintage dates should not be allowed on wines labeled with a country for an appellation absent ''stricter standards of origin for wine labeled with the American appellation of origin.'' They note that wines labeled with an EU country name must consist entirely of wine from that country, while TTB regulations permit wine labeled with the American appellation of origin to

contain up to 25 percent wine from other countries. This, they state, misleads the consumer and places U.S. growers at a disadvantage. Both organizations note that California law requires a wine claiming a California appellation of origin to consist wholly of California wine, and CAWG notes that Oregon law requires that all grapes used in the production of a wine with an Oregon appellation be grown in Oregon. Both organizations urge TTB to act on a current petition submitted by CAWG and other grape growers associations which proposes that wines bearing American appellations of origin must contain only U.S. wine.

The comment from the winery that does not support the proposed rule states that the proposal will dilute the vintage date standard and confuse consumers, stating, ''It makes a huge difference if the wine is from an AVA specifically, or if it would just say American. * * * Most people who are not avid wine drinkers, identify with AVAs. Most wine drinkers also identify with a year date. Let's not make more confusion to the general public than what is necessary. Let's keep the standards high.''

**TTB Finding**

After careful review of the comments discussed above, TTB has determined that it is appropriate to adopt without change the proposed regulatory amendments contained in Notice No. 122. The majority of commenters expressed support for the proposed rule. While TTB understands the winery's argument that applying a vintage date to a large area could undermine the value of a vintage date statement, TTB believes that vintage dates can provide useful, truthful information to consumers. TTB considers the concerns expressed by CAWG and the Lodi District Grape Growers Association about the percentage of foreign wine permitted in wine labeled with the American appellation of origin to be a separate issue outside the scope of this rulemaking.

**Regulatory Flexibility Act**

TTB certifies under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities. These amendments merely provide optional, additional flexibility in wine labeling decisions. Accordingly, a regulatory flexibility analysis is not required.

**Executive Order 12866**

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

**Drafting Information**

Jennifer Berry of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

**List of Subjects in 27 CFR Part 4**

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

**Amendments to the Regulations**

For the reasons discussed in the preamble, TTB amends 27 CFR, chapter I, part 4 as set forth below:

## PART 4—LABELING AND ADVERTISING OF WINE

■ 1. The authority citation for 27 CFR part 4 continues to read as follows:

**Authority:** 27 U.S.C. 205, unless otherwise noted.

**§ 4.27 [Amended]**

■ 2. Section 4.27 is amended:

■ a. In the second sentence of the introductory text of paragraph (a), by removing the words ''other than a country (which does not qualify for vintage labeling)''; and

■ b. In paragraph (a)(2), by removing the words ''country or''.

**§ 4.34 [Amended]**

■ 3. Section 4.34(b)(5) is amended by removing the last sentence.

Signed: April 30, 2012.

**John J. Manfreda,**

*Administrator.*

Approved: May 14, 2012.

**Timothy E. Skud,**

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

[FR Doc. 2012–22598 Filed 9–12–12; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Part 9

**[Docket No. TTB–2011–0011; T.D. TTB–107; Ref: Notice No. 125]**

**RIN 1513–AB83**

## Establishment of the Inwood Valley Viticultural Area

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

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

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the 28,441-acre ''Inwood Valley'' viticultural area in Shasta County, California. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** *Effective Date:* October 15, 2012.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:**

**Background on Viticultural Areas**

*TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine

advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

*Definition*

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

*Requirements*

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

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

**Inwood Valley Petition**

TTB received a petition from consulting geographer Patrick Shabram, on behalf of himself and Anselmo Vineyards of Inwood Valley, California, proposing the establishment of the ''Inwood Valley'' American viticultural area. The original petition proposed a viticultural area containing approximately 32,647 acres, with 60 acres on 4 commercially-producing vineyards and 14 acres planned for further viticultural development. After reviewing the original petition, TTB suggested to the petitioner that the boundary of the proposed viticultural area be modified in order to conform to the requirements of § 9.12 of the TTB regulations (27 CFR 9.12), which requires a petitioned-for viticultural area to be an area in which viticulture exists and to contain features distinguishable from the surrounding area. Acting on this request, Patrick Shabram, the consulting geographer who submitted the original petition on behalf of Anselmo Vineyards, submitted an addendum to the petition, proposing a modified boundary that used lines drawn between identifiable features on the USGS maps to approximate the limits of the distinguishing soil types of the proposed viticultural area and to exclude portions of the proposed viticultural area that do not contain viticulture. The proposed modifications reduced the size of the proposed viticultural area to 28,298 acres and were not intended to affect any grape growers located within the originally petitioned-for viticultural area.

The proposed Inwood Valley viticultural area, located in rural, southern Shasta County in north-central California, does not overlap, or otherwise involve, any existing or proposed viticultural areas.

**Notice of Proposed Rulemaking and Comments Received**

TTB published Notice No. 125 in the **Federal Register** on December 5, 2011 (76 FR 75830), proposing to establish the Inwood Valley viticultural area, based on the modified boundary as discussed above. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed viticultural area. The distinguishing features of the proposed viticultural area include geology, topography, climate, native vegetation, and soil. The notice also included a comparison of the distinguishing features to the surrounding area. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural area, see Notice No. 125.

In Notice No. 125, TTB solicited comments on the accuracy of the name, boundary, climactic, and other required information submitted in support of the petition. The comment period closed on February 3, 2012.

During the comment period, TTB received four comments in response to Notice No. 125. The commenters included two self-identified wine industry members and two commenters who did not list any affiliation. Three of the comments support the establishment of the proposed Inwood Valley viticultural area. TTB also received one comment outside of the comment period, as discussed later in this section.

One of the three supporting comments, comment 2, also states that the main purpose of the American viticultural area program is not to provide more information to consumers, but instead to boost the local economy and provide vintners with a more competitive advantage in the marketplace. TTB notes that its regulations regarding the approval of American viticultural areas and their use on labels are intended to ensure that such statements provide adequate information about the identity and origin of the product and are not misleading. Whether or not, and to what extent, there is any economic benefit from the approval of a viticultural area is not a factor that TTB considers in determining whether or not to approve a petition for a viticultural area.

The fourth comment objects to the proposed ''Inwood Valley'' name, stating that people do not correlate the name ''Inwood'' with Northern California, and that the word ''valley'' is ''nongeographical.'' Rather, the comment contends that the word ''valley'' is often used as a marketing tool to promote the idea of nature and fresh produce, and that making the name ''Inwood Valley'' viticulturally significant would prohibit wine bottlers outside the proposed viticultural area that currently use the name ''Inwood'' on their labels from later adding ''valley'' to their labels or brand name if they believed it would be in their best marketing interest to do so. The comment cites Inwood Estates Vineyard and Winery in Dallas, Texas, as an example of a winery that would be prohibited from adding ''valley'' to its name if ''Inwood Valley'' becomes a term of viticultural significance. The commenter did not claim any association with Inwood Estates Vineyard and Winery and did not comment on any other aspect of the petition.

Section 9.12(a)(1) of the TTB regulations requires that the area within the proposed viticultural area ''must be nationally or locally known by the name specified in the petition.'' As stated in Notice No. 125, TTB has determined the name evidence submitted by the petitioner shows that the region within the proposed viticultural area is known locally as ''Inwood Valley.'' The evidence provided with the petition indicates that local residents and businesses within the proposed viticultural area use the name ''Inwood Valley,'' and that the name ''Inwood Valley'' accurately describes the region in which the proposed viticultural area is located. TTB further adds that ''Inwood,'' by itself, is not recognized as having viticultural significance, and that the word ''valley'' is commonly used in American viticultural area names; there are 40 American viticultural area names containing the word ''valley'' in California alone.

TTB is not aware of any current label holder that will be adversely affected by the establishment of the Inwood Valley viticultural area and the designation of the full name ''Inwood Valley'' as a term of viticultural significance. Such establishment also will not affect any current or future label holders using the word ''Inwood,'' standing alone, on wine labels. For example, the ability of Inwood Estates Vineyard and Winery to use ''Inwood Estates'' or ''Inwood Winery'' on a wine label would not be affected by the publication of this final rule. With regard to the restriction on the use of the term ''Inwood Valley'' on future labels, TTB specifically noted in Notice No. 125 that any current or future label holder wishing to use the term on a wine label must ensure that the wine meets the eligibility requirements for the appellation.

After the close of the comment period, TTB received a comment from a vineyard owner requesting that the southern boundary of the proposed viticultural area be modified in order to include his vineyard. The commenter stated that his vineyard was within the boundary of the viticultural area as originally proposed in the petition, and that he became aware of the boundary line modification and the resultant exclusion of his vineyard only after the comment period had closed. According to the vineyard owner, his property is located immediately adjacent to the viticultural area boundary proposed in Notice No. 125 and currently has 2.5 acres of planted vineyards, with 4 more acres of vineyards planned in the near future. After being informed of the commenter's request, Mr. Shabram sent a letter to TTB acknowledging that the exclusion of the vineyard was inadvertent and stating that the geographical features of the vineyard are similar to those of the viticultural area proposed in Notice No. 125.

TTB notes that, as stated in Notice No. 125, the proposed boundary was based on marked features on USGS maps that approximately follow the distinguishing features of elevation and soil types. TTB believes a slight modification to the boundary to include the vineyard at issue is consistent with the distinguishing features evidence submitted with the petition and discussed in Notice No. 125. Also, although the comment period had already closed when the comment was received, TTB specifically noted in the proposed rule its interest in comments relating to the appropriateness of the proposed boundary.

Accordingly, given the circumstances of the exclusion of the commenter's vineyard from the proposed viticultural area and the potential impact of the rulemaking on the commenter, TTB concludes that the boundary should be modified so that the additional vineyard is included within the Inwood Valley viticultural area. Mr. Shabram provided TTB with the modifications to the boundary description based on markings appearing on the applicable USGS maps, and the letters from the vineyard owner and Mr. Shabram are included in the rulemaking docket. The boundary modification adds 143 acres to the Inwood Valley viticultural area, for a total of 28,441 acres, with approximately 62.5 acres dedicated to 5 commercially-producing vineyards.

## TTB Determination

After careful review of the petition and the comments received, TTB finds that the evidence provided by the petitioner supports the establishment of the 28,441-acre Inwood Valley viticultural area as proposed in Notice No. 125 and modified by the alteration to the boundary description discussed below. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the ''Inwood Valley'' viticultural area in Shasta County, California, effective 30 days from the publication date of this document.

### *Boundary Description*

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this final rule. Paragraphs (c)(17) and (18) of the final boundary description of the viticultural area differ from the description in the proposed rule, consistent with the modification of the southern portion of the boundary line discussed above. In addition, TTB clarified the wording of other boundary descriptions within paragraph (c) but the location of the boundary as described in those sections did not change from that proposed in Notice No. 125.

### *Maps*

The petitioner provided the required maps, and TTB lists them below in the regulatory text.

## Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, ''Inwood Valley,'' is recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the new regulation clarifies this point. Once this final rule becomes effective, wine bottlers using ''Inwood Valley'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area name as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

## Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new

reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

**Executive Order 12866**

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

**Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this notice.

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

Wine.

**The Regulatory Amendment**

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

## PART 9—AMERICAN VITICULTURAL AREAS

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

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

## Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.226 to read as follows:

### § 9.226 Inwood Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Inwood Valley''. For purposes of part 4 of this chapter, ''Inwood Valley'' is a term of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Inwood Valley viticultural area are titled:

(1) Clough Gulch, California—Shasta County, Provisional edition 1985;

(2) Inwood, California—Shasta County, Provisional edition 1985;

(3) Hagaman Gulch, California—Shasta County, Provisional edition 1985;

(4) Shingletown, California—Shasta County, Provisional edition 1985; and

(5) Tuscan Buttes NE., California, 1965, Photoinspected 1976.

(c) *Boundary.* The Inwood Valley viticultural area is located in Shasta County, California. The boundary of the Inwood Valley viticultural area is as described below:

(1) The beginning point is on the Clough Gulch map at BM (Benchmark) 1254.4 located along State Route 44 in T31N/R2W. From the beginning point, proceed east-northeasterly in a straight line approximately 4.1 miles, onto the Inwood map, to the 1,786-foot elevation point, section 17, T31N/R1W; then

(2) Proceed east-northeasterly in a straight line approximately 2.1 miles to the 2,086-foot elevation point, section 15, T31N/R1W; then

(3) Proceed north-northeasterly in a straight line approximately 0.7 mile to the marked 1,648-foot elevation point (which should be marked as 2,648 feet based on its two adjacent elevation lines) on Bear Creek Ridge, section 10, T31N/R1W; then

(4) Proceed east-northeasterly in a straight line approximately 0.8 mile to the 2,952-foot elevation point (located between two transmission lines), section 11, T31N/R1W; then

(5) Proceed east-northeasterly in a straight line approximately 1.2 miles to the 3,042-foot summit of Blue Mountain, section 1, T31N/R1W; then

(6) Proceed easterly in a straight line approximately 0.7 mile, crossing over the R1W/R1E ''Mt. Diablo Meridian'' line, to the 3,104-foot elevation point, section 6, T31N/R1E; then

(7) Proceed east-northeasterly in a straight line approximately 2.2 miles to the summit of Alamine Peak, section 32, T32N/R1E; then

(8) Proceed southeasterly in a straight line approximately 2.1 miles, onto the Hagaman Gulch map, to Bear Pen Springs, section 10, T31N/R1E; then

(9) Proceed west-southwesterly in a straight line approximately 0.8 mile to the 3,373-foot summit of Chalk Mountain, section 9, T31N/R1E; then

(10) Proceed south-southwesterly in a straight line approximately 1 mile, returning to the Inwood map, to 2,756-foot elevation point, section 17, T31N/R1E; then

(11) Proceed south in a straight line approximately 0.6 mile to the intersection of that line with an improved road marked ''Private'' at the southern boundary of section 17, T31N/R1E; then

(12) Proceed south-southwesterly along that ''Private'' road approximately 1.6 miles to the marked gate of the ''Private'' road at the road's intersection with unnamed improved and unimproved roads, section 29, T31N/R1E; then

(13) Proceed southwesterly in a straight line approximately 1.6 miles, onto the Shingletown map, to the intersection of that line with State Route 44 and an unnamed improved road (known locally as Ash Creek Road), section 31, T31N/R1E; then

(14) Proceed southwesterly in a straight line approximately 0.2 miles to the 3,334-foot elevation point, section 31, T31N/R1E; then

(15) Proceed southwesterly in a straight line approximately 1.5 miles, crossing over the R1W/R1E ''Mt. Diablo Meridian'' line, to the 3,029-foot elevation point on Shingletown Ridge, section 1, T30N/R1W; then

(16) Proceed westerly in a straight line approximately 1.6 miles to the 2,435-foot elevation point, section 3, T30N/R1W; then

(17) Proceed west-southwesterly in a straight line approximately 1.7 miles to the 2,065-foot elevation point (southeast of a marked Borrow Pit), section 8, T30N/R1W; then

(18) Proceed west-northwesterly in a straight line approximately 5.2 miles, onto the Tuscan Buttes NE map, to the 956-foot elevation point near an unnamed spring in section 33, T31N/R2W; then

(19) Proceed north in a straight line approximately 1.7 miles, onto the Clough Gulch map, to BM 1048.1 on State Route 44, section 28, T31N/R2W; then

(20) Proceed east along State Route 44 approximately 1.1 miles, returning to the beginning point.

Signed: July 26, 2012.

**John J. Manfreda,**

*Administrator.*

Approved: August 2, 2012.

**Timothy E. Skud,**

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

[FR Doc. 2012–22595 Filed 9–12–12; 8:45 am]

BILLING CODE 4810–31–P

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## DEPARTMENT OF THE TREASURY

## Alcohol and Tobacco Tax and Trade Bureau

## 27 CFR Part 9

**[Docket No. TTB–2011–0009; T.D. TTB–106; Ref: Notice Nos. 123 and 123A]**

**RIN 1513–AB67**

## Establishment of the Middleburg Virginia Viticultural Area

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

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

**SUMMARY:** The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 198-square mile ''Middleburg Virginia'' viticultural area in Loudoun and Fauquier Counties in northern Virginia. TTB designates viticultural areas to allow vintners to

better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** *Effective Date:* October 15, 2012.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

**SUPPLEMENTARY INFORMATION:**

## Background on Viticultural Areas

### *TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

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

### *Definition*

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

### *Requirements*

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

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

## Middleburg Virginia Petition

In August 2008, TTB received a petition from Rachel E. Martin, executive vice president of Boxwood Winery in Middleburg, Virginia, proposing the establishment of the ''Middleburg Virginia'' American viticultural area in portions of Loudoun and Fauquier Counties in northern Virginia. The petition states that the proposed viticultural area derives its name from the Town of Middleburg, Virginia, and it is bounded by the Potomac River to the north and by mountains to the east, south, and west. The petition notes that the proposed viticultural area covers approximately 190-square miles (121,600 acres) and contains 229 acres of commercial vineyards and 12 wineries.

In July 2009, Ms. Martin submitted to TTB a modification to the proposed Middleburg Virginia viticultural area boundary line in order to include several additional vineyards within the proposed viticultural area. The modification increased the size of the proposed viticultural area by 1,920 acres in the Burnt Mill Run area, east of Zulla, on the USGS Rectortown map. According to the petitioner, the additional acreage has the same distinguishing features as the originally proposed viticultural area. With the petitioner's modified boundary line, the proposed Middleburg Virginia viticultural area contains 251 acres of commercial grape growing in 10 vineyards and 14 wineries. With the petitioner's agreement, TTB also made several small modifications to the originally-proposed boundary line in order to better match the provided maps with the petition's narrative boundary description. These changes were made in the vicinity of the town of Marshall and Little Cobbler Mountain and near the hamlet of Airmont along Route 734 and added approximately 5 square miles (3,200 acres) to the proposed viticultural area. TTB notes that the proposed viticultural area does not overlap or otherwise affect any established or proposed American viticultural area.

## Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 123 in the **Federal Register** on November 8, 2011 (76 FR 69198), proposing to establish the Middleburg Virginia viticultural area. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed viticultural area. The distinguishing features of the proposed viticultural area include climate, topography, geology, and soil. The notice also compared the distinguishing features of the proposed viticultural area to the surrounding area. TTB estimates that the proposed Middleburg Virginia viticultural area, as described in Notice No. 123, contains approximately 198-square miles (or 126,720 acres). For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural area see Notice No. 123.

In Notice No. 123, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. The comment period was scheduled to close on January 9, 2012. During the comment period, the Loudoun Wine Growers Association submitted a request to extend the comment period (comment 12), claiming that their members had been

unaware of the proposal. In response to the request, Ms. Rachel E. Martin, who filed the original petition to establish the Middleburg Virginia viticultural area, submitted a comment (comment 23) that expressed opposition to the extension of the comment period. In the interest of providing the public with a full opportunity to comment on the proposed rulemaking, TTB issued Notice No. 123A, which extended the comment period until February 27, 2012 (77 FR 2027, January 13, 2012).

Excluding the two comments received regarding the extension of the comment period, TTB received 26 comments in response to Notice No. 123 during both the original and extended comment period. The commenters included 17 self-identified wine industry members, including growers and vintners; 3 commenters who did not list any affiliation; 2 food and wine writers; Ms. Martin, the petitioner, who submitted two additional comments; Virginia's Secretary of Agriculture and Forestry, on behalf of the Commonwealth; and a soil scientist.

*Comments in Support of Establishing the Petitioned-for AVA*

Fifteen of the commenters unequivocally support the proposed Middleburg Virginia viticultural area (comments 1, 4, 6, 7, 9, 11, 16, 17, 18, 19, 20, 21, 22, 24, and 25). These commenters included 10 self-identified wine industry members, including growers, vintners, and a wine exporter; two food and wine writers; the Secretary of Agriculture and Forestry for the Commonwealth of Virginia; and two commenters who stated no affiliation. Several of the comments specifically supported the evidence that was presented in the petition and described in Notice No. 123. For instance, comment 7, from a winery operator within the petitioned-for viticultural area, states that the petition was ''well researched'' and accurately describes the ''unique geographical and agricultural'' nature of the region. Comment 9, from a local winemaker and grape grower, applauds the petition as ''the most comprehensive I have ever seen related to a Virginia AVA'' and believes it effectively describes the microclimate of the area. Comment 17, from a grower to the west and outside of the petitioned-for viticultural area, notes that ''[the] features of the lands identified in this AVA are clearly distinctive from the valley in which we grow grapes.'' Comment 22, from a local grower, supports the boundaries of the petitioned-for viticultural area, stating that ''[the] area defined accurately depicts the consistent grape-growing area, which varies measurably from the surrounding area.'' In comment 24, a wine writer states that the petitioned-for viticultural area ''comprises a contiguous and distinct microclimate that is distinct from the surrounding area.'' Finally, comment 25, from a viticultural consultant who has worked with growers in the region, believes the petitioned-for viticultural area should be established and become ''one of what should eventually be many AVAs based on specific geographic parameters,'' and describes the varied elevations within the boundaries as resembling the elevation variations found within the established Napa Valley and Monticello viticultural areas.

An additional comment (comment 26) supports the establishment of the proposed viticultural area and also requests a boundary modification to include the commenter's vineyard in the proposed viticultural area. The modification request is discussed later in this document.

*Comment in Opposition of Establishing the Petitioned-for AVA*

Comment 27 expressly opposes the establishment of the proposed Middleburg Virginia viticultural area because ''[t]here are sufficient viticultural areas,'' and many of the existing viticultural areas are ''underutilized.'' The comment states that ''[a]dding yet another designation reduces the intrinsic value of said designation'' and urges rejecting ''this and future applications.''

TTB notes that under its regulations the number of established viticultural areas and utilization rate of the designations are not factors that determine whether or not a viticultural area should be established. TTB does not believe these factors are determinative as to whether the use of a viticultural area name on a label as an appellation of origin would provide adequate information about the identity and origin of the product or would be misleading.

*Soil Scientist Comment*

Alex Blackburn, the soil scientist whose analysis was relied upon and cited in the petition, also submitted a comment (comment 5) to clarify two statements attributed to him in the petition and Notice No. 123. Mr. Blackburn first explained that although the topography section of Notice No. 123 states that fairly level terrain, like that found in the southern region of the proposed viticultural area, is an important characteristic for a vineyard site, steeper parcels can be prepared and managed for use as vineyards and may have ''significant advantages concerning the production of quality grapes.'' Secondly, Mr. Blackburn noted that the soils section of Notice No. 123 describes the Purcellville, Tankerville, Philomont, and Middleburg soils of the proposed viticultural area as being ''among the best in the Blue Ridge Physiographic Province for fruit production, and grapevines grown in these soils have better quality with few vigor problems'' because they are ''lower in natural fertility and in available water capacity'' than the soils of the region outside the proposed viticultural area. Mr. Blackburn clarified that while the statement may apply to the Tankerville and Philomont soils, Purcellville soils ''are often vigorous due to high natural fertility and plant available water,'' and the Middleburg soils are very deep and fertile but are located in drainage swales that are generally not recommended for the production of quality grapes.

Section 9.12(a)(3) requires a petition to include a description of the common features of a proposed viticultural area and how those features are distinctive from the features associated with adjacent areas outside the proposed viticultural area boundary. TTB agrees that Mr. Blackburn's comments clarify the statements attributed to him in the petition and Notice No. 123, but these clarifications do not affect the evidence supporting the conclusion that the soil and terrain within the proposed viticultural area are distinguishable from the surrounding area.

*Comments Concerning the Name of the Proposed Viticultural Area*

Four comments from local vineyard owners (comments 3, 8, 10, and 14) object to the name of the proposed viticultural area, claiming that the name ''Middleburg Virginia'' does not represent the entire region within the proposed viticultural area, particularly the portion within northern Loudoun County. TTB notes that none of these comments expressly opposes the establishment of the proposed viticultural area.

Comment 3 proposes the alternative names of ''Northern Virginia'' and ''Greater Loudoun'' and suggests that the name ''Middleburg Virginia'' might be appropriate if the size of the proposed viticultural area was reduced to encompass a much smaller area around the town of Middleburg. Comment 8 states that the region of northern Loudoun County has ''no historical or geographical association with the town of Middleburg,'' and offered the name ''Northern Piedmont'' as an alternative. Comment 10 states that the proposed viticultural area is too

large for the name ''Middleburg Virginia'' to apply to the entire area, and suggests the proposed viticultural area be called ''Northern Virginia Piedmont.'' Comment 14 also questions whether the proposed name applies to the entire region within the proposed viticultural area, but supports the establishment of a viticultural area in the region and agrees with the proposed boundary. In response to these concerns, Ms. Martin, the petitioner, submitted a comment (comment 13) reiterating her belief that the proposed name is applicable to the entire region that would be included in proposed viticultural area.

In response to these comments, TTB notes that § 9.12(a)(1) requires a petition to provide evidence that currently and directly associates a name with the proposed viticultural area, and that the area be known locally or nationally by that name. As stated in Notice No. 123, the evidence provided with the petition indicates that local residents and businesses within the proposed viticultural area use the name ''Middleburg Virginia,'' and that the name ''Middleburg Virginia'' accurately describes the general region in which the proposed viticultural area is located rather than only the town of Middleburg. Although the three commenters claim that the proposed ''Middleburg Virginia'' name does not apply to the entire proposed viticultural area, they offered no evidence to refute the name evidence provided in the petition and Notice No. 123. Additionally, the commenters did not submit any evidence in support of the alternative proposed names that they assert more accurately describe the entire proposed viticultural area than the ''Middleburg Virginia'' name.

*Comments Proposing Changes to the Boundary*

Four comments (comments 2, 10, 15 and 26) suggest modifications to the proposed boundary line. Comment 2 suggests adjusting the proposed western portion of the boundary line to coincide with the eastern boundary of the established Shenandoah Valley viticultural area farther to the west, in order to eliminate a 3-mile wide ''gap'' between the proposed viticultural area and the Shenandoah Valley viticultural area. Comment 2 further states that the boundary modification would be justified because the soil characteristics and growing conditions of the ''gap'' are similar to those within proposed viticultural area.

Comment 10 claims the proposed viticultural area is too heterogeneous, and the hillier, mountainous areas within the proposed boundary should be removed because they have a different topography from the rest of the proposed viticultural area. Comment 15 also suggests modifying the proposed boundary line to remove the slopes, peaks, and ridges of the mountains within the proposed viticultural area because these higher, steeper elevations are ''separately distinct features from the rolling plains of Middleburg and its surrounding countryside.''

One comment (comment 26) supports the establishment of the proposed Middleburg Virginia viticultural area and also requests that the boundary be adjusted to include the commenter's vineyard, which is adjacent to the eastern portion of the proposed boundary that follows State Route 662. Ms. Martin, the petitioner, in comment 28 confirmed that the climate, topography, geology, and soil of the property in question are consistent with the proposed viticultural area, and she stated that she supports a modification of the boundary to include the commenter's property.

Section 9.12(a)(2) of the TTB regulations requires petitions to explain the basis for defining the boundary of the proposed viticultural area and to describe the commonalities within the boundary and explain how the region outside the proposed boundary differs. As noted in Notice No. 123, the boundary evidence included in the petition provided an adequate basis for the proposed boundary. Comments 2, 10, and 15 recommend significant boundary modifications; however, the commenters did not provide data and evidence to support their assertions and rebut the evidence submitted with the petition. With regard to comment 2, TTB notes that the terrain in the gap between the proposed viticultural area and the established Shenandoah viticultural area appears to be more mountainous and rugged than that of the majority of the proposed viticultural area, with higher elevations and steeper slopes that run in a north-south direction, compared to the gentle, rolling hills within the proposed viticultural area.

With regard to the request in comment 26 to modify the eastern portion of the proposed boundary that follows State Route 662 so that the commenter's vineyard would be included within the viticultural area, there are several factors that support this proposed boundary change. First, the commenter's property is directly adjacent to the boundary of the proposed viticultural area. TTB notes that the proposed boundary was based in part on marked features on USGS maps that approximately track the distinguishing feature of soil types; the location and extent of a particular soil type can only be approximated on the USGS maps used for boundary directions. Second, the petitioner confirmed that the property shares the same distinguishing features as the region within the proposed viticultural area. Finally, the boundary modification adds only 330 acres (0.5 square miles). Accordingly, TTB concludes that the boundary should be modified to include the commenter's vineyard.

**TTB Determination**

After careful review of the petition and the comments received in response to Notice No. 123, TTB finds that the evidence provided by the petitioner supports the establishment of the approximately 198-square mile Middleburg Virginia viticultural area. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the ''Middleburg Virginia'' viticultural area in Loudoun and Fauquier Counties, Virginia, effective 30 days from the publication date of this document.

*Boundary Description*

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this notice.

As discussed earlier in this document, the final boundary description of the viticultural area differs from the description in the proposed rule in order to incorporate the additional 330 acres. Paragraphs (c)(8) through (12) have been changed to expand the southern boundary slightly to include a vineyard that was adjacent to and outside of the viticultural area boundary proposed in Notice No. 123; subparagraphs (c)(9) through (c)(42) in the proposed rule were redesignated as paragraphs (c)(13) through (c)(46) in this final rule to accommodate the boundary modification.

*Maps*

The petitioner provided the required maps, and TTB lists them below in the regulatory text. The Leesburg Quadrangle map was added to accommodate the boundary modification described above.

**Impact on Current Wine Labels**

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, ''Middleburg Virginia,'' is

recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the regulation clarifies this point. Once this final rule becomes effective, wine bottlers using ''Middleburg Virginia'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

**Regulatory Flexibility Act**

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

**Executive Order 12866**

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

**Drafting Information**

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

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

Wine.

**The Regulatory Amendment**

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

## PART 9—AMERICAN VITICULTURAL AREAS

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

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

■ 2. Subpart C is amended by adding § 9.225 to read as follows:

### Subpart C—Approved American Viticultural Areas

**§ 9.225 Middleburg Virginia.**

(a) *Name.* The name of the viticultural area described in this section is ''Middleburg Virginia''. For purposes of part 4 of this chapter, ''Middleburg Virginia'' is a term of viticultural significance.

(b) *Approved maps.* The 14 United States Geological Survey (scale 1:24,000) topographic maps used to determine the boundary of the Middleburg Virginia viticultural area are titled:

(1) Harpers Ferry Quadrangle, West Virginia-Virginia-Maryland, 1996;

(2) Point of Rocks Quadrangle, Maryland-Virginia, 1970, photoinspected 1981;

(3) Waterford Quadrangle, Virginia-Maryland, 1970, photorevised 1984;

(4) Leesburg Quadrangle, Virginia-Maryland, 1994;

(5) Lincoln Quadrangle, Virginia-Loudoun Co., 1970, photoinspected 1981;

(6) Middleburg Quadrangle, Virginia, 1968, photorevised 1978, photoinspected 1981;

(7) Rectortown Quadrangle, Virginia, 1970, photoinspected 1981;

(8) Marshall Quadrangle, Virginia-Fauquier Co., 1970, photorevised 1983;

(9) Orlean Quadrangle, Virginia, 1970, photorevised 1983;

(10) Upperville Quadrangle, Virginia, 1970, photorevised 1983;

(11) Linden Quadrangle, Virginia, 1994;

(12) Ashby Gap Quadrangle, Virginia, 1970, photorevised 1978, photoinspected 1981;

(13) Bluemont Quadrangle, Virginia, 1970, photorevised 1979; photoinspected 1981; and

(14) Purcellville Quadrangle, Virginia-Loudoun Co., 1970, photorevised 1984.

(c) *Boundary.* The Middleburg Virginia viticultural area is located in Loudoun and Fauquier Counties, Virginia. The boundary of the Middleburg Virginia viticultural area is as described below:

(1) The beginning point is on the Harpers Ferry map at the intersection of the easternmost boundary line of the Harpers Ferry National Historical Park and the south bank of the Potomac River in Loudoun County, Virginia. From the beginning point, follow the south bank of the Potomac River easterly (downstream) for approximately 8.2 miles, crossing onto the Point of Rocks map, to the mouth of Catoctin Creek; then

(2) Proceed southwesterly (upstream) along the meandering Catoctin Creek for approximately 4 miles to State Route 663 (locally known as Taylorstown Road) at Taylorstown; then

(3) Proceed easterly on State Route 663 for approximately 0.1 mile to State Route 665 (locally known as Loyalty Road) in Taylorstown; then

(4) Proceed southerly on State Route 665 for approximately 5.4 miles, crossing onto the Waterford map, to State Route 662 on the south side of Waterford; then

(5) Proceed southerly on State Route 662 for approximately 2.5 miles to State Route 9 (locally known as Charles Town Pike) near Paeonian Springs; then

(6) Proceed southerly on State Route 9 (Charles Town Pike) for approximately 0.7 mile, crossing over State Route 7 (locally known as Harry Byrd Highway), to State Business Route 7 (locally known as E. Colonial Highway); then

(7) Proceed westerly on State Business Route 7 (E. Colonial Highway) for approximately 0.4 mile to the continuation of State Route 662 (locally known as Canby Road); then

(8) Proceed southerly on State Route 662 (Canby Road) for approximately 0.75 miles to an unnamed, unimproved road near the marked 701-foot elevation; then

(9) Proceed southeasterly in a straight line for approximately 0.4 miles, crossing onto the Leesburg map, to the northern terminus of an unnamed light-duty road known locally as Gore Lane; then

(10) Proceed southerly along Gore Lane for approximately 0.7 miles to State Route 820; then

(11) Proceed southwesterly along State Route 820 for approximately 0.68 miles, crossing onto the Lincoln map, to State Route 622 (Canby Road); then

(12) Proceed southwesterly on State Route 622 (Canby Road) for approximately 2 miles to the intersection with State Route 729; then

(13) Proceed southwesterly on State Route 729 for approximately 2.8 miles to the State Route 729 bridge at North Fork Creek; then

(14) Proceed southeasterly (downstream) along the meandering North Fork Creek for approximately 4 miles to the confluence of North Fork Creek with Goose Creek; then

(15) Proceed southwesterly (upstream) along the meandering Goose Creek for approximately 5.6 miles to State Route 734 at Carters Bridge; then

(16) Proceed southeasterly on State Route 734 for approximately 2.4 miles, crossing onto the Middleburg map, to State Route 629; then

(17) Proceed southerly on State Route 629 for approximately 1 mile to the road's intersection with U.S. Route 50 at Benchmark (BM) 341 at Dover, then continue in a straight line due south for approximately 150 feet to the Little River; then

(18) Proceed southwesterly (upstream) along the meandering Little River for approximately 8 miles to the State Route 626 bridge at Halfway; then

(19) Proceed northwesterly on State Route 626 for approximately 0.3 mile to State Route 706, and then continue northwesterly on State Route 706 for approximately 1.6 miles, crossing onto the Rectortown map, to Burnt Mill Run; then

(20) Proceed west-southwesterly (upstream) along Burnt Mill Run for approximately 0.4 mile to State Route 705; then

(21) Proceed south-southwesterly on State Route 705 for approximately 0.5 mile to State Route 715; then

(22) Proceed west-northwesterly on State Route 715 for approximately 0.4 mile to State Route 709 at Zulla; then

(23) Proceed south-southwesterly on State Route 709 for approximately 4.6 miles, crossing onto the Marshall map, to Interstate Highway 66 (0.6 mile south of Brookes Corner); then

(24) Proceed west-northwesterly on Interstate Highway 66 for approximately 4.0 miles, crossing onto the Orlean map, to State Route 732 (locally known as Ramey Road); then

(25) Proceed westerly on State Route 732 approximately 2 miles to State Route 731 (locally known as Ashville Road) near Ashville; then

(26) Proceed northwesterly in a straight line, crossing onto the Upperville map, to the marked 1,304-foot peak on Little Cobbler Mountain, then northerly in a straight line to the marked 1,117-foot peak on Little Cobbler Mountain, and then continue northerly in a straight line to the marked 771-foot peak near the northern end of Little Cobbler Mountain; then

(27) Proceed west in a straight line for approximately 2.7 miles to the 595-foot elevation point on State Route 724, southeast of Markham, and continue west in a straight line for approximately 3.1 miles, crossing onto the Linden map, to State Route 726 and an unnamed side road (near a cemetery), approximately 0.7 mile southwest of the intersection of State Route 726 and State Route 55 (near Belle Meade); then

(28) Proceed northeasterly along State Route 726 for approximately 0.7 mile to State Route 55; then

(29) Proceed east-northeast in a straight line for approximately 1.7 miles to State Route 688 at BM 629 in Wildcat Hollow; then

(30) Proceed northerly and then northeasterly on State Route 688 for approximately 5.5 miles, crossing over and back between the Linden and Upperville maps and then continuing on the Upperville map, to U.S. Route 17; then

(31) Proceed northerly on U.S. Route 17 for approximately 2.0 miles, crossing onto the Ashby Gap map, to U.S. Route 50 (just east of Paris); then

(32) Proceed east-northeasterly in a straight line for approximately 1.5 miles to the marked 797-foot elevation point located along State Route 618 at a fork in the road approximately 0.65 miles north of U.S. Route 50; then

(33) Proceed southeasterly in a straight line for approximately 0.9 mile to U.S. Route 50 at BM 625, which is located at a bridge over an unnamed branch of Panther Skin Creek; then

(34) Proceed south-southeasterly in a straight line for approximately 2.9 miles, crossing onto the Upperville map, to the intersection of State Routes 712 and 710 at Kerfoot; then

(35) Proceed southeasterly on State Route 710 for approximately 2.5 miles, crossing onto the Rectortown map, to the State Route 710 bridge over Goose Creek; then

(36) Proceed northeasterly (downstream) along the meandering Goose Creek for approximately 10.9 miles to State Route 626 at Bentons Bridge; then

(37) Proceed northwesterly on State Route 626 for approximately 4.0 miles, crossing onto the Bluemont map, to State Route 630 at Unison; then

(38) Proceed northeasterly on State Route 630 for approximately 0.75 mile to Dog Branch; then

(39) Proceed northwesterly along Dog Branch for approximately 1.75 miles to State Route 719; then

(40) Proceed north-northeasterly on State Route 719 for approximately 2 miles to State Route 734 at Airmont; then

(41) Proceed east-southeasterly on State Route 734 for approximately 0.7 mile to State Route 735; then

(42) Proceed northeasterly on State Route 735 for approximately 2 miles to State Route 725; then

(43) Proceed north-northeasterly in a straight line for approximately 4.4 miles, crossing over the northwest corner of the Lincoln map and then onto the Purcellville map, to the intersection of State Routes 711 and 690, (northwest of Purcellville); then

(44) Proceed north-northeasterly on State Route 690 for approximately 3.1 miles to State Route 9, then proceed east on State Route 9 for approximately 0.2 mile to the continuation of State Route 690, then proceed northerly on State Route 690 for approximately 5.3 miles, crossing onto the Harpers Ferry map, to the road's intersection with the 600-foot elevation line immediately south of the road's marked 592-foot elevation point (located 0.75 mile east-northeast of the radio facilities at the 1,424-foot peak of Short Hill Mountain); then

(45) Proceed northerly along the 600-foot elevation line for approximately 4 miles to the Harpers Ferry National Historical Park south boundary line; then

(46) Proceed east and north approximately 0.75 mile along the Harpers Ferry National Historical Park boundary line, returning to the beginning point.

Signed: July 9, 2012.

**John J. Manfreda,**

*Administrator.*

Approved: July 18, 2012.

**Timothy E. Skud,**

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

[FR Doc. 2012–22596 Filed 9–12–12; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2012–0739]**

**RIN 1625–AA00**

## Safety Zone; Blue Angels at Kaneohe Bay Air Show, Oahu, HI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone while the U.S. Navy Blue Angels Squadron conducts aerobatic performances over Kaneohe Bay, Oahu, Hawaii. This safety zone encompasses a small area of the Kane'ohe Bay Naval

Defensive Sea Area, including an area that extends approximately 150 yards northeast and 250 yards southwest of the Defensive Sea Area. This safety zone extends from the surface of the water to the ocean floor. This safety zone is necessary to protect watercraft and the general public from hazards associated with the U.S. Navy Blue Angels aircraft low flying, high powered jet aerobatics over open waters. Vessels desiring to transit through the zone can request permission by contacting the Honolulu Captain of the Port at telephone number 808–842–2600.

**DATES:** This rule is effective from 9 a.m. September 28, 2012 through 5 p.m. September 30, 2012. This rule will be enforced on a daily basis from 9 a.m. through 5 p.m. September 28 through September 30, 2012.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2012–0739]. 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.'' 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.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander Scott O. Whaley, Waterways Management Division, U.S. Coast Guard Sector Honolulu, telephone 808–522–8264 ext. 352, email *Scott.O.Whaley@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 the Coast Guard did not receive necessary information regarding the event with sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to air show participants, participant aircraft, spectators, and the general public.

For the same reason discussed above, 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**.

## B. 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. 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

On May 14, 2012, Kaneohe Bay Air Show 2012 coordinators informed the U.S. Coast Guard of a State of Hawaii approved Air Show plan that include an aerial performance ''show box'' extending beyond the Kane'ohe Bay Naval Defensive Sea Area as established by Executive Order No. 8681 of February 14, 1941. Within this ''show box'', the U.S. Navy Blue Angels Squadron will conduct aerobatic performances, exhibiting their aircraft's maximum performance capabilities, over Kaneohe Bay, Oahu, Hawaii during a 3-day period. Taking into account the hazards associated within this ''show box'' during the Squadron's high powered multiple jet aircraft performances, and that Kaneohe Bay normally experiences heavy waterway traffic during the weekends, a safety zone for the portions of the ''show box'' that extend beyond the Kane'ohe Bay Naval Defensive Sea was determined to be appropriate by the Captain of the Port so as to ensure the safety of all watercraft and the general public during the Blue Angels' performances.

## C. Regulatory Analyses

We developed this 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 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. The economic impact of this rule is not significant for the following reasons: (1) The safety zone will be enforced for only eight hours each day for a three day period; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the event area without authorization from the Captain of the Port Honolulu or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the event area during the enforcement period if authorized by the Captain of the Port Miami or a designated representative.

### *2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. 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, transit through, anchor in, or remain within that portion of Kaneohe Bay encompassed within the safety zone from 8 a.m. until 5 p.m. on September 28, 29, and 30, 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.

### *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**, above. 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 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 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 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 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 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 rule 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 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 rule involves the establishment of a temporary safety zone to protect the public on navigable waters of the United States. This 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 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. 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.T14–210 to read as follows:

**§ 165.T14–210 Safety Zone; Blue Angels at Kaneohe Bay Air Show, Oahu, Hawaii.**

(a) *Location.* The following area is a safety zone: All waters contained within an area composing of one box on Kane'ohe Bay Naval Defensive Sea Area as established by Executive Order No. 8681 of February 14, 1941, in Kaneohe Bay, Oahu, Hawaii. This box extends approximately 150 yards northeast and 250 yards southwest of the Defensive Sea Area and is bound by the following points: 21°26.449′ N 157°47.071′ W then south to 21°26.270′ N 157°46.895′ W then northeast to 21°27.943′ N 157°44.953′ W then west to 21°28.016′ N 157°45.250′ W returning southwest to the starting point. This safety zone extends from the surface of the water to the ocean floor. These coordinates are based upon the National Oceanic and Atmospheric Administration Coast Survey, Pacific Ocean, Oahu, Hawaii, chart 19359.

(b) *Regulations.* (1) Entry into or remaining in the safety zones described in paragraph (a) of this section is prohibited unless authorized by the Honolulu Coast Guard Captain of the Port.

(2) Persons desiring to transit these safety zones may contact the Honolulu Captain of the Port on VHF channel 16 (156.800 MHz) or at telephone number 808–842–2600 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Enforcement period.* This rule is effective from 9 a.m. September 28, 2012 through 5 p.m. September 30, 2012. This rule will be enforced daily between the hours of 9 a.m. through 5 p.m. from September 28 through September 30, 2012.

(d) *Penalties.* Vessels or persons violating this rule are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Dated: August 27, 2012.

**J.M. Nunan,**

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

[FR Doc. 2012–22600 Filed 9–12–12; 8:45 am]

**BILLING CODE 9110–04–P**

## POSTAL SERVICE

## 39 CFR Part 111

## Holiday Mobile Shopping Promotion

**AGENCY:** Postal Service ™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service will revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 709.3 to add a new temporary promotion during November of 2012 for Presorted and automation First-Class Mail® cards, letters, and flats, and Standard Mail® letters and flats bearing two-dimensional mobile barcodes or equivalent print technology.

**DATES:** *Effective date:* November 7, 2012.

**FOR FURTHER INFORMATION CONTACT:** Krista Becker at 202–268–7345, Bill Chatfield at 202–268–7278, John Rosato at 202–268–8597, or *mobilebarcode@usps.gov.*

**SUPPLEMENTARY INFORMATION:** On June 27, 2012, the Postal Service filed a notice with the Postal Regulatory Commission (Docket No. R2012–9) to temporarily reduce the prices for certain types of First-Class Mail and Standard Mail letters and flats containing a transactional two-dimensional barcode (''mobile barcode'') readable by consumer mobile devices. The terms ''mobile barcode or mobile barcodes'' include equivalent mobile technologies such as watermarks or tags. On August 7, 2012, the PRC approved the Holiday Mobile Shopping Promotion (''Promotion''), which will take place between November 7, 2012 and November 21, 2012 (''promotion period''). The Promotion is designed to spur mobile purchasing by putting mailers' mobile-optimized offers, coupons, and catalogs into the hands of customers for the Black Friday/Cyber Monday holiday shopping timeframe.

In this final rule, the Postal Service provides a description of the eligibility conditions for the Holiday Mobile Shopping Promotion, and the revised mailing standards to implement the promotion. The new standards will replace those for the Mobile Commerce and Personalization Promotion that have been in effect for the months of July and August 2012.

To be eligible, each mailpiece listed on a qualifying postage statement must have a mobile barcode on the outside of the piece or on the contents within the piece. When scanned, the mobile barcode must lead the recipient of the mailpiece to a mobile optimized shopping Web site that allows the recipient to purchase an advertised product on the mobile device (the sale of services will not qualify). Directional text must be printed near the mobile barcode to instruct the recipient to scan the image. Mobile barcodes that direct consumers to web pages that allow them to pay for prior or future purchases or encourage enrollment in online bill payment or paperless statement services are not eligible for the Promotion. Mailpieces with mobile barcodes that convey postage information, destination, sender, or a machinable serial number for security purposes also are not eligible for the discount.

### Discount and Rebate Information

The Holiday Mobile Shopping Promotion provides an upfront price reduction of 2 percent on the eligible postage for qualifying mailpieces. Qualifying mailings are Presorted and automation mailings of First-Class Mail cards, letters, and flats, and Standard Mail (including Nonprofit) letters and flats. Commingled, co-mailed, and combined mailings are allowed, but a separate postage statement is required for the mailpieces with mobile barcodes.

The price reduction will be taken off the eligible postage amount due at the time of mailing. The Promotion discount does not apply to single-piece First-Class Mail pieces including residual single-piece First-Class Mail pieces claimed on a postage statement for Presorted and automation mailings. The price reduction also does not apply to any Standard Mail residual pieces paying single-piece First-Class Mail prices.

Eligible mailings must be accompanied by electronic documentation, submitted via mail.dat, mail.xml, or Postal Wizard. The electronic documentation must identify the mail owner and mail preparer in the ''by/for'' fields for all mailings, either by the Customer Registration ID (CRID) or Mailer ID (MID) assigned by USPS®. Mailings of automation cards and letters, including Standard Mail letters (other than those with simplified addresses) claiming a carrier route automation letter price on a postage statement, or automation flats must have Intelligent Mail® barcodes. Mailpieces with POSTNET ™ barcodes will not be eligible for the price reduction.

Mailers also may qualify for an additional 1 percent rebate on the pre-discount postage of their qualifying mailings if a portion of their orders is fulfilled via Priority Mail® between November 9, 2012, and December 31, 2012 (''fulfillment period''). Priority Mail packages must bear a unique trackable barcode (i.e., Delivery Confirmation barcode or Intelligent Mail package barcode). To claim the rebate, mailers will need to demonstrate that during the fulfillment period, the number of Priority Mail packages delivered to customers exceeded 0.5 percent (''package threshold'') of the total number of qualifying mailpieces sent during the ''promotion period'' (November 7, 2012, through November 21, 2012.).

An example of the package threshold calculation is in the table below:

| | |
|---|---|
| Promotion Period—Discounted Mail volume | 100,000 pieces. |
| Total postage prior to discount | $21,000. |
| 2% Discount Applied | $420. |
| Total Postage after Discount applied | $20,580. |
| Fulfillment Threshold—0.5% of Discounted Mail volume | 500 packages. |
| Actual number of packages fulfilled via Priority Mail with Delivery Confirmation (11/9–12/31) | 1,225. |
| Additional rebate earned | $210. |

In the example above, if the mailer had sent 500 packages or less via Priority Mail with Delivery Confirmation during the fulfillment period, there would be no rebate. Rebate applications will be due to the program office no later than February 15, 2013. Any earned rebate will be deposited to the participant's mailing postage payment account.

### Postage Payment Methods

Postage payment methods will be restricted to permit imprint, metered postage, or precancelled stamps. Pieces with metered postage must bear an exact

amount of postage as stipulated by the class and shape of mail. For First-Class Mail letters, the affixed values below are for the first 2 ounces only, and for First-Class Mail flats, for the first ounce only. Affixed postage values for metered mailings will be as follows:

| | |
|---|---|
| First-Class Mail postcards | $0.20 |
| First-Class Mail automation and Presorted machinable letters | 0.25 |
| First-Class Mail nonmachinable letters | 0.45 |
| First-Class Mail automation and Presorted flats | 0.35 |
| Standard Mail Regular letters | 0.12 |
| Standard Mail Regular flats | 0.13 |
| Standard Mail Nonprofit letters | 0.05 |
| Standard Mail Nonprofit flats | 0.06 |

Mailings with postage paid by metered or precancelled stamp postage will have the percentage discount deducted from the additional postage due, except for Value Added Refund mailings, which may include the amount of the discount with the amount to be refunded. The holiday mobile shopping promotion discount cannot be combined with other incentives, with the exception of the full-service Intelligent Mail barcode discount.

**Promotion Dates and More Information**

To participate in the promotion, customers must be registered for the Promotion on the Incentive Programs Service through the Business Customer Gateway at *https://gateway.usps.com/bcg/login.htm* and specify which permits and CRIDs will participate in the promotion. Registration opens September 15, 2012 and must be completed at least 2 hours prior to the first mailing. The Postal Service will implement the Promotion and temporary price reduction for mailings made on November 7, 2012, through November 21, 2012. Plant-verified drop shipment (PVDS) mailings accepted no later than November 21, 2012, may be entered at destinations through December 6, 2012. Program requirements, including updated FAQs, are available on the RIBBS® Web site at *https://ribbs.usps.gov/index.cfm?page=mobilebarcode* or by email to *mobilebarcode@usps.gov.*

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

## PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

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

■ 2. Revise the following sections of the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM):

*Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM):

* * * * *

**700 Special Standards**

* * * * *

**709 Experimental and Temporary Classifications**

* * * * *

[*Revise the title of 3.0 as follows:*]

**3.0 Holiday Mobile Shopping Promotion**

**3.1 Program Description and Scope**

[*Revise 3.1 as follows:*]

The holiday mobile shopping promotion provides a 2 percent discount on the prices of Presorted and automation pieces in mailings of First-Class Mail cards, letters, and flats, and Standard Mail (including Nonprofit) letters and flats that include a transactional two-dimensional mobile barcode and meet all the conditions in 3.0. The term ''mobile barcode'' also will include equivalent mobile technologies, such as watermarks and tags, that meet all the conditions in 3.0. Automation pieces must bear Intelligent Mail barcodes. The promotion is valid for mailings entered from November 7, 2012, through November 21, 2012. Plant-verified drop shipment (PVDS) mailings meeting all relevant standards may be accepted at origin as late as November 21, 2012, if they are entered no later than December 6, 2012 at the destination facility. Mailers also may qualify for an additional 1 percent rebate on the postage of their qualifying mailers under 3.3.

**3.2 Eligibility Standards**

[*Revise 3.2 as follows:*]

To be eligible for the 2 percent discount, customers must be registered for the promotion on the Incentive Programs Service through the Business Customer Gateway at *https://gateway.usps.com/bcg/login.htm,* and specify which permits and CRIDs will participate in the promotion. Registration opens September 15, 2012, and must be completed at least 2 hours prior to the first mailing. Mailpieces must be mailed under the following conditions:

a. The mobile barcode or similar image must be on each mailpiece, either on the outside or printed on the contents of the piece. Brief instructions or directional copy must be printed near the mobile barcode to instruct the recipient to scan the barcode or image. See 3.4 for placement restrictions.

b. The mobile barcode must be readable by a mobile device and must lead to a mobile-optimized Web site. The mobile barcode must be relevant to the contents of the mailpiece. Scanning the barcode must lead the consumer to a Web page that allows the recipient to purchase an advertised product on the mobile device. Barcodes with links that direct consumers to sites that allow purchase of a service, payment for prior or future purchases, or that encourage enrollment in online bill payment or paperless statement services are not eligible for the discount. Mailpieces with mobile barcodes that convey postage information, destination, sender, or a machinable serial number for security purposes also are not eligible for the discount.

c. The mailpieces with mobile barcodes must be one of the following:

1. Presorted or automation First-Class Mail cards, letters, or flats. Automation pieces must bear Intelligent Mail barcodes.

2. Standard Mail (including Nonprofit) letters or flats. Automation pieces must bear Intelligent Mail barcodes.

d. Postage must be paid by permit imprint or by affixing metered postage or a precanceled stamp to each piece of mail; the postage statement and mailing

documentation must be submitted electronically. The mail owner's identity must be indicated in the electronic documentation (''eDoc''). The eDoc must identify the mail owner and mail preparer in the by/for fields, either by Customer Registration ID (CRID) or Mailer ID (MID) assigned by the USPS. All Presorted and automation pieces declared on a postage statement must contain a mobile barcode that qualifies for the discount.

e. At the time of mailing, mailers must provide the USPS acceptance unit with an unaddressed sample of the mailpiece that contains a mobile barcode. Mailers also must retain, until February 15, 2013, a sample of each mailpiece claiming a discount.

f. Other than a full-service Intelligent Mail discount (see 705.24), no other incentives apply for mailpieces claiming a discount under this promotion.

g. Participants must agree to participate in a survey conducted either during or after the promotional period.

h. Federal government official mailings under OMAS are not eligible for this promotion.

i. The electronic equivalent of the mailer's signature on the postage statement will certify that each mailpiece claimed on the postage statement contains a qualifying mobile barcode.

[*Revise the heading and text of 3.3 as follows:*]

**3.3 Discounts**

Mailers must claim the 2 percent postage discount on the postage statement at the time the statement is electronically submitted. Mailings with postage affixed will deduct the discount amount from the additional postage due, except that mail service providers authorized to submit Value Added Refund (''VAR'') mailings may include the discount in the amount to be refunded. Pieces with metered postage must bear an exact amount of postage as stipulated by the class and shape of mail. Affixed postage values for metered mailings may be found in the **Federal Register** notice preamble available at pe.usps.com. Provisions for additional postage for First-Class Mail pieces over 1 ounce are in 234.2.2a and 334.2.2a, and in 244.2.2 and 344.2.2 for Standard Mail pieces over 3.3 ounces. Mailers may also qualify for an additional one percent rebate on the postage of their qualifying mailpieces if a portion of their orders are fulfilled via Priority Mail between November 9, 2012, and December 31, 2012 (fulfillment period). To claim the rebate, mailers will need to demonstrate that during the fulfillment period, the number of Priority Mail packages (sent with a unique trackable barcode, such as Delivery Confirmation or Intelligent Mail package barcode) delivered to customers exceeded 0.5 percent of the total number of qualifying mailpieces mailed from November 7, 2012, through November 21, 2012.

[*Add new 3.4 as follows:*]

**3.4 Mobile Barcode Placement**

The mobile barcode cannot be placed on a detached address label (DAL or DML) or card that is not attached to the mailpiece. The mobile barcode cannot be placed in the (postage) indicia zone or the (Intelligent Mail) barcode clear zone on the outside of the mailpiece. For letters, the barcode clear zone is defined in 202.5.1. For flats, the barcode clear zone for this purpose is the barcode itself and an area that extends an additional ⅛ inch from any part of the barcode. The indicia zone is defined as follows:

a. The postage ''indicia zone'' is 2 inches from the top edge by 4 inches from the right edge of the mailpiece;

b. When the postage indicium is not in the area described in 3.4a, the mobile barcode must not be placed within 2 inches of the actual postage indicium.

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

**Stanley F. Mires,**

*Attorney, Legal Policy and Legislative Advice.*

[FR Doc. 2012–22507 Filed 9–12–12; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

## 39 CFR Part 501

## Revisions to the Requirements for Authority to Manufacture and Distribute Postage Evidencing Systems

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** This rule updates the security and revenue protection features of the Computerized Meter Resetting System (CMRS) to reflect recommended changes in Sarbanes-Oxley compliance procedures.

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

**FOR FURTHER INFORMATION CONTACT:** Marlo Kay Ivey, Business Programs Specialist, Payment Technology, U.S. Postal Service, at 202–268–7613.

**SUPPLEMENTARY INFORMATION:** When the Postal Service was mandated to comply with Sarbanes-Oxley regulations, the Postal Service required a Statement on Auditing Standards (SAS) 70 Type II Report from each of our providers. As the American Institute of Certified Public Accountants (AICPA) guidance has changed, the Postal Service is now requiring a Statements on Standards for Attestation Engagements (SSAEs) No. 16 Type II Report from each of our providers. We have also clarified that the expense incurred from obtaining this report will be paid by the resetting companies (RCs).

**List of Subjects in 39 CFR Part 501**

Administrative practice and procedure.

Accordingly, for the reasons stated, 39 CFR part 501 is amended as follows:

## PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

■ 1. The authority citation for 39 CFR part 501 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

■ 2. Section 501.15 is amended by revising paragraph (i) as follows:

**§ 501.15 Computerized Meter Resetting System.**

* * * * *

(i) *Security and Revenue Protection.* To receive Postal Service approval to continue to operate systems in the CMRS environment, the RC must submit to a periodic examination of its CMRS system and any other applications and technology infrastructure that may have a material impact on Postal Service revenues, as determined by the Postal Service. The examination shall be performed by a qualified, independent audit firm and shall be conducted in accordance with the Statements on Standards for Attestation Engagements (SSAEs) No. 16, Service Organizations, developed by the American Institute of Certified Public Accountants (AICPA), as amended or superseded. Expenses associated with such examination shall be incurred by the RC. The examination shall include testing of the operating effectiveness of relevant RC internal controls (Type II SSAE 16 Report). If the service organization uses another service organization (sub-service provider), Postal Service management should consider the nature and materiality of the transactions processed by the sub-service organization and the contribution of the sub-service organization's processes and controls in the achievement of the Postal Service's

control objectives. The Postal Service should have access to the sub-service organization's SSAE 16 report. The control objectives to be covered by the SSAE 16 report are subject to Postal Service review and approval and are to be provided to the Postal Service 30 days prior to the initiation of each examination period. As a result of the examination, the service auditor shall provide the RC and the Postal Service with an opinion on the design and operating effectiveness of the RC's internal controls related to the CMRS system and any other applications and technology infrastructure considered material to the services provided to the Postal Service by the RC. Such examinations are to be conducted on no less than an annual basis, and are to be as of and for the 12 months ended June 30 of each year (except for new contracts for which the examination period will be no less than the period from the contract date to the following June 30, unless otherwise agreed to by the Postal Service). The examination reports are to be provided to the Postal Service by August 15 of each year. To the extent that internal control weaknesses are identified in a Type II SSAE 16 report, the Postal Service may require the remediation of such weaknesses and review working papers and engage in discussions about the work performed with the service auditor. The Postal Service requires that all remediation efforts (if applicable) are completed and reported by the RC prior to the Postal Service's fiscal year end (September 30). In addition, the RC will be responsible for performing an examination of their internal control environment related to the CMRS system and any other applications and technology infrastructure considered material to the services provided to the Postal Service by the RC, in particular disclosing changes to internal controls, for the period of July 1 to September 30. This examination should be documented and submitted to the Postal Service by October 14. The RC will be responsible for all costs related to the examinations conducted by the service auditor and the RC.

* * * * *

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2012–22510 Filed 9–12–12; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[EPA–R07–OAR–2012–0466; FRL–9726–2]

## Approval and Promulgation of Implementation Plans; State of Missouri; Maximum Allowable Emission of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Missouri State Implementation Plan (SIP) to incorporate a new Missouri regulation to restrict Particulate Matter (PM) emissions from fuel burning equipment used for indirect heating. The new regulation consolidates four existing area-specific regulations into one state-wide rule for clarity. The requirements prescribed in the new regulation are as stringent as the conditions specified in the currently approved SIP with the four existing area-specific regulations. EPA has determined that the SIP revision submitted by the State of Missouri satisfies the applicable requirements of the Clean Air Act (CAA or Act).

**DATES:** This direct final rule will be effective November 13, 2012, without further notice, unless EPA receives adverse comment by October 15, 2012. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2012–0466, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: doolan.stephanie@epa.gov.*
3. *Mail or Hand Delivery:* Stephanie Doolan, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

*Instructions:* Direct your comments to Docket ID No. EPA–R07–OAR–2012–0466. 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Doolan, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, at (913) 551–7719, or by email at *doolan.stephanie@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA.

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II. EPA Review of the State Submittal

A. Summary of the Emission Limits
B. Enforceability
III. Final Action
IV. Statutory and Executive Order Reviews

## I. Background for the Proposal

The SIP revision which is the subject of this action was submitted by Missouri by letter dated October 11, 2011. The revision consists primarily of a consolidation of existing rules relating to PM emission from indirect heating sources. EPA most recently revised the NAAQS for PM on October 17, 2006. (71 FR 61144). The PM standard regulates two types of particulates: fine particulates, or $PM_{2.5}$, which generally refers to particles less than or equal to 2.5 micrometers (μm) in diameter; and coarse particulates, or $PM_{10}$, referring generally to particles less than or equal to 10 μm in diameter. Because the preexisting state rules were designed to address a prior NAAQS for total suspended particulates, the consolidated Missouri rule regulates total PM emissions, without reference to particle size.

Today's action does not change existing emissions limitations, but rather consolidates four previously existing Missouri area-specific rules into one state-wide standard for clarity. The consolidated rule provides an exemption for units that burn specific types of ''clean burning'' fuels and an alternative method of demonstrating compliance by averaging emissions for facilities with multiple units subject to this rule, as described in more detail below. These four rules were previously approved into the Missouri SIP. *See* 40 CFR 52.1320(c).

The four rules which are being consolidated into the new Missouri rule include:

—10 CSR 10–2.040, Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating, for the Kansas City Metropolitan Area;
—10 CSR 10–3.060, Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating, applicable to the ''out state area'' defined as areas in Missouri other than the City of St. Louis, and St. Charles, St. Louis, Jefferson, Franklin, Clay, Cass, Buchanan, Ray, Jackson, Platte and Greene Counties;
—10 CSR 10–4–040, Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating, for Springfield-Greene County area; and
—10 CSR 10–5.030, Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating, for the St. Louis Metropolitan Area.

These standards have been consolidated into one state-wide rule, 10 CSR 10–6.405, Restriction of Particulate Matter Emissions from Fuel Burning Equipment Used for Indirect Heating.

Missouri's new rule restricts the emission of PM from fuel burning equipment used for indirect heating. As discussed above, the rule applies state-wide, with additional conditions applicable to the Springfield, Kansas City and St. Louis Metropolitan Areas. The rule applies to facilities that burn fuel for the primary purpose of producing steam, hot water, or hot air or other indirect heating of liquids, gases or solids and, in the course of doing so, the products of combustion do not come into contact with process materials. The types of facilities affected by this rule include but are not limited to utility and industrial boilers, process heaters and smelters of all sizes. The types of fuel may include but are not limited to coal, tire-derived fuel, coke, lignite, coke breeze, gas, fuel oil, biomass and wood, but do not include refuse.

An installation is excluded from this rule if all of the installation's applicable units are fueled only by landfill gas, propane, natural gas, fuel oils #2 through #6 (provided that the fuels are low in sulfur), or other gases with low hydrogen sulfide and/or mercury content, as discussed in greater detail below.

EPA's analysis of the State's SIP submittal is presented below. As a result of EPA's analysis, we are approving this request and are amending Missouri's SIP to remove the four pre-existing rules and replace them with the new rule, 10 CSR 10–6.405. This revision creates the new consolidated rule and rescinds the former area-specific rules.

This rulemaking does not change the substantive PM emissions requirements. It merely clarifies the Missouri regulation, adds exemptions for individual emission units using clean-burning fuels and for entire facilities using only these specific clean fuels, and is expected to improve compliance.

## II. EPA Review of the State Submittal

### *A. Summary of Revised Emission Limits*

The Missouri rule establishes emission rate limits for installations in which fuel is burned for the primary purpose of producing steam, hot water, or hot air or other indirect heating of liquids, gases, or solids and in the course of doing so, the products of combustion do not come into direct contact with process materials. As discussed above, fuels may include but are not limited to coal, tire-derived fuel, coke, lignite, coke breeze, gas, fuel oil, biomass and wood, but do not include refuse.

An installation is excluded from this rule if all of the installation's applicable units are fueled only by landfill gas, propane, natural gas, fuel oils #2 through #6 (with less than 1.2 percent sulfur), or other gases (with hydrogen sulfide levels less than or equal to four parts-per-million by volume as measured by American Standard for Testing of Materials (ASTM) ASTM D4084, or equivalent method, and mercury concentrations less than 40 micrograms per cubic meter as measured using ASTM D5954, or ASTM D6350, or equivalent), or any combination of these fuels.

In a correspondence dated January 31, 2012, the Missouri Department of Natural Resources (MDNR) provided supplemental information to EPA supporting the rule. In its analysis of the emissions impact of the clean fuels exclusion, MDNR relied on a technical analysis of emissions from units burning such fuels, performed for EPA in conjunction with the boiler MACT rulemaking (76 FR 80532). MDNR compared projected emissions from such units to the emission limitations under the state rule, and concluded that emissions would be lower with the use of clean fuels than emissions allowed under the state's indirect heating rule. MDNR concluded, based on this analysis, that emissions would not increase as a result of the exclusion. EPA has reviewed MDNR's analysis and agrees with this conclusion.

The Missouri rule sets emission limits for Existing Indirect Heating Sources based on the area of the State (Kansas City and St. Louis Metropolitan areas, or Springfield—Greene County and Outstate Missouri areas) and the aggregate heat content of all fuels whose combustion products pass through a stack(s). These limits are the same as those already approved in the State SIP through the adoption of the pre-existing rules.

Similarly, the Missouri rule sets emission limits for New Indirect Heating Sources. Again, these limits are the same as those already approved in the State SIP through the adoption of the pre-existing regulations.

The Missouri rule also presents the option of demonstrating compliance if the weighted average emission rate (WAER) of two or more indirect heating sources is less than or equal to the maximum allowable particulate emission rate limits for PM emissions required by the regulation. EPA has reviewed this approach and determined

that it is a valid method for demonstrating compliance with the standard because it achieves the same overall level of emissions for the installation.

The January 31, 2012, correspondence, referenced above, also included a technical analysis demonstrating that the averaging approach versus unit-specific PM limits for determining compliance with the rule had no effect on the emission limits. EPA agrees with this analysis.

In summary, EPA has reviewed this consolidated regulation and determined that it achieves the same level of PM control as the pre-existing four regulations, and therefore is equally protective of human health and the environment.

*B. Enforceability*

The Missouri rule is state enforceable and has already been made effective by the state as of October 30, 2011. The Missouri rule specifies reporting and record keeping requirements for installations subject to the rule. The owner or operator of an installation subject to the rule shall maintain records annual emissions and testing records demonstrating compliance with the rule for a period of five years. These records must be available to MDNR upon request.

## III. Final Action

EPA is approving Missouri's request to include the new State rule regulation into the Missouri SIP. This approval is based on EPA's finding that the rule is as stringent as the four rules it replaces and fulfills the requirements of the CAA. EPA notes that although this SIP revision does not reduce state-wide PM from current levels, it consolidates and clarifies four existing rules to result in greater compliance toward attaining the 2006 p.m. NAAQS.

## IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 16, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 29, 2012.

**Mark J. Hague,**

*Acting Regional Administrator, Region 7.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart AA—Missouri

■ 2. Section 52.1320(c) is amended by revising the entries for 10–2.040, 10–3.060, 10–4.040, and 10–5.030 and adding an entry for 10–6.405 to the table in numerical order to read as follows:

### § 52.1320 Identification of Plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * * * | * | * | * |
| 10–2.040 | Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating. | 9/4/84 | 1/24/85, 50 FR 3337 | Rescinded. |
| * | * * * | * | * | * |
| 10–3.060 | Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating. | 11/30/02 | 3/18/03, 68 FR 12831 | Rescinded. |
| * | * * * | * | * | * |
| 10–4.040 | Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating. | 11/30/02 | 3/18/03, 68 FR 12831 | Rescinded. |
| * | * * * | * | * | * |
| 10–5.030 | Maximum Allowable Emission of Particulate Matter from Fuel Burning Equipment Used for Indirect Heating. | 9/4/84 | 1/24/85, 50 FR 3337 | Rescinded. |
| * | * * * | * | * | * |
| 10–6.405 | Restriction of Particulate Matter Emissions From Fuel Burning Equipment Used for Indirect Heating. | 10/30/11 | 9/13/12 [*insert* **Federal Register** *page number where the document begins*]. | Replaces 10–2.040, 10–3.060, 10–4.040, and 10–5.030 |
| * | * * * | * | * | * |

* * * * *

[FR Doc. 2012–22471 Filed 9–12–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

**[EPA–R01–RCRA–2012–0447; FRL–9727–2]**

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Rule

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is granting the petition submitted by International Business Machines Corporation (IBM) to exclude or ''delist'' a certain wastewater treatment sludge generated by its facility in Essex Junction, Vermont from the lists of hazardous wastes. This final rule responds to a petition submitted by IBM to delist F006 waste. The F006 waste is sludge generated from IBM's Industrial Waste Treatment Plant (IWTP).

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. The F006 exclusion is a conditional exclusion for 3,150 cubic yards per year of the F006 wastewater treatment sludge.

Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

**DATES:** *Effective Date:* This final rule is effective on September 13, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R01–RCRA–2012–0447. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g. CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either 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. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

**FOR FURTHER INFORMATION CONTACT:** Sharon Leitch, RCRA Waste Management and UST Section, Office of Site Remediation and Restoration, (Mail Code: OSRR07–01), 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*.

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

I. Overview Information
- A. What action is EPA finalizing?
- B. Why is EPA approving this action?
- C. What are the limits of this exclusion?
- D. How will IBM manage the waste, when delisted?
- E. When is the final delisting exclusion effective?
- F. How does this final rule affect states?

II. Background
- A. What is a delisting petition?
- B. What regulations allow facilities to delist a waste?
- C. What information must the generator supply?

III. EPA's Evaluation of the Waste Information and Data
- A. What waste did IBM petition EPA to delist?
- B. How much waste did IBM propose to delist?
- C. How did IBM sample and analyze the waste data in this petition?

IV. Public Comments Received on the Proposed Exclusions

A. Who submitted comments on the proposed rules?
B. What was the comment and what was EPA's response?
V. Statutory and Executive Order Reviews

## I. Overview Information

*A. What action is EPA finalizing?*

After evaluating the petition for IBM, EPA proposed, on July 16, 2012 (77 FR 41720), to exclude the waste from the lists of hazardous waste under § 261.31. EPA is finalizing the decision to grant IBM's delisting petition to have its F006 wastewater treatment sludge excluded, or delisted, from the definition of a hazardous waste, once it is disposed in a Subtitle D landfill.

*B. Why is EPA approving this action?*

IBM's petition requests a delisting from the F006 waste listing under 40 CFR 260.20 and 260.22. IBM does not believe that the petitioned waste meets the criteria for which EPA listed it. IBM also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See Section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition). EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. EPA considered whether the waste is acutely toxic, the concentrations of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist the waste from IBM's facility is based on the information submitted in support of this rule, including a description of the waste and analytical data from the Essex Junction, Vermont facility.

*C. What are the limits of this exclusion?*

This exclusion applies to the waste described in IBM's petition only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

*D. How will IBM manage the waste, when delisted?*

The delisted F006 wastewater treatment sludge will be disposed of in a Subtitle D landfill which is permitted, licensed or otherwise authorized by a state to manage industrial waste.

*E. When is the final delisting exclusion effective?*

This rule is effective September 13, 2012. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allow rules to become effective in less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

*F. How does this final rule affect 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.

## II. Background

*A. What is a delisting petition?*

A delisting petition is a request from a generator to EPA or to an authorized state to exclude or delist, from the RCRA list of hazardous wastes, waste the generator believes should not be considered hazardous under RCRA.

*B. What regulations allow facilities to delist a waste?*

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke

any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

*C. What information must the generator supply?*

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste and that such factors do not warrant retaining the waste as a hazardous waste.

## III. EPA's Evaluation of the Waste Information and Data

*A. What waste did IBM petition EPA to delist?*

IBM petitioned EPA on July 11, 2008, to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, F006 wastewater treatment sludge, generated from its facility in Essex Junction, Vermont.

*B. How much waste did IBM propose to delist?*

IBM requested that EPA grant an exclusion for 3,150 cubic yards per year of F006 wastewater treatment sludge.

*C. How did IBM sample and analyze the waste data in this petition?*

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.

## IV. Public Comments Received on the Proposed Exclusion

*A. Who submitted comments on the proposed rule?*

EPA received one email comment from a consultant regarding the petition.

*B. What was the comment and what was EPA's response?*

*Comment:* Based on the condition that the resultant sludge is a combination of three (3) independent waste streams (i.e. it appears each waste stream is being diluted by two(2) other waste streams) it would be prudent to require IBM to submit to EPA, or the landfill, monthly waste rates from each of the three (3) independent waste streams to ensure the contribution ratios are not dramatically changing.

The removal of one waste process could potentially increase the hazardous components by 50% from the other 2 waste streams. If volume of sludge waste is a component in EPA's calculations related to overall impact, then the increase, or reduction of a waste stream could impact the results.

*Response:* EPA believes that the requirements found in Conditions 4, 5 and 6 of the final exclusion adequately address any changes in operations or processes at the facility that could have an impact on the composition of the delisted sludge.

## V. 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 Sections 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 Section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''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 final 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 the DRAS program, 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 Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by Section 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 Section 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 Section 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 final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. 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:** Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 22, 2012.

**H. Curtis Spalding,**

*Regional Administrator, EPA Region 1.*

For the reasons set out in the preamble, 40 CFR part 261 is amended 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. In Table 1 of Appendix IX to Part 261 add the following waste stream in alphabetical order by facility to read as follows:

**Appendix IX to Part 261—Waste 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. IBM must implement a testing program that meets the following conditions for the exclusion to be valid:<br>1. Delisting Levels: (A) 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.<br>(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.<br>(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.<br>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:<br>(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.<br>(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. |

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | (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.<br>(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.<br>(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.<br>(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.<br>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.<br>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:<br>(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;<br>(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);<br>(C) Submit with all data a signed copy of the certification statement in 40 CFR 260.22(i)(12).<br>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.<br>(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.<br>(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.<br>(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:<br>(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;<br>(B) Update the one-time written notification if it ships the delisted waste to 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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[FR Doc. 2012–22571 Filed 9–12–12; 8:45 am]
BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 100812345–2142–03]**

**RIN 0648–XC229**

## Snapper-Grouper Fishery of the South Atlantic; Reopening of the 2012 Commercial Sector for Yellowtail Snapper in the South Atlantic

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

**ACTION:** Temporary rule; reopening.

**SUMMARY:** NMFS reopens the 2012 commercial sector for yellowtail snapper in the South Atlantic exclusive economic zone (EEZ). NMFS previously determined the commercial ACL for yellowtail snapper would be reached by September 11, 2012, and closed the commercial sector for yellowtail snapper in the South Atlantic EEZ at 12:01 a.m. on September 11, 2012. Updated landings estimates indicate the ACL will not be reached by that date. Therefore, NMFS is reopening the commercial sector for yellowtail snapper. The purpose of this action is to allow the commercial sector to maximize harvest benefits and at the same time protect the yellowtail snapper resource.

**DATES:** The reopening is effective 12:02 a.m., local time, September 11, 2012, through December 31, 2012, the end of the fishing season, unless the ACL is reached before that date, at which time the Assistant Administrator may file a notification to that effect with the Office of the Federal Register.

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

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

### Background

The 2007 reauthorization of the Magnuson-Stevens Act implemented new requirements that established ACLs and AMs to end overfishing and prevent overfishing from occurring. AMs are management controls to prevent ACLs from being exceeded, and to correct or mitigate overages of the ACL if they occur.

The Comprehensive ACL Amendment to the Snapper-Grouper FMP, the Golden Crab Fishery of the South Atlantic Region FMP, the Dolphin and Wahoo Fishery off the Atlantic States FMP, and the Pelagic Sargassum Habitat of the South Atlantic Region FMP published March 16, 2010 (77 FR 15916). In part, the final rule for the Comprehensive ACL Amendment specified ACLs and AMs for species in the Snapper-Grouper FMP that are not undergoing overfishing, including yellowtail snapper. Implementation of ACLs and AMs for yellowtail snapper is intended to prevent overfishing from occurring in the future, while maintaining catch levels consistent with achieving optimum yield for the resource.

The AM at § 622.49(b)(14)(i) requires NMFS to close the commercial sector for yellowtail snapper for the remainder of the fishing year when the ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS projected the commercial ACL for yellowtail snapper of 1,142,589 lb (518,270 kg), round weight, would be reached on or before September 11, 2012, and closed the commercial sector for yellowtail snapper on that date (77 FR 53776, September 4, 2012). However, based on updated landings estimates, NMFS has determined that only 75 percent of the available commercial ACL will be landed by September 11, 2012. Therefore, NMFS will reopen the commercial sector to allow the remainder of the ACL to be harvested.

Under the reopening procedures located at § 622.43(c), when a sector has been closed based on a projection of when the ACL specified in § 622.49 has been reached and subsequent data indicate that the ACL was not reached, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register. Such notification may reopen the sector to provide an opportunity for the ACL to be harvested. Accordingly, NMFS is reopening the commercial sector for yellowtail snapper in the South Atlantic EEZ from 12:02 a.m., local time, September 11, 2012, through December 31, 2012, the end of the fishing year, unless the ACL is reached before that date. If the ACL is reached before that date, the Assistant Administrator may file a notification to that effect with the Office of the Federal Register.

### Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of South Atlantic yellowtail snapper and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under § 622.43(c) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive the requirements to provide prior notice and the opportunity for public comment on this temporary rule. Such procedures are unnecessary and contrary to the public interest because the commercial ACL for yellowtail snapper established in the Comprehensive ACL Amendment and located at § 622.49(b)(14)(i)(A) and the reopening procedures located at § 622.43(c) have already been subject to notice and comment and all that remains is to notify the public that additional harvest is available under the established ACL and, therefore, the commercial sector for yellowtail snapper will reopen.

Additionally, there is a need to immediately notify the public of the reopening of the commercial sector for yellowtail snapper because the closure is set for September 11, 2012, and this reopening will allow fishers to continue their fishing practices with minimal disruption to business practices. Therefore, this temporary rule is intended to minimize economic harm to fishermen while still protecting the yellowtail snapper resource.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: September 10, 2012.

**Lindsay Fullenkamp,**

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

[FR Doc. 2012–22586 Filed 9–10–12; 4:15 pm]
BILLING CODE 3510–22–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 111207737–2141–02]**

**RIN 0648–XC206**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2012 total allowable catch of pollock for Statistical Area 610 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), September 10, 2012, through 1200 hrs, A.l.t., October 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2012 total allowable catch (TAC) of pollock in Statistical Area 610 of the GOA is 9,338 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the C season pollock allowance by 512 mt to reflect the underharvest of the B seasonal apportionment in Statistical Area 610. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 610 is 9,850 mt (9,338 mt plus 512 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2012 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 9,800 mt and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 7, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 10, 2012.

**Lindsay Fullenkamp,**

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

[FR Doc. 2012–22592 Filed 9–10–12; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register

Vol. 77, No. 178

Thursday, September 13, 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

### Food and Nutrition Service

### 7 CFR Parts 210 and 245

**RIN 0584–AE17**

## Independent Review of Applications Required by the Healthy, Hunger-Free Kids Act of 2010

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

**ACTION:** Proposed rule.

**SUMMARY:** In accordance with Section 304 of the Healthy, Hunger-Free Kids Act of 2012, this proposed rule would require local education agencies participating in the Department's National School Lunch Program and demonstrating high levels of, or a high risk for administrative error associated with certification, verification, and other administrative processes to conduct an independent review of the initial eligibility determinations for free and reduced price school meals for accuracy prior to notifying households of eligibility or ineligibility. Additionally, this proposed rule would require each affected local educational agency to submit to the relevant State agency the results of the reviews including the number of applications subject to a second review, the number and percentage of reviewed applications for which the eligibility determinations changed, and a summary of the type of changes made. State agencies would be required to submit to the Food and Nutrition Service, a report describing the results of the second reviews in their State. This proposed rule is expected to reduce administrative errors in eligibility determinations for free and reduced price school meals.

**DATES:** To be assured of consideration, written comments must be postmarked on or before November 13, 2012.

**ADDRESSES:** The Food and Nutrition Service, USDA, invites interested persons to submit comments on this proposed rule. Comments may be submitted through one of the following methods:

- *Preferred method:* Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Comments should be addressed to Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594.
- *Hand Delivery or Courier:* Deliver comments to the Food and Nutrition Service, Child Nutrition Division, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.–5 p.m.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Duplicate comments are not considered. Therefore, we request that commenters submit comments through only one of the methods listed above. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. The Food and Nutrition Service (FNS) will make the comments publicly available on the Internet via *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** William Wagoner or Jessica Saracino, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service at (703) 305–2590.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The National School Lunch Program (NSLP) and School Breakfast Program (SBP) reimburse local educational agencies (LEAs) for the cost of providing nutritious low-cost or free meals to children in public and nonprofit private schools and residential child care institutions. Participating schools and institutions receive cash reimbursements and U.S. Department of Agriculture (USDA) food assistance for each meal served. About 101,000 schools and institutions participate in the NSLP and average daily student participation totaled approximately 32 million in Fiscal Year (FY) 2011. About 88,000 schools participate in the SBP and average daily student participation totaled approximately 11.6 million in FY 2011.

In exchange for Federal assistance, participating schools and institutions serve meals that satisfy Federal nutrition standards. In addition, they must offer school meals at no cost, or at reduced price, to children from income eligible households. Children from households with incomes at or below 130 percent of the Federal poverty level ($29,055 for a family of four during School Year (SY) 2011–2012) are eligible for free meals. Those with incomes between 130 and 185 percent of the Federal poverty level ($41,348 for a family of four during SY 2011–2012) are eligible for reduced price meals.

Children are determined eligible for free meals through application or direct certification; reduced price eligibility is determined by application alone. In recent years, FNS research (see below for more information) has identified a significant amount of erroneous payments associated with administrative errors occurring during the free and reduced price eligibility determination process.

*Administrative Error*

When households submit applications for free or reduced price meals, the LEA staff review these applications and make determinations of eligibility by comparing household size and income information with the guidelines published by FNS, or by assessing categorical eligibility based on a household's indication of meeting a categorical standard (homeless, migrant, runaway or foster child) or participation in certain means-tested programs (Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, etc.). During the eligibility determination process, administrative errors can occur in determining gross monthly income, household family size, or assignment of benefit level based on household size and income specific (or relevant) information. Inaccurate certifications may result in assignment of a higher or lower amount of benefits than children are eligible to receive. For example, a child could incorrectly be certified for free lunches when they should be certified for reduced price lunches.

Common administrative errors in determining gross monthly income may involve computation errors. Such errors include not converting multiple income

sources to annual income, incorrectly determining the frequency of receipt of household income, and/or incorrect addition or multiplication. In determining household size, common errors include not counting the children in the list of all household members or counting a child twice.

Approved but incomplete applications (e.g., missing adult signature, missing last four digits of social security number, missing amount of income of the adult signing the application, etc.) also constitute administrative errors. In some instances, an administrative error may not have any impact on a benefit decision, and therefore would not translate into an error in the benefit level provided to a child.

*Research Findings*

In 2007, FNS released the Access, Participation, Eligibility, and Certification (APEC) study, which included national estimates of the amounts and rates of erroneous payments in the NSLP and SBP. Erroneous payments may arise because LEAs claim reimbursement at the free or reduced price rate for meals served to children who are not eligible for these benefits. Alternatively, erroneous payments may occur because LEAs fail to claim reimbursement at the free or reduced price rate for children who have applied for and are eligible for these benefits.

Using a nationally-representative sample for SY 2005–06, the APEC study found that 4.2 percent of applications were misclassified due to administrative error. This resulted in $129 million in net loss ($158 million in overpayments less $29 million in underpayments), for the NSLP and SBP combined. The most common administrative error was certification of students whose applications were incomplete; this most frequently occurred because the application lacked a signature. Other types of administrative errors were missing applications, assessment errors and transmittal errors.

In addition to the APEC study, FNS annually conducts the Regional Office Review of Applications (RORA) for School Meals. This annual report examines administrative error made during LEA approval of applications for free and reduced price meals in the NSLP and SBP. The most recent report, published in July 2011, found that LEA eligibility determinations were incorrect for 2.3 percent of students applying for free and reduced price meals in SY 2009–2010. About two-thirds (63 percent) of the incorrect determinations certified households for more benefits than were justified based on the documentation available, while roughly one-third (37 percent) of the students certified in error were certified for a lesser benefit than was justified. Errors were most commonly made processing income-based applications, with most errors associated with the determination of a household's gross income.

In response to concerns raised by APEC and RORA and the Department, the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296, (the HHFKA), modified the free and reduced price process for determining children's eligibility for free and reduced price meal benefits. The HHFKA strengthened rules governing certification.

## II. Overview of the Proposed Rule

Section 304 of the HHFKA amended section 22 of the Richard B. Russell National School Lunch Act (NSLA) 42 U.S.C. to require LEAs that demonstrate high levels of, or a high risk for, administrative error associated with certification, verification, and other administrative processes, as determined by the Secretary, to have an individual independently review the initial eligibility determinations for free and reduced price school meals for accuracy prior to notifying households of eligibility or ineligibility. This independent review of eligibility determinations is hereafter referred in this preamble and the proposed regulation as ''second review'' of applications.

The Department has determined that given the results of the APEC and RORA, this proposed rule should focus on administrative errors that occur during certification of eligibility. For purposes of this proposed rule, certification includes both benefit issuance and updating student eligibility for program benefits on rosters used to claim meals to the extent the State agency identifies problems in the benefit delivery process during an administrative review. Subsequent rulemaking may address administrative error associated with verification and other administrative processes.

This proposed rule addresses requirements for both State agencies and LEAs, including criteria for identifying LEAs that must conduct a second review of applications; requirements for the second review of applications process, including timeframes and duration of second reviews; and requirements for reporting review results. With these new requirements, this proposed rule would create a new section 7 CFR 245.11 entitled ''Second review of applications'' and would redesignate the current 7 CFR 245.11 through 245.13 as 7 CFR 245.12 through 245.14, respectively.

These requirements are discussed in more detail below.

### State Agency Requirements

*LEA Selection Process*

Proposed 7 CFR 245.11(a) would require each State agency to annually identify LEAs that demonstrate high levels of, or a high risk for, administrative error associated with the certification process to conduct a second review of applications.

Under the proposal, a State agency would be required to use the following criteria when identifying LEAs that are required to conduct a second review of applications:

- *Criterion 1—Administrative Review Performance Standard 1 Violation:* LEAs subject to a follow-up administrative review due to certification, benefit issuance or updating eligibility status violations of Performance Standard 1 (7 CFR 210.18(i)(3)(i));
- *Criterion 2—At-risk for Administrative Review Performance Standard 1 Violation:* LEAs at risk for a follow-up administrative review due to certification, benefit issuance or updating eligibility status violations of Performance Standard 1 (7 CFR 210.18(i)(3)(i));
- *Criterion 3—Provision ⅔ (special assistance certification and reimbursement alternatives) base year:* LEAs that are establishing a new Provision ⅔ base year in the following school year; and
- *Criterion 4—State agency discretion:* Of the LEAs scheduled for an administrative review the following year, the State agency may select any LEAs not identified through the above criterion that the State agency identifies as at risk for certification error, as determined by the State agency.

*Criterion 1—Administrative Review Performance Standard 1 Violation:* On an administrative review, State agencies assess whether a LEA and schools under its jurisdiction have a system in place that accurately certifies children for free and reduced price meal benefits, issues benefits, and updates eligibility status (Performance Standard 1). Any LEA with an inadequate certification and issuance system is required to take corrective action and, depending on the severity of the problem, may be subject to a follow-up administrative review. The Performance Standard 1 thresholds resulting in a follow-up administrative review are found at current 7 CFR 210.18(i)(3)(i). The threshold related to certification, benefit issuance and

updating eligibility is exceeded when: (1) a number of the reviewed schools in a LEA (as specified in Table B under § 210.18(i)(3)(i)) have an inadequate system for certification, issuing benefits or updating eligibility status; and (2) a school or LEA's system for certification, issuing benefits or updating eligibility status is inadequate, i.e., if 10 percent or more (but not less than 100 lunches) of the free and reduced price lunches claimed for the review period (for any school reviewed) are claimed incorrectly due to errors of certification, benefit issuance or updating of eligibility status.

For purposes of this proposed rule, a LEA subject to a follow-up administrative review due to certification and benefit issuance violations of Performance Standard 1 (§ 210.18(i)(3)(i)) would be subject to a second review of applications beginning the following school year.

*Criterion 2—At-risk for Administrative Review Performance Standard 1 Violation:* This proposed rule also would require State agencies to identify LEAs that demonstrate a high risk for administrative error associated with certification to be required to conduct a second review of applications. For purposes of this proposed rule, LEAs, as determined by an administrative review, which claimed between 5–10 percent of the free and reduced price lunches incorrectly due to errors of certification, benefit issuance or updating of eligibility status would be considered at high risk for administrative error associated with certification.

Based on data available through RORA, we expect that LEAs selected based on Criterion 1 and 2 will account for approximately 20–25 percent of all LEAs nationwide over a three year period.

*Criterion 3—Provision 2/3 (special assistance certification and reimbursement alternatives) base year:* In an effort to reduce paperwork and other administrative burdens at the local level, Congress incorporated into Section 11(a)(1) of the NSLA (42 U.S.C. 1759a) alternative provisions to the traditional requirements for annual determinations of eligibility for free and reduced price school meals and daily meal counts by type. A school participating in Provisions 2 or 3 must serve NSLP and/or SBP meals to all participating children at no charge for up to 4 consecutive years. During the first base year, there is no change in traditional procedures and administrative burden. The school distributes free and reduced price meal applications and makes eligibility determinations for participating children, takes daily meal counts by type (free, reduced price and paid) at the point of service, or approved alternate, reports these counts for claiming meal reimbursement, and receives Federal reimbursement based on these counts as it normally does. However, regardless of the children's free, reduced price or paid eligibility category, all children are served meals at no charge. During years 2, 3 and 4 of the cycle, the school makes no new eligibility determinations and continues to serve all children meals at no charge. The school takes counts of only the total number of reimbursable meals served each day, instead of counting meals by type. Reimbursement during these years is determined by applying the percentages of free, reduced price, and paid meals served during the base year to the total meal count for the claiming period in subsequent years.

The APEC study found that schools in Provisions 2 or 3 base years, on average, experience higher erroneous payments rates than other schools (1.75 times higher for NSLP), making them a high risk for administrative error associated with certification. Therefore, this proposed rule would require State agencies to require LEAs to conduct a second review of applications when the LEA is establishing a new Provision ⅔ base year.

*Criterion 4—State agency discretion:* Lastly, this proposed rule would allow State agencies to select LEAs that are not identified in the above criteria, and that the State identifies are at risk for certification error, and are scheduled for an administrative review the following year. This selection requirement is intended to ensure that when a selected LEA undergoes an administrative review the following year, it will already be working towards decreasing the administrative error associated with the certification process, thus mitigating the potential for fiscal action by the State agency.

This requirement would give State agencies discretion to decide which LEAs are selected to conduct the second review of applications. Examples of LEAs that State agencies should include are new entities with less experience with the free and reduced price process, LEAs with new administrative staff and LEAs in the first year of a new electronic system.

These criteria for selection are included in proposed 7 CFR 245.11(b).

FNS asks for commenter input on the above criteria for selecting LEAs for the second review of applications. Specifically, we are interested in input on how many LEAs would likely be required to conduct a second review of applications using these criteria, as well as any suggestions for other criteria that could be used for LEA selection.

**Exemptions**

FNS is also seeking input on whether State agencies should be able to exempt LEAs that use computerized free and reduced price determination and roster transfer systems, provided that the State agency can attest to the efficacy of those systems. While FNS is considering this exemption for LEAs that use computerized systems, we do not expect that State agencies would use the exemption often because computerized eligibility determination systems should be more accurate than manual determinations, meaning that LEAs using them would not likely fall within the criterion for LEA selection. We anticipate that this exemption would reduce burden on State agencies.

**LEA Requirements**

The proposed rule at 7 CFR 245.11(c) would require LEAs identified by their State agency to conduct a second review of applications, to ensure that the initial eligibility determination for each application is reviewed for accuracy prior to notifying the household of the eligibility or ineligibility of the household for free and reduced price meals. Under the proposal, the second review would be conducted by an individual or entity who did not make the initial eligibility determination. This individual or entity is not required to be an employee of the LEA but must be trained on how to make application determinations as are all individuals who review initial eligibility applications, individuals or entities who conduct a second review of applications are subject to the disclosure requirements set forth in the NSLA and current 7 CFR 245.6(f) through 245.6(k).

*Timeframes*

The proposed rule at 7 CFR 245.11(c)(1) would require the second review of applications by identified LEAs to be conducted in a timely manner and not result in the delay of an eligibility determination. Once the review of eligibility has been completed, the household must be notified immediately.

In addition, the proposed rule would make a change to the timeframes for application approval for all LEAs, not simply those affected by the second review of applications requirements. Under the proposal, the Department would establish a regulatory requirement that all LEAs notify the household of the children's eligibility

and provide the eligible children the benefits to which they are entitled within 10 operating days of receiving the application. This change would conform the regulations with longstanding guidance and is intended to make the certification process consistent for both LEAs that are required to conduct a second review of applications and those that are not. This proposed change is found at 7 CFR 245.6(c)(6)(i).

*Second Review Duration*

The proposed rule at § 245.11(c)(2) would require LEAs identified under Criterion 1 (Administrative Review Performance Standard 1 Violation), Criterion 2 (At-risk for Administrative Review Performance Standard 1 Violation), or Criterion 4 (State agency discretion) to conduct a second review of applications until such time as the required LEA documentation demonstrates no more than 5 percent of the applications reviewed in the second review have changes to the eligibility determination.

Documentation means the required LEA annual report (described below) detailing the number of free and reduced price applications subject to a second review and the number and percentage of reviewed applications for which the eligibility determination was changed and a summary of the type of changes made.

LEAs identified under Criterion 3 (Provision 2/3 base year) are required to conduct a second review of applications during every base year. These LEAs are considered at-risk for administrative error associated with certification because of the infrequency (every 4 years) that they perform the certification process.

*Reporting Requirements*

As required by the HHFKA, this proposed rule would establish reporting requirements for State agencies and LEAs. These proposed reporting requirements would allow the State agency and the Department to monitor the potential decrease in administrative error associated with certification created by the second review of applications requirement.

Under the proposal at § 245.11(b)(2), State agencies would be required to submit an annual report, as specified by FNS, detailing the number of free and reduced price applications subject to a second review, the number and percentage of reviewed applications for which the eligibility was changed and a summary of the type of changes that were made for all the LEAs that were required to conduct a second review of applications. In addition, this proposed rule would require at § 245.11(c)(3) that LEAs subject to conduct a second review of applications be required to submit to the appropriate State agency, the number of applications reviewed, the results of the second reviews including the number and percentage of reviewed applications for which the eligibility determination was changed and a summary of the type of changes that were made.

*Verification for Cause*

The intended effect of this proposed rule is to help reduce administrative error during the application review process. The Department would also like to point out that in addition to decreasing the types of administrative error described above, the second review of applications requirement could provide an opportunity to allow an LEA to identify applications that should be verified for cause. Currently, 7 CFR 245.6a(c)(7) requires LEAs to verify any questionable application and encourages them, on a case-by-case basis, to verify any application for cause when the LEA is aware of additional income or persons in the household. LEAs must first complete the certification process prior to conducting verification.

## II. Procedural Matters

*Executive Order 12866 and Executive Order 13563*

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

This proposed rule has been determined to be not significant under section 3(f) of Executive Order 12866.

*Regulatory Flexibility Act*

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612). Pursuant to that review, it has been certified that this rule will not have a significant impact on a substantial number of small entities.

While there may be some LEA burden associated with the second review of applications required in this proposed rule, the burden will not be significant and will be outweighed by the benefits of decreased administrative error associated with certification. Additionally, only LEAs that fall under the established criteria would be required to conduct the second review of applications.

*Unfunded Mandates Reform Act*

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

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

*Executive Order 12372*

The National School Lunch Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.555. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

*Executive Order 13132*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

*Prior Consultation With State Officials:* Prior to drafting this proposed rule, FNS staff received informal input

from various stakeholders while participating in various State, regional, national, and professional conferences. Numerous stakeholders, including State and local program operators, also provided input at public meetings held by the School Nutrition Association.

*Nature of Concerns and the Need to Issue This Rule:* State agencies and LEAs want to provide the best possible school meals through the NSLP but are concerned about the costs and administrative burden associated with increased program oversight. While FNS is aware of these concerns, the National School Lunch Act, 42 U.S.C. 1769c(b)(6), as amended by the HHFKA, requires that LEAs that demonstrate a high level of, or a high risk for, administrative error associated with certification have an individual or entity review the initial eligibility determinations for free and reduced price school meals for accuracy prior to sending out household notifications of eligibility or ineligibility.

*Extent to Which We Meet Those Concerns:* FNS has considered the impact of this proposed rule on State and local operators and has developed a rule that would implement the second review of applications requirement in the most effective and least burdensome manner.

*Executive Order 12988*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures under § 210.18(q) or § 235.11(f) must be exhausted.

*Civil Rights Impact Analysis*

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' and 1512–1, ''Regulatory Decision Making Requirements,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age, or disability, nor is it intended to have a differential impact on minority owned or operated business establishments, and women-owned or operated business establishments that participate in the Child Nutrition Programs. The proposed rule is technical in nature, and it affects only the State agencies and the local educational agencies operations.

*Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320), requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This is a new collection. The proposed provisions in this rule create new burden which will be merged into a currently approved information collection titled ''Determining Eligibility for Free and Reduced Price Meals,'' OMB Control #0584–0026, expiration date March 31, 2013. The current collection burden inventory for the Determining Eligibility for Free and Reduced Price Meals (7 CFR part 245) is 960,367. These changes are contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

Comments on the information collection in this proposed rule must be received by November 13, 2012. Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Jon Garcia, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection requirements, please contact Jon Garcia at the address indicated above. Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the proposed information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this request for comments will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

*Title:* Independent Review of Applications Required by the Healthy, Hunger-Free Kids Act of 2010.

*OMB Number:* 0584–NEW.

*Expiration Date:* Not Yet Determined.

*Type of Request:* New Collection.

*Abstract:* Section 304 of the Healthy, Hunger-Free Kids Act of 2010 amended Section 22(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1769c(b)). The new requirements necessitate the submission of a report to the State agency from each local educational agency that is required by the State agency to conduct a second review of eligibility determinations based on demonstrating high levels of, or a high risk for, administrative error associated with the certification process. This report must describe the results of the second review of applications, including the number and percentage of reviewed applications for which the eligibility determinations changed and a summary of the types of changes made. State agencies are required to submit this information in a report to the USDA. USDA must publish annually the results of the reviews of initial eligibility determinations by State, number, percentage, and type of error.

This proposed rule would increase the recordkeeping and reporting burden for local educational agencies and State agencies on the current collection burden inventory for Determining Eligibility for Free and Reduced Price Meals, OMB Control #0584–0026. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

**Estimated Annual Burden for 0584–NEW, Independent Review of Applications, 7 CFR Part 245**

*Respondents for This Proposed Rule:* State Agencies and Local Educational Agencies.

*Estimated Number of Respondents for This Proposed Rule:* 1,456.

*Estimated Number of Responses per Respondent for This Proposed Rule:* 1.

*Estimated Total Annual Responses:* 1,456.

*Estimated Total Annual Burden on Respondents for This Proposed Rule:* 378.

ESTIMATED ANNUAL BURDEN FOR 0584–NEW, INDEPENDENT REVIEW OF APPLICATIONS, 7 CFR PART 245

[Reporting (State agencies and local educational agencies)]

| | Section | Estimated number of respondents | Frequency of response | Average annual responses | Average burden per response | Annual burden hours |
|---|---|---|---|---|---|---|
| State agencies must annually report the results of the second reviews conducted by LEAs each school year. | 7 CFR 245.11(b)(2) ... | 56 | 1 | 6 | .5 | 28 |
| Local educational agencies must annually report the results of the second reviews conducted each school year. | 7 CFR 245.11(c)(3) ... | 1,400 | 1 | 1,400 | 0.25 | 350 |
| Total Reporting for Proposed Rule. | ..... | 1,456 | ..... | 1,456 | ..... | 378 |

ESTIMATED ANNUAL BURDEN FOR 0584–NEW, INDEPENDENT REVIEW OF APPLICATIONS, 7 CFR PART 245

[Recordkeeping (State agencies and local educational agencies)]

| | Section | Estimated number of respondents | Frequency of response | Average annual responses | Average burden per response | Annual burden hours |
|---|---|---|---|---|---|---|
| State agencies ..... | 7 CFR 245.11 ..... | 56 | 1 | 56 | *0 | *0 |
| Local educational agencies ..... | 7 CFR 245.11 ..... | 1,400 | 1 | 1,400 | *0 | *0 |
| Total Recordkeeping for Proposed Rule. | | | | | | |

*Recordkeeping requirements for State agencies and local educational agencies are included in the burden for the existing requirements for submitting data for the FNS–742 form.

SUMMARY OF BURDEN (OMB #0584–NEW) 7 CFR 245

| | |
|---|---|
| Total No. Respondents ..... | 1,456 |
| Average No. Responses Per Respondent ..... | 1 |
| Total Annual Responses ..... | 1,456 |
| Average Hours per Response ..... | ..... |
| Total Burden Hours for Proposed Rule ..... | 378 |

*E-Government Act Compliance*

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

**List of Subjects**

*7 CFR Part 210*

Children, Commodity School Program, Food assistance programs, Grant programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

*7 CFR Part 245*

Civil rights, Food assistance programs, Grant programs-education, Grant programs-health, Infants and children, Milk, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR parts 210 and 245 are proposed to be amended as follows:

## PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

**Authority:** 42 U.S.C. 1751–1760, 1779.

2. Amend § 210.15 by:

a. In paragraph (a)(7), removing the word ''and'';

b. In paragraph (a)(8), removing the period and adding ''; and'' in its place;

c. Adding a new paragraph (a)(9).

The addition reads as follows:

**§ 210.15 Reporting and recordkeeping.**

(a) * * *

(9) For any local educational agency required to conduct a second review of free and reduced price applications as required under § 245.11 of this chapter, the number of free and reduced price applications subject to a second review and the number and percentage of reviewed applications for which the eligibility determination was changed and a summary of the types of changes made.

* * * * *

3. Amend § 210.20 by:

a. In paragraph (a)(8), removing the word ''and'';

b. In paragraph (a)(9), removing the period and adding the word ''; and''

c. Adding a new paragraph (a)(10).

The addition reads as follows:

**§ 210.20 Reporting and recordkeeping.**

(a) * * *

(10) For local educational agencies required to conduct a second review of applications under § 245.11 of this chapter, the results of the reviews including the number and percentage of reviewed applications for which the eligibility determination was changed and a summary of the types of changes made.

* * * * *

## PART 245—DETERMINING ELIGIBILITY FOR FREE AND REDUCED PRICE MEALS AND FREE MILK IN SCHOOLS

1. The authority citation for part 245 continues to read as follows:

**Authority:** 42 U.S.C. 1752, 1758, 1759a, 1772, 1773, and 1779.

2. In § 245.6 revise paragraph (c)(6)(i) to read as follows:

**§ 245.6 Application, eligibility and certification of children for free and reduced price meals and free milk.**

* * * * *

(c) * * *

(6) * * *

(i) *Income applications.* The local educational agency must notify the household of the children's eligibility and provide the eligible children the benefits to which they are entitled within 10 operating days of receiving the application.

* * * * *

3. Amend Part 245 by:

a. Redesignating §§ 245.11 through 245.13 as §§ 245.12 through 245.14, respectively;

b. Adding a new § 245.11 to read as follows:

**§ 245.11 Second review of applications.**

(a) *General.* On an annual basis not later than the end of each school year, State agencies must identify local educational agencies demonstrating a high level of, or risk for, administrative error associated with certification processes and notify the affected local educational agencies that they must conduct a second review of applications beginning in the following school year. The second review of applications must be completed prior to notifying the household of the eligibility or ineligibility of the household for free or reduced price meals.

(b) *State agency requirements.*

(1) *Selection criteria.* In selecting local educational agencies demonstrating a high level of, or risk for, administrative errors associated with certification processes, State agencies must use the following criteria:

(i) *Administrative Review Performance Standard 1 Violation.* All local educational agencies subject to a follow-up administrative review due to certification, benefit issuance, or updating eligibility status violations of Performance Standard 1 under § 210.18(i)(3)(i) of this chapter.

(ii) *At-Risk for Administrative Review Performance Standard 1 Violation.* All local educational agencies at risk for a follow-up administrative review under § 210.18(i)(3)(i) because they claim between 5–10 percent of the free and reduced price lunches incorrectly for the review period due to errors of certification, benefit issuance or updating of eligibility status.

(iii) *Provision 2 or Provision 3 Base Year.* All local educational agencies that are establishing a new base year in the following school year under the special assistance certification and reimbursement alternatives set forth in § 245.9.

(iv) *State agency Discretion.* Of the local educational agencies scheduled for an administrative review under § 210.18(c) the following year, the State agency must select those local educational agencies not selected under paragraphs (b)(1)(i) through (b)(1)(iii) and that are at risk for certification error, as determined by the State agency.

(2) *Reporting Requirement.* By February 1 of each year, each State agency must submit a report, as specified by FNS, describing the results of the second reviews conducted by local educational agencies in their State. The report must include:

(i) The number of free and reduced price applications subject to a second review;

(ii) The number of reviewed applications for which the eligibility determination was changed;

(iii) The percentage of reviewed applications for which the eligibility determination was changed; and

(iv) A summary of the types of changes that were made.

(c) *Local educational agency requirements.* Local educational agencies selected by the State agency to conduct a second review of applications must ensure that the initial eligibility determination for each application is reviewed for accuracy prior to notifying the household of the eligibility or ineligibility of the household for free and reduced price meals. The second review must be conducted by an individual or entity who did not make the initial determination. This individual or entity is not required to be an employee of the local educational agency but must be trained on how to make application determinations. All individuals or entities who conduct a second review of applications are subject to the disclosure requirements set forth in § 245.6(f) through § 245.6(k).

(1) *Timeframes.* The second review of initial determinations must be completed by the local educational agency in a timely manner and must not result in the delay in notifying the household, as set forth in § 245.6(c)(6)(i).

(2) *Duration of requirement to conduct a second review of applications.* Selected local educational agencies must conduct a second review of applications until the State agency determines that the local educational agency is no longer demonstrating a high level of, or is no longer at risk for, administrative error associated with the certification process. The State agency makes this determination as follows:

(i) For local educational agencies selected for second review of applications using criterion set forth in paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iv) of this section, local educational agency provided documentation demonstrates that no more than 5 percent of reviewed applications required a change in eligibility determination.

(ii) For local educational agencies selected for second review of applications using criterion set forth in paragraph (b)(1)(iii) of this section, a second review of applications is required every base year of the Provision 2 or Provision 3 cycle.

(3) *Reporting Requirement.* Each local educational agency required to conduct a second review of applications must annually submit to the State agency the following information on a date established by the State agency:

(i) The number of free and reduced price applications subject to a second review;

(ii) The number of reviewed applications for which the eligibility determination was changed;

(iii) The percentage of reviewed applications for which the eligibility determination was changed; and

(iv) A summary of the types of changes that were made.

Dated: September 5, 2012.

**Robin D. Bailey Jr.,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2012–22261 Filed 9–12–12; 8:45 am]

BILLING CODE 3410–30–P

## FARM CREDIT ADMINISTRATION

## 12 CFR Parts 604, 611, 612, 619, 620, 621, 622, 623, and 630

**RIN 3052–AC65**

## Unincorporated Business Entities

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA, we, or our) is proposing to establish a regulatory framework for Farm Credit System (System) institutions' use of unincorporated business entities (UBEs) organized under State law for certain business activities. For purposes of this proposed rule, a UBE includes limited partnerships (LPs), limited liability partnerships (LLPs), limited liability limited partnerships (LLLPs), limited liability companies (LLCs), and any other unincorporated business entities, such as unincorporated business trusts, organized under State law. This rule does not apply to UBEs that one or more System institutions may establish as Rural Business Investment Companies (RBICs) pursuant to the institutions' authority under the provisions of title VI of the Farm Security and Rural Investment Act of 2002, as amended

(FSRIA), and United States Department of Agriculture (USDA) regulations implementing FSRIA. This rule does apply, however, to System institutions that organize UBEs for the express purpose of investing in RBICs.

**DATES:** Comments on this proposed rule must be submitted on or before November 13, 2012.

**ADDRESSES:** We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we do not accept comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *Email:* Send us an email at *reg-comm@fca.gov*.
- *FCA Web site: http://www.fca.gov*. Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

**FOR FURTHER INFORMATION CONTACT:**

Elna Luopa, Senior Corporate Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4414, TTY (703) 883–4434,

or

Wendy Laguarda, Assistant General Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

**SUPPLEMENTARY INFORMATION:**

## I. Objectives

The objectives of this proposed rule are to:

- Affirm FCA's authority to regulate and examine the System institutions' use of UBEs, including the authority to impose any conditions FCA deemed necessary and appropriate on UBE business activity, and to take enforcement action against System institutions' activities involving UBEs;
- Prohibit System institutions from using UBEs to engage in direct lending or any activity that exceeds their authority under the Act or circumvents the application of cooperative principles;
- Limit the amount of a System institution's equity investments in UBEs;
- Create a process for FCA review and approval of requests by System institutions to organize or invest in UBEs for certain business activity;
- Establish standards for the proper and adequate disclosure and reporting of System UBE activity; and
- Ensure that the System's use of UBEs remains transparent and free from conflicts of interest.

## II. Background

Beginning in the early 1980s, FCA approved joint ventures among System institutions, as well as System institution contractual alliances with non-System entities, that sought to improve the reliability and delivery of authorized products and services to agriculture and rural America. These collaborative initiatives enabled System institutions to provide services and products more efficiently and inexpensively, resulting in improved and less costly services and products to the farmer and rancher System borrowers and rural communities.

Business models and structures have significantly evolved since the 1980s, as more and more States have adopted uniform statutes governing unincorporated, largely limited liability, business structures. The System's use of UBEs has been a logical outgrowth of its earlier collaborative initiatives implemented through joint ventures and alliances. Like these earlier joint initiatives, UBEs enable the System to provide more efficient, less costly services and products to the agricultural or rural community, but through more sophisticated, formal and flexible structures that address ownership rights, management, operations, assumptions of liability, allocation of profits and losses and payment of taxes. Further, UBEs have the added advantage of providing more protection for System stockholders by enabling a System institution to limit its liability to the amount of its equity investment in a UBE.

## III. The Statutory Basis for the Proposed Rule

### *A. System Institutions' Authority*

The System's existing investment [1] and incidental powers [2] provide the authorities for System institutions to invest in and form UBEs for certain business activity. Specifically, under § 615.5140(e), System institutions may exercise their investment authorities to invest in ''other investments approved by the FCA'' provided the funding bank has approved the investment. System investments in UBEs fall under this category, and may be approved by FCA upon a request that explains the risk characteristics of the investment and the System institution's purpose and objectives for making the investment.

Unlike the express authority to organize service corporations under sections 4.25 and 4.28(A) of the Act,[3] no provision under the Act explicitly authorizes System institutions to organize entities under State law to engage in business activity. However, Congress has long encouraged coordinated initiatives by System institutions to provide joint products, services or functions to System borrowers. We note that the farmer-owned, cooperative and jointly liable System, by its very establishment, is designed to accomplish the most efficient and effective delivery system of credit and related services to agriculture and its producers and rural communities. Moreover, various provisions in the Act have authorized or directed System institutions to offer joint products or services. The same year that Congress added the service

[1] Sections 1.5(15) and 3.1(13)(A) of the Act set forth the investment authorities for System banks. Sections 2.2(10) and 2.12(18) of the Act set forth the investment authorities for System associations. FCA regulations in subpart E of part 615 imbue service corporations, chartered under section 4.25 of the Act, with the same investment authorities as their organizing System banks and associations.

[2] Sections 1.5(3), (15) and (21); 2.2(3), (10) and (20); 2.12(3), (18) and (19); 3.1(3) and (16) of the Act.

[3] Section 4.25 and 4.28(A), added to the Act in 1980, expressly authorize System banks and associations to organize service corporations. Congress stated that this authority was needed to provide a more efficient way for System banks to coordinate services. Service corporations, like System banks and associations, are federally chartered instrumentalities and subject to the same FCA supervisory, regulatory and enforcement oversight as System banks and associations. Service corporations are authorized to provide the same functions and services as banks and associations with two significant exceptions: they cannot extend credit or provide insurance services.

corporation authority to the Act (1980), it also directed System institutions to establish programs for young, beginning and small (YBS) farmers and ranchers ''in coordination with other units of the Farm Credit System serving the territory and with other governmental and private sources of credit.'' [4] These 1980 additional authorities evidence Congress' intention that System institutions be able to provide coordinated services and products to System borrowers and rural communities using business structures that can best facilitate such efforts.

In fact, System institutions, with FCA approval, have been using their incidental authority to enter into non-corporate joint ventures to promote coordinated and expedient initiatives, which in recent years have included State-chartered UBEs.

This proposed rule will provide a more uniform approval and oversight process for the System's continuing use of UBEs. The rule emphasizes that incidental powers can neither be the basis for broadening or circumventing the limitations and restrictions of a System institution's express powers in carrying on the business of the bank or association nor used to engage in activities that are impermissible under the Act. The delivery of System credit, services and other products will still chiefly be provided by System institutions' direct use of their express powers to serve their eligible borrowers and customers. As a Government-sponsored enterprise (GSE) of cooperative institutions owned and controlled by their member-borrowers, it is essential that System institutions maintain their strong cooperative traditions and reputations.[5]

In recognizing changing business practices through the System's use of UBEs, the preservation of the System's member-focused principles remains paramount. This proposed rule would therefore prohibit System institutions from engaging in direct lending activities or any other activity through UBEs that circumvents the application of cooperative principles such as borrower rights, stock ownership, voting rights or patronage.

Finally, to provide transparency to the public, FCA intends to post on its Web site the name and business purpose of UBEs organized and controlled by one or more System institutions that are approved under this rule.

*B. FCA Authority Over System Investments in UBEs and UBE Business Activity*

Under part C of title V of the Act, FCA has the ability to take an enforcement action against a System institution in connection with its equity investment in and use of a UBE for business activity to ensure an institution's safety and soundness.

## IV. Section-by-Section Analysis

*A. Unincorporated Business Entities [New §§ 611.1150 Through 611.1158]*

We propose adding a new subpart J to part 611 that would address the purpose and scope of unincorporated business entities organized or invested in by System institutions. Subpart J includes provisions on: (1) Definitions; (2) FCA's regulatory, examination, enforcement, and assessment authorities; (3) general restrictions and prohibitions on the use of UBEs; (4) notice-only requirements for certain activities conducted through UBEs; (5) FCA's review process for UBEs not meeting the notice-only provisions; (6) ongoing requirements; (7) disclosure and reporting requirements; and (8) transparency and conflict of interest requirements. Subpart J also contains a grandfather provision for those UBEs previously approved by FCA on a case-by-case basis and for those UBEs established under the guidance provided in FCA Bookletter BL–057,[6] which may be rescinded once a final rule becomes effective.

1. Purpose and Scope [New § 611.1150]

Proposed § 611.1150 affirms that System institutions have incidental power as may be necessary or expedient to carry on the business of the bank or association, as applicable. In exercising this incidental power, System institutions may continue to establish UBEs, provided the UBE business activity is necessary or expedient to the System institution's express authorities in carrying on the business of the bank or association and falls within the parameters of the rule.

The proposed rule would apply to any System institution that organizes or invests in a UBE for the delivery of services or functions. This proposed rule also pertains to any System institution that has an equity investment in a System-organized and controlled UBE regardless of the amount of the investment. The proposed rule would also apply to any System institution that is a partner or member of a UBE organized to acquire and manage unusual or complex collateral associated with loans under FCA Bookletter BL–057.

Except as authorized by this rule, System institutions cannot manage, control, or invest in any State-chartered or organized business entity. The proposed rule would not permit System institutions to make equity investments in UBEs that are organized, controlled or managed by a non-System entity (third-party UBE) except as may be approved by FCA under § 615.5140(e) for de minimis and passive investments. Such approvals would be considered outside of this rule.

As previously stated, this rule is not applicable to any UBEs that System institutions may establish as RBICs under their separate statutory authority. System institutions' activities under the RBIC authority must be carried out in accordance with the authority of and regulations issued by USDA.[7] However, this rule does apply to System institutions that organize UBEs for the express purpose of investing in a RBIC.

2. Definitions [New § 611.1151]

We propose a definitions section in § 611.1151 that defines the following relevant terms used in the proposed rule.

*Articles of Formation* refers to the relevant State documents on the establishment, ownership, and operation of a UBE and includes registration certificates, charters, articles of organization, partnership agreements, membership or trust agreements, operating, administration or management agreements, fee agreements, or any other documentation on the establishment, ownership or operation of a UBE.

*Control* [8] distinguishes whether a System institution controls the business

[4] Section 4.19 of the Act.

[5] This perspective is noted in the FCA Board's Policy Statement (FCA–PS–80) on Cooperative Operating Philosophy—Serving the Members of Farm Credit System Institutions, dated October 14, 2010, and published in the **Federal Register** at 75 FR 64728 on October 20, 2010.

[6] FCA Bookletter BL–057 on ''Use of State-Chartered Business Entities to Hold Acquired Property,'' dated April 2, 2009, provides guidance on the System's use of UBEs to acquire and manage unusual or complex collateral associated with loans.

[7] Public Law 107–171, title VI, sec. 6029 (2002), as amended by the Food, Conservation, and Energy Act of 2008, Public Law 110–246, title VI, sec. 6027, and USDA regulations at 7 CFR 4290.10 through 4290.3099. FCA has the authority to ensure that a System institution's investment in a RBIC is safe and sound and that they operate the RBIC in accordance with law and regulation.

[8] The term *control* as it is used in the context of this proposed rule is based on the guidance provided in Generally Accepted Accounting Principles (GAAP) under the Financial Accounting Standards Board's Accounting Standards Codification (ASC). *See* primary discussion of control at ASC 810–10–15 and ASC 810–10–25; significant influence over an investment at ASC 323–10–15; and control for limited partnerships and similar entities, including LLCs, etc. at ASC

Continued

activities, operations, and actions of the UBE. *Control* means that one System institution, directly or indirectly, owns more than 50 percent of the UBE's equity *or* serves as the general partner[9] of an LLLP or constitutes the sole manager or is the managing member of a UBE. However, under generally accepted accounting principles (GAAP), the power to control may also exist with a lesser percentage of ownership, for example, if a System institution is the UBE's primary beneficiary; exercises significant influence over the UBE; or establishes control under other facts and circumstances in accordance with GAAP.

Under this definition, a System institution also will be deemed to have control over the UBE if it exercises decision-making authority in a principal capacity of the UBE as defined under GAAP.

A System institution must divest its ownership interest or withdraw as a member or partner from any UBE as soon as practicable if, after a System institution organizes or invests in a System-controlled UBE, non-System persons or entities obtain control as defined under GAAP. Alternatively, as soon as practicable the non-System persons or entities must relinquish control as defined under GAAP.

*Equity investment* means a System institution's contribution of money or assets to the operating capital of a UBE that provides ownership rights in return. The term is meant to include any such contribution of money or assets regardless of the terminology that might be used in an individual State's statute or regulations. The definition of equity investment does not include the costs of organizing a UBE, such as the cost of the articles of formation, attorney fees, filing fees, etc.

*System institution* refers to each System bank under titles I or III of the Act, each association under title II of the Act, and each service corporation chartered by FCA under section 4.25 of the Act.

*Third-party UBE* means any UBE that is owned or controlled by one or more non-System persons or entities.

*UBE* is an acronym for Unincorporated Business Entity. As defined for purposes of this proposed rule, the term ''UBE'' includes unincorporated business entities that are formally established and maintained through applicable State law, such as limited partnerships, limited liability companies, and business or other trust entities.

*UBE Business Activity* refers to the delivery of services or functions by a UBE for one or more System institutions.

3. Regulation, Examination, Enforcement, and Assessment Authority [New § 611.1152]

Proposed § 611.1152 affirms that FCA has full regulatory, supervisory, oversight, examination and enforcement authority over System institutions in connection with their equity investments in and control of UBEs and the services and functions that a UBE performs for the System institution. Such authority includes FCA's right to require a System institution to withdraw from a UBE through dissolution or disassociation or to divest of any investment in a UBE. Sections 5.17(a)(5), 5.17(a)(10), and 5.25(a) of the Act, as well as § 615.5354, also give FCA the authority to condition the approval of a System institution's equity investment in a UBE. The FCA's use of these authorities ensures that System institutions providing certain functions and services through State-organized or chartered UBEs remain safe and sound and operate in accordance with law and regulations.

Finally, this proposed section provides that the cost of regulating and examining equity investments in UBEs and the services and functions that UBEs can perform for System institutions will be subject to FCA's assessment authority under section 5.15 of the Act.

4. General Restrictions and Prohibitions on the Use of UBEs [New § 611.1153]

Proposed § 611.1153 sets forth certain general restrictions on any function, service or activity that a System institution(s) conducts through a UBE. These restrictions would ensure that the System continues to operate in a safe and sound manner and that its status as a cooperative system of lending institutions and a GSE is not jeopardized through the use of UBEs.

The first restriction would provide that any business a System institution conducts through a UBE must be necessary or expedient to the business of the System institution. A UBE cannot be used to deliver services or functions or to engage in any activity that a System institution itself could not engage in under the Act or implementing regulations.

A second restriction would protect the integrity of the System's cooperative structure by prohibiting System institutions from engaging in direct lending activities or from engaging in any other activity through the use of a UBE that would circumvent the application of cooperative principles, as determined by FCA, including borrower rights, stock ownership, voting rights or patronage.

A third restriction would ensure that the use of a UBE by a System institution is transparent to the public and free from conflicts of interest. This provision would require that a UBE be held out to the public as a separate or subsidiary entity; the business transactions, accounts and records of the UBE are not commingled with those of the System institution; and all transactions between officers, employees and agents of the UBE and a System institution are conducted at arm's length, in the interest of the System institution, and in compliance with the standards of conduct rules in 12 CFR part 612, subpart A.

A fourth restriction would limit a single System institution from conducting business through a one-member UBE, such as a limited liability company, other than for the limited purposes of: (1) Acquiring and managing unusual or complex collateral associated with loans, as set forth under the guidance of FCA Bookletter BL–057; and (2) providing electronic transaction, fixed asset, trustee or other similar services that are integral to the daily internal operations of System institutions.

We are proposing this limitation for a number of reasons. First, the Agency does not want to set in motion a proliferation of System-controlled UBEs organized for numerous purposes by a single System institution. Such a proliferation could create a costly administrative burden for the Agency and complicate FCA's oversight authority. Moreover, the creation of one-member UBEs does not foster System collaborative efforts aimed at providing more efficient System operations and improved services to agriculture, agricultural producers, and rural America. Just as Congress encouraged System collaboration through the creation of the 4.25 service corporations, the use of UBEs would, generally, be reasonable and supportable from a business perspective when undertaken through System institution partnerships or multi-member limited liability companies. Finally, without reasonable and supportable reasons to form a UBE,

810–20–25. *See also* proposed Accounting Standards Update 2011–220 for possible revisions to these sections.

[9] The rule would allow a System institution to serve as a general partner of an LLLP, but not an LP, since the liability for the partnership's debts and obligations is limited to the amount invested by the general partner in an LLLP but not in an LP. We note that an LLP does not have a general partner because all partners in an LLP have limited liability.

including a one-member UBE, System institutions should conduct all aspects of their business activity either directly or through a service corporation under section 4.25 of the Act.

Regardless of the limitations on one-member UBEs, we recognize that the use of a UBE to perform services integral to a System institution's daily internal operations, as noted above, may lessen administrative burdens and reduce costs for a System institution. FCA may determine that some of these integral and internal services that a UBE, including a one-member UBE, could provide would become eligible for the notice provision in proposed § 611.1154. If so, we would inform System institutions of this development through an FCA Bookletter or other similar means.

We note that, under the agricultural credit association (ACA) structure, the ACA and its subsidiary production credit association (PCA) and Federal land credit association (FLCA) are treated by FCA as one entity for most regulatory purposes. Also, we note that an Agricultural Credit Bank (ACB) and its Farm Credit Bank (FCB) subsidiary are treated by FCA as a single entity for most regulatory purposes. Therefore, we would consider any UBE formed solely between an ACA and its subsidiary PCA and FLCA or an ACB and its subsidiary FCB as a one-member UBE (and not a multi-member UBE) that could be organized only for the limited purposes set forth above.

A fifth restriction would limit a UBE organized as a partnership to one that is established between or among two or more System institutions that do not have a common board of directors. An ACA and its PCA and FLCA subsidiaries, which operate under a common board of directors, are treated by FCA as one entity for most regulatory purposes, and could not create a partnership between or among themselves under this rule. Similarly, an ACB and its FCB subsidiary, also treated by FCA as one entity for most regulatory purposes, could not create a partnership between themselves.

A sixth restriction would prohibit one or more System institutions that organize or invest in a UBE from creating a subsidiary of the UBE, or enabling the UBE to create its own subsidiary or any other type of affiliated entity. This restriction is essential given FCA's obligations as an independent, safety and soundness regulator of a GSE. The complex arrangements that could possibly be established between System-owned or controlled UBEs and other special purpose vehicles currently permitted under various State laws could, as stated above, create a costly administrative burden for the Agency and complicate FCA's regulatory, examination, and enforcement oversight of the System's safety and soundness. For this reason, we are prohibiting System institutions from propagating additional subsidiaries or any other affiliated entities through their UBEs.

A seventh restriction requires that a System institution's liability be limited to the amount of the institution's equity investment in the UBE, thus preserving a significant benefit for the use of such a business structure—the concept of limited liability. Therefore, System institutions could not serve as a general partner in those UBEs organized as limited partnerships.

An eighth restriction would limit the aggregate amount of equity investments that a System institution is authorized to hold in all UBEs to one percent of the institution's total outstanding loans calculated at the time of each investment. The proposed rule allows FCA to approve an exception to this limitation on a case-by-case basis. In addition, FCA may impose a limitation that is lower than the one-percent aggregate limit based on safety or soundness and other relevant concerns. We believe this limit to be reasonable given that such an investment imposes a financial liability on a System institution up to the amount of its total investments in UBEs. Such an investment remains at-risk; it is recovered only after the System institution sells its interest to other investors or the UBE owners receive some of the proceeds from the liquidated assets of the UBE (if any such proceeds remain after satisfying all other obligations of the UBE). To calculate the investment limit under proposed § 611.1153(h), the rule would require that equity investments held by a service corporation be attributed to its System institution bank and association owners based on their percentage of ownership of the service corporation. This limit would not apply to equity investments made in one-member UBEs organized to acquire and manage unusual or complex collateral associated with loans.

The ninth restriction prohibits a System institution from making any equity investment in a third-party UBE except as may be authorized by FCA on a case-by-case basis under § 615.5140(e) for de minimis and passive investment purposes (such requests would be considered outside of this rule). Also, a System institution is prohibited from being named as the general partner, manager or primary beneficiary of a third-party UBE. Such arrangements have the potential to subject a System institution to liability and reputational risks created by the third-party UBE and to result in actual or apparent conflicts of interest that neither a System institution nor FCA could adequately control. Finally, such arrangements could dilute the Agency's oversight of System activities and diminish FCA's ability to ensure the safety and soundness of the System.

A final restriction would prohibit non-System entities or persons from holding any equity interest in a System-controlled UBE with one exception. Non-System entities or persons would be able to hold up to 20 percent of the equity of a System-controlled UBE that is organized to provide services integral to the daily internal operations of a System institution. This percentage of non-System ownership is the same non-System ownership percentage that FCA regulations currently permit for service corporations organized by one or more System institutions under section 4.25 of the Act. The ninth and final restrictions do not apply to UBEs formed for the purpose of acquiring and managing unusual or complex collateral associated with multiple-lender loan transactions in which non-System persons or entities are participants.

5. Notice-Only Requirement for Certain UBE Equity Investments [§ 611.1154]

In proposed § 611.1154, we describe the specific types of UBEs that a System institution may organize or invest in by providing sufficient advance notice to the FCA. This section also sets forth the specific information that a System institution must include in its notice as well as where the notice must be filed.

This ''notice-only'' provision would be limited to the following UBEs:

a. Those engaged in acquiring and managing the unusual or complex collateral associated with loans as described in FCA Bookletter BL–057, dated April 2, 2009; and

b. Those providing hail or multi-peril crop insurance services in accordance with § 618.8040.

FCA may determine that other UBE business activity is also appropriate for this ''notice-only'' provision and, in such an event, would notify all System institutions by bookletter or other means. Only System institutions with a composite FIRS rating of 1 or 2 would qualify for the ''notice-only'' provision. All other System institutions that intend to form or invest in a UBE must obtain FCA's prior approval under the provisions in § 611.1155 regardless of the nature or purpose of the intended UBE.

A System institution that qualifies for the ''notice-only'' provision would be required to submit articles of formation as defined in § 611.1151 that address basic information on the UBE's ownership, control, and operations. The System institution would also need to specify the dollar amount of its investment in the UBE and provide a certified resolution from its board of directors that the board has authorized the UBE investment and business activity and has given its approval to submit the notice to FCA. A letter from the funding bank that the bank has approved such investment would also be required. For those System institutions forming a UBE for hail or multi-purpose crop insurance services, or for other UBE activity that FCA determines appropriate for the ''notice-only'' provision, the notice would need to include a statement from the board of directors explaining the operating efficiencies and benefits to be gained from the conduct of business through a UBE. The statement must also affirm that the UBE is necessary or expedient to the institution's business; that it will operate with transparency; that it will operate in a manner that prevents conflicts of interest between the UBE and the institution itself; that the UBE will comply with all applicable Federal, State, and local laws; and that the UBE will not be used by the System institution to make direct loans, perform any functions, or provide any services that the System institution is not authorized to provide under the Act and FCA regulations or that go beyond the stated purpose of the UBE. FCA may require additional information under the notice provision or allow the omission of some information. Finally, System institutions that organize or invest in UBEs under this ''notice-only'' provision must comply with the ongoing requirements and disclosure and reporting requirements of §§ 611.1156 and 611.1157, respectively.

6. Approval Process [New § 611.1155]

In § 611.1155, we describe the documents that FCA would require to review a request for approval to organize or invest in a UBE if the request would not qualify for the ''notice-only'' provision in § 611.1154. We would ask a System institution to explain the risk characteristics of the investment, the initial amount of equity it plans to invest in the UBE, the purpose of the UBE, and its objectives. A System institution must provide support for its need to establish or invest in a UBE. We would also ask for a statement on the operating efficiencies that the System institutions expect to achieve and the benefits they expect to derive from using the UBE. A System institution would be required to submit the articles of formation defined in § 611.1151 that address basic information on the UBE's ownership, management structure, and operations. We would also require a certified resolution of the institution's board of directors approving the equity investment in the UBE and the UBE's business activity as well as a letter from the funding bank that it has approved the institution's investment in the UBE. In addition, we would require that an institution's board of directors provide us with a statement that the UBE is necessary or expedient to the institution's business; that it will operate with transparency; that it will operate in a manner that prevents conflicts of interest between the UBE and the institution itself; that the UBE will comply with all applicable Federal, State, and local laws; and that the UBE will not be used by the System institution to make direct loans, perform any functions, or provide any services that the System institution is not authorized to provide under the Act and FCA regulations or that go beyond the stated purpose of the UBE. The institutions may also submit any other information they deem necessary. FCA may require additional information or allow the omission of some information depending on the complexity of the UBE request. If FCA denies approval of the request, we will specify in writing our reasons for denial.

7. Ongoing Requirements [New § 611.1156]

Any System institution that organizes or invests in a UBE for the delivery of services or functions under the provisions of this rule would be expected to maintain and ensure FCA's access to all documents and records of the UBE. Also, a System institution would need to be prepared to divest its ownership interest or withdraw as a member or partner from any UBE that conducts activities beyond its approved limited purpose or that are contrary to the Act or FCA regulations. Under the proposed rule, if the FCA directed the System institution to divest its equity investment in, or withdraw as a member, partner, general partner, managing member or primary beneficiary of, a System-owned and controlled UBE, the institution would be required to do so as soon as practicable.

If a System institution fails to divest its equity investment in, or withdraw as a member, partner, general partner, managing member or primary beneficiary of, a System-owned and controlled UBE, as directed by the FCA within a reasonable period of time, such institution may be subject to an enforcement action pursuant to FCA's enforcement authority under part C of title V of the Act.

8. Disclosure and Reporting Requirements [§ 611.1157]

All System institutions that hold equity investments in UBEs would be required to include information about their equity investments and business activities in their annual reports to shareholders. We propose amending § 620.5, which prescribes the content of the annual report to shareholders, to include this requirement. FCA could also direct that System institutions holding equity investments in UBEs make periodic reports to FCA as required by § 621.12.

System institutions with UBEs that are grandfathered under the rule through the provision in § 611.1158 (discussed below) would be subject to the ongoing requirements of § 611.1156 and all disclosure and reporting requirements of § 611.1157.

We also propose that a System institution dissolving a UBE that it controls be required to provide a timely report to FCA when the dissolution occurs. This reporting will enable FCA to have current information on the status of UBE activity.

9. Grandfather Provision [New § 611.1158]

We propose grandfathering from the Notice and Approval provisions of the rule a System institution's organization of, or investment in, a UBE that received specific, written approval by FCA prior to the date this proposed rule would become effective as a final rule. We would also grandfather those UBEs organized pursuant to the guidance in FCA Bookletter BL–057. All System institutions grandfathered would remain subject to the conditions of approval imposed at the time of FCA's approval and be subject to the ongoing requirements of § 611.1156 and the disclosure and reporting requirements of § 611.1157. System institutions so grandfathered could not change or expand the UBE business activity, ownership interests in, or control of the UBE without providing notice to FCA at least 20 business days in advance of any change. If FCA determined that the proposed change or expansion is material, it could require the System institutions to submit a new approval request under § 611.1155.

*B. Other Miscellaneous Changes*

We propose conforming changes to various FCA regulatory sections to delete terms made obsolete by a final UBE rule and to add new regulatory sections cross-referenced in this proposed regulation.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

**List of Subjects**

*12 CFR Part 604*

Sunshine Act.

*12 CFR Part 611*

Agriculture, Banks, banking, Rural areas.

*12 CFR Part 612*

Agriculture, Banks, banking, Conflict of interests, Crime, Investigations, Rural areas.

*12 CFR Part 619*

Agriculture, Banks, banking, Rural areas.

*12 CFR Part 620*

Accounting, Agriculture, Banks, banking, Reporting and recordkeeping requirements, Rural areas.

*12 CFR Part 621*

Accounting, Agriculture, Banks, banking, Penalties, Reporting and recordkeeping requirements, Rural areas.

*12 CFR Part 622*

Administrative practice and procedure, Crime, Investigations, Penalties.

*12 CFR Part 623*

Administrative practice and procedure.

*12 CFR Part 630*

Accounting, Agriculture, Banks, banking, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 604, 611, 612, 619, 620, 621, 622, 623, and 630 of chapter VI, title 12 of the Code of Federal Regulations are proposed to be amended as follows:

## PART 604—FARM CREDIT ADMINISTRATION BOARD MEETINGS

1. The authority citation for part 604 continues to read as follows:

**Authority:** Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252).

### § 604.420 [Amended]

2. Section 604.420 is amended by removing the words ''service organizations'' in paragraph (i)(1) and adding in their place, the words ''service corporations chartered under the Act.''

## PART 611—ORGANIZATION

3. The authority citation for part 611 is revised to read as follows:

**Authority:** Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100–399, 102 Stat. 989, 1004.

### § 611.1130 [Amended]

4. Section 611.1130 is amended in the first sentence of paragraph (a) by removing the words ''service organizations organized under the Act'' and adding in their place, the words ''service corporations chartered under the Act''.

5. Amend Part 611 by revising the heading of subpart I to read as follows:

## Subpart I—Service Corporations

### § 611.1136 [Amended]

6. Section 611.1136 is amended by:

a. Revising the heading of § 611.1136; and

b. Removing the words ''and unincorporated service organizations'' in paragraph (c); and

c. Removing the words ''service organizations'' each place they appear and adding in their place, the words ''service corporations''.

The revision reads as follows:

### § 611.1136 Regulation and examination of service corporations.

7. Part 611 is amended by adding a new subpart J, consisting of §§ 611.1150 through 611.1158, to read as follows:

## Subpart J—Unincorporated Business Entities

Sec.

611.1150 Purpose and scope.
611.1151 Definitions.
611.1152 Authority over equity investments in UBEs for business activity.
611.1153 General restrictions and prohibitions on the use of UBEs.
611.1154 Notice of equity investments in UBEs.
611.1155 Approval of equity investment in UBEs.
611.1156 Ongoing requirements.
611.1157 Disclosure and reporting requirements.
611.1158 Grandfather provision.

### § 611.1150 Purpose and scope.

(a) *Purpose.* This subpart sets forth the parameters for one or more Farm Credit System (System) institutions to organize or invest in an Unincorporated Business Entity (UBE) in accordance with the Farm Credit Act of 1971, as amended (Act).

(b) *Scope.* Except as authorized under these regulations, no System institution may manage, control, become a member or partner, or invest in a State-organized or chartered business entity. This rule applies to each System institution that organizes or invests in a UBE, including a UBE organized for the express purpose of investing in a Rural Business Investment Company. This rule does not apply to UBEs that one or more System institutions have the authority to establish as Rural Business Investment Companies pursuant to the provisions of title VI of the Farm Security and Rural Investment Act of 2002, as amended (FSRIA) and United States Department of Agriculture regulations implementing FSRIA.

### § 611.1151 Definitions.

For purposes of this subpart, the following definitions apply:

*Articles of formation* means registration certificates, charters, articles of organization, partnership agreements, membership or trust agreements, operating, administration or management agreements, fee agreements or any other documentation on the establishment, ownership, or operation of a UBE.

*Control* means that one System institution, directly or indirectly, owns more than 50 percent of the UBE's equity *or* serves as the general partner of an LLLP, or constitutes the sole manager or the managing member of a

UBE. However, under generally accepted accounting principles (GAAP), the power to control may also exist with a lesser percentage of ownership, for example, if a System institution is the UBE's primary beneficiary, exercises significant influence over the UBE or establishes control under other facts and circumstances in accordance with GAAP. Under this definition, a System institution also will be deemed to have control over the UBE if it exercises decision-making authority in a principal capacity of the UBE as defined under GAAP.

*Equity investment* means a System institution's contribution of money or assets to the operating capital of a UBE that provides ownership rights in return.

*System institution* means each System bank under titles I or III of the Act, each System association under title II of the Act, and each service corporation chartered under section 4.25 of the Act.

*Third-party UBE* means a UBE that is owned or controlled by one or more non-System persons or entities as the term ''control'' is defined under GAAP.

*UBE* means a Limited Partnership (LP), Limited Liability Partnership (LLP), Limited Liability Limited Partnership (LLLP), Limited Liability Company (LLC), Business or other Trust Entity (TE), or other business entity established and maintained under State law that is not incorporated under any law or chartered under Federal law.

*UBE business activity* means the services and functions delivered by a UBE for one or more System institutions.

**§ 611.1152 Authority over equity investments in UBEs for business activity.**

(a) *Regulation, supervisory, oversight, examination and enforcement authority.* FCA has regulatory, supervisory, oversight, examination and enforcement authority over each System institution's equity investment in or control of a UBE and the services and functions that a UBE performs for the System institution. This includes FCA's authority to require a System institution's dissolution of, disassociation from, or divestiture of an equity investment in a UBE, or to otherwise condition the approval of equity investments in UBEs.

(b) *Assessing UBE investments and business activity.* In accordance with section 5.15 of the Act and § 607.2(h), the cost of regulating and examining equity investments in UBEs and the services and functions that UBEs can perform for System institutions will be taken into account when assessing a System institution for the cost of administering the Act.

**§ 611.1153 General restrictions and prohibitions on the use of UBEs.**

(a) *Authorized UBE business activity.* All UBE business activity must be:

(1) Necessary or expedient, as determined by the FCA, to the business of one or more System institutions owning the UBE; and

(2) In no instance greater than the functions and services that one or more System institutions owning the UBE are authorized to perform under the Act and as determined by the FCA.

(b) *Circumvention of cooperative principles.* System institutions are prohibited from using UBEs to engage in direct lending activities or any other activity that would circumvent the application of cooperative principles as determined by FCA, including borrower rights as described in section 4.14A of the Act, or stock ownership, voting rights or patronage as described in section 4.3A of the Act.

(c) *Transparency and the avoidance of conflicts of interest.* Each System institution must ensure that:

(1) The UBE is held out to the public as a separate or subsidiary entity;

(2) The business transactions, accounts, and records of the UBE are not commingled with those of the System institution; and

(3) All transactions between the UBE and System institution directors, officers, employees, and agents are conducted at arm's length, in the interest of the System institution, and in compliance with standards of conduct rules in §§ 612.2130 through 612.2270.

(d) *Limit on one-member UBEs.* A UBE owned solely by a single System institution (including between and among a parent agricultural credit association and its production credit association and Federal land credit association subsidiaries and between a parent agricultural credit bank and its subsidiary Farm Credit Bank) as a one-member UBE is limited to the following special purposes:

(1) Acquiring and managing the unusual or complex collateral associated with loans; and

(2) Providing limited services such as electronic transaction, fixed asset, trustee or other services that are integral to the daily internal operations of a System institution.

(e) *Limit on UBE partnerships.* A System institution operating through a parent-subsidiary structure may not create a UBE partnership between or among the parent agricultural credit association and its production credit association and Federal land credit association subsidiaries or between a parent Agricultural Credit Bank and its Farm Credit Bank subsidiary.

(f) *Prohibition on UBE subsidiaries.* A System institution is prohibited from creating a subsidiary of a UBE that it has organized or invested in under this subpart or from enabling the UBE itself to create a subsidiary or any other type of affiliated entity.

(g) *Limit on potential liability.*

(1) Each System institution's equity investment in a UBE must be established in a manner that will limit potential exposure of the System institution to no more than the amount of its investment in the UBE.

(2) A System institution cannot become a general partner of any partnership other than an LLLP.

(h) *Limit on amount of equity investment in UBEs.* The aggregate amount of equity investments that a single System institution is authorized to hold in UBEs must not exceed one percent of the institution's total outstanding loans, calculated at the time of each investment. On a case-by-case basis, FCA may approve an exception to this limitation that would exceed the one-percent aggregate limit. Conversely, FCA may impose a percentage limit lower than the one-percent aggregate limit based on safety or soundness and other relevant concerns. This one-percent aggregate limit does not apply to equity investments in one-member UBEs as permitted in paragraph (d)(1) of this section. Any equity investment made in a UBE by a service corporation must be attributed to its System institution owners based on the ownership percentage of each bank or association.

(i) *Prohibition on relationship with a third-party UBE.* A System institution is prohibited from:

(1) Making any equity investment in a third-party UBE except as may be authorized on a case-by-case basis under § 615.5140(e) for de minimis and passive investments. Such requests would be considered outside of this rule.

(2) Serving as the general partner or manager of a third-party UBE; or

(3) Being designated as the primary beneficiary of a third-party UBE, either alone or with other System institutions.

(j) *Limitation on non-System equity investments.* Non-System persons or entities may not invest in a UBE that is controlled by a System institution except that non-System persons or entities may own 20 percent or less of the equity of a System-controlled UBE organized to deliver services integral to the daily internal operations of a System institution.

(k) *UBEs formed for acquiring and managing collateral.* The provisions of paragraphs (i) and (j) in this section do not apply to UBEs formed for the purpose of acquiring and managing unusual or complex collateral associated with multiple-lender loan transactions in which non-System persons or entities are participants.

**§ 611.1154 Notice of equity investments in UBEs.**

(a) *Applicability.* This notice provision is applicable only to System institutions that have a composite Financial Institution Rating System (FIRS) rating of 1 or 2 and wish to make an equity investment in UBEs whose activities are limited to the following purposes:

(1) Acquiring and managing unusual or complex collateral associated with loans;

(2) Providing hail or multi-peril crop insurance services in collaboration with another System institution in accordance with § 618.8040; and

(3) Any other UBE business activity that FCA determines to be appropriate for this ''notice-only'' provision.

(b) *Notice requirements.* A System institution must provide reasonable written notice to FCA. System institutions are encouraged to submit such notice as soon as possible, but it must be submitted no later than 20 business days in advance of making an equity investment in a UBE for authorized UBE business activity described in paragraph (a) of this section. The notice must include:

(1) The UBE's articles of formation, including its name and the State in which it is organized, length of time it will exist, its partners or members, and its management structure;

(2) The dollar amount of the System institution's equity investment in the UBE;

(3) A certified resolution of the System institution's board of directors authorizing the equity investment in, and business activity of, the UBE and the board's approval to submit the notice to the FCA;

(4) A letter from the funding bank that it has approved the institution's equity investment in the UBE;

(5) For those UBEs identified in paragraphs (a)(2) and (3) of this section, a detailed statement from the System institution's board of directors that the UBE:

(i) Is needed to achieve operating efficiencies and benefits;

(ii) Is necessary or expedient to the System institution's business;

(iii) Will operate with transparency;

(iv) Will conduct its business activity in a manner designed to prevent conflicts of interest between its purpose and operations and the mission and operations of the System institution(s);

(v) Will otherwise be in compliance with applicable Federal, State, and local laws; and

(vi) Will not be used by the System institution to make direct loans; perform any functions or provide any services that the System institution is not authorized to perform or provide under the Act and FCA regulations; or to exceed the stated purpose of the UBE as set forth in its articles of formation.

(6) Any additional information the System institution wishes to submit.

(c) *Supplementation or omission of information.* FCA may require the supplementation or allow the omission of any information required under paragraph (b) of this section.

(d) *Other requirements.* All System institutions under this ''notice-only'' provision must also comply with the ongoing requirements and disclosure and reporting requirements set forth in §§ 611.1156 and 611.1157, respectively, of this subpart.

**§ 611.1155 Approval of equity investments in UBEs.**

(a) *Request.* System institutions must receive FCA approval before organizing or investing in any UBE that does not qualify for the ''notice-only'' provision set forth in § 611.1154 of this subpart. A request for approval under this section must include the following information:

(1) A detailed statement of the risk characteristics of the investment, as required by § 615.5140(e) and the initial amount of equity investment;

(2) A detailed statement on the purpose and objectives of the UBE; the need for the UBE and the operating efficiencies and benefits that will be achieved by using the UBE;

(3) The proposed articles of formation addressing, at a minimum, the following:

(i) The UBE's name, the State in which it is organized, the city and State in which its principal office is to be located, and its partners or members; and management structure;

(ii) Specific business activities that the UBE will conduct;

(iii) General powers of the UBE;

(iv) Ownership, voting, partnership, membership and operating agreements for the UBE;

(v) Procedures to adopt and amend the partnership, membership or operating agreement of the UBE;

(vi) The standards and procedures for the application and distribution of the UBE's earnings; and

(vii) Length of time the UBE will exist.

(4) A certified resolution of the System institution's board of directors authorizing the equity investment in the UBE and the UBE business activity and the board's approval to submit the request to the FCA.

(5) A letter from the funding bank that it has approved the institution's equity investment in the UBE;

(6) A statement from the System institution's board of directors that the UBE:

(i) Is necessary or expedient to the System institution's business;

(ii) Will operate with transparency;

(iii) Will conduct its business activity in a manner designed to prevent conflicts of interest between its purpose and operations and the mission and operations of the System institution(s);

(iv) Will comply with applicable Federal, State, and local laws; and

(v) Will not be used by the System institution to make direct loans; perform any functions or provide any services that the System institution is not authorized to perform or provide under the Act and FCA regulations; or exceed the purpose of the UBE as stated in its articles of formation.

(7) Any additional information the System institution wishes to submit or any other supporting documentation that FCA may request.

(b) *Supplementation or omission of information.* FCA may require the supplementation or allow the omission of any information required under paragraph (a) of this section based on the complex or noncomplex nature of the proposed UBE.

(c) *Denial of a request.* The FCA will specify in writing to the submitting System institutions the reasons for denial of any request to organize or invest in a UBE.

**§ 611.1156 Ongoing requirements.**

A System institution that makes an equity investment in a UBE under §§ 611.1154 or 611.1155 of this subpart must also comply with the following requirements:

(a) Maintain and ensure FCA's access to all books, papers, records, agreements, reports and other documents of each UBE necessary to document and protect the institution's interest in each entity;

(b) Divest, as soon as practicable, the institution's equity or beneficial interest in (or withdraw membership from) any UBE that conducts activities beyond those authorized to carry out its limited purpose or that are contrary to the Act or FCA regulations; and

(c) Divest the institution's respective ownership or managerial duties in the UBE as soon as practicable, if directed to do so by FCA.

(d) Divest the institution's ownership interest or withdraw as a member or partner from any UBE as soon as practicable if, after a System institution organizes or invests in a System-controlled UBE, non-System persons or entities obtain control as defined under GAAP. Alternatively, as soon as practicable, the non-System persons or entities must relinquish control as defined under GAAP. This paragraph does not apply to UBEs formed for the purpose of acquiring and managing unusual or complex collateral associated with multiple-lender loan transactions in which non-System persons or entities are participants.

**§ 611.1157 Disclosure and reporting requirements.**

(a) *Annual report to shareholders.* In its annual report to shareholders, as set forth in § 620.5(a)(12), a System institution must provide information on its UBE investment and business activity.

(b) *Periodic reports as directed.* As directed by FCA, a System institution may be required to submit periodic reports to FCA on any equity investment in a UBE or UBE status as provided under § 621.12, and in accordance with §§ 621.13 and 621.14.

(c) *Dissolution of a UBE.* A System institution must submit a timely report to FCA on the dissolution of a UBE that it controls.

**§ 611.1158 Grandfather provision.**

(a) *Scope.* The following equity investments in UBEs are grandfathered from the Notice and Approval provisions under §§ 611.1154 and 611.1155, respectively, of this subpart.

(1) Those UBE formations or equity investments that received specific, written approval by FCA prior to the effective date of this regulation; and

(2) Those UBEs organized to acquire or manage unusual or complex collateral associated with loans.

(b) *System institutions' obligations.* All System institutions with grandfathered UBEs:

(1) Remain subject to their conditions of approval;

(2) Are subject to the ongoing requirements of § 611.1156 and the disclosure and reporting requirements of § 611.1157 of this subpart; and

(3) May not change or expand the UBE business activity, ownership interests in, or control of the UBE without providing notice of such changes to FCA at least 20 business days in advance of any change or expansion. If the proposed change or expansion is determined to be material, FCA may require the System institution(s) to submit an ''Approval'' request under § 611.1155 of this subpart.

## PART 612—STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

8. The authority citation for part 612 continues to read as follows:

**Authority:** Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

9. Section 612.2130 is amended by revising paragraphs (p) and (t) to read as follows:

**§ 612.2130 Definitions.**

* * * * *

(p) *Service corporation* means each service corporation chartered under the Act.

* * * * *

(t) *System institution* and *institution* mean any bank, association, or service corporation in the Farm Credit System, including the Farm Credit Banks, banks for cooperatives, Agricultural Credit Banks, Federal land bank associations, agricultural credit associations, Federal land credit associations, production credit associations, the Federal Farm Credit Banks Funding Corporation, and service corporations chartered under the Act.

## PART 619—DEFINITIONS

10. The authority citation for part 619 is revised to read as follows:

**Authority:** Secs. 1.4, 1.5, 1.7, 2.1, 2.2, 2.4, 2.11, 2.12, 3.1, 3.2, 3.21, 4.9, 5.9, 5.17, 5.19, 7.0, 7.1, 7.6, 7.8, and 7.12 of the Farm Credit Act (12 U.S.C. 2012, 2013, 2015, 2072, 2073, 2075, 2092, 2093, 2122, 2123, 2142, 2160, 2243, 2252, 2254, 2279a, 2279a–1, 2279b, 2279c–1, 2279f); sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

11. Part 619 is amended by adding a new § 619.9338 to read as follows:

**§ 619.9338 Unincorporated business entities.**

An *Unincorporated Business Entity* means a Limited Partnership (LP), Limited Liability Partnership (LLP), Limited Liability Limited Partnership (LLLP), Limited Liability Company (LLC), Business or other Trust Entity (TE), or other business entity established and maintained under State law that is not incorporated under any law or chartered under Federal law.

## PART 620—DISCLOSURE TO SHAREHOLDERS

12. The authority citation for part 620 is revised to read as follows:

**Authority:** Secs. 4.3, 4.3A, 4.19, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2154, 2154a, 2207, 2243, 2252, 2254); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

13. Section 620.5 is amended by:

a. Removing the words ''service organization'' in paragraph (a)(3) and adding in their place, the words ''service corporation chartered under the Act''; and

b. Adding a new paragraph (a)(11) to read as follows:

**§ 620.5 Contents of the annual report to shareholders.**

* * * * *

(a) * * *

(11) For banks and associations, business relationships with unincorporated business entities (UBEs).

(i) Except as provided in § 620.5(a)(12)(ii) of this section, describe the business relationship with any UBE, as defined in § 611.1151, that was organized by the bank or association or in which the bank or association has an equity interest. Include in the description the name of the UBE, the type of business entity, the purpose for which the UBE was organized, the scope of its activities, and the level of ownership. If the bank or association does not have an equity interest, but manages the operations of a UBE that is controlled by a System institution, describe this business relationship and any fees received.

(ii) If the UBE is a one-member UBE as described in § 611.1153(d)(1), the bank or association need only disclose the name of the UBE, the type of business entity, and the purpose for which the UBE was organized.

* * * * *

## PART 621—ACCOUNTING AND REPORTING REQUIREMENTS

14. The authority citation for part 621 continues to read as follows:

**Authority:** Secs. 5.17, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2279aa–11); sec. 514 of Pub. L. 102–552.

**§ 621.1 [Amended]**

15. Section 621.1 is amended by removing the words ''service organizations'' and adding in their place, the words ''service corporations''.

**§ 621.2 [Amended]**

16. In § 621.2 paragraph(e) is amended by removing the words ''service organization'' and adding in their place, the words ''service corporation.''

## PART 622—RULES OF PRACTICE AND PROCEDURE

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

**Authority:** Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273); 28 U.S.C. 2461 note; and 42 U.S.C. 4012a(f).

### § 622.2 [Amended]

18. In § 622.2 paragraph (d) is amended by removing the words ''service organization chartered under part E of title IV of the Act'' and adding in their place, the words ''service corporation chartered under the Act.''

## PART 623—PRACTICE BEFORE THE FARM CREDIT ADMINISTRATION

19. The authority citation for part 623 is revised to read as follows:

**Authority:** Secs. 5.9, 5.10, 5.17, 5.25–5.37 of the Farm Credit Act (12 U.S.C. 2243, 2244, 2252, 2261–2273).

### § 623.2 [Amended]

20. In § 623.2 paragraph (d) is amended by removing the words ''service organization chartered under part E of title IV of the Act'' and adding in their place, the words ''service corporation chartered under the Act.''

## PART 630—DISCLOSURE TO INVESTORS IN SYSTEMWIDE AND CONSOLIDATED BANK DEBT OBLIGATIONS OF THE FARM CREDIT SYSTEM

21. The authority citation for part 630 is revised to read as follows:

**Authority:** Secs. 4.2, 4.9, 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2153, 2160, 2243, 2252, 2254); sec. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656; sec. 514 of Pub. L. 102–552, 106 Stat. 4102.

### § 630.20 [Amended]

22. Section 630.20 is amended by removing the words ''service organization'' in paragraph (a)(2) and adding in their place, the words ''service corporation.''

Dated: September 6, 2012.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2012–22382 Filed 9–12–12; 8:45 am]

BILLING CODE 6705–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2009–1088; Directorate Identifier 2008–SW–76–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Sikorsky Aircraft Corporation Helicopters

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

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** We are revising an earlier proposed airworthiness directive (AD) for the Sikorsky Aircraft Corporation (Sikorsky) Model S–92A helicopter, which proposed revising the Rotorcraft Flight Manual (RFM), Operating Limitations section, to prohibit Class D external load operations, including human external cargo (HEC), because this model helicopter was not certificated to one-engine inoperative performance standards for carrying Class D external loads. This Supplemental NPRM is prompted by a recent design approval, which allows Class D external load operations if the appropriate operating limitations are included in the RFM. This proposed AD is intended to require appropriate operating limitations to allow operators to perform Class D external load-combination operations, including HEC, in this model helicopter that now meets the Category A performance standard.

**DATES:** We must receive comments on this proposed AD by November 13, 2012.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

For service information identified in this proposed AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop S581A, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, email address *tsslibrary@sikorsky.com*, or at *http://www.sikorsky.com.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**FOR FURTHER INFORMATION CONTACT:** John Coffey, Flight Test Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7173; email: *john.coffey@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

### Discussion

On October 23, 2009, we issued a proposal to amend 14 CFR part 39 to include an AD that would apply to Sikorsky Model S–92 helicopters. That NPRM was published in the **Federal**

**Register** on December 10, 2009 (74 FR 65496). The NPRM proposed revising the RFM SA S92A–RFM–003, Part 1, Section 1, Operating Limitations, Types of Operation, by removing the statement ''RESCUE HOIST: category 'A' only External load operations with Class 'D' external loads.'' The NPRM proposed replacing that statement with ''HOIST: Class D external loads PROHIBITED.''

That NPRM was prompted by a mistake in the RFM, which allowed ''Class D'' rotorcraft load combinations for HEC operations for this model helicopter. The Model S–92A RFM did not include the required one-engine inoperative (OEI) hover performance and procedures.

Also, the NPRM proposed replacing the words ''RESCUE HOIST'' in the RFM with ''HOIST.''

## Actions Since Previous NPRM Was Issued

Since issuing the previous NPRM, a recent design approval for HEC operations has been issued for this helicopter. Therefore, we no longer need to prohibit rotorcraft load combinations for HEC operations for this model helicopter, but rather we need to correct the RFM to apply the appropriate limitations.

Because this change expands the scope of the originally proposed rule, the FAA will reopen the comment period to provide additional opportunity for public comment.

## FAA's Determination

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

## Proposed AD Requirements

This proposed AD would require, within 90 days, revising the Operating Limitations section of the RFM S92A–RFM–003, Part 1, Section 1, by inserting a copy of this AD into the RFM or by making pen and ink changes to several sections of the RFM Operating Limitations. The changes required by this AD are complied with if RFM S92A–RFM–003, Revision 12, has been incorporated into the RFM.

## Costs of Compliance

We estimate that this proposed AD would affect 65 helicopters in the U.S. registry. The costs for inserting a correction to the RFM are expected to be minimal.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Sikorsky Aircraft Corporation Helicopters:** Docket No. FAA–2009–1088; Directorate Identifier 2008–SW–76–AD.

**(a) Applicability**

This AD applies to Sikorsky Aircraft Corporation Model S–92A helicopters, certificated in any category.

**(b) Unsafe Condition**

This AD defines the unsafe condition as an inaccurate Rotorcraft Flight Manual (RFM) provision, which was approved without appropriate limitations for this model helicopter for carrying Class D external rotorcraft-load combinations, including Human External Cargo (HEC), when this model helicopter was not certificated to Category A one-engine inoperative (OEI) performance standards, including fly away capabilities after an engine failure, which is required for carrying HEC.

**(c) Compliance**

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

**(d) Required Actions**

Within 90 days, revise the Operating Limitations section of Rotorcraft Flight Manual (RFM) S92A–RFM–003, Part 1, Section 1, by inserting a copy of this AD into the RFM or by making pen and ink changes, as follows:

**Note to paragraph (d):** The changes required by this AD are complied with if RFM S92A–RFM–003, Revision 12, has been incorporated into the RFM.

(1) In the Types of Operation section, beneath Hoist, add the following:

''The hoist equipment certification installation approval does not constitute approval to conduct hoist operations. Operational approval for hoist operations must be granted by the Federal Aviation Administration. No cabin seats may be installed in front of station 317 when conducting Human External Cargo hoist operations, which requires Category A performance capabilities.''

(2) In the Flight Limits section, add the following:

''HOIST When conducting Human External Cargo operations, which require category 'A' performance capabilities, the minimum hover height is 20 feet AGL and the maximum hover height is 80 feet AGL.

HOIST The collective axis must remain uncoupled when conducting Human External Cargo, which requires category 'A' performance capabilities, for the period of time that the person is off the ground or water and not in the aircraft. This can be

accomplished by either uncoupling the collective axis or by the pilot depressing the collective trim switch during the pertinent portion of the maneuver.''

(3) In the Weight Limits section:

(i) Remove this note: ''**NOTE:** The 150 pound hoist decrement does not preclude Cat A operations at a gross weight of 26,500 pounds with a hoist installed. If conditions permit, the pilot may go to the right of the 26,500 line on figure 1–2 to determine a maximum gross weight up to 26,650 and then subtract 150 pounds.''

(ii) Add this paragraph and figure: ''HOIST Maximum gross weight for Human External Cargo, which requires category 'A' performance capabilities, is limited to the gross weight determined in accordance with the following Figure 1–2A to Paragraph (d) of this AD for your altitude and temperature with the air-conditioner, anti-ice, and bleed air turned off.''

BILLING CODE 4910–13–P

SA S92A-RFM-003 Part 1, Section I

**S-92A MAXIMUM GROSS WEIGHT**
**FOR HOISTING HUMAN EXTERNAL CARGO**
**REQUIRING CATEGORY A**

**ONE ENGINE INOPERATIVE OEI 30 SECOND POWER**
**AIR-CONDITIONER OFF ANTI-ICE OFF BLEED AIR OFF**

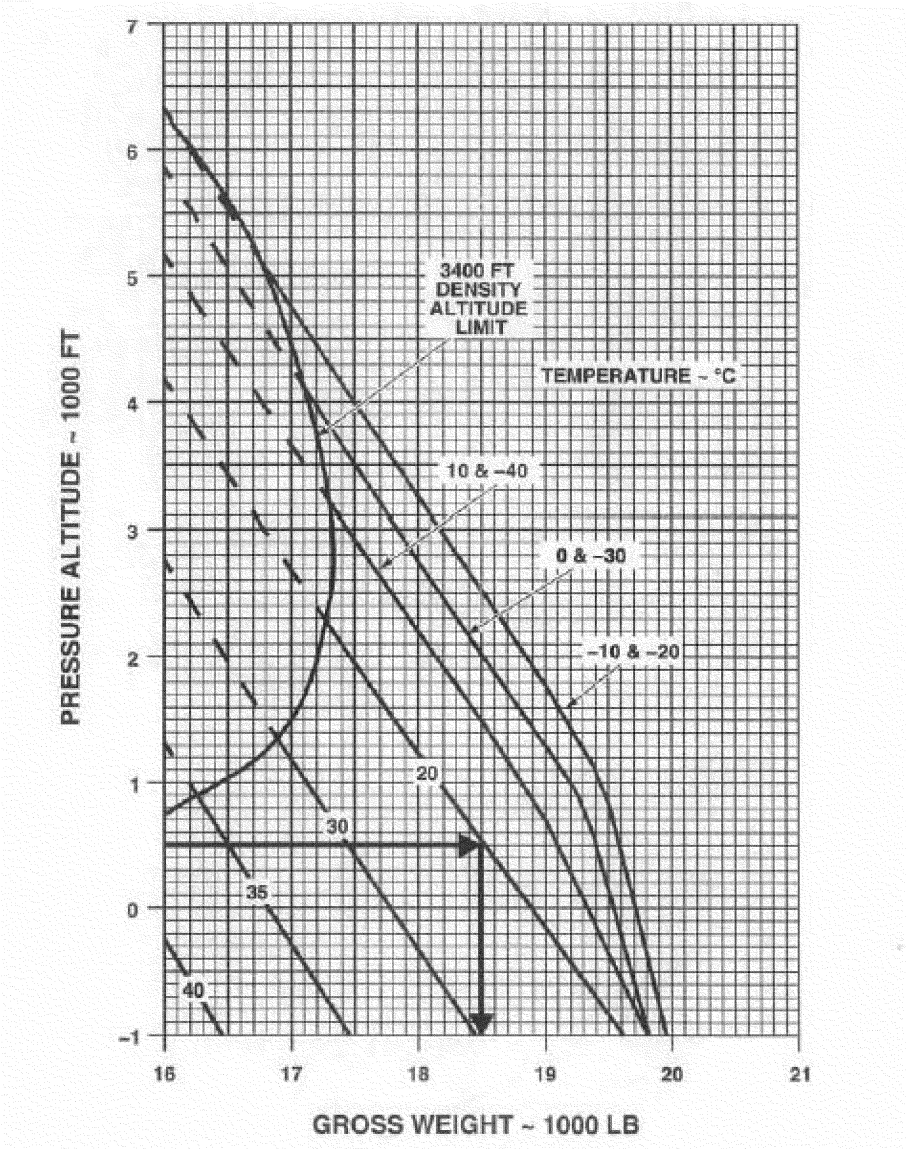


**Figure 1-2A to Paragraph (d), Maximum Gross Weight for HEC Requiring Cat 'A'**

**NOTE 1 to Figure 1-2A to Paragraph (d) of this AD: THIS CHART DEPICTS THE GROSS WEIGHT, PRESSURE ALTITUDE, TEMPERATURE COMBINATION WHERE OEI HOGE CAPABILITY EXISTS USING 30 SECOND OEI POWER WITH A 60 SHP MARGIN.**

**NOTE 2 to Figure 1-2A to Paragraph (d) of this AD: 15 FT OF GROUND CLEARANCE IS ASSURED IN THE EVENT OF AN ENGINE FAILURE AT 20 TO 80 FT AGL.**

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

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: John Coffey, Flight Test Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7173, fax (781) 238–7170; email *john.coffey@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

**(f) Additional Information**

For service information identified in this AD, contact Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop S581A, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, email address *tsslibrary@sikorsky.com*, or at *http://www.sikorsky.com.* You may review a copy of this information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**(g) Subject**

Joint Aircraft Service Component (JASC) Code: 2510: Flight Compartment Equipment.

Issued in Fort Worth, Texas, on September 5, 2012.

**Lance T. Gant,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2012–22525 Filed 9–12–12; 8:45 am]

BILLING CODE 4910–13–C

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0901; Directorate Identifier 2012–NE–19–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for all Turbomeca S.A. Arriel 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines. This proposed AD was prompted by several reports of uncommanded in-flight shutdown (IFSD) on Arriel 1 engines. This proposed AD would require performing a high gas generator speed (NG) rating vibration check. We are proposing this AD to prevent an uncommanded in-flight shut-down of the engine, which could result in an emergency landing.

**DATES:** We must receive comments on this proposed AD by November 13, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *frederick.zink@faa.gov*; phone: 781–238–7779; fax: 781–238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0901; Directorate Identifier 2012–NE–19–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0117, dated July 3, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Several cases of uncommanded in-flight shut-down (IFSD) have been reported on ARRIEL 1 engines. Results of subsequent investigations showed that some Gas Generator (GG) rear bearing failures have occurred following ''Level 3'' maintenance operations on the GG Assembly. Some of these maintenance operations may have created an unbalanced condition of the GG rotating assembly and, ultimately, failure of the GG rear bearing.
>
> This condition, if not detected and corrected, could lead to an uncommanded engine in-flight shut down and may ultimately lead to an emergency landing.

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

### FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

### Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1,445 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S.

operators to be $122,825. Our cost estimate is exclusive of possible warranty coverage.

### Authority for This Rulemaking

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

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

### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Turbomeca S.A.:** Docket No. FAA–2012–0901; Directorate Identifier 2012–NE–19–AD.

**(a) Comments Due Date**

We must receive comments by November 13, 2012.

**(b) Affected Airworthiness Directives (ADs)**

None.

**(c) Applicability**

This AD applies to all Turbomeca S.A. ARRIEL 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines.

**(d) Reason**

This AD was prompted by several reports of uncommanded in-flight shutdown on Arriel 1 engines. We are issuing this AD to prevent an uncommanded in-flight shutdown of the engine, which could result in an emergency landing.

**(e) Actions and Compliance**

Unless already done, from the effective date of this AD, do the following. After any Level 3 maintenance action on the gas generator (GG) rotating assembly and before returning the engine to service, accomplish a high GG speed (NG) rating vibration check.

**(f) Definition**

Level 3 maintenance on the GG rotating assembly is when the Module 03 is removed from the helicopter for implementation of deep maintenance operation to be performed in accordance with the applicable maintenance instructions.

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

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

**(h) Related Information**

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *frederick.zink@faa.gov;* phone: 781–238–7779; fax: 781–238–7199.

(2) Refer to Mandatory Continuing Airworthiness Information AD 2012–0117, dated July 3, 2012, for related information.

Issued in Burlington, Massachusetts, on September 5, 2012.

**Colleen M. D'Alessandro,**

*Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2012–22530 Filed 9–12–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2011–1401; Airspace Docket No. 11–AGL–27]**

## Proposed Amendment of Class E Airspace; Gaylord, MI

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Gaylord, MI. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Gaylord Regional Airport. Also, this action would rename the airport and update the geographic coordinates. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

**DATES:** 0901 UTC. Comments must be received on or before October 29, 2012.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–1401/Airspace Docket No. 11–AGL–27, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1401/Airspace Docket No. 11–AGL–27.'' The postcard will be date/time stamped and returned to the commenter.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**The Proposal**

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Gaylord Regional Airport, Gaylord, MI. The airport name would also be updated from Otsego County Airport to Gaylord Regional Airport, as well as the airport's geographic coordinates, to coincide with the FAA's aeronautical database. Controlled airspace is needed for the safety and management of IFR operations at the airport.

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

The FAA has determined that this proposed 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Gaylord Regional Airport, Gaylord, MI.

**Environmental Review**

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

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

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

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

* * * * *

**AGL MI E5 Gaylord, MI [Amended]**

Gaylord Regional Airport, MI
(Lat. 45°00′47″ N., long. 84°42′12″ W.)
Gaylord VOR/DME
(Lat. 45°00′45″ N., long. 84°42′15″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Gaylord Regional Airport, and within 2 miles each side of the 090° bearing from the airport extending from the 7-mile radius to 10.5 miles east of the airport, and within 8 miles north and 4 miles south of the Gaylord VOR/DME 278° radial extending from the 7-mile radius to 14.1 miles west of the airport, and within 8 miles north and 4 miles south of the Gaylord VOR/DME 270° radial extending from the 7-mile radius to 14.2 miles west of the airport.

Issued in Fort Worth, TX, on August 29, 2012.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2012–22599 Filed 9–12–12; 8:45 am]

BILLING CODE 4901–13–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2012–0811]**

**RIN 1625–AA00**

## Safety Zone, Atlantic Intracoastal Waterway; Oak Island, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to extend the temporary safety zone established on the waters of the Atlantic Intracoastal Waterway at Oak Island,

North Carolina. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance on the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina. The safety zone extension would temporarily restrict vessel movement within the designated area starting on December 12, 2012 through February 14, 2013.

**DATES:** Comments and related material must be received by the Coast Guard on or before September 28, 2012.

**ADDRESSES:** You may submit comments identified by docket number 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 CWO4 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@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. 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, 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–2012–0811 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

### *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–2012–0811 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

The safety zone at issue was initially established in a previous rulemaking under docket number USCG–2012–0431. We published a Notice of Proposed Rulemaking on June 15, 2012 (77 FR 35906), and after receiving no comments, we published a temporary final rule on July 30, 2012 (44 FR 44466).

## C. Basis and Purpose

North Carolina Department of Transportation has awarded a contract to Marine Contracting Corporation of Virginia Beach, Virginia to perform bridge maintenance on the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina. The contract provides for replacing the fender system to commence on September 12, 2012 with a completion date of December 12, 2012. The contractor has been granted an extension by North Carolina Department of Transportation until February 14, 2013 to complete the bridge maintenance. The contractor will utilize a 140 foot deck barge with a 40 foot beam as a work platform and for equipment staging. A safety zone is needed to provide a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction of horizontal clearance.

## D. Discussion of Proposed Rule

The proposed temporary safety zone will encompass the waters directly under the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina (33°55′18″ N/078°04′22″ W). All vessels transiting this section of the waterway requiring a horizontal clearance of greater than 50 feet will be required to make a one hour advanced notification to the work supervisor at the NC 133 Fixed Bridge while the safety zone is in effect. A safety zone is currently in effect from 8 a.m. September 12, 2012 through 8 p.m. December 12, 2012, and

we are proposing to extend its duration until 8 p.m. February 14, 2013.

**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. This rule would not restrict traffic from transiting a portion of the Atlantic Intracoastal Waterway, it would only impose a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 50 feet.

*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 may be small entities: the owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 p.m. December 12, 2012 through 8 p.m. February 14, 2013.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone would apply to this section of the Atlantic Intracoastal Waterway, vessel traffic would be able to request passage by providing a one hour advanced notification. Before the effective period, the Coast Guard would issue maritime advisories widely available to the users of the waterway. 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 a temporary safety zone. This 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 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 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–0811 to read as follows:

**§ 165.T05–0811 Safety Zone; Atlantic Intracoastal Waterway, Oak Island, NC.**

(a) Regulated Area. The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina (33°55′18″ N/078°04′22″ W).

(b) Regulations. The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0811. In addition the following regulations apply:

(1) All vessels requiring greater than 50 feet horizontal clearance to safely transit through the NC 133 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 311.8, at Oak Island, North Carolina must contact the work supervisor on VHF–FM marine band radio channels 13 and 16 one hour in advance of intended transit.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(3) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) Definitions.

(1) Captain of the Port North Carolina means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) Designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(3) Work Supervisor means the contractors on site representative.

(d) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) Enforcement period. This section will be enforced from through 8 p.m. December 12, 2012 through 8 p.m. February 14, 2013 unless cancelled earlier by the Captain of the Port.

Dated: August 30, 2012.

**A. Popiel,**

*Captain, U.S. Coast Guard, Captain of the Port Sector North Carolina.*

[FR Doc. 2012–22597 Filed 9–12–12; 8:45 am]

**BILLING CODE 9110–04–P**

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

**36 CFR Part 1192**

**[Docket No. ATBCB 2010–0004]**

**RIN 3014–AA38**

## Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of information meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) is holding an information meeting in Seattle, WA on October 2, 2012 on pending rulemaking to revise and update accessibility guidelines for buses, over-the-road buses, and vans. The purpose of the meeting is to discuss issues related to the design and slope of bus ramps and the space needed at the top of ramps by individuals who use wheeled mobility devices to access the fare collection device and to turn into the main aisle.

**DATES:** The information meeting will be held from 2:15 p.m. to 5:30 p.m. on October 2, 2012.

**ADDRESSES:** The information meeting location is Washington State Convention Center, Rooms 611–612 (6th level), 800 Convention Place, Seattle, WA 98101–2350.

**FOR FURTHER INFORMATION CONTACT:** Scott Windley, Office of Technical and Information Services, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone (202) 272–0025 (voice) or (202) 272–0028 (TTY). Email address *windley@access-board.gov.* Persons planning to attend the meeting should contact Scott Windley. More information and any updates to the meeting will be posted on the Access Board's Web site at *http://www.access-board.gov/transit/.*

**SUPPLEMENTARY INFORMATION:** In July 2010, the Architectural and Transportation Barriers Compliance Board (Access Board) issued a notice of proposed rulemaking (NPRM) to revise and update its accessibility guidelines for buses, over-the-road buses, and vans. See 75 FR 43748, July 26, 2010. The NPRM revised both the substance and structure of the guidelines. In addition to a new organization and format, the NPRM included revisions to technical requirements for ramp slopes, onboard circulation routes, wheelchair spaces,

and securement systems. The NPRM also included a new requirement for automated stop and route announcements in systems with 100 or more buses and requirements specific to bus rapid transit systems. To improve accessibility, the Board proposed reducing the maximum slope of vehicle ramps. The NPRM proposed that bus ramps have slopes not steeper than 1:6 (17 percent) when deployed to the boarding and alighting areas without station platforms and to the roadway. See T303.8.1 in the NPRM. Some bus and ramp manufacturers currently provide ramps that meet this proposed provision. To minimize the ramp extension beyond the doorway, some manufacturers provide a fixed ramp slope inside the bus creating the potential for a grade break, or change in ramp slope, within a single ramp run. These designs also can reduce the level floor space at the top of the ramp.

The comment period on the NPRM ended on November 23, 2010. After the comment period ended, the Access Board received correspondence from Lane Transit District, Santa Clara Valley Transportation Authority, and Douglas Cross Transportation Consulting that raised issues regarding the usability of these ramps. The Access Board staff met with representatives from Lane Transit District and Douglas Cross Transportation Consulting to discuss these issues. The correspondence and a report on the meeting have been placed in the docket.

In August 2012, the Access Board reopened the comment period until October 31, 2012 to collect additional information on bus ramps. See 77 FR 50068, August 20, 2012. As part of this effort, the Board will hold two information meetings to discuss the usability and impacts of certain bus ramp designs that have recently been implemented.

The first information meeting will be held in Washington, DC from 9:30 a.m. to 1:30 p.m. on September 19, 2012 in the Board's conference center at 1331 F Street NW., Suite 800, Washington, DC 20004–1111. Notice of the first meeting was provided in the August 20, 2012 **Federal Register** notice.

The second information meeting will be held in conjunction with the American Public Transportation Association (APTA) annual meeting in Seattle, WA from 2:15 p.m. to 5:30 p.m. on October 2, 2012 at the Washington State Convention Center, Rooms 611–612 (6th level), 800 Convention Place, Seattle, WA 98101–2350. The information meeting is open to all members of the public, including those who are not registered to attend the APTA annual meeting.

The Access Board is interested in receiving information on the following questions at the information meetings:

1. Can a bus ramp with a slope of 1:6 be provided without a grade break and without compromising the available level space within the bus at the top of the ramp? How might bus kneeling affect these designs?

2. If the ramp slope were required to be uniform for the length of the ramp with no grade breaks, how would such a requirement affect bus and ramp designs, manufacturers, transit operators, and transit users, including those with disabilities?

3. How much level space, measured when the bus is sitting on a level surface, can be provided beyond the top of the ramp? How can this space be configured to permit individuals who use wheeled mobility devices to access fare collection devices and to turn into the main aisle? How does the slope of the ramp, the location of the fare collection device, and the configuration of the handrail affect the availability of this space?

4. If level space were required at the top of the ramp to permit access to fare collection devices and to facilitate turning into main aisles, how would such a requirement affect bus designs, manufacturers, transit operators, and transit users, including those with disabilities?

Bus and ramp manufacturers, transit operators, researchers, disability organizations, and interested individuals are invited to participate in the public information meetings and to submit comment. Transcripts of the meetings will be placed in the docket at *http://www.regulations.gov* and will be available on the Access Board's Web site at *http://www.access-board.gov/transit/.*

The information meetings will be accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be provided. Persons attending the information meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.accessboard.gov/about/policies/fragrance.htm* for more information).

**David M. Capozzi,**

*Executive Director.*

[FR Doc. 2012–22554 Filed 9–12–12; 8:45 am]

BILLING CODE P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA–R07–OAR–2012–0466; FRL–9726–1]

## Approval and Promulgation of Implementation Plans; State of Missouri; Maximum Allowable Emission of Particulate Matter From Fuel Burning Equipment Used for Indirect Heating

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Missouri to incorporate a new rule, Maximum Allowable Emissions of Particulate Matter (PM) Emissions from Fuel Burning Equipment Used for Indirect Heating. The new rule consolidates four pre-existing rules into one state-wide rule for clarity. The applicable standard addressed in this action is the $PM_{2.5}$ and $PM_{10}$ NAAQS promulgated by EPA in 2006. EPA is proposing this revision because the standards and requirements set by the rules will strengthen the Missouri SIP. EPA's approval of this SIP revision is being done in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Comments on this proposed action must be received in writing by October 15, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2012–0466, by mail to Stephanie Doolan, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register.**.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Doolan at (913) 551–7719, or by email at *doolan.stephanie@epa.gov.*

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register,** EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action,

no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register.**

Dated: August 29, 2012.

**Mark J. Hague,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 2012–22470 Filed 9–12–12; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 43 CFR Part 2

**RIN 1093–AA15**

## Freedom of Information Act Regulations

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Proposed rule.

This rule would revise the regulations that the Department follows in processing records under the Freedom of Information Act (''FOIA''). The revisions clarify and update procedures for requesting information from the Department and procedures that the Department follows in responding to requests from the public. The revisions also incorporate clarifications and updates resulting from changes to the FOIA and case law. Finally, the revisions include current cost figures to be used in calculating and charging fees and increase the amount of information that members of the public may receive from the Department without being charged processing fees.

**DATES:** Comments must be submitted on or before November 13, 2012.

**ADDRESSES:** You may submit comments on the rulemaking by either of the methods listed below. Please use Regulation Identifier Number 1093–AA15 in your message.

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

2. *U.S. mail, courier, or hand delivery:* Executive Secretariat—FOIA regulations, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Cindy Cafaro, Office of Executive Secretariat and Regulatory Affairs, 202–208–5342.

**SUPPLEMENTARY INFORMATION:**

### I. Why We're Publishing This Rule and What It Does

The regulations are being revised to update, clarify, and streamline the language of procedural provisions, and to incorporate certain changes brought about by the amendments to the FOIA under the OPEN Government Act of 2007, Public Law 110–175, 121 Stat. 2524. Additionally, the regulations are being updated to reflect developments in the case law and to include current cost figures to be used in calculating and charging fees.

The revisions also incorporate changes to the language and structure of the FOIA regulations in order to improve the Department's FOIA performance. More nuanced multitrack processing can be found at § 2.15. Partial fee waivers will expressly be permitted under § 2.45. Proposed revisions of the Department's fee schedule can be found at § 2.42, § 2.49(a)(1), and Appendix A. The duplication charge for physical records or scanning records will increase from thirteen to fifteen cents a page. The amount at or below which the Department will not charge a fee will increase from $30.00 to $50.00.

### II. Compliance With Laws and Executive Orders

*1. Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

*2. Regulatory Flexibility Act*

The Department of the Interior certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

*3. Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

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.

*4. Unfunded Mandates Reform Act*

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*5. Takings (E.O. 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

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

In accordance with Executive Order 13132, the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It would not substantially and directly affect the relationship between the Federal and state governments. A Federalism Assessment is not required.

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

In accordance with Executive Order 12988, the Office of the Solicitor has

determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*8. Consultation With Indian Tribes (E.O. 13175)*

Under the criteria in Executive Order 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. This proposed rule does not have tribal implications that impose substantial direct compliance costs on Indian Tribal governments.

*9. Paperwork Reduction Act*

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required.

*9. National Environmental Policy Act*

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required. Pursuant to Department Manual 516 DM 2.3A(2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject late to the NEPA process, either collectively or case-by-case.''

*10. Effects on the Energy Supply (E.O. 13211)*

This proposed rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required. This proposed rule will not have a significant effect on the nation's energy supply, distribution, or use.

*11. Clarity of This Regulation*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*12. Public Availability of Comments*

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**List of Subjects in 43 CFR Part 2**

Freedom of information.

**David J. Hayes,**
*Deputy Secretary of the Interior.*

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR subtitle A as follows:

## PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

1. The authority citation for Part 2 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

2. The heading of part 2 is revised to read as set forth above.

3. Subpart F (consisting of § 2.41), subpart G (consisting of §§ 2.45 through 2.79), and subpart H (consisting of §§ 2.80 through 2.90) are redesignated as subpart J (consisting of § 2.141), subpart K (consisting of §§ 2.145 through 2.179), and subpart L(consisting of §§ 2.180 through 2.190).

4. Subparts A through E of Part 2 are revised to read as follows:

### Subpart A—Introduction

Sec.
2.1 What should you know up front?
2.2 What kinds of records are not covered by the regulations in subparts A through I of this part?

### Subpart B—How to Make a Request

2.3 Where should you send a FOIA request?
2.4 Does where you send your request affect its processing?
2.5 How should you describe the records you seek?
2.6 How will fee information affect the processing of your request?
2.7 What information should you include about your fee category?
2.8 Can you ask for records to be disclosed in a particular form or format?
2.9 What if your request seeks records about another person?
2.10 May you ask for expedited processing?
2.11 What contact information should your request include?

### Subpart C—Processing Requests

2.12 What should you know about how bureaus process requests?
2.13 How do consultations and referrals work?

### Subpart D—Timing of Responses to Requests

2.14 In what order are responses usually made?
2.15 What is multitrack processing and how does it affect your request?
2.16 What is the basic time limit for responding to a request?
2.17 When does the basic time limit begin for misdirected FOIA requests?
2.18 When can the bureau suspend the basic time limit?
2.19 When may the bureau extend the basic time limit?
2.20 When will expedited processing be provided and how will it affect your request?

### Subpart E—Responses to Requests

2.21 How will the bureau respond to requests?
2.22 How will the bureau grant requests?
2.23 When will the bureau deny requests?
2.24 How will the bureau deny requests?
2.25 What if the requested records contain both exempt and nonexempt material?

## Subpart A—Introduction

### § 2.1 What should you know up front?

(a) Subparts A through I of this part contain the rules that the Department follows in processing records under the Freedom of Information Act (''FOIA'').

(b) Definitions of terms used in Subparts A through I of this part are found at § 2.70.

(c) Subparts A through I of this part should be read in conjunction with the text of the FOIA and the OMB Fee Guidelines.

(d) The Department's FOIA Handbook and its attachments contain detailed information about Department procedures for making FOIA requests and descriptions of the types of records maintained by different Department bureaus or offices. This resource is available at *http://www.doi.gov/foia/guidance.cfm.*

(e) Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under subparts A through I and subpart K of this part.

(f) Part 2 does not entitle any person to any service or to the disclosure of any record that is not required under the FOIA.

(g) Before you file a FOIA request, you are encouraged to review the Department's electronic FOIA libraries at *http://www.doi.gov/foia/libraries.cfm.* The material you seek may be immediately available electronically at no cost.

#### § 2.2 What kinds of records are not covered by the regulations in subparts A through I of this part?

Subparts A through I of this part do not apply to records that fall under the law enforcement exclusions in 5 U.S.C. 552(c)(1)–(3). These exclusions may be used only in the limited circumstances delineated by the statute and require both prior approval from the Office of the Solicitor and the recording of their use and approval process.

### Subpart B—How to Make a Request

#### § 2.3 Where should you send a FOIA request?

(a) The Department does not have a central location for submitting FOIA requests and it does not maintain a central index or database of records in its possession. Instead, the Department's records are decentralized and maintained by various bureaus and offices throughout the country.

(b) To make a request for Department records, you must write directly to the bureau that you believe maintains those records.

(c) Address requests to the appropriate FOIA contact in the bureau that maintains the requested records. The Department's FOIA Web site, *http://www.doi.gov/foia/index.cfm*, lists the physical and email addresses of each bureau's FOIA Officer, along with other appropriate FOIA contacts at *http://www.doi.gov/foia/contacts.cfm.*

(d) Questions about where to send a FOIA request should be directed to the bureau that manages the underlying program or to the appropriate FOIA Public Liaison, as discussed in § 2.66.

#### § 2.4 Does where you send your request affect its processing?

(a) A request to a particular bureau component (for example, a request addressed to a regional or field office) will be presumed to seek only records from that particular component.

(b) If you seek records from an entire bureau, submit your request to the bureau FOIA Officer. The bureau FOIA Officer will forward it to the bureau component(s) that he or she believes has or are likely to have responsive records.

(c) If a request to a bureau states that it seeks records located at another specific component of the same bureau, the appropriate FOIA contact will forward the request to the other component.

(d) If a request to a bureau states that it seeks records from other unspecified components within the same bureau, the appropriate FOIA contact will send the request to the Bureau FOIA Officer. He or she will forward it to the components that the bureau FOIA Officer believes have or are likely to have responsive records.

(e) If a request to a bureau states that it seeks records of another specified bureau, the bureau will route the misdirected request to the specified bureau for response.

(f) If a request to a bureau states that it seeks records from other unspecified bureaus, the bureau's FOIA Officer may forward the request to those bureaus which he or she believes have or are likely to have responsive records. If the bureau FOIA Officer forwards the request, they will notify you in writing and provide the name of a contact in the other bureau(s). If it does not forward the request, the bureau will return it to you, advise you to submit the request directly to the other bureaus, notify you that it cannot comply with the request, and close the request.

#### § 2.5 How should you describe the records you seek?

(a) You must reasonably describe the records sought. A reasonable description contains sufficient detail to enable bureau personnel familiar with the subject matter of the request to locate the records with a reasonable amount of effort.

(b) You should include as much detail as possible about the specific records or types of records that you are seeking. This will assist the bureau in identifying the requested records (for example, time frames involved or specific personnel who may have the requested records). The bureau's FOIA Public Liaison can assist you in formulating or reformulating a request in an effort to better identify the records you seek.

(c) If the request does not reasonably describe the records sought, the bureau will inform you what additional information is needed. It will also notify you that it will not be able to comply with your FOIA request unless you provide the additional information requested within 20 workdays. If you receive this sort of response, you may wish to discuss it with the bureau's designated FOIA contact or its FOIA Public Liaison (see § 2.66). If the bureau does not hear from you within 20 workdays after asking for additional information, it will presume that you are no longer interested in the records and will close the file on the request.

#### § 2.6 How will fee information affect the processing of your request?

(a) Your request must explicitly state that you will pay all fees associated with processing the request, that you will pay fees up to a specified amount, and/or that you are seeking a fee waiver.

(b) If the bureau anticipates that the fees for processing the request will exceed the amount you have agreed to pay, the bureau will notify you that it:

(1) Needs either an assurance that you will pay the anticipated fees or an advance payment (see § 2.50); and

(2) Will not be able to fully comply with your FOIA request unless you provide the assurance or advance payment requested.

(c) If the bureau does not hear from you within 20 workdays after requesting the information in paragraph (b) of this section, it will presume that you are no longer interested in the records and will close the file on the request.

(d) If you are seeking a fee waiver, your request must include sufficient justification (see the criteria in § 2.45, § 2.48 and § 2.56). Failure to provide sufficient justification will result in a denial of the fee waiver request. If you are seeking a fee waiver, you may also indicate the amount you are willing to pay if the fee waiver is denied (see § 2.46 for the fee waiver criteria). This allows the bureau to process the request for records while it considers your fee waiver request.

(e) The bureau will begin processing the request only after the fee issues are resolved.

(f) If you are required to pay a fee and it is later determined on appeal that you were entitled to a full or partial fee waiver, you will receive an appropriate refund.

#### § 2.7 What information should you include about your fee category?

(a) A request should indicate your fee category (that is, whether you are a commercial-use requester, news media, educational or noncommercial scientific institution, or other requester under the criteria in § 2.38 and § 2.39).

(b) If you submit a FOIA request on behalf of another person or organization (for example, if you are an attorney submitting a request on behalf of a client), the fee category will be determined by considering the underlying requester's identity and intended use of the information.

(c) If your fee category is unclear, the bureau may ask you for additional information (see § 2.51).

**§ 2.8 Can you ask for records to be disclosed in a particular form or format?**

(a) Generally, you may choose the form or format of disclosure for records requested. The bureau must provide the records in the requested form or format if the bureau can readily reproduce the record in that form or format.

(b) The bureau may charge you the direct costs involved in converting records to the requested format if the bureau does not normally maintain the records in that format.

**§ 2.9 What if your request seeks records about another person?**

(a) When a request seeks records about another person, you may receive greater access by submitting proof that the person either:

(1) Consents to the release of the records to you (for example, a notarized authorization signed by that person); or

(2) Is deceased (for example, a copy of a death certificate or an obituary).

(b) At its discretion, the bureau can require you to supply additional information if necessary to verify that a particular person has consented to disclosure or is deceased.

**§ 2.10 May you ask for expedited processing?**

You may include a request for expedited processing, which the bureau will evaluate under the criteria outlined in § 2.20.

**§ 2.11 What contact information should your request include?**

A request should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the bureau needs additional information or clarification of your request.

## Subpart C—Processing Requests

**§ 2.12 What should you know about how bureaus process requests?**

(a) Except as described in § 2.4 and § 2.13, the bureau to which the request is addressed is responsible for responding to the request and for making a reasonable effort to search for responsive records.

(b) In determining which records are responsive to a request, the bureau will include only records in its possession and control on the date that it begins its search.

(c) The bureau will make reasonable efforts to search for the requested records in electronic form or format, except when these efforts would significantly interfere with the operation of the bureau's automated information system.

(d) If a bureau receives a request for records in its possession that it did not create or that another bureau or Federal agency is substantially concerned with, it may undertake consultations and/or referrals as described in § 2.13.

**§ 2.13 How do consultations and referrals work?**

(a) Consultations and referrals can occur within the Department or outside the Department.

(1) Paragraphs (b) and (c) of this section addresses consultations and referrals that occur within the Department.

(2) Paragraphs (d) through (h) of this section address consultations and referrals that occur outside the Department.

(b) If a bureau (other than the Office of Inspector General) receives a request for records in its possession that another bureau created or is substantially concerned with, it will either:

(1) Consult with the other bureau before deciding whether to release or withhold the records; or

(2) Refer the request, along with the records, to that other bureau for direct response.

(c) The bureau that originally received the request will notify you of the referral in writing, along with the name of a contact in the other bureau(s) to which the referral was made.

(d) If, while responding to a request, the bureau locates records that originated with another Federal agency, it usually will refer the request and any responsive records to that other agency for a release determination and direct response.

(e) If the bureau refers records to another agency, it will document the referral and maintain a copy of the records that it refers; notify you of the referral in writing, unless that identification will itself disclose a sensitive, exempt fact; and provide the name of a contact at the other agency. You may treat such a response as a denial of records and file an appeal, in accordance with the procedures in § 2.59.

(f) If the bureau locates records that originated with another Federal agency while responding to a request, the bureau will make the release determination itself (after consulting with the originating agency) when:

(1) The record is of primary interest to the Department (for example, a record may be of primary interest to the Department if it was developed or prepared according to the Department regulations or directives, or in response to a Departmental request);

(2) The Department is in a better position than the originating agency to assess whether the record is exempt from disclosure;

(3) The originating agency is not subject to the FOIA; or

(4) It is more efficient or practical depending on the circumstances.

(g) If the bureau receives a request for records that another Federal agency has classified under any applicable executive order concerning record classification, it must refer the request to that agency for response.

(h) If the bureau receives a request for records not in its possession, but that the bureau believes may be in the possession of another Federal agency, the bureau will return the request to you, advise you to submit it directly to the other agency, notify you that the bureau cannot comply with the request, and close the request. You may treat such a response as a denial of records and file an appeal, in accordance with the procedures in § 2.59.

## Subpart D—Timing of Responses to Requests

**§ 2.14 In what order are responses usually made?**

The bureau ordinarily will respond to requests according to their order of receipt within their processing track.

**§ 2.15 What is multitrack processing and how does it affect your request?**

(a) The bureaus of the Department use processing tracks to distinguish simple requests from more complex ones on the basis of the estimated number of workdays needed to process the request.

(b) In determining the number of workdays needed to process the request, the bureau considers factors such as the number of pages involved in processing the request or the need for consultations.

(c) The basic processing tracks are designated as follows:

(1) Simple: requests in this track will take between one to five workdays to process;

(2) Normal: requests in this track will take between six to twenty workdays to process;

(3) Complex: requests in this track will take between twenty workdays and sixty workdays to process; or

(4) Exceptional/Voluminous: requests in this track involve very complex processing challenges, which may include a large number of potentially responsive records, and will take over sixty workdays to process.

(d) Bureaus also have a specific processing track for requests that are granted expedited processing under the standards in § 2.20.

(e) Bureaus must advise you of the track into which your request falls and,

when appropriate, will offer you an opportunity to narrow your request so that it can be placed in a different processing track.

**§ 2.16 What is the basic time limit for responding to a request?**

(a) Ordinarily, the bureau has 20 workdays after the date of receipt to determine whether to grant or deny a FOIA request.

(b) A consultation or referral under § 2.13 does not restart the statutory time limit for responding to a request.

**§ 2.17 When does the basic time limit begin for misdirected FOIA requests?**

The basic time limit for a misdirected FOIA request begins no later than ten workdays after the date the request is first received by any component of the Department that is designated to receive FOIA requests.

**§ 2.18 When can the bureau suspend the basic time limit?**

(a) The basic time limit in § 2.16 may be temporarily suspended for the time it takes you to respond to one written communication from the bureau reasonably asking for clarifying information.

(b) The basic time limit in § 2.16 may also repeatedly be temporarily suspended for the time it takes you to respond to written communications from the bureau that are necessary to clarify issues regarding fee assessment (see § 2.51).

**§ 2.19 When may the bureau extend the basic time limit?**

(a) The bureau may extend the basic time limit if unusual circumstances exist. Before the expiration of the basic 20 workday time limit to respond, the bureau will notify you in writing of:

(1) The unusual circumstances involved; and

(2) The date by which it expects to complete processing the request.

(b) If the processing time will extend beyond a total of 30 workdays, the bureau will:

(1) Give you an opportunity to limit the scope of the request or agree to an alternative time period for processing; and

(2) Make available its FOIA Public Liaison (see § 2.66) to assist in resolving any disputes between you and the bureau.

(c) If the bureau extends the time limit under this section and you do not receive a response in that time period, you may consider the request denied and file an appeal under subpart H of this part.

(d) Your refusal to reasonably modify the scope of a request or arrange an alternative time frame for processing a request after being given the opportunity to do so may be considered for litigation purposes as a factor when determining whether exceptional circumstances exist.

**§ 2.20 When will expedited processing be provided and how will it affect your request?**

(a) The bureau will provide expedited processing upon request if you demonstrate to the satisfaction of the bureau that there is a compelling need for the records. The following circumstances demonstrate a compelling need:

(1) Where failure to expedite the request could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) Where there is an urgency to inform the public about an actual or alleged Federal Government activity and the request is made by a person primarily engaged in disseminating information.

(i) In most situations, a person primarily engaged in disseminating information will be a representative of the news media.

(ii) If you are not a full time member of the news media, to qualify for expedited processing here, you must establish that your main professional activity or occupation is information dissemination, although it need not be your sole occupation.

(iii) The requested information must be the type of information which has particular value that will be lost if not disseminated quickly; this ordinarily refers to a breaking news story of general public interest.

(iv) Information of historical interest only or information sought for litigation or commercial activities would not qualify, nor would a news media deadline unrelated to breaking news.

(b) If you seek expedited processing, you must submit a statement that:

(1) Explains in detail how your request meets one or both of the criteria in paragraph (a) of this section; and

(2) Certifies that your explanation is true and correct to the best of your knowledge and belief.

(c) You may ask for expedited processing at any time. Requests must be submitted to the bureau that maintains the records requested. When making a request for expedited processing of an administrative appeal, submit the request to the FOIA Appeals Officer.

(d) The bureau must notify you of its decision to grant or deny expedited processing within 10 calendar days of receiving an expedited processing request.

(e) If expedited processing is granted, the request will be given priority, placed in the processing track for expedited requests, and be processed as soon as practicable.

(f) If expedited processing is denied, the bureau will notify you of the right to appeal the decision on expedited processing in accordance with the procedures in subpart H of this part.

(g) If you appeal the decision on expedited processing, your appeal (if it is properly formatted under § 2.59) will be processed ahead of other appeals.

(h) If the bureau has not responded to the request for expedited processing within 10 calendar days, you may file an appeal for nonresponse in accordance with § 2.57(a)(8)).

## Subpart E—Responses to Requests

**§ 2.21 How will the bureau respond to requests?**

(a) The bureau will grant, partially grant, or deny the request (in writing) in accordance with the deadlines in subpart D of this part.

(b) If the bureau determines that a request will take longer than 10 workdays to process, it immediately will send you a written acknowledgment that includes the request's individualized tracking number.

**§ 2.22 How will the bureau grant requests?**

(a) Once the bureau makes a determination to grant a request in full or in part, it must notify you in writing.

(b) The notification will inform you of any fees charged under subpart G of this part.

(c) The bureau will release records (or portions of records) to you promptly upon payment of any applicable fees.

(d) If the records (or portions of records) are not included with the bureau's notification, the bureau will advise you how, when, and where the records will be made available.

**§ 2.23 When will the bureau deny requests?**

(a) A bureau denies a request when it makes a decision that:

(1) The requested record is exempt, in whole or in part;

(2) The request does not reasonably describe the records sought;

(3) The requested record does not exist or cannot be located;

(4) The requested record is not readily reproducible in the form or format you seek;

(5) A fee waiver, or another fee-related request, will not be granted; or

(6) Expedited processing will not be provided.

(b) The bureau must consult with the Office of the Solicitor before it denies a

fee waiver request or withholds all or part of a requested record.

**§ 2.24 How will the bureau deny requests?**

(a) The bureau must notify you in writing of any denial of your request.

(b) The denial notification must include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including a reference to any FOIA exemption(s) applied by the bureau to withhold records in full or in part;

(3) An estimate of the volume of any records or information withheld, for example, by providing the number of pages or some other reasonable form of estimation, unless such an estimate would harm an interest protected by the exemption(s) used to withhold the records or information;

(4) The name and title of the Office of the Solicitor attorney consulted (if the bureau is denying a fee waiver request or withholding all or part of a requested record); and

(5) A statement that the denial may be appealed under subpart H of this part and a description of the requirements set forth therein.

**§ 2.25 What if the requested records contain both exempt and nonexempt material?**

If responsive records contain both exempt and nonexempt material, the bureau will consult with the Office of the Solicitor, as discussed in § 2.23(b). After consultation, the bureau will partially grant and partially deny the request by:

(a) Segregating and releasing the nonexempt information, unless the nonexempt material is so intertwined with the exempt material that disclosure of it would leave only meaningless words and phrases;

(b) Indicating on the released portion of the record how much information was deleted, unless doing so would harm an interest protected by the FOIA exemption used to withhold the information; and

(c) Indicating where the deletion is made, if technically feasible, and the FOIA exemption used to withhold the information.

5. Subparts F through I are added to Part 2 to read as follows:

**Subpart F—Handling Confidential Information**

2.26 How will the bureau interact with the submitter of possibly confidential information?
2.27 When will the bureau notify a submitter of a request for their possibly confidential information?
2.28 What information will the bureau include when it notifies a submitter of a request for their possibly confidential information?
2.29 When will the bureau not notify a submitter of a request for their possibly confidential information?
2.30 How and when may a submitter object to disclosure of confidential information?
2.31 What must a submitter include in a detailed Exemption 4 objection statement?
2.32 How will the bureau consider the submitter's objections?
2.33 What if the bureau determines it will disclose information over the submitter's objections?
2.34 Will a submitter be notified of a FOIA lawsuit?
2.35 Will you receive notification of activities involving the submitter?
2.36 Can a bureau release information protected by Exemption 4?

**Subpart G—Fees**

2.37 What general principles govern fees?
2.38 What are the requester fee categories?
2.39 Does your requester category affect the fees you are charged?
2.40 How will fee amounts be determined?
2.41 What search fees will you have to pay?
2.42 What duplication fees will you have to pay?
2.43 What review fees will you have to pay?
2.44 What fees for other services will you have to pay?
2.45 When will the bureau waive fees?
2.46 When may you ask the bureau for a fee waiver?
2.47 How will the bureau notify you if it denies your fee waiver request?
2.48 How will the bureau evaluate your fee waiver request?
2.49 When will you be notified of anticipated fees?
2.50 When will the bureau require advance payment?
2.51 What if the bureau needs clarification about fee issues?
2.52 How will you be billed?
2.53 How will the bureau collect fees owed?
2.54 When will the bureau combine or aggregate requests?
2.55 What if other statutes require the bureau to charge fees?
2.56 May the bureau waive your fees at its discretion?

**Subpart H—Administrative Appeals**

2.57 When may you file an appeal?
2.58 How long do you have to file an appeal?
2.59 How do you file an appeal?
2.60 Who makes decisions on appeals?
2.61 How are decisions on appeals issued?
2.62 When can you expect a decision on your appeal?
2.63 Can you receive expedited processing of appeals?
2.64 Must you submit an appeal before seeking judicial review?

**Subpart I—General Information**

2.65 Where are records made available?
2.66 What are public liaisons?
2.67 When will the Department make records available without a FOIA request?
2.68 How will FOIA materials be preserved?
2.69 How will a bureau handle a request for federally-funded research data?
2.70 What definitions apply to subparts A through I of this part?

## Subpart F—Handling Confidential Information

**§ 2.26 How will the bureau interact with the submitter of possibly confidential information?**

(a) The Department encourages, but does not require, submitters to designate confidential information in good faith at the time of submission. Such designations assist the bureau in determining whether information obtained from the submitter is confidential information, but will not always be determinative.

(b) If, in the course of responding to a FOIA request, a bureau cannot readily determine whether information is confidential information, the bureau will:

(1) Consult with the submitter under § 2.27 and § 2.28; and

(2) Provide the submitter an opportunity to object to a decision to disclose the information under § 2.30 and § 2.31.

**§ 2.27 When will the bureau notify a submitter of a request for their possibly confidential information?**

(a) Except as outlined in § 2.29, a bureau must promptly notify a submitter in writing when it receives a FOIA request if either:

(1) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4 of the FOIA; or

(2) The bureau believes that requested information may be protected from disclosure under Exemption 4.

(b) If a large number of submitters are involved, the bureau may publish a notice in a manner reasonably calculated to reach the attention of the submitters (for example, in newspapers or newsletters, the bureau's Web site, or the **Federal Register**) instead of providing a written notice to each submitter.

**§ 2.28 What information will the bureau include when it notifies a submitter of a request for their possibly confidential information?**

A notice to a submitter must include:

(a) Either a copy of the FOIA request or the exact language of the request;

(b) Either a description of the possibly confidential information located in

response to the request or a copy of the responsive records, or portions of records, containing the information;

(c) A description of the procedures for objecting to the release of the possibly confidential information under § 2.30 and § 2.31;

(d) A time limit for responding to the bureau—no less than 10 workdays from receipt or publication of the notice (as set forth in § 2.27(b))—to object to the release and to explain the basis for the objection;

(e) Notice that information contained in the submitter's objections may itself be subject to disclosure under the FOIA;

(f) Notice that the bureau, not the submitter, is responsible for deciding whether the information will be released or withheld;

(g) A request for the submitter's views on whether they still consider the information to be confidential if the submitter designated the material as confidential commercial or financial information 10 or more years before the request; and

(h) Notice that failing to respond within the time frame specified under § 2.28(d) will create a presumption that the submitter has no objection to the disclosure of the information in question.

**§ 2.29 When will the bureau not notify a submitter of a request for their possibly confidential information?**

The notice requirements of § 2.28 will not apply if:

(a) The information has been lawfully published or officially made available to the public; or

(b) Disclosure of the information is required by a statute other than the FOIA or by a regulation (other than this part) issued in accordance with the requirements of Executive Order 12600.

**§ 2.30 How and when may a submitter object to the disclosure of confidential information?**

(a) If a submitter has any objections to the disclosure of confidential information, the submitter should provide a detailed written statement to the bureau that specifies all grounds for withholding the particular information under any FOIA exemption (see § 2.31 for further discussion of Exemption 4 objection statements).

(b) A submitter who does not respond within the time period specified under § 2.28(d) will be considered to have no objection to disclosure of the information. Responses received by the bureau after this time period will not be considered by the bureau unless the appropriate bureau FOIA contact determines, in his or her sole discretion, that good cause exists to accept the late response.

**§ 2.31 What must a submitter include in a detailed Exemption 4 objection statement?**

(a) To rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information is confidential information. To do this, the submitter must give the bureau a detailed written statement. This statement must include a specific and detailed discussion of why the information is a trade secret or, if the information is not a trade secret:

(1) Whether the Government required the information to be submitted, and if so, how substantial competitive or other business harm would likely result from release;

(2) Whether the submitter provided the information voluntarily and, if so, how the information fits into a category of information that the submitter does not customarily release to the public; and

(3) A certification that the information is confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources.

(b) If not already provided, the submitter must include a daytime telephone number, an email and mailing address, and a fax number (if available).

**§ 2.32 How will the bureau consider the submitter's objections?**

(a) The bureau must carefully consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(b) The bureau, not the submitter, is responsible for deciding whether the information will be released or withheld.

**§ 2.33 What if the bureau determines it will disclose information over the submitter's objections?**

If the bureau decides to disclose information over the objection of a submitter, the bureau must notify the submitter by certified mail, return receipt requested. The notification must be sent to the submitter's last known address and must include:

(a) The specific reasons why the bureau determined that the submitter's disclosure objections do not support withholding the information;

(b) Copies of the records or information the bureau intends to release; and

(c) Notice that the bureau intends to release the records or information no less than 10 workdays after receipt of the notice by the submitter.

**§ 2.34 Will a submitter be notified of a FOIA lawsuit?**

If you file a lawsuit seeking to compel the disclosure of confidential information, the bureau must promptly notify the submitter.

**§ 2.35 Will you receive notification of activities involving the submitter?**

If any of the following occur, the bureau will notify you:

(a) The bureau provides the submitter with notice and an opportunity to object to disclosure;

(b) The bureau notifies the submitter of its intent to disclose the requested information; or

(c) A submitter files a lawsuit to prevent the disclosure of the information.

**§ 2.36 Can a bureau release information protected by Exemption 4?**

If a bureau determines that the requested information is protected from release by Exemption 4 of the FOIA, the bureau has no discretion to release the information. Release of information protected from release by Exemption 4 is prohibited by the Trade Secrets Act, a criminal provision found at 18 U.S.C. 1905.

## Subpart G—Fees

**§ 2.37 What general principles govern fees?**

(a) The bureau will charge for processing requests under the FOIA in accordance with this subpart and with the OMB Fee Guidelines.

(b) The bureau may contact you for additional information to resolve fee issues.

(c) The bureau ordinarily will collect all applicable fees before sending copies of records to you.

(d) You may usually pay fees by check, certified check, or money order made payable to the ''Department of the Interior'' or the bureau.

(1) Where appropriate, the bureau may require that your payment be made in the form of a certified check.

(2) You may also be able to pay your fees by credit card. You may contact the bureau to determine what forms of payment it accepts.

(e) The bureau should ensure that it conducts searches, review, and duplication in the most efficient and the least expensive manner so as to minimize costs for both you and the bureau.

(f) If the Department does not comply with any of the FOIA's statutory time limits, the bureau cannot assess search fees for your FOIA request, unless unusual or exceptional circumstances apply.

**§ 2.38 What are the requester fee categories?**

(a) There are four categories of requesters for the purposes of determining fees—commercial-use, educational and noncommercial scientific institutions, representatives of news media, and all others.

(b) The bureau's decision to place you in a particular fee category will be made on a case-by-case basis based on your intended use of the information and, in most cases, your identity. If you do not submit sufficient information in your FOIA request for the bureau to determine your proper fee category, the bureau may ask you to provide additional information (see § 2.51).

(c) See § 2.70 for the definitions of each of these fee categories.

**§ 2.39 How does your requester category affect the fees you are charged?**

(a) You will be charged as shown in the following table:

| Requester category | Search fees | Review fees | Duplication fees |
|---|---|---|---|
| Commercial use requester | Yes | Yes | Yes. |
| Educational and non-commercial scientific institutions. | No | No | Yes (first 100 pages, or equivalent volume, free). |
| Representative of news media requester. | No | No | Yes (first 100 pages, or equivalent volume, free). |
| All other requesters | Yes (first 2 hours free) | No | Yes (first 100 pages, or equivalent volume, free). |

(b) If you are in the fee category of a representative of the news media or an educational and noncommercial scientific institution and the Department does not comply with any of the FOIA's statutory time limits, the Department cannot assess duplication fees for the FOIA request in question, unless unusual or exceptional circumstances apply to the processing of the request.

**§ 2.40 How will fee amounts be determined?**

(a) The bureau will charge the types of fees discussed below unless a waiver of fees is required under § 2.39 or has been granted under § 2.45 or § 2.56.

(b) Because the types of fees discussed below already account for the overhead costs associated with a given fee type, the bureau should not add any additional costs to those charges.

**§ 2.41 What search fees will you have to pay?**

(a) The bureau will charge search fees for all requests, subject to the restrictions of § 2.39 and § 2.40(a). The bureau may charge you for time spent searching even if it does not locate any responsive records or if it determines that the records are entirely exempt from disclosure.

(b) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees will be the average hourly General Schedule (''GS'') base salary, plus the District of Columbia locality payment, plus 16 percent for benefits, of employees in the following three categories, as applicable:

(1) Clerical—Based on GS–6, Step 5, pay (all employees at GS–7 and below are classified as clerical for this purpose);

(2) Professional—Based on GS–11, Step 7, pay (all employees at GS–8 through GS–12 are classified as professional for this purpose); and

(3) Managerial—Based on GS–14, Step 2, pay (all employees at GS–13 and above are classified as managerial for this purpose).

(c) You can review the current fee schedule for the categories discussed in subsection (b) of this section at *http://www.doi.gov/foia/fees-waivers.cfm.*

(d) Some requests may require retrieval of records stored at a Federal records center operated by the National Archives and Records Administration. For these requests, bureaus will charge additional costs in accordance with the Transactional Billing Rate Schedule established by the National Archives and Records Administration.

**§ 2.42 What duplication fees will you have to pay?**

(a) The bureau will charge duplication fees, subject to the restrictions of § 2.39 and § 2.40(a).

(b) If photocopies or scans are supplied, the bureau will provide one copy per request at the cost determined by the table in appendix A to this part.

(c) For other forms of duplication, the bureau will charge the actual costs of producing the copy, including the time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under § 2.41(b).

(d) If the bureau must scan paper records to accommodate your preference to receive records in an electronic format, you will pay both the per page amount noted in Appendix A and the time spent by personnel scanning the requested records. For each quarter hour spent by personnel scanning the requested records, the fees will be the same as those charged for a search under § 2.41(b).

**§ 2.43 What review fees will you have to pay?**

(a) The bureau will charge review fees if you make a commercial-use request, subject to the restrictions of § 2.39 and § 2.40(a).

(b) The bureau will assess review fees in connection with the initial review of the record (the review conducted by the bureau to determine whether an exemption applies to a particular record or portion of a record).

(c) The Department will not charge for reviews at the administrative appeal stage of exemptions applied at the initial review stage. However, if the appellate authority determines that an exemption no longer applies, any costs associated with the bureau's re-review of the records to consider the use of other exemptions may be assessed as review fees.

(d) The bureau will charge review fees at the same rates as those charged for a search under § 2.41(b).

(e) The bureau can charge review fees even if the record(s) reviewed ultimately is not disclosed.

**§ 2.44 What fees for other services will you have to pay?**

(a) Although not required to provide special services, if the bureau chooses to do so as a matter of administrative discretion, it will charge you the direct costs of providing the service.

(b) Examples of these services include certifying that records are true copies under subpart L of this part, providing multiple copies of the same record, obtaining research data under § 2.69, or sending records by means other than first class mail.

(c) The bureau will notify you of these fees before they accrue and will obtain your written assurance of payment or an

advance payment before proceeding. See § 2.49 and § 2.50.

**§ 2.45 When will the bureau waive fees?**

(a) The bureau will release records responsive to a request without charge (in other words, it will give you a full fee waiver) or at a reduced charge (in other words, it will give you a partial fee waiver, as discussed further in paragraph (b) of this section) if the bureau determines, based on all available information, that you have demonstrated (under the factors listed in § 2.48) that disclosing the information is:

(1) In the public interest because it is likely to contribute significantly to public understanding of government operations or activities, and

(2) Not primarily in your commercial interest.

(b) A partial fee waiver may be appropriate if some but not all of the requested records are likely to contribute significantly to public understanding of the operations and activities of the government.

(c) When deciding whether to waive or reduce fees, the bureau will rely on the fee waiver justification submitted in your request letter. If the letter does not include sufficient justification, the bureau will deny the fee waiver request. The bureau may, at its discretion, request additional information from you (see § 2.51).

(d) The burden is on you to justify entitlement to a fee waiver. Requests for fee waivers are decided on a case-by-case basis. If you have received a fee waiver in the past, that does not mean you are automatically entitled to a fee waiver for every request submitted. Your fee waiver request must address the criteria referenced in this section.

(e) Discretionary fee waivers are addressed in § 2.56.

(f) The bureau must not make value judgments about whether the information at issue is ''important'' enough to be made public; it is not the bureau's role to attempt to determine the level of public interest in requested information.

**§ 2.46 When may you ask the bureau for a fee waiver?**

(a) You should request a fee waiver when your request is first submitted to the bureau (see § 2.6).

(b) You may submit a fee waiver request at a later time if the underlying record request is still either pending or on administrative appeal.

**§ 2.47 How will the bureau notify you if it denies your fee waiver request?**

If the bureau denies your request for a fee waiver, it will notify you, in writing, of the following:

(a) The basis for the denial, including a full explanation of why the fee waiver request does not meet the Department's fee waiver criteria in § 2.48.

(b) The name and title or position of each person responsible for the denial;

(c) The name and title of the Office of the Solicitor attorney consulted; and

(d) Your right to appeal the denial to the FOIA Appeals Officer, under the procedures in § 2.57, within 30 workdays after the date of the fee waiver denial letter.

**§ 2.48 How will the bureau evaluate your fee waiver request?**

(a) In deciding whether your fee waiver request meets the requirements of § 2.45(a)(1), the bureau will consider the criteria listed in paragraphs one through four below. You must address each of these criteria.

(1) How the records concern the operations or activities of the Federal government.

(2) How disclosure is likely to contribute to public understanding of those operations or activities, including:

(i) How the contents of the records are meaningfully informative;

(ii) The logical connection between the content of the records and the operations or activities;

(iii) How disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding;

(iv) Your identity, vocation, qualifications, and expertise regarding the requested information and information that explains how you plan to disclose the information in a manner that will be informative to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding

(v) Your ability and intent to disseminate the information to a reasonably broad audience of persons interested in the subject (for example, how and to whom do you intend to disseminate the information).

(3) How disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding, including:

(i) Whether the information being requested is new;

(ii) Whether the information would confirm or clarify data that has been released previously;

(iii) How disclosure will increase the level of public understanding of the operations or activities of the Department or a bureau that existed prior to disclosure; and

(iv) Whether the information is already publicly available. If the Government previously has published the information you are seeking or it is routinely available to the public in a library, reading room, through the Internet, or as part of the administrative record for a particular issue, it is unlikely that there will be a significant contribution from release.

(4) How the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure.

(b) In deciding whether the fee waiver meets the requirements in § 2.45(a)(2), the bureau will consider any commercial interest of yours that would be furthered by the requested disclosure.

(1) You are encouraged to provide explanatory information regarding this consideration.

(2) The bureau will not find that disclosing the requested information will be primarily in your commercial interest where the public interest is greater than any identified commercial interest in disclosure.

(3) If you do have a commercial interest that would be furthered by disclosure, explain how the public interest in disclosure would be greater than any commercial interest you or your organization may have in the documents.

(i) Your identity, vocation, and intended use of the requested records are all factors to be considered in determining whether disclosure would be primarily in your commercial interest.

(ii) If you are a representative of a news media organization seeking information as part of the news gathering process, we will presume that the public interest outweighs your commercial interest.

(iii) If you represent a business/corporation/association or you are an attorney representing such an organization, we will presume that your commercial interest outweighs the public interest unless you demonstrate otherwise.

**§ 2.49 When will you be notified of anticipated fees?**

(a) The bureau will notify you under this section unless:

(1) The anticipated fee is less than $50 (you will not be charged if the fee for processing your request is less than $50, unless multiple requests are aggregated under § 2.54).

(2) You have been granted a full fee waiver; or

(3) You have previously agreed to pay all the fees associated with the request.

(b) If none of the above exceptions apply, the bureau will:

(1) Promptly notify you of the estimated costs;

(2) Ask you to provide written assurance within 20 workdays that you will pay all fees or fees up to a designated amount;

(3) Notify you that it will not be able to comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(c) If the bureau does not receive your written assurance of payment under paragraph (b)(2) of this section within 20 workdays, the request will be closed.

(d) After the bureau begins processing a request, if it finds that the actual cost will exceed the amount you previously agreed to pay, the bureau will:

(1) Stop processing the request;

(2) Promptly notify you of the higher amount and ask you to provide written assurance of payment; and

(3) Notify you that it will not be able to fully comply with your FOIA request unless you provide the written assurance requested; and

(4) Give you an opportunity to reduce the fee by modifying the request.

(e) If you wish to modify your request in an effort to reduce fees, the bureau's FOIA Public Liaison can assist you.

**§ 2.50 When will the bureau require advance payment?**

(a) The bureau will require advance payment before starting further work when it finds the estimated fee is over $250 and:

(1) You have never made a FOIA request to the Department requiring the payment of fees; or

(2) You did not pay a previous FOIA fee within 30 calendar days of the date of billing.

(b) If the bureau believes that you did not pay a previous FOIA fee within 30 calendar days of the date of billing, the bureau will require you to either:

(1) Demonstrate you paid prior fee within 30 calendar days of the date of billing; or

(2) Pay any unpaid amount of the previous fee, plus any applicable interest penalties (see § 2.53), and pay in advance the estimated fee for the new request.

(c) When the bureau notifies you that an advance payment is due, it will give you an opportunity to reduce the fee by modifying the request.

(d) A bureau request for payment before copies of documents are sent to you is not an advance payment.

(e) If the bureau requires advance payment, it will start further work only after receiving the advance payment. It will also notify you that it will not be able to comply with your FOIA request unless you provide the advance payment. Unless you pay the advance payment within 20 workdays after the date of the bureau's fee letter, the bureau will presume that you are no longer interested and will close the file on the request.

**§ 2.51 What if the bureau needs clarification about fee issues?**

(a) If your FOIA request does not contain sufficient information for the bureau to determine your proper fee category or leaves another fee issue unclear, the bureau may ask you to provide additional clarification. If it does so, the bureau will notify you that it will not be able to comply with your FOIA request unless you provide the clarification requested.

(b) If the bureau asks you to provide clarification, the 20-workday statutory time limit for the bureau to respond to the request is temporarily suspended.

(1) If the bureau hears from you within 20 workdays, the 20-workday statutory time limit for processing the request will resume (see § 2.16).

(2) If you still have not provided sufficient information to resolve the fee issue, the bureau may ask you again to provide additional clarification and notify you that it will not be able to comply with your FOIA request unless you provide the additional information requested within 20 workdays.

(3) If the bureau asks you again for additional clarification, the statutory time limit for response will be temporarily suspended again and will resume again if the bureau hears from you within 20 workdays.

(c) If the bureau asks for clarification about a fee issue and does not hear from you within 20 workdays, it will presume that you are no longer interested and will close the file on the request.

**§ 2.52 How will you be billed?**

If you are required to pay a fee associated with a FOIA request, the bureau processing the request will send a bill for collection.

**§ 2.53 How will the bureau collect fees owed?**

(a) The bureau may charge interest on any unpaid bill starting on the 31st day following the billing date.

(b) The bureau will assess interest charges at the rate provided in 31 U.S.C. 3717 and implementing regulations and interest will accrue from the billing date until the bureau receives payment.

(c) The bureau will follow the provisions of the Debt Collection Act of 1982 (Public Law 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset to collect overdue amounts and interest.

(d) This section does not apply if you are a state, local, or tribal government.

**§ 2.54 When will the bureau combine or aggregate requests?**

(a) The bureau may aggregate requests and charge accordingly when it reasonably believes that you, or a group of requesters acting in concert with you, are attempting to avoid fees by dividing a single request into a series of requests on a single subject or related subjects.

(b) The bureau may presume that multiple requests of this type made within a 30-day period have been made to avoid fees.

(c) The bureau will aggregate requests separated by a longer period only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved.

(d) The bureau will not aggregate multiple requests involving unrelated matters.

**§ 2.55 What if other statutes require the bureau to charge fees?**

(a) The fee schedule in appendix A to this part does not apply to fees charged under any statute that specifically requires the bureau to set and collect fees for particular types of records.

(b) If records otherwise responsive to a request are subject to a statutorily-based fee schedule, the bureau will inform you whom to contact to obtain the records.

**§ 2.56 May the bureau waive your fees at its discretion?**

(a) The bureau may waive fees at its discretion if a request involves furnishing:

(1) A copy of a record that the bureau has reproduced for free distribution;

(2) One copy of a personal document (for example, a birth certificate) to a person who has been required to furnish it for retention by the Department;

(3) One copy of the transcript of a hearing before a hearing officer in a grievance or similar proceeding to the employee for whom the hearing was held;

(4) Records to donors with respect to their gifts;

(5) Records to individuals or private nonprofit organizations having an

official, voluntary, or cooperative relationship with the Department if it will assist their work with the Department;

(6) A reasonable number of records to members of the U.S. Congress; state, local, and foreign governments; public international organizations; or Indian tribes, when to do so is an appropriate courtesy, or when the recipient is carrying on a function related to a Departmental function and the waiver will help accomplish the Department's work;

(7) Records in conformance with generally established business custom (for example, furnishing personal reference data to prospective employers of current or former Department employees); or

(8) One copy of a single record to assist you in obtaining financial benefits to which you may be entitled (for example, veterans or their dependents, employees with Government employee compensation claims).

(b) You cannot appeal the denial of a discretionary fee waiver.

## Subpart H—Administrative Appeals

### § 2.57 When may you file an appeal?

(a) You may file an appeal when:

(1) The bureau withholds records, or parts of records;

(2) The bureau informs you that your request has not adequately described the records sought;

(3) The bureau informs you that it does not possess or cannot locate responsive records and you have reason to believe this is incorrect or that the search was inadequate;

(4) The bureau did not address all aspects of the request for records;

(5) You believe there is a procedural deficiency (for example, fees are improperly calculated);

(6) The bureau denied a fee waiver;

(7) The bureau did not make a decision within the time limits in § 2.16 or, if applicable, § 2.18; or

(8) The bureau denied, or was late in responding to a request for expedited processing filed under the procedures in § 2.20.

(b) An appeal under paragraph (a)(8) of this section relates only to the request for expedited processing and does not constitute an appeal of the underlying request for records. Special procedures apply to requests for expedited processing of an appeal (see § 2.63).

(c) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response, the bureau's FOIA Officer, and/or the FOIA Public Liaison to see if the issue can be resolved informally. However, appeals must be received by the FOIA Appeals Officer within the time limits in § 2.58 or they will not be processed.

### § 2.58 How long do you have to file an appeal?

(a) Appeals covered by § 2.57(a)(1), (2), (3), (4), and (5) must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the final response.

(b) Appeals covered by § 2.57(a)(6) must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the letter denying the fee waiver.

(c) Appeals covered by § 2.57(a)(7) may be filed any time after the time limit for responding to the request has passed.

(d) Appeals covered by § 2.57(a)(8) should be filed as soon as possible.

(e) Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

### § 2.59 How do you file an appeal?

(a) You must submit the appeal in writing by mail, fax or email to the FOIA Appeals Officer (using the address available at *http://www.doi.gov/foia/appeals.cfm*). Your failure to send an appeal directly to the FOIA Appeals Officer may delay processing.

(b) The appeal must include:

(1) Copies of all correspondence between you and the bureau concerning the FOIA request, including the request and the bureau's response (if there is one); and

(2) An explanation of why you believe the bureau's response was in error.

(c) The appeal should include your name, mailing address, daytime telephone number (or the name and telephone number of an appropriate contact), email address, and fax number (if available) in case the Department needs additional information or clarification.

(d) An appeal concerning a denial of expedited processing or a fee waiver denial should also demonstrate fully how the criteria in § 2.20 or § 2.45 and § 2.48 are met.

(e) All communications concerning an appeal should be clearly marked with the words: ''FREEDOM OF INFORMATION APPEAL.''

(f) The Department will reject an appeal that does not attach all correspondence required by paragraph (b)(1) of this section, unless the FOIA Appeals Officer determines, in his or her sole discretion, that good cause exists to accept the defective appeal. The time limits for responding to an appeal will not begin to run until the correspondence is received.

### § 2.60 Who makes decisions on appeals?

(a) The FOIA Appeals Officer is the deciding official for FOIA appeals.

(b) When necessary, the FOIA Appeals Officer will consult other appropriate offices, including the Office of the Solicitor, for all denials of records and fee waivers.

(c) The FOIA Appeals Officer normally will not make a decision on an appeal if the request becomes a matter of FOIA litigation.

### § 2.61 How are decisions on appeals issued?

(a) A decision on an appeal must be made in writing.

(b) A decision that upholds the bureau's determination will notify you of the decision and your statutory right to file a lawsuit.

(c) A decision that overturns, remands, or modifies the bureau's determination will notify you of the decision. The bureau then must further process the request in accordance with the appeal determination.

### § 2.62 When can you expect a decision on your appeal?

(a) The basic time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2.59.

(b) The FOIA Appeals Officer may extend the basic time limit, if unusual circumstances exist. Before the expiration of the basic 20 workday time limit to respond, the FOIA Appeals Officer will notify you in writing of the unusual circumstances involved and of the date by which he or she expects to complete processing of the appeal.

(c) If the Department is unable to reach a decision on your appeal within the given time limit for response, the FOIA Appeals Officer will notify you of:

(1) The reason for the delay; and

(2) Your statutory right to seek review in a United States District Court.

### § 2.63 Can you receive expedited processing of appeals?

(a) To receive expedited processing of an appeal, you must demonstrate to the Department's satisfaction that the appeal meets one of the criteria under § 2.20 and include a statement that the need for expedited processing is true and correct to the best of your knowledge and belief.

(b) The FOIA Appeals Officer will advise you whether the Department will grant expedited processing within 10 calendar days of receiving the appeal.

(c) If the FOIA Appeals Officer decides to grant expedited processing, he or she will give the appeal priority and process it ahead of other pending appeals.

**§ 2.64 Must you submit an appeal before seeking judicial review?**

Before seeking review by a court of the bureau's adverse determination, you generally must first submit a timely administrative appeal.

## Subpart I—General Information

**§ 2.65 Where are records made available?**

Records that are required by the FOIA to be made proactively available for public inspection and copying are accessible on the Department's Web site, *http://www.doi.gov/foia/libraries.cfm*. They may also be available at bureau office locations.

**§ 2.66 What are public liaisons?**

(a) Each bureau has a FOIA Public Liaison that can assist individuals in locating bureau records.

(b) FOIA Public Liaisons report to the Department's Chief FOIA Officer and you can raise concerns to them about the service you have received.

(c) FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in resolving disputes.

(d) A list of the Department's FOIA Public Liaisons is available at *http://doi.gov/foia/servicecenters.cfm*.

**§ 2.67 When will the Department make records available without a FOIA request?**

(a) Each bureau must:

(1) Determine which of its records must be made publicly available under the FOIA (for example, certain frequently requested records);

(2) Identify additional records of interest to the public that are appropriate for public disclosure; and

(3) Post those records in FOIA libraries.

(b) Because of these proactive disclosures, you are encouraged to review the Department's FOIA libraries before filing a FOIA request. The material you seek may be immediately available electronically at no cost.

**§ 2.68 How will FOIA materials be preserved?**

(a) Each bureau must preserve all correspondence pertaining to the requests that it receives under subpart B of this part, as well as copies of all requested records, until disposition or destruction is authorized by the General Records Schedule 14 of the National Archives and Records Administration (''NARA'') or another NARA-approved records schedule.

(b) Materials that are identified as responsive to a FOIA request will not be disposed of or destroyed while the request or a related appeal or lawsuit is pending. This is true even if they would otherwise be authorized for disposition or destruction under the General Records Schedule 14 of NARA or another NARA-approved records schedule.

**§ 2.69 How will a bureau handle a request for federally-funded research data?**

(a) If you request research data that were used by the Federal Government in developing certain kinds of agency actions, and the research data relate to published research findings produced under an award, in accordance with OMB Circular A–110:

(1) If the bureau was the awarding agency, it will request the research data from the recipient;

(2) The recipient must provide the research data within a reasonable time; and

(3) The bureau will review the research data to see if it can be released under the FOIA.

(b) If the bureau obtains the research data solely in response to your FOIA request, the bureau may charge you a reasonable fee equaling the full incremental cost of obtaining the research data.

(1) This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients.

(2) This fee is in addition to any fees the agency may assess under the FOIA.

(c) The bureau will forward a copy of the request to the recipient, who is responsible for searching for and reviewing the requested information in accordance with these FOIA regulations. The recipient will forward a copy of any responsive records that are located, along with any recommendations concerning the releasability of the data, and the total cost incurred in searching for, reviewing, and providing the data.

(d) The bureau will review and consider the recommendations of the recipient regarding the releasability of the requested research data. However, the bureau, not the recipient, is responsible for deciding whether the research data will be released or withheld.

**§ 2.70 What definitions apply to subparts A through I of this part?**

For the purposes of subparts A through I of this part, the following definitions apply:

*Bureau* means any major component of the Department administering its own FOIA program. A list of these components is available at: *http://www.doi.gov/foia/contacts.cfm*.

*Commercial interest* means a commercial, trade, or profit interest as these terms are commonly understood. Your status as profitmaking or non-profitmaking is not the deciding factor in determining whether you have a commercial interest.

*Commercial use* means a use that furthers your commercial, trade or profit interests or that of the person on whose behalf the request is made.

*Confidential information* means trade secrets or commercial or financial information (that is privileged or confidential and obtained by the Department from a person) that may be protected from disclosure under Exemption 4 of the FOIA.

*Department* means the Department of the Interior.

*Direct costs* means those resources that the bureau expends in searching for and duplicating (and, in the case of commercial-use requests, reviewing) records to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space and of heating or lighting a facility.

*Duplication* means reproducing a copy of a record or of the information contained in it necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

*Educational institution* means any school that operates a program of scholarly research. In order to fall within this category, you must show that the request is authorized by and made under the auspices of, a qualifying institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research.

*Exceptional circumstances* means a delay that does not result from a predictable workload of requests (unless the bureau demonstrates reasonable progress in reducing its backlog of pending requests).

*Exempt* means the record in question, or a portion thereof, is not subject to disclosure due to one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)-(9).

*Exemption* means one or more of the FOIA's nine statutory exemptions, found at 5 U.S.C. 552(b)(1)-(9).

*Expedited processing* means giving a FOIA request priority and processing it ahead of other requests pending in the bureau because you have shown a compelling need for the records.

*Fee category* means one of the four categories, discussed in § 2.38 and § 2.39, that agencies place you in for the

purpose of determining whether you will be charged fees for search, review, and duplication.

*FOIA* means the Freedom of Information Act, 5 U.S.C. 552, as amended.

*FOIA libraries* means a physical or electronic compilation of records required to be made available to the public for inspection and copying under 5 U.S.C. 552(a)(2). It also includes a physical or electronic compilation of records that the bureau, at its discretion, makes available to the public for inspection and copying.

*Frequently requested records* means records that have been released to any person in response to a FOIA request and that have been requested, or that the bureau anticipates will be requested, at least two more times under the FOIA.

*Multitrack processing* means placing simple requests, requiring relatively minimal review, in one processing track and more voluminous and complex requests in one or more other tracks. Requests in each track are processed on a first-in/first-out basis.

*Noncommercial scientific institution* means an institution that is not operated for commerce, trade or profit, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, you must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

*OMB Fee Guidelines* means the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget at 52 FR 10012 (Mar. 27, 1987).

*Published* means, for the purposes of § 2.69 only, when:

(1) Research findings are published in a peer-reviewed scientific or technical journal; or

(2) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

*Recipient* means, for the purposes of § 2.69 only, an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

*Record* means an agency record that is either created or obtained by an agency and is under agency possession and control at the time of the FOIA request, or is maintained by an entity under Government contract for the purposes of records management.

*Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term *news* as used in this definition means information that is about current events or that would be of current interest to the public. Examples of news media entities are newspapers, television, Web sites, or radio stations broadcasting to the public at large, and publishers of periodicals (but only if such entities qualify as disseminators of news) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all inclusive. As methods of news delivery evolve, alternative representatives of news media may come into being. A freelance journalist will qualify as a news-media entity if he or she can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by that entity (for example, a publication contract would present a solid basis for such an expectation).

*Research data* means, for the purposes of § 2.69 only, the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. The term *recorded* as used in this definition excludes physical objects (e.g., laboratory samples). Research data also do not include:

(1) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(2) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

*Review* means the examination of a record located in response to a request to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential information submitter under subpart G of this part, but it excludes time spent resolving general legal or policy issues regarding the application of FOIA exemptions.

*Search* means the process of looking for and retrieving records responsive to a request. Search time includes page-by-page or line-by-line identification of information within records; and the reasonable efforts expended to locate and retrieve electronic records.

*Submitter* means any person or entity outside the Federal Government from whom the Department obtains confidential information, directly or indirectly. The term includes, but is not limited to individuals, corporations, and state, local, tribal, and foreign governments.

*Unusual circumstances* means the need to search for and collect requested records from field facilities or other establishments that are separate from the office processing the request; the need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or the need for consultation, which shall be conducted with all practicable speed, with another agency, or among two or more components of the Department, having a substantial interest in the determination of the request.

*Workday* means a regular Federal workday. It excludes Saturdays, Sundays, or Federal legal public holidays. Items arriving or delivered after 5 p.m. Eastern Time will be deemed received on the next workday.

*You* means a person requesting records, or filing an appeal, under the FOIA.

6. Appendices A through E to Part 2 are removed.

7. Appendix C is redesignated as Appendix A and revised to read as follows.

**Appendix A to Part 2—Fee Schedule**

| Types of records | Fee |
|---|---|
| (1) Physical records: | |
| Pages no larger than 8.5 × 14 inches, when reproduced by standard office copying machines or scanned into an electronic format | $.15 per page ($.30 for double-sided copying). |
| Color copies of pages no larger than 8.5 × 11 inches | $.90 per page. |
| Pages larger than 8.5 × 14 inches | Direct cost to DOI. |
| Color copies of pages no larger than 11 × 17 inches | $1.50 per page. |
| Photographs and records requiring special handling (for example, because of age, size, or format) | Direct cost to DOI. |
| (2) Electronic records: | |
| Charges for services related to processing requests for electronic records | Direct cost to DOI. |
| (3) Certification | Fee. |
| Each certificate of verification attached to authenticate copies of records | $.25. |
| (4) Postage: | |
| Charges that exceed the cost of first class postage, such as express mail or overnight delivery | Postage or delivery charge. |
| (5) Other Services: | |
| Cost of special services or materials, other than those provided for by this fee schedule, when requester is notified of such costs in advance and agrees to pay them | Direct cost to DOI. |

8. Appendix F to Part 2 is redesignated as Appendix B to Part 2.

[FR Doc. 2012–22391 Filed 9–12–12; 8:45 am]

BILLING CODE 4310–10–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 90

**[WT Docket Nos. 12–64 and 11–110; Report No. 2959]**

### Petition for Reconsideration of Action in Rulemaking Proceeding; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Petition for reconsideration; correction.

**SUMMARY:** The Federal Communications Commission published a summary in the **Federal Register** of August 31, 2012, regarding a Petition for Reconsideration filed in a rulemaking proceeding. The summary included the incorrect deadline for filing replies to an opposition to the Petition. This document revises the deadline for replies to an opposition to the Petition.

**DATES:** Oppositions to the Petition must be filed on or before September 17, 2012. Replies to an opposition must be filed on or before September 27, 2012.

**FOR FURTHER INFORMATION CONTACT:** Brian Regan, Mobility Division, Wireless Telecommunications Bureau, *brian.regan@fcc.gov* <*mailto:brian.regan@fcc.gov*>, (202) 418–2849.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission (FCC) published a summary of a Petition for Reconsideration of a rulemaking proceeding in the **Federal Register** at 77 FR 53163, August 31, 2012. The deadlines for filing oppositions to the Petition and replies to oppositions to the Petition were listed in the summary. The deadline in the summary for replies to an opposition is incorrect.

In the summary published in 77 FR 53163 on August 31, 2012, in FR Doc. No. 2012–21478, make the following correction. On page 53163, in the third column, correct the second sentence in the **DATES** section to read: Replies to an opposition must be filed on or before September 27, 2012.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2012–22562 Filed 9–12–12; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register

Vol. 77, No. 178

Thursday, September 13, 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

### Forest Service

### Glenn/Colusa County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and discuss new project proposals.

**DATES:** The meeting will be held on September 17, 2012 from 1:30 p.m. and end at approximately 4 p.m.

**ADDRESSES:** The meeting will be held at the Mendocino National Forest Supervisor's Office, Snow Mountain Conference Room, 825 North Humboldt Ave., Willows, CA. Written comments may be submitted as described under Supplementary Information.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 825 N. Humboldt Ave., Willows, CA 95988. Please call ahead to (530) 934–3316 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District. Phone voice (530) 934–3316; phone TTY (530) 934–7724; EMAIL *rjero@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed For Further Information.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) RAC Administrative Updates, (5) Project Presentations & Discussion, (6) Vote and Recommend, (7) Next Agenda. The full agenda may be previewed at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Glenn+and+Colusa+Counties*.

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 10, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988 or by email to *rjero@fs.fed.us* or via facsimile to 530–934–1212.

A summary of the meeting will be posted at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/RAC/Glenn+and+Colusa+Counties?OpenDocument,* within 21 days of the meeting.

Dated: August 30, 2012.

**Eduardo Olmedo,**

*District Ranger.*

[FR Doc. 2012–22417 Filed 9–12–12; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Tehama County Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to present, vote on and recommend project proposals.

**DATES:** The meeting will be held on September 20, 2012 from 9 a.m. and end at approximately 12 noon.

**ADDRESSES:** The meeting will be held at the Lincoln Street School, The Gallery room, 1135 Lincoln Street, Red Bluff, CA. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 825 N. Humboldt Ave., Willows, CA 95988. Please call ahead to (530) 934–3316 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District. Phone voice (530) 934–3316; phone TTY (530) 934–7724; Email *rjero@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in **FOR FURTHER INFORMATION**.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) RAC Administrative Updates, (5) Project Presentations & Discussion, (6) Vote and Recommend Projects, (7) Next Agenda. The full agenda may be previewed at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Tehama+County.*

Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 10, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave., Willows, CA 95988 or by email to *rjero@fs.fed.us* or via facsimile to 530–934–1212.

A summary of the meeting will be posted at: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf/Web_Agendas?OpenView&Count=1000&RestrictToCategory=Tehama+County,* within 21 days of the meeting.

Dated: August 30, 2012.

**Eduardo Olmedo,**

*District Ranger.*

[FR Doc. 2012–22418 Filed 9–12–12; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Mendocino Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Mendocino County Resource Advisory Committee will meet September 21, 2012 (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of Minutes, (2) Handout Discussion, (3) Public Comment, (4) Financial Report, (5) Sub-committees, (6) Matters before the group, (7) Discussion—approval of projects, (8) Next agenda and meeting date.

**DATES:** The meeting will be held on September 21, 2012, from 9 a.m. until 12 noon.

**ADDRESSES:** The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

**FOR FURTHER INFORMATION CONTACT:** Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo, CA 95428, (707) 983–6658; Email *windmill@willitsonline.com.*

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by September 17, 2012. Public comment will have the opportunity to address the committee at the meeting.

Dated: August 31, 2012.

**Lee Johnson,**

*Designated Federal Official.*

[FR Doc. 2012–22419 Filed 9–12–12; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lincoln County Resource Advisory Committee Meeting

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lincoln County Resource Advisory Committee will meet in Libby, MT. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend project proposals for implementation for Secure Rural Schools and Community Self-Determination Act 2012.

**DATES:** September 19, 2012, at 6 p.m.

**ADDRESSES:** Forest Supervisor's Office, 31374 Hwy 2, Libby, Montana. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Supervisor's Office. Please call ahead to 406–283–7764 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Janette Turk, Committee Coordinator, Kootenai National Forest at (406) 283–7764, or email *jturk@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.**

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: The purpose of the meeting is to review and recommend project proposals for implementation for Secure Rural Schools and Community Self-Determination Act 2012.

If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake, based in Kalispell, Montana. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 17 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Forest Supervisor's Office, 31374 Hwy 2, Libby, Montana, or by email to *jturk@fs.fed.us,* or via facsimile to 406–283–7709.

Dated: September 4, 2012.

**Paul Bradford,**

*Forest Supervisor, Kootenai National Forest.*

[FR Doc. 2012–22535 Filed 9–12–12; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Shoshone Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Shoshone Resource Advisory Committee (Committee) is holding a meeting on September 19, 2012. The meeting was advertised as taking place in Thermopolis at Big Horn Federal Savings but is being changed to a conference call. This change is being made to increase participation by Committee members and to reduce funds spent on travel. The purpose of

the meeting is to finalize selection of projects to recommend for 2012 Title II funds.

**DATES:** The conference call will be held September 19, 2012, at 9 a.m.

**ADDRESSES:** The meeting is being changed to a conference call.

**FOR FURTHER INFORMATION CONTACT:** Olga Troxel, Resource Advisory Committee Coordinator, Shoshone National Forest Supervisor's Office, (307) 578–5164.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The conference call is open to the public. The following business will be conducted: Finish reviewing project proposals and select projects to recommend for 2012 SRS Title II funding. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided.

Dated: September 7, 2012.

**Joseph G Alexander,**

*Forest Supervisor.*

[FR Doc. 2012–22531 Filed 9–12–12; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Designation for the Pocatello, ID; Evansville, IN; and Salt Lake City, UT Areas

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** GIPSA is announcing the designation of Idaho Grain Inspection Service (Idaho); Ohio Valley Grain Inspection, Inc. (Ohio Valley); and Utah Depart of Agriculture and Food (Utah) to provide official services under the United States Grain Standards Act (USGSA), as amended.

**DATES:** *Effective Date:* October 1, 2012.

**ADDRESSES:** Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.

**FOR FURTHER INFORMATION CONTACT:** Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov*.

*Read Applications:* All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

**SUPPLEMENTARY INFORMATION:** In the March 5, 2012 **Federal Register** (76 FR 2012–5245), GIPSA requested applications for designation to provide official services in the geographic areas presently serviced by Idaho, Ohio Valley, and Utah. Applications were due by April 4, 2012.

Idaho, Ohio Valley and Utah were the sole applicants for designation to provide official services in these areas. As a result, GIPSA did not ask for additional comments.

GIPSA evaluated all available information regarding the designation criteria in section 79(f) of the USGSA (7 U.S.C. 79(f)) and determined that Idaho, Ohio Valley, and Utah are qualified to provide official services in the geographic area specified in the **Federal Register** on March 5, 2012. This designation action to provide official services in these specified areas is effective October 1, 2012 and terminates on September 30, 2015.

Interested persons may obtain official services by contacting these agencies at the following telephone numbers:

| Official agency | Headquarters location and telephone | Designation start | Designation end |
|---|---|---|---|
| Idaho | Pocatello, ID (208) 233–8303 | 10/1/2012 | 9/30/2015 |
| Ohio Valley | Evansville, IN (812) 423–9010 | 10/1/2012 | 9/30/2015 |
| Utah | Salt Lake City, UT (801) 392–2292 | 10/1/2012 | 9/30/2015 |

Section 79(f) of the USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)).

Under section 79(g) of the USGSA, designations of official agencies are effective for no longer than three years unless terminated by the Secretary; however, designations may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

**Authority:** 7 U.S.C. 71–87k.

**Larry Mitchell,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 2012–22609 Filed 9–12–12; 8:45 am]

**BILLING CODE 3410–KD–P**

## DEPARTMENT OF AGRICULTURE

### Grain Inspection, Packers and Stockyards Administration

### Opportunity for Designation in the Champaign-Danville, IL; Emmett, MI; Davenport, IA; Enid, OK; Keokuk, IA; Marshall, MI; and Omaha, NE Areas; Request for Comments on the Official Agencies Servicing These Areas

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

**ACTION:** Notice.

**SUMMARY:** The designations of the official agencies listed below will end on March 31, 2013. We are asking persons or governmental agencies interested in providing official services in the areas presently served by these agencies to submit an application for designation. In addition, we are asking for comments on the quality of services provided by the following designated agencies: Champaign-Danville Grain Inspection Departments, Inc. (Champaign); Detroit Grain Inspection Service, Inc. (Detroit); Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa); Enid Grain Inspection Company, Inc. (Enid); Keokuk Grain Inspection Service (Keokuk); Michigan Grain Inspection Services, Inc. (Michigan); and Omaha Grain Inspection Service, Inc. (Omaha).

**DATES:** Applications and comments must be received by October 15, 2012.

**ADDRESSES:** Submit applications and comments concerning this notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISOnline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISOnline customer number and USDA

eAuthentication username and password prior to applying.

• *Submit Comments Using the Internet:* Go to Regulations.gov (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.

• *Mail, Courier or Hand Delivery:* Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.

• *Fax:* Eric J. Jabs, 816–872–1257.

• *Email: Eric.J.Jabs@usda.gov.*

*Read Applications and Comments:* All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

**FOR FURTHER INFORMATION CONTACT:** Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Section 79(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)). Under section 79(g) of the USGSA, designations of official agencies are effective for three years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

**Areas Open for Designation**

*Champaign*

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic area, in the States of Illinois and Indiana, is assigned to this official agency.

In Illinois and Indiana

Bounded on the North by the northern Livingston County line from State Route 47; the eastern Livingston County line to the northern Ford County line; the northern Ford and Iroquois County lines east to Interstate 57; Interstate 57 north to the northern Will County line; Bounded on the North by the northern Will County line from Interstate 57 east to the Illinois-Indiana State line; the Illinois-Indiana State line north to the northern Lake County line; the northern Lake, Porter, Laporte, St. Joseph, and Elkhart County lines; Bounded on the East by the eastern and southern Elkhart County lines; the eastern Marshall County line; Bounded on the South by the southern Marshall and Starke County lines; the eastern Jasper County line south-southwest to U.S. Route 24; U.S. Route 24 west to Indiana State Route 55; Indiana State Route 55 south to the Newton County line; the southern Newton County line west to U.S. Route 41; Bounded on the East by U.S. Route 41 south to the northern Parke County line; the northern Parke and Putnam County lines; the eastern Putnam, Owen and Greene County lines; Bounded on the South by the southern Greene County line; the southern Sullivan County line west to U.S. Route 41(150); U.S. Route 41(150) south to U.S. Route 50; U.S. Route 50 west across the Indiana-Illinois State line to Illinois State Route 33; Illinois State Route 33 north and west to the Western Crawford County line; and Bounded on the West by the western Crawford and Clark County lines; the Southern Coles County line; the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line, from this point through Arrowsmith to Pontiac along a straight line running north and south which intersects with State Route 116; State Route 116 east to State Route 47; State Route 47 north to the northern Livingston County line. *In Michigan*

Berrien, Cass, and St. Joseph Counties, Champaign's assigned geographic area does not include the export port locations inside Champaign's area which are serviced by GIPSA.

*Detroit*

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic area, in the State of Michigan, is assigned to this official agency. Bounded on the North by the northern Clinton County line; the eastern Clinton County line south to State Route 21; State Route 21 east to State Route 52; State Route 52 north to the Shiawassee County line; the northern Shiawassee County line east to the Genesee County line; the western Genesee County line; the northern Genesee County line east to State Route 15; State Route 15 north to Barnes Road; Barnes Road east to Sheridan Road; Sheridan Road north to State Route 46; State Route 46 east to State Route 53; State Route 53 north to the Michigan State line; Bounded on the East by the Michigan State line south to State Route 50; Bounded on the South by State Route 50 west to U.S. Route 127; and Bounded on the West by U.S. Route 127 north to U.S. Route 27; U.S. Route 27 north to the northern Clinton County line.

*Eastern Iowa*

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic areas in the States of Illinois, Iowa, and Wisconsin are assigned to this official agency.

In Illinois and Iowa

Jo Daviess, Stephenson, Winnebago, Boone, McHenry, Lake, Will DuPage, Kendall, DeKalb, Lee, and Ogle Counties in Illinois and Delaware and Dubuque Counties in Iowa. Bounded on the North, in Iowa, by Interstate 80 from the western Iowa County line east to State Route 38; State Route 38 north to State Route 130; State Route 130 east to the Mississippi River;

Bounded on the East, in Illinois, from the Mississippi River to the eastern Rock Island County line; the northern Henry and Bureau County lines; east to State Route 88; State Route 88 south to the southern Bureau County line; the eastern and southern Henry County lines; the eastern Knox County line; Bounded on the South by the southern Knox County line; the eastern and southern Warren County lines; the southern Henderson County line across the Mississippi River; in Iowa, by the southern Des Moines, Henry, Jefferson, and Wapello County lines; and Bounded on the West by the western and northern Wapello County lines; the western and northern Keokuk County lines; the western Iowa County line north to Interstate 80.

All export port locations within Eastern Iowa's assigned geographic areas in the State of Illinois are serviced by GIPSA.

In Wisconsin

The entire State of Wisconsin, for domestic services. All export port locations within Eastern Iowa's assigned geographic areas in the State of Wisconsin are serviced by GIPSA (Milwaukee, WI) and the Wisconsin Department of Agriculture (Superior, WI).

*Enid*

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic areas in the States of Oklahoma and Texas are assigned to this official agency.

In Oklahoma

Adair, Alfalfa, Atoka, Beckham, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Ellis, Garfield, Garvin, Grady, Grant, Greer, Harmon, Harper, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher,

Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward Counties.

In Texas

Clay, Wichita, and Wilbarger Counties.

*Keokuk*

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic areas in the States of Illinois and Iowa are assigned to this official agency.

In Illinois

Adams, Brown, Fulton, Hancock, Mason, McDonough, and Pike (northwest of a line bounded by U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the eastern Pike County line) Counties.

In Iowa

Davis, Lee, and Van Buren Counties.

*Michigan*

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic areas in the States of Michigan and Ohio are assigned to this official agency.

In Michigan

Bounded on the North by the northern Michigan State line; Bounded on the East by the eastern Michigan State line south and east to State Route 53; State Route 53 south to State Route 46; State Route 46 west to Sheridan Road; Sheridan Road south to Barnes Road; Barnes Road west to State Route 15; State Route 15 south to the Genesee County line; the northern Genesee County line west to the Shiawassee County line; the northern Shiawassee County line west to State Route 52; State Route 52 south to State Route 21; State Route 21 west to Clinton County; the eastern and northern Clinton County lines west to U.S. Route 27; U.S. Route 27 south to U.S. Route 127; U.S. Route 127 south to the Michigan-Ohio State line.

In Ohio

The northern State line east to the eastern Fulton County line; the eastern Fulton, Henry, and Putnam County lines; the eastern Allen County line south to the northern Hardin County line; the northern Hardin County line east to U.S. Route 68; U.S. Route 68 south to State Route 47;

Bounded on the South by State Route 47 west-southwest to Interstate 75 (excluding all of Sidney, Ohio); Interstate 75 south to the Shelby County line; the southern and western Shelby County lines; the southern Mercer County line; and Bounded on the West by the Ohio-Indiana State line from the southern Mercer County line to the northern Williams County line; in Michigan, by the southern Michigan State line west to the Branch County line; the western Branch County line north to the Kalamazoo County line; the southern Kalamazoo and Van Buren County lines west to the Michigan State line; the western Michigan State line north to the northern Michigan State line.

*Omaha*

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic areas in the States of Iowa and Nebraska are assigned to this official agency. Bounded on the North by Nebraska State Route 91 from the western Washington County line east to U.S. Route 30; U.S. Route 30 east to the Missouri River; the Missouri River north to Iowa State Route 175; Iowa State Route 175 east to Iowa State Route 37; Iowa State Route 37 southeast to the eastern Monona County line; Bounded on the East by the eastern Monona County line; the southern Monona County line west to Iowa State Route 183; Iowa State Route 183 south to the Pottawattamie County line; the northern and eastern Pottawattamie County lines; the southern Pottawattamie County line west to M47; M47 south to Iowa State Route 48; Iowa State Route 48 south to the Montgomery County line; Bounded on the South by the southern Montgomery County line; the southern Mills County line west to Interstate 29; Interstate 29 north to U.S. Route 34; U.S. Route 34 west to the Missouri River; the Missouri River north to the Sarpy County line (in Nebraska); the southern Sarpy County line; the southern Saunders County line west to U.S. Route 77; and Bounded on the West by U.S. Route 77 north to the Platte River; the Platte River southeast to the Douglas County line; the northern Douglas County line east; the western Washington County line northwest to Nebraska State Route 91.

**Opportunity for Designation**

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 79(f) of the USGSA and 7 CFR 800.196. Designation in the specified geographic areas is for the period beginning April 1, 2013 and ending March 31, 2016. To apply for designation or for more information, contact Eric J. Jabs at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov.*

**Request for Comments**

We are publishing this notice to provide interested persons the opportunity to comment on the quality of services provided by the Champaign, Detroit, Eastern Iowa, Enid, Keokuk, Michigan, and Omaha official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicants. Submit all comments to Eric J. Jabs at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

**Authority:** 7 U.S.C. 71–87k.

**Larry Mitchell,**

*Administrator, Grain Inspection, Packers and Stockyards Administration.*

[FR Doc. 2012–22610 Filed 9–12–12; 8:45 am]

BILLING CODE 3410–KD–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* International Trade Administration.

*Title:* Interim Procedures for Considering Requests under the Commercial Availability Provision of the United States-Colombia Trade Promotion Agreement.

*OMB Control Number:* None.

*Form Number(s):* N/A.

*Type of Request:* Regular submission (new information collection).

*Burden Hours:* 89.

*Number of Respondents:* 16 (10 for Requests; 3 for Responses; 3 for Rebuttals).

*Average Hours per Response:* 8 hours per Request; 2 hours per Response; and 1 hour per Rebuttal.

*Needs and Uses:* Title II, Section 203(o) of the United States-Colombia Trade Promotion Agreement Implementation Act (the ''Act'') [Pub. L. 112–42] implements the commercial availability provision provided for in Article 3.3 of the United States-Colombia Trade Promotion Agreement (the ''Agreement''). The Agreement entered into force on May 15, 2012. Subject to the rules of origin in Annex 4.1 of the Agreement, and pursuant to the textile provisions of the Agreement, a fabric, yarn, or fiber produced in Colombia or the United States and traded between the two countries is entitled to duty-free tariff treatment. Annex 3–B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Colombia or the United States. The fabrics listed are commercially unavailable fabrics, yarns, and fibers, which are also entitled to duty-free treatment despite not being produced in Colombia or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.3, Paragraphs 5–7 of the Agreement. Under this provision, interested entities from Colombia or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3–B of the Agreement.

Chapter 3, Article 3.3, paragraph 7 of the Agreement requires that the President ''promptly'' publish procedures for parties to exercise the right to make these requests. Section 203(o)(4) of the Act authorizes the President to establish procedures to modify the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in either the United States or Colombia as set out in Annex 3–B of the Agreement. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (''CITA''), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (''OTEXA'') (See Proclamation No. 8818, 77 FR 29519, May 18, 2012).

The intent of the Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Colombian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Colombia, subject to Section 203(o) of the Act.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: September 7, 2012.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–22501 Filed 9–12–12; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–38–2012]**

### Foreign-Trade Zone 216—Olympia, WA; Authorization of Production Activity; Callisons, Inc. (Mint Products); Lacey and Chehalis, WA

On May 10, 2012, the Port of Olympia, grantee of FTZ 216, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Callisons, Inc., within FTZ 216-Site 3 and Site 15, in Lacey and Chehalis, Washington.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 28568, 5–15–2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: September 10, 2012.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2012–22601 Filed 9–12–12; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC230**

### North Pacific Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, October 1–9, 2012, in Anchorage, AK.

**DATES:** The meetings will be held Monday, October 1, 2012 through Tuesday, October 9, 2012. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the meetings.

**ADDRESSES:** The meetings will be held at the Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, AK.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** David Witherell, Council staff; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** The Council will begin its plenary session at 8 a.m. on Wednesday, October 3 continuing through Tuesday October 9. Council's Advisory Panel (AP) will begin at 8 a.m., Tuesday, October 2 and continue through Saturday, October 6, the Scientific Statistical Committee (SSC) will begin at 8 a.m. on Monday, October 1 and continue through Wednesday, October 3. The Enforcement Committee will meet October 2, 1 p.m.–4 p.m., Birch Room. All meetings are open to the public, except executive sessions.

**Council Plenary Session**

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

*Reports*

1. Executive Director's Report (including report on spatial tools for arctic mapping and planning (STAMP), update on staff meetings); NMFS Management Report (Including report on status of petition to list corals under Endangered Species Act (ESA), update on the Habitat Blueprint); Alaska Department of Fish & Game (ADF&G) Report; NOAA Enforcement Report; United States Coast Guard (USCG) Report; United States Fish & Wildlife Service (USFWS) Report; Protected Species Report (PSR).
2. Halibut Fisheries Issues: ADF&G report on final 2011 sport halibut removals; Final action on Halibut Catch Share Plan; Charter Halibut: Review Methodology for 2013 limits (SSC only).
3. Groundfish Specifications; Receive Groundfish Plan Team reports; Aleutian Island Pacific cod model review (SSC only); Adopt proposed groundfish catch specifications.
4. Observer Program: Receive NMFS report on Observer Deployment Plan; Receive Observer Advisory Committee (OAC) Report.
5. Steller Sea Lion (SSL) Issues: SSL Environmental Impact Statement (EIS) scoping (October 2); report from SSL Mitigation Committee; SSC review of SSL EIS analytical approach.
6. Vessel Replacement Issues: Discussion paper on Amendment 80 vessel replacement with American Fisheries Act (AFA) vessels; Initial review of AFA Vessel Replacement Gulf of Alaska (GOA) Sideboards; Final Action on Freezer Long Line (FFL) Vessel Replacement (Maximum Length Overall (MLOA) adjustment).
7. Bering Sea Aleutian Island (BSAI) Crab Management: Initial Review of BSAI Crab Right of First Refusal (ROFR); Initial Review of BSAI Crab active participation requirements; Discussion paper on BSAI Crab Cooperative Provisions for Crew; Workgroup report on BSAI Crab Binding Arbitration—Golden King Crab; Discussion paper on Binding Arbitration Issues (lengthy season, publishing decisions, Individual Processoring Quota (IPQ) Initiation); Crab Economic Data Reporting (EDR)—Review forms and draft regulations; Final Over Fishing Level (OFL)/Allowable Biological Catch (ABC) specifications for 6 stocks in the BSAI Crab Stock Assessment Fishery Evaluation (SAFE); Revise alternatives for BSAI Tanner crab rebuilding plan.
8. Groundfish Issues: Feedback on goals and objectives on Central Gulf of Alaska (CGOA) trawl Prohibited Species Catch (PSC) tools; Expanded discussion paper on Vessel Monitoring System (VMS) Use and Requirements; Review the Bering Sea Habitat Conservation Area Boundary; Discussion paper on Northern Bering Sea Research.
9. Staff Tasking: Review Committees and tasking.
10. Other Business.

The SSC agenda will include the following issues:

1. Halibut Fisheries Issues.
2. Groundfish Specifications.
3. Observer Program.
4. SSL EIS.
5. AFA Vessel replacement GOA Sideboards.
6. Review of BSAI Crab ROFR.
7. Review of BSAI Crab active participation requirements.
8. OFL/ABC specifications for 6 stocks in the BSAI Crab SAFE.
9. Revise alternatives for BSAI Tanner Crab Rebuilding plan.
10. Northern Bering Sea Research.

The Advisory Panel will address most of the same agenda issues as the Council except B reports. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 7, 2012.

**Tracey L. Thompson,**

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

[FR Doc. 2012–22502 Filed 9–12–12; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC221**

### New England Fishery Management Council; Public Meeting; Correction

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

**ACTION:** Notice of correction to a public meeting; addition to agenda.

**SUMMARY:** The New England Fishery Management Council (Council) is revising the agenda for a public meeting of the Council on September 25–27, 2012 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meeting will be held on Tuesday, Wednesday and Thursday, September 25–27 starting at 9 a.m. on Tuesday, at 8:30 a.m. on Wednesday and at 8 a.m. on Thursday.

**ADDRESSES:** The meeting will be held at the Radisson Hotel Plymouth Harbor, 180 Water Street, Plymouth, MA 02360; telephone: (508) 747–4900; fax: (508) 747–8937.

*Council Address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

**Thursday, September 27, 2012**

The New England Fishery Management Council's September 25–

27 agenda will occur as previously published in the **Federal Register** on September 7, 2012 (77 FR 55192). On Thursday, September 27, 2012, however, the final day of the meeting, there will be an addition to the items the Council will address. Just prior to adjournment, the Council will discuss the approval of alternatives to be included in the Standardized Bycatch Reporting Methodology (SBRM) Amendment for analysis

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: September 7, 2012.

**Tracey L. Thompson,**

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

[FR Doc. 2012–22506 Filed 9–12–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**RIN 0648–XB042**

## Marine Mammals; File No. 16325

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that a permit has been issued to Jooke Robbins, Ph.D., Center for Coastal Studies, 5 Holway Avenue, Provincetown, MA 02657 to conduct research on marine mammals.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

**FOR FURTHER INFORMATION CONTACT:** Joselyd Garcia-Reyes or Carrie Hubard, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** On February 29, 2012, notice was published in the **Federal Register** (77 FR 12244) that a request for a permit to conduct research on humpback whales (*Megaptera novaeangliae*), fin whales (*Balaenoptera physalus*), blue whales (*B. musculus*), sei whales (*B. borealis*), minke whales (*B. acutorostrata*), sperm whales (*Physeter macrocephalus*), and killer whales (*Orcinus orca*) had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit authorizes harassment of humpback, fin, blue, sei, minke, sperm and killer whales by close vessel approaches; photo-identification and behavioral observations; photogrammetry; collection of exhaled air, feces and sloughed skin; and skin and blubber biopsy sampling import and export of parts. The research would continue a long-term study of North Atlantic humpback whales and improve understanding of the other six target species in the North Atlantic. Research would occur in the waters off Canada, Maine to Florida, and Puerto Rico. Incidental harassment of North Atlantic right whales (*Eubalaena glacialis*) and 14 other non-listed marine mammals is also authorized. The permit expires August 31, 2017.

An environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on August 24, 2012.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: September 7, 2012.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–22607 Filed 9–12–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**RIN 0648–XB048**

## Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Northwest Pacific Ocean, March Through May, 2012

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulation, we hereby give notification that we have issued an Incidental Harassment Authorization (Authorization) to Lamont-Doherty Earth Observatory (Observatory), a part of Columbia University, to take marine mammals, by harassment, incidental to conducting a marine geophysical (seismic) survey in the central Pacific Ocean, May through June, 2012.

**DATES:** Effective May 1, 2012, through June 11, 2012.

**ADDRESSES:** To obtain an electronic copy of the Authorization, write to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or download an electronic copy at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

To obtain an electronic copy of (1) the application containing a list of the

references within this document; and (2) the National Science Foundation's (Foundation) Environmental Assessment (EA) under the National Environmental Policy Act of 1969 and Executive Order 12114; write to the previously mentioned address, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or download the file at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The Service's Biological Opinion will be available online at: *http://www.nmfs.noaa.gov/pr/consultation/opinions.htm.*

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 101(a)(5)(D) of the Marine Mammal Protect Act of 1972, as amended (MMPA; 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 Marine Mammal Protection Act established an expedited process for U.S. citizens to apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the Marine Mammal Protection 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 authorization 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 Marine Mammal Protection Act defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

## Summary of Request

On December 12, 2012, we received a complete application from the Observatory requesting that we issue an Authorization for the take, by Level B harassment only, of small numbers of marine mammals incidental to conducting a seismic survey in the central Pacific Ocean from May 1 through May 26, 2012. We determined the application complete and adequate on February 28, 2012 and released the application for public comment (see **ADDRESSES**) for consideration of issuing an Authorization to the Observatory.

The Observatory, with research funding from the Foundation, plans to conduct the seismic survey from May 1 through May 26, 2012 offshore the Line Islands in the central Pacific Ocean. They plan to use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*), an airgun array, and a single hydrophone streamer to provide the data necessary to understand sedimentation patterns on the flanks of the Line Islands Ridge and to investigate how climate patterns have varied over time in the late Pleistocene period. In addition to the operations of the seismic airgun array and hydrophone streamer, the Observatory intends to operate a multibeam echosounder (echosounder), a sub-bottom profiler, and an acoustic Doppler current profiler continuously throughout the survey except while on station for marine coring activities.

Acoustic stimuli (i.e., increased underwater sound) generated during seismic operations, 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. We expect these disturbances to be temporary and result in a temporary modification in behavior and/or low-level physiological effects (Level B harassment only) of small numbers of certain species of marine mammals.

We do not expect that the movement of the *Langseth,* during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (4.6 knots (kts); 8.5 kilometers per hour (km/h); 5.3 miles per hour (mph)) during seismic acquisition.

We also do not expect that the operation of the echosounder, sub-bottom profiler and current profiler have the potential to harass marine mammals because they would already experience affects from the airgun array. Whether or not the airguns are operating simultaneously with the other sources, we expect the marine mammals to exhibit no more than short-term and inconsequential responses to the echosounder, sub-bottom profiler and current profiler given their characteristics (e.g., narrow, downward-directed beam)

We have outlined the purpose of the program in a previous notice for the proposed Authorization (77 FR 19242, March 30, 2012). The Observatory's proposed activities have not changed between the proposed IHA notice and this final notice announcing the issuance of the Authorization. Refer to the to the notice of the proposed IHA (77 FR 19242, March 30, 2012), the application, and Environmental Assessment for a more detailed description of the authorized action, including vessel and acoustic source specifications.

## Description of the Specified Geographic Region

The Observatory will conduct the survey in the Exclusive Economic Zones of the Republic of Kiribati the U.S. The study area will encompass an area in the Line Islands bounded by approximately 0.5–8 degrees (°) North by 156–162° West. Water depths in the survey area range from approximately 1,100 to 5,000 m (0.68 to 3.1 mi).

## Comments and Responses

We published a notice of receipt of the Observatory's application and proposed Authorization in the **Federal Register** on March 30, 2012 (77 FR 19242). During the 30-day public comment period, we received comments from the Marine Mammal Commission (Commission) only. The Commission's comments are online at: *http://*

*www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are their comments and our responses.

*Comment 1:* The Commission recommends that, before issuing the requested Authorization, we require the Observatory to: (1) Re-estimate the proposed exclusion zones and buffer zones and associated number of marine mammal takes using operational and site-specific environmental parameters; and (2) if the Observatory does not re-estimate the zones, provide a detailed justification for basing the proposed survey's zones on modeling that relies on measurements from the Gulf of Mexico instead of the central Pacific Ocean.

*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 Observatory's data are sufficient for us to conduct our analysis and support our determinations under the Marine Mammal Protection Act, the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act. The identified zones are appropriate for the survey and additional field measurements are not necessary at this time. Thus, for this survey, we 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 central Pacific Ocean exclusion and buffer zones on modeling based on the 2007–2008 *Langseth's* peer-reviewed, calibration study in the Gulf of Mexico (Tolstoy, *et al,* 2004, 2009). The Foundation's Environmental Assessment (see Appendix A) includes detailed information on the study, their modeling process, and a comparison of the Observatory's modeled results with results of the 2007 to 2008 *Langseth* 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., safety radii) 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 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 and estimation methodologies.

*Comment 2:* The Commission recommends that, before issuing the requested Authorization, we use species-specific maximum densities (i.e., estimated by multiplying the existing density estimates by a precautionary correction factor) and then re-estimate the anticipated number of takes.

*Response:* For purposes of this Authorization, the Observatory used the cetacean densities based on the National Marine Fisheries Service, Southwest Fisheries Science Center's, eastern tropical Pacific ship transect surveys conducted from 1986 through 2006 (Barlow *et al.,* 2009b; Read *et al.,* 2009) or from surveys conducted in 2002 (Barlow, 2006) to estimate the number of takes. 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 survey in the central Pacific Ocean. The results of the associated monitoring reports show that our past use of best estimates was appropriate and has not refuted our past determinations.

*Comment 3:* The Commission recommends that, before issuing the requested IHA, we condition the Authorization to prohibit the use of a 15-minute pause following the sighting of a mysticete or large odontocete in the exclusion zone and to extend the pause to cover the maximum dive times of those species encountered near the vessel prior to initiating ramp-up procedures.

*Response:* We would like to clarify the Commission's understanding of two conditions within the Authorization—one related to turning on the airguns (ramp-up) after a shutdown due to a marine mammal sighting within the exclusion zone and the other related to a ramp-up after an extended shutdown (i.e., the 15-minute pause due to equipment failure or routine maintenance).

To clarify, the Authorization requires the *Langseth* to shutdown the airguns when an observer sees a marine mammal within, approaching, or entering the relevant exclusion zones for cetaceans or for pinnipeds. Following a shutdown, the *Langseth* would only ramp up the airguns if a marine mammal had exited the relevant exclusion zone or if visual observer had not seen the animal within the relevant exclusion zone for 15 minutes for species with shorter dive times (i.e., small odontocetes and pinnipeds) or 30 minutes for species with longer dive durations (i.e., mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

We believe that 30 minutes is an adequate length for the monitoring period prior to the ramp-up of airguns after sighting a mysticete and large odontocetes for the following reasons:

- The *Langseth* can transit roughly 4.25 kilometers (km) in 30 minutes. At this distance, the vessel will have moved 60 times (4.25 km ÷ 0.07 km) away from the distance of the original 180–dB exclusion zone (70 meters (m)) from the initial sighting
- The relevant exclusion zones for cetaceans and pinnipeds are relatively small (i.e., 70 m for cetaceans and 20 m for pinnipeds). Extending the monitoring period for a relatively small exclusion zone 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.
- Because a significant part of their movement is vertical [deep-diving], it is unlikely that a submerged mysticete/large odontocete would move in the same direction and speed (roughly 5 knots) with the vessel for 30 minutes. If an mysticete/large odontocete's maximum underwater dive time is 45 minutes, then there is only a one in three chance that the last random surfacing could occur within the 70 m exclusion zone.
- The visual observers are constantly monitoring the horizon and the exclusion zones during the 30-minute period. On average, observers can observe to the horizon (10 km; 6.2 miles) from the height of the *Langseth's* observation deck and should be able to say with a reasonable degree of confidence whether a marine mammal would be encountered within this distance before resuming the two-GI airgun operations at full power.

Next, we intend to clarify the monitoring period associated with an extended shutdown (i.e., the 15-minute

pause due to equipment failure or routine maintenance). During active seismic operations, there are occasions when the *Langseth's* crew will need to temporarily shut down the airguns due to equipment failure or for maintenance. Thus, an extended shutdown is not related to an observer detecting a marine mammal within, approaching, or entering the relevant exclusion zones. However, the observers are still actively monitoring the relevant exclusion zones for cetaceans and pinnipeds.

In the case of an extended shutdown, due to equipment failure or routine maintenance, the *Langseth's* crew will turn on the airguns and follow the mitigation monitoring procedures for a ramp-up after a period of 15 minutes. Again, the observers will monitor the full exclusion zones for marine mammals and will implement a shutdown if necessary.

In conclusion, we have designed monitoring and mitigation measures to comply with the requirement that incidental take authorizations must include means of effecting the least practicable impact on marine mammal species and their habitat. 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 the Observatory has requested take; 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 the exclusion zones and thus further minimize the potential for take.

*Comment 4:* The Commission recommends that we work with the Foundation to analyze the data collected during ramp-up procedures to help determine the effectiveness of those procedures as a mitigation measure for geophysical 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.

We require the Observatory to gather all data that could potentially provide information regarding the effectiveness of ramp-up as a mitigation measure in its final 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 reporting requirements may provide information regarding the effectiveness of ramp-up as a mitigation measure, provided the observers detect animals during ramp-up.

**Description of the Marine Mammals in the Area of the Specified Activity**

Twenty-six marine mammal species may occur in the survey area offshore the Line Islands in the central Pacific Ocean, including 19 odontocetes (toothed cetaceans), six mysticetes (baleen whales) and one species of pinniped during May through June, 2012. Six of these species are listed as endangered under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), including the blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), and sperm (*Physeter macrocephalus*) whales, and the Hawaiian monk seal (*Monachus schauinslandi*).

Based on available data, we do not expect the Observatory to encounter nine of the 26 species in the proposed survey areas. They include the: Blue, fin, humpback, killer, minke, pygmy, pygmy killer, and sei whales and the Hawaiian monk seal because of the species' rare and/or extralimital occurrence in the survey areas. The Observatory did not request and we did not authorize take of these nine species. Thus, the issued Authorization only addresses requested take authorizations for 17 species: One mysticete, and 16 odontocetes. We expect that delphinids would be the most common marine mammal species in the survey area. They include the pantropical spotted (*Stenella attenuata*), spinner (*S. longirostris*) dolphins, and the short-finned pilot whale (*Globicephala macrorhynchus*).

We have presented a more detailed discussion of the status of these stocks and their occurrence in the central Pacific Ocean in the notice of the proposed Authorization (77 FR 19242, March 30, 2012).

**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 (TTS) is not an injury (Southall *et al.,* 2007). Although one cannot entirely exclude the possibility, 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 here, we expect some behavioral disturbance to occur, but we expect the disturbance to be localized and short-term.

The notice of the proposed Authorization (77 FR 19242, March 30, 2012) included a discussion of the effects of sounds from airguns on mysticetes and odontocetes including tolerance, masking, behavioral disturbance, hearing impairment, and other non-auditory physical effects. We refer the reader to the Observatory's application and Environmental Assessment for additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to seismic vessels.

**Anticipated Effects on Marine Mammal Habitat**

We included a detailed discussion of the potential effects of this action on marine mammal habitat, including physiological and behavioral effects on marine fish and invertebrates in the notice of the proposed Authorization (77 FR 19242, March 30, 2012). While we anticipate that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible. We considered these impacts in detail in the notice of the proposed Authorization (77 FR 19242, March 30, 2012) as behavioral modification. The main impact associated with the activity would be temporarily elevated noise levels and the associated direct effects on marine mammals.

**Mitigation**

In order to issue an incidental take authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act, 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 applications for incidental take authorizations 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 would implement the following mitigation measures for marine mammals:

(1) Proposed exclusion zones;

(2) Speed or course alteration;

(3) Shutdown procedures; and

(4) Ramp-up procedures.

*Exclusion Zones*—The Observatory uses safety radii to designate exclusion zones and to estimate take for marine mammals. Table 1 shows the distances at which one would expect to receive three sound levels (160–, 180–, and 190–dB) from the two GI airguns. The 180–dB and 190–dB level shutdown criteria are applicable to cetaceans and pinnipeds, respectively, as specified by us (2000). The Observatory used these levels to establish the exclusion zones.

TABLE 1—DISTANCES TO WHICH SOUND LEVELS ≥160, 180, 190 DB RE: 1 μPA (RMS) ONE COULD RECEIVE IN DEEP WATER DURING THE PROPOSED SEISMIC SURVEY IN THE CENTRAL PACIFIC OCEAN, MAY, 2012. THE OBSERVATORY PROVIDED THE DISTANCES ARE BASED ON THEIR MODEL RESULTS.

| Source and volume | Tow depth (m) | Water depth (m) | Predicted RMS radii distances (m) | | |
|---|---|---|---|---|---|
| | | | 160 dB | 180 dB | 190 dB |
| Two GI airguns (105 in$^3$) | 3 | Deep (> 1,000) | 670 | 70 | 20 |

If the visual observer detects marine mammal(s) within or about to enter the appropriate exclusion zone, the *Langseth* crew would shut down the airguns immediately.

*Speed or Course Alteration*—If the visual observer detects a marine mammal outside the zone and, based on its position and the relative motion, the marine mammal is likely to enter the zone, the *Langseth* could change the vessel's speed and/or direct course. The *Langseth* would implement speed or course operation if operationally practicable, thus minimizing the effect on the planned science objectives. The visual observer would monitor the activities and movements of the marine mammal (relative to the seismic vessel) to determine if the animal is approaching the applicable exclusion zone. If the animal appears likely to enter the zone, the *Langseth* would implement further mitigation measures, (i.e., either further course alterations or a shut-down of the seismic source). Typically, during seismic operations, the source vessel is unable to change speed or course and the Langseth would need to implement one or more alternative mitigation measures.

*Shut-down Procedures*—The *Langseth* will shut down the operating airgun(s) if a marine mammal is seen outside the exclusion zone for the airgun(s). If the vessel cannot change its speed and/or course to avoid having the animal enter the zone, the *Langseth* will shutdown the seismic source before the animal is within the zone. If a marine mammal is already within the zone when first detected, the *Langseth* will shutdown the seismic source immediately.

Following a shut-down, the *Langseth* will not resume airgun activity until the marine mammal has cleared the zone. The visual observer will consider the animal to have cleared the zone if:

- A visual observer has visually observed the animal leave the zone, or
- A visual observer has not sighted the animal within the 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, killer, and beaked whales).

*Ramp-up Procedures*—The Observatory will follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a shut-down has exceeded that period. The Observatory proposes that, for the present cruise, this period would be approximately 15 minutes. The Observatory has used similar periods (approximately 15 minutes) during previous seismic surveys.

The Observatory will begin a ramp-up with a single GI airgun (105 in$^3$) and will add the second GI airgun (105 in$^3$) after five minutes. During ramp-up, the visual observer will monitor the exclusion zone, and if he/she sights a marine mammal(s), the *Langseth* will implement a shut-down as though both GI airguns were operational.

If the complete zone is not visible for at least 30 minutes prior to the start of operations in either daylight or nighttime, the *Langseth* will not commence the ramp-up. If one airgun is operational, 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 if they choose. A ramp-up from a shut-down may occur at night, but only where the exclusion zone is small enough to be visible. The Observatory will not initiate a ramp-up of the airguns if a visual observer detects a marine mammal within or near the applicable zones during the day or close to the vessel at night.

We have carefully evaluated the proposed mitigation measures and have considered a range of other measures in the context of ensuring that we prescribe the means of effecting the least practicable adverse impact on the affected marine mammal species and 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, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on our evaluation of the proposed measures, as well as other measures considered by us or recommended by the public for previous low-energy seismic surveys, we have determined that the mitigation measures provide the means of effecting the least practicable adverse 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 Marine Mammal Protection Act states that we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The 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 our expectations of the level of taking or impacts on populations of marine mammals present in the action area.

*Monitoring*

The Observatory will conduct 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 issued Authorization. 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 be occurring simultaneously in the same regions. Further, the Observatory is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

*Vessel-Based Visual Monitoring*

The Observatory will position visual observers aboard the seismic source vessel to watch for marine mammals near the vessel during daytime airgun operations and during any ramp-ups at night. The observers will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the ramp-up of airgun operations after an extended shut-down (i.e., greater than approximately 15 minutes for this proposed cruise). When feasible, the 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 their observations, the *Langseth* will shutdown the airguns when they detect marine mammals within or about to enter a designated exclusion zone. The zone is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations in the central Pacific Ocean, at least three visual observers will be aboard the *Langseth*. The Observatory will appoint the observers with our concurrence. At least one observer will monitor the zones during seismic operations. Observations will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. Observers will be on duty in shifts of duration no longer than four hours. The vessel crew will also be instructed to assist in detecting marine mammals.

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 observer will have a good view around the entire vessel. During daytime, the visual 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. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. 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 visual observers detect marine mammals within or about to enter the designated exclusion zone, the *Langseth* will immediately shut-down the airguns if necessary. The observers will continue to maintain watch to determine when the animal(s) are outside the zone by visual confirmation. The Langseth will not resume airgun operations until he/she confirms that the animal has left the zone, or if the observer has not observed the animal 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, killer, and beaked whales).

*Observer Data and Documentation*

The 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. The Observatory will use the data to estimate numbers of animals potentially 'taken' by harassment (as defined in the Marine Mammal Protection Act). The data will also provide information needed to order a shutdown of the airguns when a marine mammal is within or near the exclusion zone. Also, the observers will also be on watch 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 an 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 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.

Observers will record all observations in a standardized format and will enter data into an electronic database. The 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:

1. The basis for real-time mitigation (airgun power down or shutdown).

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 and turtles 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.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the issued 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 Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Pacific Islands Regional Stranding Coordinator at 808–944–2269 (*David.Schofield@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 Marine Mammal Protection Act 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 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 Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the Pacific Islands Regional Stranding Coordinator at 808–944–2269 (*David.Schofield@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 visual 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 to the Acting Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301–427–8401 and/or by email to *Jolie.Harrison@noaa.gov* and *ITP.Cody@noaa.gov* and the NMFS Pacific Islands Regional Stranding Coordinator at 808–944–2269 (*David.Schofield@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 Marine Mammal Protection Act 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 have authorized incidental take by Level B harassment only for the marine geophysical survey in the central 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 re: 1 μPa 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 the Authorization. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The Observatory's estimates assume that marine mammals exposed to airgun sounds greater than or equal to 160 dB re: 1 μPa 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 two GI airgun array during approximately 2,316 square km (894 square miles) (includes primary and secondary lines and an additional 25 percent contingency) of survey lines in the central 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 echosounder, sub-bottom profiler, and acoustic Doppler current 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 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 two airguns.

We have presented a more detailed discussion of the Observatory's methods to estimate take by incidental harassment in the notice of the proposed Authorization (77 FR 19242, March 30, 2012). Refer to the notice for more detailed information on the density data and their methodology to estimate take.

The Observatory's estimates of exposures to various sound levels

assume that they will complete the surveys; in fact, they have increased the calculations of the ensonified by 25 percent to accommodate turns, lines that may need to be repeated, and equipment testing. As is typical during ship surveys, inclement weather and equipment malfunctions may cause delays and may limit the number of useful line-kilometers of seismic operations that the Observatory can finish. Furthermore, any marine mammal sightings within or near the designated exclusion zone will result in the shutdown of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to 160–dB re: 1 FPa 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.

Table 2 in this notice shows estimates of the number of individual cetaceans that potentially could be exposed to greater than or equal to 160 dB re: 1 μPa during the seismic survey if no animals moved away from the survey vessel. We present the take authorization in the far right column of Table 3. For endangered species, the requested take authorization reflects the mean group size in the eastern tropical Pacific Ocean (Jackson *et al.,* 2008) for the particular species in cases where the calculated number of individuals exposed was between 0.05 and the mean group size (i.e., for the sperm whale). For non-listed species, the requested take authorization reflects the mean group size in the Center's survey area (Barlow *et al.,* 2008) for the particular species in cases where the calculated number of individuals exposed was between one and the mean group size.

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 the proposed survey is 828 (see Table 2 in this notice). That total includes: Four Bryde's whales or 0.01 percent of the regional population; and seven sperm whales (also listed as endangered) or 0.03 percent of the regional population could be exposed during the survey.

As stated earlier in this notice, the Observatory did not estimate take of endangered humpback, sei, blue, or fin whales or Hawaiian monk seals because of the low likelihood of encountering these species during the cruise. In addition, 18 beaked whales (16 Cuvier's, one Longman's, and one *Mesoplodon* spp.) could be exposed during the survey. Most (94.7 percent) of the cetaceans that could be potentially exposed are delphinids (e.g., spinner, pantropical spotted, and striped dolphins are estimated to be the most common species in the area) with maximum estimates ranging from four to 425 species exposed to levels greater than or equal to 160 dB re: 1 μPa.

TABLE 3—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO DIFFERENT SOUND LEVELS DURING THE OBSERVATORY'S SEISMIC SURVEY IN THE CENTRAL PACIFIC OCEAN DURING MAY, 2012.

| Species | Estimated number of individuals exposed to sound levels ≥ 160 dB re: 1 μPa [1] | Approximate percent of regional population [2] | Requested take authorization |
|---|---|---|---|
| Bryde's whale | 1 | 0.01 | [4] 4 |
| Blue whale | 0 | < 0.01 | 0 |
| Sperm whale | 7 | 0.03 | [4] 8 |
| Dwarf sperm whale | 18 | 0.16 | 18 |
| Cuvier's beaked whale | 16 | 0.08 | 16 |
| Longman's beaked whale | 1 | 0.36 | [4] 14 |
| *Mesoplodon* spp.[3] | 1 | <0.01 | [4] 4 |
| Rough-toothed dolphin | 3 | <0.01 | [4] 13 |
| Bottlenose dolphin | 11 | <0.01 | [4] 12 |
| Pantropical spotted dolphin | 279 | 0.06 | 279 |
| Spinner dolphin | 425 | 0.02 | 425 |
| Striped dolphin | 38 | <0.01 | [4] 46 |
| Fraser's dolphin | 11 | <0.01 | [4] 182 |
| Risso's dolphin | 2 | <0.01 | [4] 14 |
| Melon-headed whale | 3 | 0.01 | [4] 101 |
| False killer whale | 0 | <0.01 | [4] 9 |
| Short-finned pilot whale | 12 | <0.01 | [4] 24 |

[1] Estimates are based on densities from Table 3 in the notice of the proposed Authorization (77 FR 19242, March 30, 2012) and an ensonified area (including 25 percent contingency).
[2] Regional population size estimates are from Table 2 notice of the proposed Authorization (77 FR 19242, March 30, 2012).
[3] Includes ginkgo-toothed and/or Blainville's beaked whales.
[4] Requested take authorization increased to mean group size.

## Encouraging and Coordinating Research

The Observatory and the Foundation will coordinate the planned marine mammal monitoring program associated with each seismic survey in the central 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); and

(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.

For reasons stated previously in this document, 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 70 meters (229.7 feet) in deep water when the two GI airgun array has a 3-meter (9.8 feet) tow depth from the vessel to be exposed to levels of sound believed to have even a minimal chance of causing permanent threshold shift; and

(4) The likelihood that marine mammal detection ability by trained marine mammal 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 do not propose to authorize injury, serious injury or mortality for this survey. We anticipate only short-term behavioral disturbance to occur during the conduct of the survey activities. Table 2 of this document outlines the number of requested 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 survey would last no more than 6 days and the *Langseth* will be continuously moving along planned tracklines. Therefore, the seismic survey will be increasing sound levels in the marine environment in a relatively small area surrounding the vessel, which is constantly traveling over far distances, for a relatively short time period in the study area.

Of the 26 marine mammal species under our (the National Marine Fisheries Service's) jurisdiction that are known to occur or may occur in the study area, six are listed as endangered under endangered under the Endangered Species Act: The humpback, sei, fin, blue, and sperm whale and the Hawaiian monk seal. We also consider these species as depleted under the Marine Mammal Protection Act.

Based on available data, we do not expect the Observatory to encounter nine of the 26 species in the proposed survey areas. They include the: Blue, fin, humpback, killer, minke, pygmy, pygmy killer, and sei whales and the Hawaiian monk seal because of the species' rare and/or extralimital occurrence in the survey areas and the low likelihood of encountering these species during the cruise. The Observatory did not request and we did not authorize take of these nine species. Thus, the issued Authorization only addresses requested take authorizations for 17 species: One mysticete, and 16 odontocetes. As mentioned previously, the survey would not occur in any areas designated as critical habitat for Endangered Species Act-listed species and would not adversely impact marine mammal habitat. 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.

As mentioned previously, we estimate that 17 species of marine mammals under our jurisdiction could be potentially affected by Level B harassment over the course of the proposed IHA. For each species, these numbers are small (each less than one percent) relative to the regional population size (see Table 2).

Our practice has been to apply the 160 dB re: 1 μPa 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 a marine seismic survey in the central Pacific Ocean, May through June, 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.

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 have found that the Observatory's planned research activities would result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine seismic survey would have a negligible impact on the affected species or stocks of marine mammals; 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 (central Pacific Ocean) that implicate section 101(a)(5)(D) of the Act.

**Endangered Species Act**

Of the species of marine mammals that may occur in the proposed survey area, several are listed as endangered under the ESA, including the blue, fin, humpback, sei, and sperm whale and Hawaiian monk seal. The Observatory did not request take of endangered humpback, sei, blue, or fin whales or Hawaiian monk seals because of the low likelihood of encountering these species during the cruise. As mentioned previously, the survey would not occur in any areas designated as critical habitat for listed species and would not adversely impact marine mammal habitat.

Under section 7 of this Act, the Foundation initiated formal consultation with the National Marine Fisheries Service, Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this seismic survey. We, (the Permits and Conservation Division), also initiated formal consultation under section 7 of the Act with the Endangered Species Act Interagency Cooperation Division, to obtain a Biological Opinion (Opinion) evaluating the effects of issuing an incidental harassment authorization for threatened and endangered marine mammals and, if appropriate, authorizing incidental take. In May 2012, the Endangered Species Act Interagency Cooperation Division issued an Opinion and concluded that the action and issuance of the Authorization was not likely to jeopardize the continued existence of blue, fin, humpback, sei, and sperm whales and Hawaiian monk seals. The Opinion also concluded that the survey would not affect designated critical habitat for these species. The Foundation and the Observatory must comply with the Relevant Terms and Conditions of the Incidental Take Statement corresponding to the Opinion issued to us, the Foundation, and the Observatory. The Observatory must also comply with the Authorization's mitigation and monitoring requirements in order to be exempt under the Incidental Take Statement in the Opinion from the prohibition on take of listed endangered marine mammal species otherwise prohibited by section 9 of the Act.

**National Environmental Policy Act (NEPA)**

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 Geophysical Survey by the R/V *Marcus G. Langseth* in the Central Pacific Ocean May, 2012,'' which incorporates an ''Environmental Assessment of a Marine Geophysical Survey by the R/V *Marcus G. Langseth* in the central Pacific Ocean, May, 2012,'' prepared by LGL Limited environmental research associates on behalf of the Foundation and the Observatory.

The Assessment analyzed the direct, indirect, and cumulative environmental impacts of the specified activities on marine mammals including those listed as threatened or endangered under the Endangered Species Act. We 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 determined that issuance of the Authorization 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 Authorization (77 FR 19242, March 30, 2012) and have considered public comments received in response prior to adopting the Foundation's Assessment. We have concluded that issuance of an Authorization 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 an Authorization to the Observatory for this activity.

**Authorization**

As a result of these determinations, we have issued an Incidental Harassment Authorization to the Observatory for the take of small numbers of marine mammals, by Level B harassment incidental to conducting a marine geophysical survey in the central Pacific Ocean, May 1 through June 11, 2012, provided the Observatory implements the previously mentioned mitigation, monitoring, and reporting requirements. The Authorization's duration will not exceed one year from the date of issuance.

Dated: April 30, 2012.

**Helen M. Golde,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–22602 Filed 9–12–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### First Responder Network Authority Board Meeting

**AGENCY:** National Telecommunications and Information Administration, U.S. Department of Commerce.

**ACTION:** Notice of Open Public Meeting.

**SUMMARY:** This notice announces an open public meeting of the Board of the First Responder Network Authority (FirstNet).

**DATES:** The meeting will be held on September 25, 2012, from 9 a.m. to 12:30 p.m. Eastern Time.

**ADDRESSES:** Board members will meet in the Secretary's Conference Room, Herbert C. Hoover Building, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Uzoma Onyeije, Senior Advisor for Public Safety, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230: telephone (202) 482–0016; email *uonyeije@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Middle Class Tax Relief and Job Creation Act of 2012 (Act), Public Law 112–96, 126 Stat. 156 (2012), created the First Responder Network Authority (FirstNet) as an independent authority within the National Telecommunications and Information Administration (NTIA). The Act directs FirstNet to establish a single nationwide, interoperable public safety broadband network. The FirstNet Board is responsible for making strategic decisions regarding FirstNet's operations. The FirstNet Board will hold its first public meeting on September 25, 2012.

*Matters to Be Considered:* The FirstNet Board will adopt its bylaws and make initial organizational decisions. NTIA will post a detailed agenda on its Web site, *http://www.ntia.doc.gov,* prior to the meeting. The agenda topics are subject to change.

*Time and Date:* The meeting will be held on September 25, 2012, from 9 a.m. to 12:30 p.m. Eastern Time. The time is subject to change.

*Place:* Board members will meet in the Secretary's Conference Room, Herbert C. Hoover Building, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

*Other Information:* The meeting is open to the public and press. The meeting will be webcast. Please refer to NTIA's Web site at *http://www.ntia.doc.gov/firstnet-public-meetings* for webcast instructions and other information.

Given the space limitations of the Secretary's Conference Room, members of the public who wish to attend the meeting in person will be directed to the Auditorium in the Herbert C. Hoover Building where they can observe the meeting by video. Due to security requirements and to facilitate entry into the building, U.S. nationals must present valid, government-issued photo identification upon arrival. Foreign nationals must contact Uzoma Onyeije at (202) 482–0016 or *uonyeije@ntia.doc.gov* at least five (5) business days prior to the meeting in order to provide the necessary clearance information, and must present valid, government-issued photo identification upon arrival.

The meeting is accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Uzoma Onyeije, Senior Advisor for Public Safety, at (202) 482–0016 or *uonyeije@ntia.doc.gov,* at least five (5) business days before the meeting.

*Records:* NTIA maintains records of all Board proceedings. Board minutes will be available at *http://www.ntia.doc.gov/firstnet-public-meetings.*

Dated: September 10, 2012.

**Kathy D. Smith,**

*Chief Counsel.*

[FR Doc. 2012–22605 Filed 9–12–12; 8:45 am]

**BILLING CODE 3510–60–P**

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### Privacy Act of 1974, as Amended

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of Proposed Privacy Act System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, herein referred to as the Consumer Financial Protection Bureau (''CFPB'' or the ''Bureau''), gives notice of the establishment of a Privacy Act System of Records.

**DATES:** Comments must be received no later than October 15, 2012. The new system of records will be effective October 23, 2012 unless the comments received result in a contrary determination.

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

- *Electronic: privacy@cfpb.gov.*
- *Mail or Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

**SUPPLEMENTARY INFORMATION:** The Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Act''), Public Law 111–203, Title X, established the CFPB. The CFPB administers, enforces, and implements federal consumer financial law, and, among other powers, has authority to protect consumers from unfair, deceptive, abusive, and discriminatory practices when obtaining consumer financial products or services. The CFPB will maintain the records systems covered by this notice. The system of records described in this notice, CFPB.020, will allow for the issuance of site badges and for the registration of employees, contractors, consultants, detailees, interns, volunteers, affiliates, and visitors for access to CFPB facilities.

The report of a new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000,[1] and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled, ''CFPB.020 CFPB Site Badge and Visitor Management Systems'' is published below.

Dated: September 7, 2012.

**Claire Stapleton,**

*Chief Privacy Officer, Bureau of Consumer Financial Protection.*

### CFPB.020

**SYSTEM NAME:**

CFPB Site Badge and Visitor Management Systems

**SYSTEM LOCATION:**

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered by these systems include, but are not limited to: (1) Current and former CFPB employees or individuals who have accepted an offer of employment from the CFPB; (2) individuals authorized to perform or use services provided in CFPB facilities including contractors, consultants, detailees, and interns; (3) volunteers or other affiliates of the CFPB and (4) visitors to CFPB facilities.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records maintained in these systems may contain identifiable information including, but not limited to: Name, email address, phone number, employment status, organization/office of assignment.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 111–203, Title X, Section 1012, codified at 12 U.S.C. 5492.

**PURPOSE(S):**

The information in these systems is being collected to enable the registration of employees, contractors, consultants, detailees, interns, volunteers, affiliates, and visitors to CFPB facilities and issue badges for such access.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records may be disclosed, consistent with the CFPB Disclosure of Records and Information Rules,

[1] Although pursuant to Section 1017(a)(4)(E) of the Consumer Financial Protection Act, Public Law 111–203, the CFPB is not required to comply with OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

promulgated at 12 CFR part 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to: (a) Permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency; or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB, or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and in the case of a proceeding, such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ or the CFPB has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) A grand jury pursuant either to a federal or state grand jury subpoena, or to a prosecution request that such record be released for the purpose of its introduction to a grand jury, where the subpoena or request has been specifically approved by a court. In those cases where the Federal Government is not a party to the proceeding, records may be disclosed if a subpoena has been signed by a judge;

(8) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(9) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license.

(10) Appropriate federal, state, local, foreign, tribal, or self-regulatory organizations or agencies responsible for investigating, prosecuting, enforcing, implementing, issuing, or carrying out a statute, rule, regulation, order, policy, or license if the information may be relevant to a potential violation of civil or criminal law, rule, regulation, order, policy or license.

**POLICIES AND PRACTIES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

The records are maintained in paper and electronic media. Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

**RETRIEVABILITY:**

Records may be retrievable by a variety of fields including, but not limited to: Name, email address, phone number, employment status, organization/office of assignment, or by some combination thereof.

**SAFEGUARDS:**

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

**RETENTION AND DISPOSAL:**

The CFPB will maintain computer and paper records indefinitely until the National Archives and Records Administration approves the CFPB's records disposition schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

Consumer Financial Protection Bureau, Physical Security Program Manager, 1700 G Street NW., Washington, DC 20552.

**NOTIFICATION PROCEDURE:**

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

**RECORD ACCESS PROCEDURE:**

See ''Notification Procedures'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification Procedures'' above.

**RECORD SOURCE CATEGORIES:**

Information in this system is obtained from employees, contractors, consultants, detailees, interns, volunteers, affiliates and/or their employer or sponsor, and visitors to CFPB facilities.

**EXEMTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2012–22500 Filed 9–12–12; 8:45 am]

**BILLING CODE 4810–AM–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, September 19, 2012, 10 a.m.–12 p.m.

**PLACE:** Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Commission Meeting—Open to the Public

**Matters To Be Considered:**

*Briefing Matters:*

1. Bassinets and Cradles—Notice of Proposed Rulemaking
2. Consideration of Opportunities to Reduce Third Party Testing Costs Consistent with Assuring the Compliance of Children's Products

A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast.*

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: September 11, 2012.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2012–22696 Filed 9–11–12; 4:15 pm]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2012–OS–0109]**

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Intelligence Agency, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Defense Intelligence Agency is proposing to alter a system to its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The blanket (k)(1) exemption applies to this systems of records to accurately describe the basis for exempting disclosure of classified information that is or may be contained in the records.

**DATES:** This proposed action will be effective on October 15, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before October 15, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive; East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Theresa Lowery at Defense Intelligence Agency, DAN 1–C, 600 MacDill Blvd., Washington, DC 20340–0001 or by phone at (202) 231–1193.

**SUPPLEMENTARY INFORMATION:** The Defense Intelligence Agency system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a of the Privacy Act of 1974, as amended, was submitted on July 25, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the, the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 10, 2012.

**Aaron Siegel,**

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

**LDIA 06–0004**

**SYSTEM NAME:**

Recall Rosters (April 16, 2010, 75 FR 19946).

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with ''Organizational elements and offices, Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–0001.''

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with ''Individual's name, organization and home address, work, home, cellular and pager numbers, home email address, emergency contact information such as name, address and telephone number, contact listing files, organizational telephone directories, and listing of office personnel.''

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''Directorate for Administration, Office of Contingency Operations, Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–0001.''

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DIA Freedom of Information Act Office (DAN–1A), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–0001.

Request should contain the individual's full name, current address, and telephone number.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records, should address written inquiries to the DIA Freedom of Information Act Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–0001.

Request should contain the individual's full name, current address, and telephone number.''

* * * * *

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with ''The individual and information migrated from the agency Human Resources Data Base.''

* * * * *

[FR Doc. 2012–22581 Filed 9–12–12; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2012–OS–0111]**

### Privacy Act of 1974; Systems of Records

**AGENCY:** National Security Agency/Central Security Service, DoD.

**ACTION:** Notice to Amend a System of Records.

**SUMMARY:** The National Security Agency (NSA) is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective on October 15, 2012 unless comments are received which result in a contrary determination. Comments

will be accepted on or before October 15, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kris Grein, National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248, or by phone at (301) 688–6527.

**SUPPLEMENTARY INFORMATION:** The National Security Agency/Central Security System systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 10, 2012.

**Aaron Siegel,**

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

## GNSA 25

**SYSTEM NAME:**

NSA/CSS Travel Records (June 8, 2009, 74 FR 27116).

**CHANGES:**

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**SYSTEM LOCATION:**

Delete entry and replace with ''Primary location: National Security Agency/Central Security Service (NSA/CSS), 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

Decentralized segments: Defense Intelligence Agency (DIA) Headquarters and DIA field elements as authorized and appropriate. For official mailing address for any of the decentralized system locations, write to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.''

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with ''5 U.S.C. Chapter 57, Travel, Transportation and Subsistence; 10 U.S.C. Chapter 157, Transportation; 37 U.S.C. Section 481, Travel and Transportation Allowances: Administrative Provisions; 41 CFR, Chapters 300–304, the Federal Travel Regulations and E.O. 9397 (SSN), as amended.''

* * * * *

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine if records about themselves are contained in this record system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquires should include individuals full name, mailing address, telephone number and signature.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquires should include individuals full name, address, telephone number and signature.''

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with ''The NSA/CSS rules for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained by written request addressed to the Deputy Associate Director for Policy and Records, National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.''

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with ''Information is collected from the individual and the individual's supervisor, the hiring activity's personnel office, and from travel and expense forms.''

* * * * *

[FR Doc. 2012–22583 Filed 9–12–12; 8:45 am]

**BILLING CODE 5001–06–P**

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# DEPARTMENT OF DEFENSE

## Office of the Secretary

**[Docket ID: DoD–2012–OS–0110]**

## Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice to delete a System of Records.

**SUMMARY:** The Office of the Secretary of Defense is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective on October 15, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before October 15, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Cindy Allard at (571) 372–0461.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed deletion is not

within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 10, 2012.

**Aaron Siegel,**

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

**DELETION:**

**DPA DXA.C 09**

Public Correspondence Files (February 22, 1993, 58 FR 10227).

*Reason:* Based on a recent review of systems of records notice DPA DXA.C 09, Public Correspondence Files, it has been determined the program never retrieved correspondence by name and therefore this system was never used and can be deleted.

[FR Doc. 2012–22582 Filed 9–12–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2012–OS–0112]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective on October 15, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before October 15, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571)372–0461.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 28, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 10, 2012.

**Aaron Siegel,**

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

**DHA 11**

**SYSTEM NAME:**

Defense Medical Personnel Preparedness Database (December 12, 2005, 70 FR 73454).

**CHANGES:**

* * * * *

**SYSTEM NAME:**

Delete entry and replace with ''Defense Medical Human Resources System—internet (DMHRSi).''

**SYSTEM LOCATION:**

Delete entry and replace with ''Department of Defense, TRICARE Management Activity, 7700 Arlington Boulevard, Falls Church, VA 22042–5101.''

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with ''Active duty Military, Reserve, National Guard, and Department of Defense (DoD) civilian employees who are part of the Military Health System (MHS) or assigned to or employed by the TRICARE Management Activity (TMA), to include non-appropriated fund employees, foreign nationals, DoD contractors, and volunteers.''

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with ''Name, date of birth, Social Security Number (SSN) and/or DoD Identification (ID) Number, National Provider Identifier (NPI), gender, place of birth, citizenship; home address, home telephone number, business email address, military rank, medical credentials including class names and class dates, specialty, licensure, educational background; immunization history, and medical readiness training.''

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with ''10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; DoDD 5136.01, Assistant Secretary of Defense for Health Affairs (ASD(HA)); DoDI 1322.24, Military Medical Readiness Skills Training; DoD 6013.13–M, Medical Expense Performance Reporting System (MEPRS) for Fixed, Medical/Dental Treatment Facilities; DoD 5136.1–P, Medical Readiness Strategic Plan (MRSP); E.O. 12656, Assignment of Emergency Preparedness Responsibilities; and E.O. 9397 (SSN), as amended.''

**PURPOSE(S):**

Delete entry and replace with ''To consolidate all of the human resources functions, including readiness, manpower, labor cost assignment, education, and training, for personnel across the DoD medical enterprise, thereby providing a single database source of instant query/access for all personnel types and the readiness posture of all DoD medical personnel. This system of records permits ready access to essential manpower, personnel, labor cost assignment, education and training, and personnel readiness information across the DoD medical enterprise.''

* * * * *

**STORAGE:**

Delete entry and replace with ''Electronic storage media.''

**RETRIEVABILITY:**

Delete entry and replace with ''Individual's name and SSN and/or DoD ID Number.''

**SAFEGUARDS:**

Delete entry and replace with ''Electronic media, data and/or electronic records are maintained in a secure, limited access, or monitored area. Physical entry is restricted by the use of locks, passwords which are changed periodically, and

administrative procedures. The system provides a two-factor authentication, using a Common Access Card and Personal Identification Number. Access to personally identifiable information in this system of records is restricted to those who require the data in the performance of their official duties, and have received proper training relative to the Privacy Act of 1974, as amended, and DoD Information Assurance Regulations.''

**RETENTION AND DISPOSAL:**

Delete entry and replace with ''Disposition pending (until the National Archives and Records Administration approves retention and disposal schedule, records will be treated as permanent).''

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''Program Manager, Defense Health Services System, 7700 Arlington Boulevard, Falls Church, VA 22042–5101.''

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained within this system of records should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: TMA Privacy Officer, TMA Privacy and Civil Liberties Office, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101.

Requests should contain the individual's full name and SSN and/or DoD ID Number.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals seeking access to records about themselves contained within this system of records should address written inquiries to the TRICARE Management Activity, ATTN: Freedom of Information Act Requester Service Center, 16401 Centretech Parkway, Aurora, CO 80011–9066.

''Requests should contain the individual's full name and SSN and/or DoD ID Number.''

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with ''The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction 81 (as amended, November 2009); 32 CFR part 311; or may be obtained from the system manager.''

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with ''DoD pay and personnel systems, DoD medical facilities personnel, DoD supervisors, and DoD operational records.''

* * * * *

[FR Doc. 2012–22579 Filed 9–12–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2012–OS–0106]**

### Privacy Act of 1974; System of Records

**AGENCY:** National Security Agency/Central Security Service, DoD.

**ACTION:** Notice to add a system of records.

**SUMMARY:** The National Security Agency/Central Security Service proposes to add a new system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The blanket (k)(1) exemption applies to this system of records to accurately describe the basis for exempting disclosure of classified information that is or may be contained in the records.

**DATES:** This proposed action will be effective on October 15, 2012 unless comments are received, which result in a contrary determination.

Comments will be accepted on or before October 15, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kris Grein, National Security Agency/Central Security Service (NSA/CSS), Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248, or by phone at (301) 688–6527.

**SUPPLEMENTARY INFORMATION:** The National Security Agency/Central Security Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT.** The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 19, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 10, 2012.

**Aaron Siegel,**

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

### GNSA 30

**SYSTEM NAME:**

Congressional, Executive, and Political Inquiry Records.

**SYSTEM LOCATION:**

National Security Agency/Central Security Service, 9800 Savage Road, Ft. George G. Meade, MD 20755–6000.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals or organizations that have authorized Members/Staff of Executive Branch Agencies of Government to make inquiries on their behalf.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records contain representative's name, constituent's name, details surrounding the issue being researched. The records may also contain the constituent's home address, home telephone number, or related personal information provided by constituent/representative making the inquiry.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; DoD Directive 5400.04, Provision of Information to Congress; and DoD Instruction 5400.04, Provision of Information to Congress.

**PURPOSE(S):**

Information is collected to reply to inquiries and to determine the need for and course of action to be taken for resolution.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C.

552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(a)(b)(3) as follows:

Information is furnished in reply to a Member/Staff of Executive Branch Agencies of Government who wrote to NSA on behalf of the constituent and who use it to respond to the constituent.

To Federal government agencies having cognizance over or authority to act on the issues involved.

The DoD Blanket Routine Uses published at the beginning of the NSA/CSS's compilation of record systems may apply to this records system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper in file folders and electronic storage media.

**RETRIEVABILITY:**

Retrieved by constituent's name or representative's name.

**SAFEGUARDS:**

Buildings are secured by a series of guarded pedestrian gates and checkpoints. Access to facilities is limited to security-cleared personnel and escorted visitors only. Within the facilities themselves, access to paper and computer printouts is controlled by limited-access facilities and lockable containers. Access to electronic records is limited and controlled by computer password protection.

**RETENTION AND DISPOSAL:**

Records are retained for 10 years and then destroyed. Paper records are destroyed by pulping, burning, or shredding. Magnetic media is erased or destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Associate Director for Legislative Affairs, National Security Agency/Central Security Service, 9800 Savage Road, Fort George G. Meade, MD 20755–6000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, mailing address, telephone number and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves that is contained in this system should address written inquiries to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, Suite 6248, 9800 Savage Road, Ft. George G. Meade, MD 20755–6248.

Written inquiries should contain the individual's full name, mailing address, telephone number and signature.

**CONTESTING RECORDS PROCEDURES:**

The NSA/CSS rules for contesting contents and appealing initial determination are published at 32 CFR part 322 or may be obtained by written request addressed to the National Security Agency/Central Security Service, Freedom of Information Act/Privacy Act Office, Suite 6248, 9800 Savage Road, Ft. George G. Meade, MD 20755–6248.

**RECORDS SOURCE CATEGORIES:**

Constituent, the constituent's representative, and from agency files.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), and published in 32 CFR 322.7. For additional information contact the system manager.

[FR Doc. 2012–22549 Filed 9–12–12; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2012–OS–0107]**

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary of Defense, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The blanket (k)(1) exemption applies to this system of records to accurately describe the basis for exempting disclosure of classified information that are or may be contained in the records.

**DATES:** This proposed action will be effective on October 15, 2012 unless comments are received, which result in a contrary determination. Comments will be accepted on or before October 15, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 19, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 10, 2012.

**Aaron Siegel,**

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

### DWHS E06

**SYSTEM NAME:**

Enterprise Correspondence Control System (ECCS) (August 19, 2009, 74 FR 41870).

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with ''Correspondence Management Division, Executive Services Directorate,

Washington Headquarters Services, Room 3C843, 1155 Defense Pentagon, Washington, DC 20301–1155.''

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with ''Individuals who either initiated, or are the subject of communications with the Office of the Secretary of Defense.''

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with ''Name (last name and first name initial) and contact information (mailing address, telephone number, fax number, email address) of individuals writing to the Secretary of Defense. This may include inquiries and other communications pertaining to any matter under the cognizance of the Secretary of Defense. Records may include complaints, appeals, grievances, investigations, alleged improprieties, personnel actions, medical reports, intelligence, and related matters associated with the mission and business activities of the department. They may be either specific or general in nature and may include such personal information as an individual's name, Social Security Number (SSN), date and place of birth, description of events or incidents of a sensitive or privileged nature, commendatory or unfavorable data.

Staff packages pertaining to individuals. Examples of such packages include: Assignment requests, awards, nominations, promotions, and presidential support letters; condolence letters, retirement letters and letters of appreciation; Senior Executive Service letters and pay adjustments, appointment letters, certificates, Secretary of Defense letters of appreciation, travel requests, military airlift requests and other related documents.''

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with ''10 U.S.C. 113, Secretary of Defense; 44 U.S.C. Chapter 31, Records Management by Federal Agencies; DoD Directive 5105.53, Director of Administration and Management (DA&M); DoD Directive 5110.4, Washington Headquarters Services (WHS); and E.O. 9397 (SSN), as amended.''

**PURPOSE(S):**

Delete entry and replace with ''Information is collected on behalf of the Secretary of Defense to support the functions of the Department of Defense and maintain a record of actions taken and responses to the President, White House staff, other Cabinet officials, Congress, state and local officials, corporate officials, members of the Department of Defense and the public.''

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''Chief, Correspondence Management Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.''

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Correspondence Management Division, Executive Services Directorate, Washington Headquarters Services, Room 3C843, 1155 Defense Pentagon, Washington, DC 20301–1155.

The requests should contain the individual's last name, first name initial, subject, and document date.''

* * * * *

[FR Doc. 2012–22550 Filed 9–12–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DoD–2012–OS–0108]**

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Information Systems Agency, DoD.

**ACTION:** Notice to alter a System of Records.

**SUMMARY:** The Defense Information Systems Agency proposes to alter a system of records in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The blanket (k)(1) exemption applies to this systems of records to accurately describe the basis for exempting disclosure of classified information that is or may be contained in the records.

**DATES:** The proposed action will be effective on October 15, 2012 unless comments are received which result in a contrary determination.

Comments will be accepted on or before October 15, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeanette Weathers-Jenkins, DISA Privacy Officer, Chief Information Office, 6916 Cooper Avenue, Fort Meade, MD 20755–7901, or by phone at (301) 225–8158.

**SUPPLEMENTARY INFORMATION:** The Defense Information Systems Agency notices for system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 23, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I of OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 10, 2012.

**Aaron Siegel,**

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

**KCIV.01**

**SYSTEM NAME:**

Records Relating to DISA Transaction under the Privacy Act of 1974 (February 22, 1993, 58 FR 10562)

* * * * *

**CHANGES:**

**SYSTEM ID:**

Delete entry and replace with ''K890.20''.

**SYSTEM NAME:**

Delete entry and replace with ''Privacy Act Records.''

**SYSTEM LOCATION:**

Delete entry and replace with ''Primary location: Defense Information Systems Agency (DISA), Chief

Information Office (CIO), 6916 Cooper Ave., Ft. Meade, MD 20755–7901.

Decentralized locations: DISA Field Activities World-wide. Official mailing addresses are published as an Appendix to DISA's compilation of systems of records notices.''

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with ''All persons who request access to, information from, or amendment of records about themselves maintained by the Defense Information Systems Agency, under the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), as amended.''

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with ''Full name, home address, telephone number, copy of current DISA identification badge, copy of driver's license, letters, memoranda, legal opinions, messages, and miscellaneous documents relating to an individual's request for access to, or amendment of, records concerning that person, including letters of denial, appeals, statements of disagreements, and related documents accumulated in processing requests received under the Privacy Act of 1974.''

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 552a, The Privacy Act of 1974, as amended; Department of Defense (DoD) 5400.11–R, DoD Privacy Program; DISAI 210–225–2, DISA Privacy Program.''

**PURPOSE(S):**

Delete entry and replace with ''This system is maintained for the purpose of processing access and amendment requests and administrative appeals under the Privacy Act; for the purpose of participating in litigation regarding agency action on such requests and appeals; and for the purpose of assisting the Defense Information Systems Agency in carrying out any other responsibilities under the Privacy Act.''

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the DISA's compilation of systems of records notices may apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Delete entry and replace with ''Records may be stored on paper and electronic storage media.''

**RETRIEVABILITY:**

Delete entry and replace with ''Retrieve by full name.''

**SAFEGUARDS:**

Delete entry and replace with ''Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Electronic records are password protected and encrypted. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know.''

**RETENTION AND DISPOSAL:**

Delete entry and replace with ''Official Privacy Act requests are kept a minimum of 2 years. Requests denied but not appealed are destroyed after 5 years. Requests for access or amendment and appeal or denial are destroyed 4 years after final action or 3 years after adjudication by the courts, whichever is later. Control logs of accounting of disclosures are kept 5 years or in accordance with the approved disposition instructions for the related subject records, whichever is later. Records are destroyed by shredding, pulping, burning or degaussing.''

**SYSTEM MANAGER(S) AND ADDRESS:**

Delete entry and replace with ''DISA Privacy Officer, Defense Information Systems Agency (DISA), Chief Information Office (CIO), 6916 Cooper Ave., Fort Meade, MD 20755–7901.''

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Information Systems Agency, Chief Information Office (CIO), 6916 Cooper Ave., Fort Meade, MD 20755–7901.

Written requests should contain the full name, home address, and telephone number of the requesting individual. The requester must present a copy of their current DISA identification badge or copy of their driver's license as proof of identity.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Information Systems Agency, Chief Information Office (CIO), 6916 Cooper Ave., Fort Meade, MD 20755–7901.

Written requests should contain the full name, home address, and telephone number of the requesting individual. The requester must present a copy of their current DISA identification badge or a copy of their driver's license as proof of identity.''

**CONTESTING RECORD PROCEDURES:**

Delete entry and replace with ''DISA's rules for accessing records, for contesting content and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the DISA Privacy Officer.''

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with ''Those individuals who submit initial requests and administrative appeals pursuant to the Privacy Act; the agency records searched in the process of responding to such requests and appeals.''

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Delete entry and replace with ''An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), and published in 32 CFR part 316.8. For additional information contact the system manager.''

[FR Doc. 2012–22551 Filed 9–12–12; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### TRICARE, Formerly Known as the Civilian Health and Medical Program of the Uniformed Services; Fiscal Year 2013 Continued Health Care Benefit Program Premium Update

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice of updated continued health care benefit program premiums for fiscal year 2013.

**SUMMARY:** This notice provides the updated Continued Health Care Benefit Program premiums for Fiscal Year 2013. Premiums may be revised annually and shall be published annually for each Fiscal Year.

**DATES:** The Fiscal Year 2013 rates contained in this notice are effective for services on or after October 1, 2012.

**ADDRESSES:** TRICARE Management Activity (TMA), Policy and Benefits Branch, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101.

**FOR FURTHER INFORMATION CONTACT:** Mark A. Ellis, telephone (703) 681–0039.

**SUPPLEMENTARY INFORMATION:** The final rule published in the **Federal Register** on September 30, 1994 (59 FR 49818) set forth rules to implement the Continued Health Care Benefit Program (CHCBP) required by 10 United States Code 1078a. Included in this final rule were provisions for updating the CHCBP premiums for each federal fiscal year. As stated in the final rule, the premiums are based on Federal Employee Health Benefit Program employee and agency contributions required for a comparable health benefits plan, plus an administrative fee. Premiums may be revised annually and shall be published annually for each fiscal year.

The TRICARE Management Activity has updated the quarterly premiums for Fiscal Year 2013 as shown below.

**Quarterly CHCBP Premiums for Fiscal Year 2013**

Individual—$1,138.

Family—$2,555.

The above premiums are effective for services rendered on or after October 1, 2012.

Dated: September 10, 2012.

**Aaron Siegel,**

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

[FR Doc. 2012–22541 Filed 9–12–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket ID USAF–2012–0018]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Department of the Air Force proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective on October 15, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before October 15, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (202) 404–6575.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on August 28, 2012 to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: September 10, 2012.

**Aaron Siegel,**

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

**F036 AF PC A**

**SYSTEM NAME:**

Effectiveness/Performance Reporting Records (February 10, 2009, 74 FR 6591).

**CHANGES:**

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**SYSTEM LOCATION:**

Delete entry and replace with ''Air Force Personnel Center (AFPC), 550 C Street West, Randolph Air Force Base, TX 78150–4709; Air Reserve Personnel Center, Denver, 18420 East Silver Creek Avenue, Building 390, 68, Buckley Air Force Base, CO 80011–9502.

Headquarters of major commands and field operating agencies; military personnel sections; each State Adjutant General Office and Air Force Reserve and Air National Guard units. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.''

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with ''Military Personnel Only.

**OFFICERS:**

Regular Active Duty Air Force/Air National Guard/Air Force Reserve personnel serving in grades Warrant Officer (W–1) through Colonel (O–6).

**ENLISTED:**

Active duty personnel grades Airman Basic (E–1) through Chief Master Sergeant (E–9). Air National Guard and Air Force Reserve personnel grades Staff Sergeant (E–5) through Chief Master Sergeant (E–9).''

* * * * *

**RETRIEVABILITY:**

Delete entry and replace with ''Name and/or Social Security Number (SSN).''

**SAFEGUARDS:**

Delete entry and replace with ''Records are accessed by the program manager and by persons cleared for need-to-know. Records are stored in file cabinets in the building that are either locked or have controlled access entry requirements. Electronic files are only accessed by authorized personnel with a Secure Common Access Card (CAC) and need-to-know.''

* * * * *

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with ''Performance evaluations maintained on Air Force Active Duty, Reserve, and Air National Guard personnel grades airman basic E–1 through general O–10.''

* * * * *

[FR Doc. 2012–22580 Filed 9–12–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

**[Docket ID: USAF–2012–0015]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice to delete a System of Records.

**SUMMARY:** The Department of the Air Force is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective on October 15, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before October 15, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800 or at 202–404–6575.

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The Department of the Air Force proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 10, 2012.

**Aaron Siegel,**

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

**DELETION:**

**F036 AFPC M**

**SYSTEM NAME:**

Officer Utilization Records System (June 11, 1997, 62 FR 31793).

*Reason:* Records are no longer required to be maintained by any office within the Directorate of Assignments (DPA) or any office with the Air Force Personnel Center (AFPC). Information is accessed through the Military Personnel Data System (MilPDS). Therefore, FO36 AFPC M Officer Utilization Records System (June 11, 1997, 62 FR 31793) can be deleted.

[FR Doc. 2012–22553 Filed 9–12–12; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID: USN–2012–0012]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Department of the Navy proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The blanket (k)(1) exemption applies to this systems of records to accurately describe the basis for exempting disclosure of classified information that is or may be contained in the records.

**DATES:** This proposed action will be effective on October 15, 2012 unless comments are received, which result in a contrary determination. Comments will be accepted on or before October 15, 2012.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Patterson, Department of the Navy, DNS–36, 2000 Navy Pentagon, Washington, DC 20350–2000 or call at (202) 685–6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 8, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 10, 2012.

**Aaron Siegel,**

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

**NM01730–1**

**SYSTEM NAME:**

Navy Chaplain Privileged Counseling Files (February 21, 2008, 73 FR 9549).

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete entry and replace with ''Organizational elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List.''

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with ''Name, date and nature of service provided, and Chaplain's notes.

PII that is mentioned by an individual during the course of a counseling interview, even if that PII was not solicited, may become part of a counseling file.''

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and SECNAVINST 1730.9, Confidential Communications to Chaplains.''

* * * * *

**NOTIFICATION PROCEDURE:**

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the chaplain who provided the service. Official mailing addresses are published in the Standard Navy Distribution List.

The request should include full name, date of service, and address of the individual concerned and should be signed.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

**RECORD ACCESS PROCEDURES:**

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the chaplain who provided the service. Official mailing addresses are published in the Standard Navy Distribution List.

The request should include full name, date of service, and address of the individual concerned and should be signed.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.''

* * * * *

[FR Doc. 2012–22552 Filed 9–12–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests; Office of Planning, Evaluation and Policy Development; Annual Mandatory Collection of Elementary and Secondary Education Data Through EDFacts

**SUMMARY:** The collection, use, and reporting of education data is an integral component of the mission of the U.S. Department of Education (ED). EDFacts, an ED initiative to put performance data at the center of ED's policy, management, and budget decision-making processes for all K–12 educational programs, has transformed the way in which ED collects and uses data. EDFacts provides an electronic submission system for state educational agencies (SEAs), and centralizes within ED the availability of the performance data supplied by SEAs to enable better analysis and use in policy development, planning, and management.

**DATES:** Interested persons are invited to submit comments on or before November 13, 2012.

**ADDRESSES:** Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04929. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Annual Mandatory Collection of Elementary and Secondary Education Data Through EDFacts.

*OMB Control Number:* 1875–0240.

*Type of Review:* Revision.

*Total Estimated Number of Annual Responses:* 55.

*Total Estimated Number of Annual Burden Hours:* 116,325.

*Abstract:* ED is currently in the process of collecting data for the 2010–11, 2011–12, and 2012–13 school years as approved by the Office of Management and Budget (OMB) (1875–0240). ED seeks another three-year approval for this collection. The proposed collection includes the 2013–14, 2014–15, and 2015–16 school years. (As part of this approval, it should be understood that ED is authorized to collect the data about these school years over whatever time is required to secure complete and accurate data from each SEA.) ED seeks OMB approval under the Paperwork Reduction Act to collect the elementary and secondary education data from state education agencies as described in the five sections of Attachment B that document all of the data groups. ED encourages the public to review, at a minimum, Attachment C, which outlines the changes between what is currently collected and what is newly proposed for collection. To the extent that any of these proposed new data groups are not available as of the 2013–14 school year, ED seeks to know from the SEA data providers if those data will be available in future years. If information for a data group is not currently available, please provide information beyond the fact that it is not available. Are there specific impediments to providing this data that you can describe? Is the definition for the data group unclear or ambiguous? Do the requested permitted values align with the way your state collects the data? This is very important information because the collecction of these data is mandatory. ED also seeks to know if the SEA data definitions are consistent and compatible with the EDFacts definitions and accurately reflect the way data is stored and used for education by SEAs. The answers to these quesitons by the data providers will influence the timing and content of the final EDFacts proposal for the collection of these data. In addition, ED requests that SEAs and other stakeholders respond to the directed questions found in Attachment D.

Dated: September 6, 2012.

**Darrin A. King,**

*Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

[FR Doc. 2012–22508 Filed 9–12–12; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### List of Correspondence From January 1, 2012, Through March 31, 2012

**AGENCY:** Office of Special Education and Rehabilitative Services; Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Secretary is publishing the following list of correspondence from the U.S. Department of Education (Department) to individuals during the previous quarter. The correspondence on this list describes the Department's interpretations of the Individuals with Disabilities Education Act (IDEA) or the regulations that implement the IDEA. This list and the letters or other documents described in this list, with personally identifiable information redacted, as appropriate, can be found at: *www2.ed.gov/policy/speced/guid/idea/index.html.*

**FOR FURTHER INFORMATION CONTACT:** Jessica Spataro or Mary Louise Dirrigl. Telephone: (202) 245–7468.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), you can call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this list and the letters or other Departmental documents described in this list in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting Jessica Spataro or Mary Louise Dirrigl at (202) 245–7468.

**SUPPLEMENTARY INFORMATION:** The following list identifies correspondence from the Department issued from January 1, 2012, through March 31, 2012. Under section 607(f) of the IDEA, the Secretary is required to publish this list quarterly in the **Federal Register**. The list includes those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, and it may also include letters and other documents that the Department believes will assist the public in understanding the requirements of the law. The list identifies the date and topic of each letter, and it provides summary information, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been redacted, as appropriate.

**Part B—Assistance for Education of All Children With Disabilities**

*Section 612—State Eligibility*

Topic Addressed: Free Appropriate Public Education

○ Letter dated February 29, 2012, to individuals (personally identifiable information redacted), regarding the obligation to make a free appropriate public education available to all eligible children with disabilities, including children with ''high cognition'' who meet the State's academic achievement standards.

Topic Addressed: Least Restrictive Environment

○ Dear Colleague Letter dated February 29, 2012, reiterating that the least restrictive environment requirements in Part B of the IDEA apply to the placement of preschool children with disabilities.

*Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements*

Topic Addressed: Initial Evaluations

○ Letter dated February 29, 2012, to Association for Neurologically Impaired Children Executive Director Philip Ferrara, regarding the relationship between a process based on the child's response to scientific, research-based intervention and the evaluation requirements in Part B of the IDEA.

Topic Addressed: Individualized Education Programs

○ Letter dated March 7, 2012, to individual (personally identifiable information redacted), regarding individualized education program and placement requirements and applicable due process procedures in Part B of the IDEA.

*Section 615—Procedural Safeguards*

Topic Addressed: Impartial Due Process Hearings

○ Letter dated February 9, 2012, to School Law Center LLC, attorneys Amy Goetz and Atlee Reilly, regarding the right of a parent of a child with a disability to request a due process hearing under Minnesota law.

○ Letter dated February 16, 2012, to Minnesota Department of Education Commissioner Brenda Cassellius, regarding the explanation in Minnesota's notice of procedural safeguards of a parent's opportunity to request a due process hearing under Minnesota law.

**Part C—Infants and Toddlers With Disabilities**

*Section 634—Eligibility*

Topic Addressed: State Residency Requirements

○ Letter dated March 28, 2012, to individual (personally identifiable information redacted), regarding how State residency requirements may be implemented consistent with Part C of the IDEA.

*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.

Dated: September 10, 2012.

**Michael Yudin,**

*Acting Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2012–22618 Filed 9–12–12; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### The Historically Black College and University Capital Financing Advisory Board

**AGENCY:** U.S. Department of Education, Office of Postsecondary Education, The Historically Black College and University Capital Financing Advisory Board.

**ACTION:** Notice of an open meeting.

**SUMMARY:** This notice sets forth the date and proposed agenda of an upcoming open meeting of the Historically Black College and University Capital Financing Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is

intended to notify the public of their opportunity to attend.

**DATES:** Monday, September 24, 2012.

**TIME:** 10:00 a.m.–2:00 p.m.

**ADDRESSES:** U.S. Department of Education, Board Room, 80 F Street NW., Washington, DC 20001.

**FOR FURTHER INFORMATION CONTACT:** Donald E. Watson, Executive Director, Historically Black College and University Capital Financing (HBCU Capital Financing) Advisory Board, 1990 K Street NW., Room 6040, Washington, DC 20006; telephone: (202) 219–7037; fax: (202) 502–7852; email: *donald.watson@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339, Monday through Friday between the hours of 8 a.m. and 8 p.m., Eastern Time.

**SUPPLEMENTARY INFORMATION:** The Board is authorized by Title III, Part D, Section 347, of the Higher Education Act of 1965, as amended in 1998 (20 U.S.C. 1066f). The Board is established within the Department of Education to provide advice and counsel to the Secretary and the Designated Bonding Authority as to the most effective and efficient means of implementing construction financing on Historically Black College and University (HBCU) campuses and to advise Congress regarding the progress made in implementing the program. Specifically, the Board provides advice as to the capital needs of HBCUs, how those needs can be met through the program, and what additional steps might be taken to improve the operation and implementation of the construction-financing program.

The purpose of this meeting is to review current program activities, to make administrative and legislative recommendations to the Secretary and the U.S. Congress addressing the capital financing issues of HBCUs, and to discuss additional steps in which the HBCU Capital Financing Program might improve its operation.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Donald E. Watson at 202 219–7037, no later than Thursday, September 20, 2012. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Monday, September 24, 2012, between 1:00 p.m. and 1:30 p.m. Each speaker will be allowed to speak for up to three minutes. Those members of the public interested in submitting written comments may do so by submitting them to the attention of Donald E. Watson, 1990 K Street NW., Room 6040, Washington DC, by Thursday September 20, 2012.

Records are kept of all Board proceedings and are available for public inspection at the Office of the Historically Black College and University Capital Financing Advisory Board, 1990 K Street NW., Room 6040, Washington, DC 20006, from the hours of 9:00 a.m. to 5:00 p.m., Eastern Time, Monday through Friday. *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 the U.S. Department of Education published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**David A. Bergeron,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. 2012–22603 Filed 9–12–12; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC12–18–000]**

### Commission Information Collection Activities (FERC–500 & FERC–505); Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of information collections and request for comments.

**SUMMARY:** In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collections, Application for License/Relicense for Water Projects with Greater than 5 Megawatt Capacity (FERC–500) and Application for License/Relicense for Water Projects with 5 Megawatt or Less Capacity (FERC–505).

**DATES:** Comments on the collections of information are due November 13, 2012.

**ADDRESSES:** You may submit comments (identified by Docket No. IC12–18–000, and applicable FERC collection number [FERC–500 or FERC–505]) by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

*Docket:* Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

**FOR FURTHER INFORMATION:** Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

**SUPPLEMENTARY INFORMATION:**

*Titles:* FERC–500: Application for License/Relicense for Water Projects with Greater than 5 Megawatt Capacity; FERC–505: Application for License/Relicense for Water Projects with 5 Megawatt or Less Capacity.

*OMB Control Nos.:* FERC–500 (1902–0058); FERC–505 (1902–0114).

*Type of Request:* 16 U.S.C. 797(e) authorizes the Commission to issue licenses to citizens of the United States for the purpose of constructing, operating, and maintaining dams, waterways over which Congress has jurisdiction. The Electric Consumers Protection Act (ECPA) amended the Federal Power Act (FPA) to provide the Commission with the responsibility of issuing licenses for non-federal hydroelectric plants. 16 U.S.C. 797(e) also requires the Commission to give equal consideration to preserving energy conservation, the protection, mitigation of damage to, and enhancement of, fish

and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality when approving licenses. Finally, 16 U.S.C. 799 stipulates conditions upon which the Commission issues hydroelectric licenses.

The Commission requires all hydroelectric license applications to address a variety of environmental concerns. Many of these concerns address environmental requirements developed by other agencies. The applicants must provide facts in order for the Commission to understand and resolve potential environmental problems associated with the application in the interests of the United States public.

*Types of Respondents:* Non-federal hydroelectric plants greater than 5 megawatt capacity (FERC–500); non-federal hydroelectric plants less than 5 megawatts capacity (FERC–505).

*Estimate of Annual Burden:* [1] The Commission estimates the total Public Reporting Burden for each information collection as:

FERC–500 (IC12–18–000): APPLICATION FOR LICENSE/RELICENSE FOR WATER PROJECTS WITH GREATER THAN 5 MEGAWATT CAPACITY

| | Number of respondents (A) | Number of responses per respondent (B) | Total number of responses (A) * (B) = (C) | Average burden hours per response (D) | Estimated total annual burden (C) * (D) |
|---|---|---|---|---|---|
| | 219 | 1 | 219 | 87 | 19,053 |

FERC–505 (IC12–18–000): APPLICATION FOR LICENSE/RELICENSE FOR WATER PROJECTS WITH 5 MEGAWATT OR LESS CAPACITY

| | Number of respondents (A) | Number of responses per respondent (B) | Total number of responses (A) * (B) = (C) | Average burden hours per response (D) | Estimated total annual burden (C) * (D) |
|---|---|---|---|---|---|
| | 16 | 1 | 16 | 273 | 4,369 |

FERC–500: Total estimated annual cost burden to respondents is $1,314,839.32 [19,053 hours ÷ 2080 hours/year [2] = 9.16009 * $143,540/year [3] = $1,314,839.32].

FERC–505: Total estimated annual cost burden to respondents is $301,502.90 [4,369 hours ÷ 2080 hours/year = 2.10048 years * $143,540/year = $301,502.90].

*Comments:* Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 6, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–22514 Filed 9–12–12; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2662–000]**

### FirstLight Hydro Generating Company; Notice of Authorization for Continued Project Operation

On August 30, 2007, the FirstLight Hydro Generating Company, licensee for the Scotland Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Scotland Hydroelectric Project is located on the Shetucket River, in Windham County, Connecticut.

The license for Project No. 2662 was issued for a period ending August 31, 2012. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2662

[1] The Commission defines burden as 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. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] 2080 hours = 52 weeks * 40 hours per week (*i.e.* 1 year of full-time employment).

[3] Average salary plus benefits per full-time equivalent employee.

is issued to the FirstLight Hydro Generating Company for a period effective September 1, 2012 through August 31, 2013, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before August 31, 2013, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the FirstLight Hydro Generating Company is authorized to continue operation of the Scotland Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Dated: September 6, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–22513 Filed 9–12–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP12–1015–000.
*Applicants:* WTG Hugoton, LP.
*Description:* WTGH Address Change Filing to be effective 10/1/2012.
*Filed Date:* 9/4/12.
*Accession Number:* 20120904–5000.
*Comments Due:* 5 p.m. e.t. 9/17/12.

*Docket Numbers:* RP12–1016–000.
*Applicants:* Gulf Crossing Pipeline Company LLC.
*Description:* Antero to Vanguard Permanent Capacity Releases on Neg Rate Agmts to be effective 9/1/2012.
*Filed Date:* 9/4/12.
*Accession Number:* 20120904–5023.
*Comments Due:* 5 p.m. e.t. 9/17/12.

*Docket Numbers:* RP12–1017–000.
*Applicants:* Gulf Crossing Pipeline Company LLC.
*Description:* Cap Rel Neg Rate Agmts Filing—Vanguard Permian to Tenaska to be effective 9/1/2012.
*Filed Date:* 9/4/12.
*Accession Number:* 20120904–5024.
*Comments Due:* 5 p.m. e.t. 9/17/12.

*Docket Numbers:* RP12–1019–000.
*Applicants:* Southern LNG Company, L.L.C.
*Description:* ACA Surcharge—SLNG 3 Service to be effective 10/1/2012.
*Filed Date:* 9/4/12.
*Accession Number:* 20120904–5201.
*Comments Due:* 5 p.m. e.t. 9/17/12.

*Docket Numbers:* RP12–1020–000.
*Applicants:* Granite State Gas Transmission, Inc.
*Description:* Revised System Maps to be effective 9/5/2012.
*Filed Date:* 9/4/12.
*Accession Number:* 20120904–5298.
*Comments Due:* 5 p.m. e.t. 9/17/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP12–88–006.
*Applicants:* National Fuel Gas Supply Corporation.
*Description:* RP12–88 Final Tariff Records Rate Case (09–05–12) to be effective 11/1/2012.
*Filed Date:* 9/5/12.
*Accession Number:* 20120905–5082.
*Comments Due:* 5 p.m. e.t. 9/17/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 6, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–22546 Filed 9–12–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12–2303–001.
*Applicants:* New York Independent System Operator, Inc.
*Description:* Amendment to NYISO OATT, Attachment Y Filing to be effective 9/24/2012.
*Filed Date:* 9/6/12.
*Accession Number:* 20120906–5039.
*Comments Due:* 5 p.m. e.t. 9/17/12.

*Docket Numbers:* ER12–2368–000.
*Applicants:* Denver City Energy Associates, LP.
*Description:* Golden Spread Electric Cooperative, Inc. submits additional information regarding cancellation of Denver City Energy Associates, L.P. tariff.
*Filed Date:* 9/5/12.
*Accession Number:* 20120905–5122.
*Comments Due:* 5 p.m. e.t. 9/26/12.

*Docket Numbers:* ER12–2583–000.
*Applicants:* PacifiCorp.
*Description:* UMPA ARTSOA Rev 3 to be effective 11/5/2012.
*Filed Date:* 9/5/12.
*Accession Number:* 20120905–5104.
*Comments Due:* 5 p.m. e.t. 9/26/12.

*Docket Numbers:* ER12–2586–000.
*Applicants:* PacifiCorp.
*Description:* BPA Agmt for Pilot Butte Sub Mtring and Trnsfr CEC to BPA BAA to be effective 11/6/2012.
*Filed Date:* 9/6/12.
*Accession Number:* 20120906–5058.
*Comments Due:* 5 p.m. e.t. 9/27/12.

*Docket Numbers:* ER12–2587–000.
*Applicants:* PacifiCorp.
*Description:* OATT Revisions to Remove MEC References to be effective 11/6/2012.
*Filed Date:* 9/6/12.
*Accession Number:* 20120906–5059.
*Comments Due:* 5 p.m. e.t. 9/27/12.

*Docket Numbers:* ER12–2588–000.
*Applicants:* Hess Small Business Services LLC.
*Description:* Category Seller Change to be effective 11/5/2012.
*Filed Date:* 9/6/12.
*Accession Number:* 20120906–5060.
*Comments Due:* 5 p.m. e.t. 9/27/12.

*Docket Numbers:* ER12–2589–000.
*Applicants:* Hess Corporation.
*Description:* Category Seller Change to be effective 11/5/2012.
*Filed Date:* 9/6/12.
*Accession Number:* 20120906–5061.
*Comments Due:* 5 p.m. e.t. 9/27/12.

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: September 6, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–22524 Filed 9–12–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. NJ12–13–000]**

### Bonneville Power Administration; Notice of Petition for Declaratory Order

Take notice that on September 4, 2012, pursuant to sections 35.28(e) and 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 35.28(e) and 18 CFR 385.207, the Bonneville Power Administration (Bonneville), submitted certain amendments to its Open Access Transmission Tariff (tariff) and a Petition for Declaratory Order requesting the Commission find that Bonneville's tariff, as amended by this filing, substantially conforms or is superior to the Commission's *pro forma* tariff and that Bonneville satisfies the requirements for reciprocity status.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on October 4, 2012.

Dated: September 6, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–22515 Filed 9–12–12; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2012–0708; FRL–9360–7]**

### Certain New Chemicals; Receipt and Status Information

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

**ACTION:** Notice.

**SUMMARY:** The Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. In addition under TSCA, EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from August 6, 2012 to August 17, 2012, and provides the required notice and status report, consists of the PMNs pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the specific PMN number or TME number, must be received on or before October 15, 2012.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0708, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *mudd.bernice@epa.gov.*

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

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from August 6, 2012 to August 17, 2012, consists of the PMNs pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—24 PMNS RECEIVED FROM 08/06/12 TO 08/17/12

| Case no. | Received date | Projected notice end date | Manufacturer/importer | Use | Chemical |
|---|---|---|---|---|---|
| P–12–0488 | 08/01/2012 | 10/29/2012 | CBI | (G) Additive to polyurethane foam | (G) Hydroxyl containing oil, polymer with aromatic isocyanate, polyalkylene-polyalkylene glycol ether with dialkylene glycol (2:1) and polyalkylene-polyalkylene glycol ether with aliphatic triol (3:1), polyalkylene glycol mono (branched alkylaromatic) ether-blocked. |
| P–12–0489 | 08/01/2012 | 10/29/2012 | CBI | (G) Additive to polyurethane foam | (G) Hydroxy containing oil, polymer with alkylene oxide, aromatic isocyanate, and polyalkylene-polyalkylene glycol ether with aliphatic triol (3:1), and alkylene oxide, polyalkylene glycol mono (branched alkylaromatic) ether-blocked. |
| P–12–0490 | 08/01/2012 | 10/29/2012 | CBI | (G) Additive to polyurethane foam | (G) Alkanol, oxybis-, polymer with aromatic isocyanate, isocyanate-terminated, polymers with 1,1′,1″,1‴-(1,2-alkyldinitrilo) tetrakis[2-alkanol], alkylene oxide, aromatic isocyanate, polyalkylenepolyalkylene glycol ether with aliphatic triol (3:1), polyalkylene glycol and alkylene oxide, polyalkylene glycol mono(branched alkylaromatic) ether-blocked. |
| P–12–0491 | 08/02/2012 | 10/30/2012 | Songwon International-Americas, Inc. | (G) Songflame tp100 is a non-halogenated polyphosphonate flame retardant that addresses the need to replace the current commercial bromine-containing flame retardants that are being phased out due to environmental regulation. Flame retardants are required to meet fire safety standards in order to reduce flammability of combustible materials. | (S) Phosphoric trichloride, reaction products with biphenol and phenol. |
| P–12–0492 | 08/03/2012 | 10/31/2012 | CBI | (G) Isolated intermediate for further polymerization at site controlled by submitter. | (G) Alkylphenol. |
| P–12–0493 | 08/06/2012 | 11/03/2012 | CBI | (G) Binder for fibers | (S) 2-propenoic acid, butyl ester, polymer with ethene, ethenyl acetate, *N*-(hydroxymethyl)-2-propenamide and 2-propenamide. |
| P–12–0494 | 08/07/2012 | 11/04/2012 | Rational Energies, Inc. | (S) Fuel blending stock | (S) Hydrocarbons, $C_4$-$C_{12}$. |
| P–12–0495 | 08/07/2012 | 11/04/2012 | Rational Energies, Inc. | (S) Fuel blending stock | (S) Hydrocarbons, $C_8$-$C_{16}$. |
| P–12–0496 | 08/07/2012 | 11/04/2012 | Rational Energies, Inc. | (S) Fuel blending stock | (S) Hydrocarbons, $C_9$-$C_{16}$. |
| P–12–0497 | 08/07/2012 | 11/04/2012 | Rational Energies, Inc. | (S) Fuel blending stock | (S) Hydrocarbons, $C_{10}$-$C_{20}$. |
| P–12–0498 | 08/07/2012 | 11/04/2012 | Rational Energies, Inc. | (S) Fuel blending stock | (S) Hydrocarbons, $C_{12}$-$C_{70}$. |
| P–12–0499 | 08/07/2012 | 11/04/2012 | Rational Energies, Inc. | (S) Fuel blending stock | (S) Hydrocarbons, $C_{20}$-$C_{70}$. |
| P–12–0500 | 08/01/2012 | 10/29/2012 | Alberdingk Boley, Inc. | (S) Coating for wood and plastic | (G) Hexanedioc acid, polymer with 2-(chloromethyl)oxirane polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, alkanedioic acid, 4,4′-(1-methylethylidene)bis[phenol] and oxirane 2-propenoate, 2,2-dimethyl-1,3-propanediol, 1,2-ethanediamine, 1,6-hexanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 5-isocyanato1–1(isocyanatomethyl)-alkylcyclohexane, compound with *N,N*-diethylethanamine. |
| P–12–0501 | 08/09/2012 | 11/06/2012 | Honda of America Mfg., Inc. | (S) Feedstock replacement in cement kiln production. | (S) Slimes and sludges, automotive phosphate conversion coating wastewater. |
| P–12–0502 | 08/09/2012 | 11/06/2012 | Kemin Industries, Inc. | (G) We intend to import a fermented product manufactured using *e. coli* producing e.c.3.1.3.26 6-phytase for use as a cleaning agent in the production of biofuels. Phytase is introduced in the biofuel manufacturing process to clean manufacturing equipment. | (S) 4-phytase 6-phytase (name based on 1l- numbering system and not 1d numbering) phytase phytase 6-phosphatase myo-inositol-hexakisphosphate 6-phosphohydrolase (name based on 1l numbering system and not 1d numbering). |
| P–12–0503 | 08/10/2012 | 11/07/2012 | CBI | (G) Manufacture of rubber products, fillers, putties, plastics additive, plastic additive, component for lubricants and metal working fluids. | (S) Fatty acids, $C_{14-22}$, 2-ethylhexyl esters, epoxidized. |
| P–12–0504 | 08/09/2012 | 11/06/2012 | CBI | (G) Water treatment product for cooling water. | (G) Phosphinic acid, sodium salt (1:1), reaction products with alkenedioic anhydride homopolymer, sodium salts. |
| P–12–0505 | 08/13/2012 | 11/10/2012 | Ineos Chlor Americas | (G) Additive | (S) Alkanes, $C_{22-30}$, chloro. |

TABLE I—24 PMNS RECEIVED FROM 08/06/12 TO 08/17/12—Continued

| Case no. | Received date | Projected notice end date | Manufacturer/importer | Use | Chemical |
|---|---|---|---|---|---|
| P–12–0506 | 08/14/2012 | 11/11/2012 | Dic International (USA) LLC. | (G) Additive for coating for weather stripping (car manufacturing). | (G) Polyether type polyurethane resin, amine salt |
| P–12–0507 | 08/15/2012 | 11/12/2012 | CBI | (G) Additive for coating paint (open, non-dispersive). | (G) Poly(oxyalkylene) alkylamine. |
| P–12–0508 | 08/16/2012 | 11/13/2012 | CBI | (G) Coating material | (G) Polyurethane. |
| P–12–0509 | 08/15/2012 | 11/12/2012 | International specialty products. | (S) Polymeric scale inhibitor | (S) 2-butenedioic acid (2*Z*)-, polymer with sodium 2-propene-1-sulfonate (1:1), potassium salt. |
| P–12–0510 | 08/15/2012 | 11/12/2012 | CBI | (G) Catalyst for adhesives and coatings | (G) Quarternary ammonium nonaflate. |
| P–12–0511 | 08/15/2012 | 11/12/2012 | CBI | (G) Additive for coating paint (open, non-dispersive). | (G) Poly(oxyalkylene) alkylamine. |

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE II—7 NOCS RECEIVED FROM 08/06/12 TO 08/17/12

| Case No. | Received date | Commencement notice end date | Chemical |
|---|---|---|---|
| P–04–0635 | 08/06/2012 | 07/24/2012 | (S) Ethane, 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy)-. |
| P–07–0161 | 08/03/2012 | 07/18/2012 | (G) Alkene substituted bis phenol. |
| P–12–0054 | 08/13/2012 | 07/24/2012 | (G) Urethane acrylate. |
| P–12–0167 | 08/10/2012 | 08/01/2012 | (S) Tar, brown-coal. |
| P–12–0309 | 08/10/2012 | 07/06/2012 | (G) Grignard reagent. |
| P–12–0310 | 08/10/2012 | 07/06/2012 | (G) Alkylsilane. |
| P–12–0338 | 08/14/2012 | 08/01/2012 | (G) Modified epoxy resin. |

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

**List of Subjects**

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: August 27, 2012.

**Chander Sirmons,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2012–22566 Filed 9–12–12; 8:45 am]

**BILLING CODE 6560–50–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 October 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* <mailto:*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:* 3060–0349.

*Title:* Equal Employment Opportunity (''EEO'') Policy, Sections 73.2080, 76.73, 76.75, 76.79 and 76.1702.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents and Responses:* 14,178 respondents and 14,178 responses.

*Estimated Time per Response:* 42 hours.

*Frequency of Response:* Recordkeeping requirement; Annual and five-year reporting requirements.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 CFR 154(i) and 303 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 595,476 hours.

*Total Annual Costs:* None.

*Privacy Impact Assessment(s):* No impacts.

*Nature and Extent of Confidentiality:* There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

*Needs and Uses:* Section 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin or sex.

Section 73.2080 requires that each broadcast station employment unit with 5 or more full-time employees shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice.

Section 76.73 provides that equal opportunity in employment shall be afforded by all multichannel video program distributors (''MVPD'') to all qualified persons and no person shall be discriminated against in employment by such entities because of race, color, religion, national origin, age or sex.

Section 76.75 requires that each MVPD employment unit shall establish, maintain and carry out a program to assure equal opportunity in every aspect of an MVPD entity's policy and practice.

Section 76.79 requires that every MVPD employment unit maintain, for public inspection, a file containing copies of all annual employment reports and related documents.

Section 76.1702 requires that every MVPD place certain information concerning its EEO program in the public inspection file and on its Web site if it has a Web site.

Federal Communications Commission.

**Gloria J. Miles,**

*Federal Register Liaison, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2012–22556 Filed 9–12–12; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:09 a.m. on Tuesday, September 11, 2012, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Thomas M. Hoenig (Appointive), seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Thomas J. Curry (Comptroller of the Currency), Director Richard Cordray (Director, Consumer Financial Protection Bureau), and Acting Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street NW., Washington, D C.

Dated: September 11, 2012.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2012–22720 Filed 9–11–12; 4:15 pm]

BILLING CODE P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicant has filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

NTL Naigai Trans Line (USA) Inc. (NVO & OFF), 970 West 190th Street, Suite 580, Torrance, CA 90502. Officers: Yoji Kurita, President/Secretary/Treasurer (QI), Akira Tsuneda, Director. Application Type: Add Trade Name of NTL Cargo One.

By the Commission.

Dated: September 7, 2012.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2012–22498 Filed 9–12–12; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

*License No.:* 010860N.

*Name:* Seair Export Import Services, Inc.

*Address:* 921 NW 120 Avenue, Plantation, FL 33325.

*Date Revoked:* August 16, 2012.

*Reason:* Failed to maintain a valid bond.

*License No.:* 021171N.

*Name:* Pacific Groupage Services, Inc.

*Address:* 9024 Foxwood Drive, Keller, TX 73248.

*Date Revoked:* August 15, 2012.
*Reason:* Voluntary surrender of license.

*License No.:* 021444N.
*Name:* J & V International Shipping Corp.
*Address:* 1001 Fairview Avenue, Room #G, Arcadia, CA 91007.
*Date Revoked:* July 28, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 023100N.
*Name:* Archers Cargo Express, Inc.
*Address:* 6800 Jericho Turnpike, Suite #120W, Room 135, Syosset, NY 11791.
*Date Revoked:* June 31, 2012.
*Reason:* Voluntary surrender of license.

**Vern W. Hill,**
*Director, Bureau of Certification and Licensing.*

[FR Doc. 2012–22499 Filed 9–12–12; 8:45 am]

**BILLING CODE 6730–01–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0149: Docket 2012–0076; Sequence 15]**

## Federal Acquisition Regulation; Information Collection; Subcontract Consent

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0149).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning subcontract consent. A notice was published in the **Federal Register** at 77 FR 29983, on May 21, 2012. One respondent submitted comments.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before October 15, 2012.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0149, Subcontract Consent, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0149, Subcontract Consent''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0149, Subcontract Consent'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0149, Subcontract Consent.

*Instructions:* Please submit comments only and cite Information Collection 9000–0149, Subcontract Consent, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Karlos Morgan, Procurement Analyst, Contract Policy Division, GSA, (202) 501–2364 or via email at *karlos.morgan@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The objective of consent to subcontract, as discussed in FAR Part 44, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds, and complies with Government policy when subcontracting. The Government requires a contractor to provide certain information (e.g., subcontractor's name, type of subcontract, price, description of supply or services, etc.) reasonably in advance of placing a subcontract to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment. The information provides the Government a basis for granting, or withholding consent to subcontract.

### B. Discussion and Analysis

*Comment:* The respondent questioned whether the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information.

*Response:* In accordance with the Paperwork Reduction Act (PRA), agencies can request OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process, to extend OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to FAR Subpart 44.2, Consent to subcontract and the contract clause at FAR 52.244–2, Subcontracts. The purpose of the clause is to provide the prime contractor with consent to perform some requirements of the contract through the use of a subcontract or subcontractor. Prime contractors and the government have a direct legal relationship; however, the government does not have such a relationship with subcontractors. As a result, the prime contractor is obligated to ensure that the requirements of the contract are met properly, including those requirements performed by the subcontractor. Failure to grant this extension would have a detrimental impact on a contractor's ability to provide goods and services to the Federal Government.

*Comment:* The respondent questioned that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden. For this reason, the respondent provided that the Agency should reassess the estimated total burden hours and revise the estimate upwards to be more accurate, as was done in FAR Case 2007–006. The respondent also provided that the burden of compliance with the information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

*Response:* Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007–006 where an

adjustment was made from the total preparation hours from three to 60. This change was made based on the comment considering particularly the hours that would be required for review within the company, prior to release to the Government. The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business. Careful consideration went into assessing the estimated burden hours for this collection, and it is determined that an upward adjustment is not required at this time. However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

**C. Annual Reporting Burden**

*Number of Respondents:* 4,252.

*Responses per Respondent:* 3.61.

*Total Responses:* 15,349.

*Average Burden Hours per Response:* .87.

*Total Burden Hours:* 13,353.

**Obtaining Copies of Proposals**

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0149, Subcontract Consent, in all correspondence.

Dated: September 5, 2012.

**William Clark,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2012–22560 Filed 9–12–12; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0060; Docket 2012–0076; Sequence 20]**

## Federal Acquisition Regulation; Information Collection; Accident Prevention Plans and Recordkeeping

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension of an information collection requirement regarding an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning Accident Prevention Plans and Recordkeeping.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before November 13, 2012.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0060, Accident Prevention Plans and Recordkeeping by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0060, Accident Prevention Plans and Recordkeeping'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0060, Accident Prevention Plans and Recordkeeping''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0060, Accident Prevention Plans and Recordkeeping'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0060, Accident Prevention Plans and Recordkeeping.

*Instructions:* Please submit comments only and cite Information Collection 9000–0060, Accident Prevention Plans and Recordkeeping, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Curtis E. Glover, Sr., Procurement Analyst, Contract Policy Division, GSA, telephone (202) 501–1448 or email at *curtis.glover@gsa.gov*.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The FAR clause at 52.236–13, Accident Prevention, requires Federal construction contractors to keep records of accidents incidental to work performed under the contract that result in death, traumatic injury, occupational disease or damage to property, materials, supplies or equipment. Records of personal inquiries are required by the Department of Labor's Occupational Safety and Health Administration regulations. The records maintained by the contractor are used to evaluate compliance and may be used in workmen's compensation cases. The FAR requires records of damage to property, materials, supplies or equipment to provide background information when claims are brought against the Government.

If the contract involves work of a long duration, or hazardous nature, the contracting officer shall insert the clause with its alternate that requires the contractor to submit a written proposed plan for implementing the clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in performing the contract and a plan for controlling the hazards. The Accident Prevention Plan is analyzed by the contracting officer along with the agency safety representatives to determine if the proposed plan will meet the requirements of safety regulations and applicable statutes.

**B. Annual Reporting Burden**

The estimated reporting burden has been adjusted since published in the **Federal Register** at 74 FR 41133, on August 14, 2009. The adjustment is based on an evaluation of Federal Procurement Data System award information for the services applicable to FAR Clause 52.213–36, and consultation with subject matter experts within the Government that procure such services.

*Respondents:* 350.
*Responses per Respondent:* 1.
*Annual Responses:* 350.
*Hours per Response:* 24.
*Total Burden Hours:* 8,400
*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0060, Accident Prevention Plans and Recordkeeping, in all correspondence.

Dated: September 7, 2012.

**William Clark,**

*Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2012–22558 Filed 9–12–12; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* ORR Requirements for Refugee Cash Assistance; and Refugee Medical Assistance (45 CFR Part 400).

*OMB No.:* 0970–0036.

*Description:* As required by section 412(e) of the Immigration and Nationality Act, the Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), is requesting the information from Form ORR–6 to determine the effectiveness of the State cash and medical assistance, child welfare, social services, and targeted assistance programs. State-by-State Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) utilization rates derived from Form ORR–6 are calculated for use in formulating program initiatives, priorities, standards, budget requests, and assistance policies. ORR regulations require that State Refugee Resettlement and Wilson-Fish agencies, and local and Tribal governments complete Form ORR–6 in order to participate in the above-mentioned programs.

*Respondents:* State Refugee Resettlement and Wilson-Fish Agencies, local, and Tribal governments.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ORR–6 | 50 | 3 | 3.88 | 582 |

Estimated Total Annual Burden Hours: 582.

*Additional Information*

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

*OMB Comment*

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2012–22563 Filed 9–12–12; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0355]**

### Wayne E. Spencer: Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Wayne E. Spencer from providing services in any capacity to a person that has an approved or pending drug product application. We base this order on a finding that Dr. Spencer was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product under the FD&C Act. Dr. Spencer was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation, but failed to respond. Dr. Spencer's failure to respond constitutes a waiver of his right to a hearing concerning this action.

**DATES:** This order is effective September 13, 2012.

**ADDRESSES:** Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Kenny Shade, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301–796–4640.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 306(a)(2)(A) of the FD&C Act (21 U.S.C. 335a(a)(2)(A)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or

approval, including the process for development or approval, of a drug product under the FD&C Act.

On March 7, 2012, the U.S. District Court for the District of Kansas entered judgment against Dr. Spencer after he entered a guilty plea to, among others, a felony count of failing to prepare and maintain records required under section 505(i) of the FD&C Act, with the intent to defraud and mislead, in violation of sections 301(e) and 303(a)(2) of the FD&C Act (21 U.S.C. 331(e), 333(a)(2), and 18 U.S.C. 2).

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein for conduct relating to the development or approval, including the process for development or approval, of a drug product under the FD&C Act.

The factual basis for this conviction is as follows: Dr. Spencer was a licensed medical doctor practicing medicine in the District of Kansas. Schering/Plough was a pharmaceutical company engaged in developing and marketing pharmaceutical products. In or about July 2009, Schering/Plough chose Lee Research Institute, Dr. Spencer's employer, to perform a clinical study known as ''A 28-Day Study Evaluating the Safety of Ragweed Sublingual Tablet in Adult Subjects 50 Years of Age and Older with Ragweed-Induced Rhino Conjunctivitis.'' Dr. Spencer was the principal investigator for the clinical study.

Before beginning the clinical study, FDA required Schering/Plough to provide the Agency with a study protocol. The study protocol contained information about how the clinical study would be conducted, where studies would be done and by whom, how the drug's safety would be evaluated, and what findings would require the study to be changed or halted. According to the study protocol, each subject had to be 50 years of age or older. Additionally, the study protocol excluded subjects who were a member or a family member of the personnel of the investigational or sponsor staff directly involved with the clinical trial. Under section 505(i) of the FD&C Act (21 U.S.C. 355(i)) and 21 CFR 312.62(b), Dr. Spencer was required to maintain adequate and accurate case histories on each individual who was administered Schering/Plough's investigational drug.

Beginning in or about January 2010, and continuing through in or about May 2010, Dr. Spencer, with the intent to defraud and mislead, failed to prepare and maintain the records required described above. Specifically, Dr. Spencer falsified the birth dates of two participants such that they appeared to be older than 50 years of age; falsely indicated that physical examinations had been performed when they had not been performed; and indicated on required forms that two participants met the inclusion criteria and had no reasons for exclusion when he knew that the participants did not meet the inclusion criteria of age and should have been excluded as employees of Lee Research Institute.

As a result of his conviction, on June 20, 2012, FDA sent Dr. Spencer a notice by certified mail proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) of the FD&C Act (21 U.S.C. 335a(a)(2)(A)), that Dr. Spencer was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product under the FD&C Act.

The proposal also offered Dr. Spencer an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Dr. Spencer received the proposal on June 25, 2012. He failed to respond and has, therefore, waived his opportunity for a hearing and has waived any contentions concerning his debarment (21 CFR part 12).

## II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(A) of the FD&C Act (21 U.S.C. 335a(a)(2)(A)), under authority delegated to the Director (Staff Manual Guide 1410.35), finds that Wayne E. Spencer has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product under the FD&C Act.

As a result of the foregoing finding, Wayne E. Spencer is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (see section 306(c)(1)(B), (c)(2)(A)(ii), and 201(dd) of the FD&C Act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(ii), and 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Spencer, in any capacity during Dr. Spencer's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Spencer provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act (21 U.S.C. 335b(a)(7))). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Spencer during his period of debarment (section 306(c)(1)(A) of the FD&C Act (21 U.S.C. 335a(c)(1)(A))).

Any application by Dr. Spencer for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) should be identified with Docket No. FDA–2012–N–0355 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 4, 2012.

**Armando Zamora,**

*Acting Director, Office of Enforcement, Office of Regulatory Affairs.*

[FR Doc. 2012–22606 Filed 9–12–12; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0356]**

### Lisa Jean Sharp: Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Lisa Jean Sharp from providing services in any capacity to a person that has an approved or pending drug product application. We base this order on a finding that Lisa Jean Sharp was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product under the

FD&C Act. Ms. Sharp was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation, but failed to respond. Ms. Sharp's failure to respond constitutes a waiver of her right to a hearing concerning this action.

**DATES:** This order is effective September 13, 2012.

**ADDRESSES:** Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Kenny Shade, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 301–796–4640.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 306(a)(2)(A) of the FD&C Act (21 U.S.C. 335a(a)(2)(A)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product under the FD&C Act.

On March 26, 2012, the U.S. District Court for the District of Kansas entered judgment against Ms. Sharp after she entered a guilty plea to, among others, a felony count of failing to prepare and maintain records required under section 505(i) of the FD&C Act, with the intent to defraud and mislead, in violation of sections 301(e) and 303(a)(2) of the FD&C Act (21 U.S.C. 331(e), 333(a)(2), and 18 U.S.C. 2).

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein for conduct relating to the development or approval, including the process for development or approval, of a drug product under the FD&C Act.

The factual basis for this conviction is as follows: Ms. Sharp was the Director of Clinical Trials for Lee Research Institute. Schering/Plough was a pharmaceutical company engaged in developing and marketing pharmaceutical products. In or about July 2009, Schering/Plough chose Lee Research Institute, Ms. Sharp's employer, to perform a clinical study known as ''A 28-Day Study Evaluating the Safety of Ragweed Sublingual Tablet in Adult Subjects 50 Years of Age and Older with Ragweed-Induced Rhino conjunctivitis.'' Ms. Sharp was the Lead Clinical Research Coordinator for the clinical study.

Before beginning the clinical study, FDA required Schering/Plough to provide the Agency with a study protocol. The study protocol contained information about how the clinical study would be conducted, where studies would be done and by whom, how the drug's safety would be evaluated, and what findings would require the study to be changed or halted. According to the study protocol, each subject had to be 50 years of age or older. Additionally, the study protocol excluded subjects who were a member or a family member of the personnel of the investigational or sponsor staff directly involved with the clinical trial. Under section 505(i) of the FD&C Act (21 U.S.C. 355(i)) and 21 CFR 312.62(b), Ms. Sharp was required to maintain adequate and accurate case histories on each individual who was administered Schering/Plough's investigational drug.

Beginning in or about January 2010, and continuing through in or about May 2010, Ms. Sharp, with the intent to defraud and mislead, failed to prepare and maintain the required records described above. Specifically, Ms. Sharp falsified the birth dates of two participants such that they appeared to be older than 50 years of age; falsely indicated that physical examinations had been performed when they had not been performed; and indicated on required forms that two participants met the inclusion criteria and had no reasons for exclusion, when she knew that the participants did not meet the inclusion criteria of age and should have been excluded as employees of Lee Research Institute.

As a result of her conviction, on June 20, 2012, FDA sent Ms. Sharp a notice by certified mail proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) of the FD&C Act (21 U.S.C. 335a(a)(2)(A)), that Ms. Sharp was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product under the FD&C Act.

The proposal also offered Ms. Sharp an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Ms. Sharp received the proposal on June 25, 2012. She failed to respond and has, therefore, waived her opportunity for a hearing and has waived any contentions concerning her debarment (21 CFR part 12).

## II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(A) of the FD&C Act (21 U.S.C. 335a(a)(2)(A)), under authority delegated to the Director (Staff Manual Guide 1410.35), finds that Lisa Jean Sharp has been convicted of a felony under federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product under the FD&C Act.

As a result of the foregoing finding, Lisa Jean Sharp is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**), (see section 306(c)(1)(B), (c)(2)(A)(ii), and 201(dd) of the FD&C Act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(ii), and 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Ms. Sharp, in any capacity during Ms. Sharp's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Ms. Sharp provides services in any capacity to a person with an approved or pending drug product application during her period of debarment she will be subject to civil money penalties (section 307(a)(7) of the FD&C Act (21 U.S.C. 335b(a)(7)). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Ms. Sharp during her period of debarment (section 306(c)(1)(A) of the FD&C Act (21 U.S.C. 335a(c)(1)(A)).

Any application by Ms. Sharp for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) should be identified with Docket No. FDA–2012–N–0356 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 4, 2012.

**Armando Zamora,**

*Acting Director, Office of Enforcement, Office of Regulatory Affairs.*

[FR Doc. 2012–22604 Filed 9–12–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0007]**

### Fee for Using a Priority Review Voucher in Fiscal Year 2013

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is announcing the fee rates for using a tropical disease priority review voucher for fiscal year (FY) 2013. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Food and Drug Administration Amendments Act of 2007 (FDAAA), authorizes FDA to determine and collect priority review user fees for certain applications for approval of drug or biological products when those applications use a priority review voucher awarded by the Secretary of Health and Human Services. These vouchers are awarded to the sponsors of certain tropical disease product applications, submitted after September 27, 2007, upon FDA approval of such applications. The amount of the fee to be submitted to FDA with applications using a priority review voucher is determined each FY based on the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous FY. This notice establishes the priority review fee rate for FY 2013.

**FOR FURTHER INFORMATION CONTACT:** David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–796–7103.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 1102 of FDAAA (Pub. L. 110–85) added new section 524 to the FD&C Act (21 U.S.C. 360n). In section 524, Congress encouraged development of new drug and biological products for prevention and treatment of certain tropical diseases by offering additional incentives for obtaining FDA approval of such products. Under section 524, the sponsor of an eligible human drug application submitted after September 27, 2007, for a qualified tropical disease (as defined in section 524(a)(3)), shall receive a priority review voucher upon approval of the tropical disease product application. The recipient of a priority review voucher may either use the voucher with a future submission to FDA under section 505(b)(1) of the FD&C Act (21 U.S.C. 355(b)(1)) or section 351 of the Public Health Service Act (21 U.S.C. 262), or transfer (including by sale) the voucher to another party that may then use it. A priority review is a review conducted with a Prescription Drug User Fee Act (PDUFA) goal date of 6 months.

The applicant that uses a priority review voucher is entitled to a priority review but must pay FDA a priority review user fee in addition to any other fee required by PDUFA. FDA has published a draft guidance on its Web site about how this priority review voucher program will operate (available at: *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm080599.pdf*).

This notice establishes the priority review fee rate for FY 2013 as $3,559,000 and outlines FDA's process for implementing the collection of the priority review user fees. This rate is effective on October 1, 2012, and will remain in effect through September 30, 2013, for applications submitted with a priority review voucher. The payment of this priority review user fee is required in addition to the payment of any other fee that would normally apply to such an application under PDUFA before FDA will consider the application complete and acceptable for filing.

## II. Priority Review User Fee for FY 2013

Under section 524(c)(2) of the FD&C Act, the amount of the priority review user fee is to be determined each FY based on the average cost incurred by FDA in the review of a human drug application subject to priority review in the previous FY. The priority review voucher fee is intended to cover the incremental costs for FDA to do a priority review on a product that would otherwise get a standard review. The formula used in past years to calculate the priority review user fee was based on the full average cost of a priority review. After reviewing more recent data and experience with the program, FDA has revised the formula to better approximate the current and ongoing incremental FDA resource costs for a priority review. The new formula will provide the Agency with the added resources to conduct a priority review while still ensuring a robust priority review voucher program that is consistent with the Agency's public health goal of encouraging the development of new drug and biological products.

A priority review is a review conducted with a PDUFA goal date of 6 months. Normally, an application for a Center for Drug Evaluation and Research (CDER) product will qualify for a priority review if FDA determines that the product, if approved, would provide safe and effective therapy where no satisfactory alternative therapy exists or would be a significant improvement compared to marketed products, including non-drug products and/or therapies, in the treatment, diagnosis, or prevention of a disease. A Center for Biologics Evaluation and Research (CBER) product will qualify for a priority review if FDA determines that the product, if approved, would be a significant improvement in the safety or effectiveness of the treatment, diagnosis, or prevention of a serious or life-threatening disease. FDA has committed to a goal to review and act on 90 percent of the applications that have been granted priority review status no later than 6 months after receipt. An application that does not receive a priority designation will receive a standard review. Under the goals identified in the letters referenced in section 101(b) of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), FDA commits to reviewing and acting on 90 percent of standard applications within 10 months of the date of receipt. A priority review involves a more intensive level of effort and a higher level of resources than a standard review.

Section 524 of the FD&C Act specifies that the fee amount should be based on the average cost incurred by the Agency for a priority review in the previous FY. Because FDA has never tracked the cost of reviewing applications that get priority review as a separate cost subset, FDA estimated this cost based on other data that the Agency has tracked and kept. FDA started by using data that the Agency estimates and publishes on its Web site each year—standard costs for review. FDA does not publish a standard cost for ''the review of a human drug application subject to priority review in the previous fiscal year.'' However, we expect all such applications would contain clinical data. The standard cost application categories with clinical data that FDA does publish each year are: (1) New drug applications (NDAs) for a new molecular entity (NME) with clinical data and (2) biologics license applications (BLAs).

The worksheets for standard costs for FY 2011, the latest year for which standard cost data are available, show a standard cost (rounded to the nearest thousand dollars) of $5,092,000 for a new molecular entity NDA and $11,203,000 for a BLA. Based on these standard costs, the total cost to review the 46 applications in these two categories in FY 2011 (10 BLAs and 36 NDAs with clinical data) was $295,342,000. (**Note:** no investigational new drug (IND) review costs are included in this amount.) Records acquired from CDER and CBER by the Office of Policy and Planning (OPP), Economics Staff, indicate that a total of 16 of these applications (12 NDAs [excluding the President's Emergency Plan for AIDS Relief NDAs] and 4 BLAs) received priority review, which would mean that the remaining 30 received standard reviews. Because a priority review compresses a review that ordinarily takes 10 months into 6 months, OPP estimates that a multiplier of 1.67 (10 months divided by 6 months) should be applied to non-priority review costs in estimating the effort and cost of a priority review as compared to a standard review. This multiplier is consistent with published research on this subject. In the article ''Developing Drugs for Developing Countries,'' published in *Health Affairs,* Volume 25, Number 2, in 2006, the comparison of historical average review times by David B. Ridley, Henry G. Grabowski, and Jeffrey L. Moe supports a priority review multiplier in the range of 1.48 to 2.35. The multiplier derived by FDA falls well below the mid-point of this range. Using FY 2011 figures, the costs of a priority and standard review are estimated using the following formula:

$$(16\,\alpha * 1.67) + (30\,\alpha) = \$295{,}342{,}000$$

where ''$\alpha$'' is the cost of a standard review and ''$\alpha$ times 1.67'' is the cost of a priority review. Using this formula, the cost of a standard review for NMEs is calculated to be $5,207,000 (rounded to the nearest thousand dollars) and the cost of a priority review for NMEs is 1.67 times that amount, or $8,696,000 (rounded to the nearest thousand dollars). The difference between these two cost estimates, or $3,489,000, represents the incremental cost of conducting a priority review rather than a standard review.

Section 524 of the FD&C Act specifies that the fee amount should be based on the average cost incurred by the Agency for a priority review in the previous FY. FDA is setting fees for FY 2013, and the previous fiscal year is FY 2012. However, the FY 2012 submission cohort has not been closed out yet, and the cost data for FY 2012 are not complete. The latest year for which FDA has complete cost data is FY 2011. Accordingly, FDA will adjust the FY 2011 incremental cost figure above by the average amount by which FDA's average salary and benefit costs increased in the 3 years prior to FY 2012, to adjust the FY 2011 amount for cost increases in FY 2012. That figure, published in the **Federal Register** notice on August 1, 2012 setting PDUFA fees for FY 2013, is 2.01 percent. Increasing the FY 2011 incremental priority review cost figure of $3,489,000 by 2.01 percent results in an estimated cost of $3,559,000 (rounded to the nearest thousand dollars). This is the priority review user fee amount for FY 2013 that must be submitted with a priority review voucher in FY 2013, in addition to any PDUFA fee that is required for such an application.

## III. Priority Review Fee Schedule for FY 2013

The fee rate for FY 2013 is set out in Table 1 of this document:

TABLE 1—PRIORITY REVIEW SCHEDULE FOR FY 2013

| Fee category | Fee rate for FY 2013 |
|---|---|
| Applications Submitted With a Priority Review Voucher in Addition to the Normal PDUFA Fee | $3,559,000 |

## IV. Implementation of Priority Review Fee

Under section 524(c)(4)(A) of the FD&C Act, the priority review user fee is due upon submission of the application for which the priority review voucher is used. Section 524(c)(4)(B) of the FD&C Act specifies that the application will be considered incomplete if the priority review user fee and all other applicable user fees are not paid in accordance with FDA payment procedures. FDA may not grant a waiver, exemption, reduction, or refund of any fees due and payable under this section of the FD&C Act, and FDA may not collect priority review voucher fees prior to a relevant appropriation for fees for that FY. Beginning with FDA's appropriation for FY 2009, the annual appropriation language states specifically that ''priority review user fees authorized by 21 U.S.C. 360n (section 524 of the FD&C Act) may be credited to this account, to remain available until expended.'' (Pub. L. 111–8, Section 5, Division A, Title VI).

The priority review fee established in the new fee schedule must be paid for any application that is received after September 30, 2012, and submitted with a priority review voucher. This fee must be paid in addition to any other fee due under PDUFA. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. The user fee identification (ID) number should be included on the check, followed by the words ''Priority Review.'' Payments can be mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197–9000.

If checks are sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only.) The FDA post office box number (P.O. Box 979107) must be written on the check. The tax identification number of the Food and Drug Administration is 53–0196965.

Wire transfer payments may also be used. Please reference your unique user fee ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the fee and include it with your payment to ensure that your fee is fully paid. The account information is as follows: New York Federal Reserve Bank, U.S. Dept. of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Dr., Rockville, MD 20850.

Dated: August 30, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–22587 Filed 9–12–12; 8:45 am]

BILLING CODE 4160–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0001]**

### Food and Drug Administration/ American Glaucoma Society Workshop on the Validity, Reliability, and Usability of Glaucoma Imaging Devices

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a

public workshop entitled ''FDA/American Glaucoma Society (AGS) Workshop on the Validity, Reliability, and Usability of Glaucoma Imaging Devices.'' FDA is co-sponsoring the workshop together with the AGS, a nonprofit organization that supports glaucoma specialists and scientists through the advancement of education and research. The purpose of this public workshop is to provide a forum for discussing the validity, reliability, and usability of glaucoma imaging devices. The primary topic to be discussed relates to imaging of the posterior segment of the eye (e.g., retinal nerve fiber layer, optic nerve head, ganglion cell layer) using Optical Coherence Tomography (OCT, time domain and spectral domain), with particular emphasis on normative databases and the diagnostic performance of OCT for therapeutic glaucoma products (regulatory considerations) and clinical decision making (clinical practice considerations).

**DATES:** *Date and Time:* The public workshop will be held on October 5, 2012, from 8 a.m. until 5 p.m.

*Location:* The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to: *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

*Contact Person:* Brad Cunningham, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993. Phone: 301–796–6620, FAX: 301–847–8126, email: *bradley.cunningham@fda.hhs.gov.*

*Registration:* AGS will charge a registration fee to cover its share of the expenses associated with the workshop. The registration fee is $200 for AGS members and $300 for non-AGS members. Registration is available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by September 17, 2012. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the public workshop will be provided beginning at 7:30 a.m. the morning of the workshop (October 5, 2012). AGS will charge an on-site registration fee of $400.

If you need special accommodations due to a disability, please contact Ms. Cindy Garris at *Cynthia.Garris@fda.hhs.gov* or 301–796–5861, no later than September 17, 2012.

To register for the public workshop, please visit the AGS Web site at: *https://www.formstack.com/forms/?1237628-fpPvbj6eU2*. For more information on the workshop, please see the FDA's Medical Devices News & Events—Workshops & Conferences calendar at: *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this meeting/public workshop from the posted events list.) Those interested in attending but unable to access the electronic registration should fax the PDF form on the AGS Web site (*http://www.americanglaucomasociety.net/client_data/files/2012/259_fdaagsworkshopregistrationform.pdf*) to 415–561–8531 to register. Please complete either the online registration form or the PDF form with the contact information for each attendee, including name, title, affiliation, address, email, and telephone number. If there are any questions with registration, please contact the AGS administrative offices at 415–561–8587. Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

*Streaming Webcast of the Public Workshop:* This public workshop will also be webcast. Persons interested in viewing the webcast must register online by September 17, 2012. Early registration is recommended because webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after October 1, 2012. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

*Transcripts:* Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript will also be available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcript will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.)

**SUPPLEMENTARY INFORMATION:**

## I. Background

Advances in glaucoma diagnostic devices have been rapid, and these devices are of increasing importance in the diagnosis and clinical management of glaucoma. Device hardware is often upgraded and innovative software, such as measurement algorithms, image registration, and normative databases, is being added to existing hardware configurations. The optimal endpoints and strategies for assessing the safety and effectiveness of these new diagnostic tools in the management of glaucoma are unclear.

While there are several ophthalmic assessments (e.g., imaging, perimetry, tonometry, etc.) and ocular spaces (e.g., posterior segment, anterior chamber angle, etc.) relevant to the diagnosis and management of glaucoma, the primary topic of this workshop is the imaging of the posterior segment (e.g., retinal nerve fiber layer, optic nerve head, ganglion cell layer, etc.) with Optical Coherence Tomography (OCT, time domain and spectral domain).

## II. Topics for Discussion at the Public Workshop

Topics to be discussed at the public workshop include, but are not limited to:

- Issues related to the use of OCT technology (time domain and spectral domain) in the diagnosis and treatment of glaucoma.
- Approaches to verify/validate new diagnostic technologies and their associated claims as well as factors that affect the quality of their images and measurements.
- Normative/reference databases and their impact on the diagnostic use of OCT devices.

Dated: September 5, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–22518 Filed 9–12–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Notice of Service Delivery Area Designation for the Mashpee Wampanoag Indian Tribe

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This Notice advises the public that the Indian Health Service (IHS) established the geographic boundaries of the Service Delivery Area (SDA) for the newly recognized Mashpee Wampanoag Indian Tribe. The SDA was established on December 22, 2008 and services were provided to eligible beneficiaries beginning on January 19, 2009. The Mashpee SDA is comprised of Barnstable, Bristol, Norfolk, Plymouth and Suffolk counties in the State of Massachusetts. The counties listed are designated administratively as the SDA, to function as a Contract Health Service Delivery Area (CHSDA), for the purposes of operating a Contract Health Service (CHS) program pursuant to the Indian Self-Determination and Education Assistant Act (ISDEAA), Public Law 93–638.

**DATES:** This notice is effective 30 days after date of publication in the **Federal Register** (FR).

**ADDRESSES:** Comments may be mailed to Betty Gould, Regulations Officer, Indian Health Service, 801 Thompson Avenue, Suite 450, Rockville, Maryland 20852. Comments will be made available for public inspection at this address from 8:30 a.m. to 5 p.m. Monday–Friday beginning approximately two weeks after publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Carl Harper, Director, Office of Resource Access and Partnerships, Indian Health Service, 801 Thompson Avenue, Suite 360, Rockville, Maryland 20852. Telephone 301/443–2694 (This is not a toll free number).

**SUPPLEMENTARY INFORMATION:** The IHS currently provides services under regulations in effect on September 15, 1987 and IHS republished at 42 CFR part 136, Subparts A–C. Many of the newly recognized Tribes do not have reservations and either Congress has legislatively designated counties to serve as SDAs or the Director, IHS, exercised reasonable administrative discretion to designate SDAs to effectuate the intent of Congress for these Tribes. The Director, IHS, published notice of the establishment of SDAs in the June 21, 2007 FR Notice (72 FR 34262–01). The SDAs function as CHSDAs for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638. Thus, the CHSDA list incorporates the SDAs that operate as CHSDAs for newly recognized Tribes. At 42 CFR part 136 subpart C, a CHSDA is defined as the geographic area within which CHS will be made available by the IHS to members of an identified Indian community who reside in the area. Residence within a CHSDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12 creates no legal entitlement to contract health services but only potential eligibility for services. Services needed but not available at an IHS/Tribal facility are provided under the CHS program depending on the availability of funds, the person's relative medical priority, and the actual availability and accessibility of alternate resources in accordance with the regulations.

As applicable to the Tribes, these regulations provide that, unless otherwise designated, a CHSDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 136.22(a)(6) (2007). In the **Federal Register** on February 22, 2007 (72 FR 8007), the Mashpee Wampanoag Indian Tribe was officially recognized as an Indian Tribe within the meaning of Federal law. After consultation with the Tribal governing body, the SDA for the Tribe was agreed upon. The purpose of this FR notice is to notify the public of the Mashpee Wampanoag Indian Tribe SDA to incorporate Barnstable, Bristol, Norfolk, Plymouth and Suffolk counties in the State of Massachusetts. The SDA was established on December 22, 2008 and services were provided to eligible beneficiaries beginning on January 19, 2009.

Under 42 CFR 136.23 those otherwise eligible Indians who do not reside on a reservation but reside within a CHSDA must be either members of the Tribe or maintain close economic and social ties with the Tribe. In this case, the Tribe estimated the eligible user population to be 1,422 enrolled Mashpee Wampanoag members who are actively involved with the Tribe.

The Mashpee Wampanoag Indian Tribe is located in the town of Mashpee, Barnstable County, Massachusetts, on the southeastern portion of Cape Cod along Nantucket Sound. A significant number of the Mashpee Wampanoag SDA eligible user population also reside in the counties of Bristol, Norfolk, Plymouth and Suffolk counties in the state of Massachusetts. These five counties are adjacent to each other. Barnstable, Bristol, Norfolk, Plymouth and Suffolk counties are not part of any other Tribe's CHSDA or SDA. It is important for the Mashpee Wampanoag Indian Tribe to be able to deliver health care services to enrolled members residing in these five counties. The Tribe believes eligible Tribal members living in the counties of the proposed SDA should also be eligible for CHS. The financial resources required to meet the immediate needs of the Tribal members residing in the five counties were determined by the IHS and were placed in the Nashville Area CHS budget. Since

This notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS

| Tribe/reservation | County/state |
|---|---|
| Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona. | Pinal, AZ. |
| Alabama-Coushatta Tribes of Texas | Polk, TX.[1] |
| Alaska | Entire State.[2] |
| Arapahoe Tribe of the Wind River Reservation, Wyoming | Hot Springs, WY, Fremont, WY, Sublette, WY. |
| Aroostook Band of Micmac Indians of Maine | Aroostook, ME.[3] |
| Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana. | Daniels, MT, McCone, MT, Richland, MT, Roosevelt, MT, Sheridan, MT, Valley, MT. |

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

| Tribe/reservation | County/state |
|---|---|
| Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin. | Ashland, WI, Iron, WI. |
| Bay Mills Indian Community, Michigan | Chippewa, MI. |
| Blackfeet Tribe of the Blackfeet Indian Reservation of Montana | Glacier, MT, Pondera, MT. |
| Minnesota Chippewa Tribe, Minnesota Bois Forte Band (Nett Lake) | Itasca, MN, Koochiching, MN, St. Louis, MN. |
| Brigham City Intermountain School Health Center, Utah | [4] |
| Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon | Harney, OR. |
| California | Entire State, except for the counties listed in the footnote.[5] |
| Catawba Indian Nation of South Carolina | All Counties in SC[6], Cabarrus, NC, Cleveland, NC, Gaston, NC, Mecklenburg, NC, Rutherford, NC, Union, NC. |
| Cayuga Nation of New York | Allegany, NY[7],Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA. |
| Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota. | Corson, SD, Dewey, SD, Haakon, SD, Meade, SD Perkins, SD, Potter, SD, Stanley, SD, Sully, SD Walworth, SD, Ziebach, SD. |
| Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana | Chouteau, MT, Hill, MT, Liberty, MT. |
| Chitimacha Tribe of Louisiana | St. Mary Parish, LA. |
| Cocopah Tribe of Arizona | Yuma, AZ, Imperial, CA. |
| Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho | Benewah, ID, Kootenai, ID, Latah, ID, Spokane, WA, Whitman, WA. |
| Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California. | La Paz, AZ, Riverside, CA, San Bernardino, CA Yuma, AZ. |
| Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana. | Flathead, MT, Lake, MT, Missoula, MT, Sanders, MT. |
| Confederated Tribes of the Chehalis Reservation, Washington | Grays Harbor, WA, Lewis, WA, Thurston, WA. |
| Confederated Tribes of the Colville Reservation, Washington | Chelan, WA[8], Douglas, WA, Ferry, WA, Grant, WA, Lincoln, WA, Okanogan, WA, Stevens, WA. |
| Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians of Oregon. | Coos, OR[9], Curry, OR, Douglas, OR Lane, OR, Lincoln, OR. |
| Confederated Tribes of the Goshute Reservation, Nevada and Utah | Nevada, Juab, UT, Toole, UT. |
| Confederated Tribes of Grand Ronde Community of Oregon | Polk, OR[10], Washington, OR, Marion, OR, Yamhill, OR, Tillamook, OR, Multnomah, OR. |
| Confederated Tribes of the Siletz Reservation, Oregon | Benton, OR[11], Clackamas, OR, Lane, OR, Lincoln, OR, Linn, OR, Marion, OR, Multnomah, OR, Polk, OR, Tillamook, OR, Washington, OR, Yam Hill, OR. |
| Confederated Tribes of the Umatilla Reservation, Oregon | Umatilla, OR, Union, OR. |
| Confederated Tribes of the Warm Springs Reservation of Oregon | Clackamas, OR, Jefferson, OR, Linn, OR, Marion, OR, Wasco, OR. |
| Confederated Tribes & Bands of the Yakama Nation, Washington | Klickitat, WA, Lewis, WA, Skamania, WA[12], Yakima, WA. |
| Coquille Tribe of Oregon | Coos, OR, Curry, OR, Douglas, OR, Jackson, OR, Lane, OR. |
| Coushatta Tribe of Louisiana | Allen Parish, LA, Elton, LA.[13] |
| Cow Creek Band of Umpqua Indians of Oregon | Coos, OR[14], Deshutes, OR, Douglas, OR, Jackson, OR, Josephine, OR, Klamath, OR, Lane, OR. |
| Cowlitz Indian Tribe, Washington | Clark, WA, Cowlitz, WA, King, WA, Lewis, WA, Pierce, WA, Skamania, WA, Thurston, WA, Columbia, OR, Kittitas, WA, Wahkiakum, WA.[15] |
| Crow Tribe of Montana | Big Horn, MT, Carbon, MT, Treasure, MT[16], Yellowstone, MT, Big Horn, WY, Sheridan, WY. |
| Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota | Brule, SD, Buffalo, SD, Hand, SD, Hughes, SD, Hyde, SD, Lyman, SD, Stanley, SD. |
| Eastern Band of Cherokee Indians of North Carolina | Cherokee, NC, Graham, NC, Haywood, NC, Jackson, NC, Swain, NC. |
| Flandreau Santee Sioux Tribe of South Dakota | Moody, SD. |
| Fond du Lac Band of Chippewa Indians of Minnesota | Carlton, MN, St. Louis, MN. |
| Forest County Potawatomi Community, Wisconsin | Forest, WI, Marinette, WI, Oconto, WI. |
| Fort Belknap Indian Community of the Fort Belknap Reservation of Montana. | Blaine, MT, Phillips, MT. |
| Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon. | Nevada, Malheur, OR. |
| Fort McDowell Yavapai Nation, Arizona | Maricopa, AZ. |
| Fort Mojave Indian Tribe of Arizona, California and Nevada | Nevada, Mohave, AZ, San Bernardino, CA. |
| Gila River Indian Community of the Gila River Indian Reservation, Arizona. | Maricopa, AZ, Pinal, AZ. |
| Grand Portage Band of Chippewa Indians of Minnesota | Cook, MN. |
| Grand Traverse Band of Ottawa & Chippewa Indians of Michigan | Antrim, MI[17], Benzie, MI, Charlevoix, MI, Grand Traverse, MI, Leelanau, MI, Manistee, MI. |
| Hannahville Indian Community, Michigan | Delta, MI, Menominee, MI. |
| Haskell Indian Health Center | Douglas, KS.[18] |
| Havasupai Tribe of the Havasupai Reservation, Arizona | Coconino, AZ. |
| Ho-Chunk Nation of Wisconsin | Adams, WI[19], Clark, WI, Columbia, WI, Crawford, WI, Dane, WI, Eau Claire, WI, Houston, MN, Jackson, WI, Juneau, WI, La Crosse, WI, Marathon, WI, Monroe, WI, Sauk, WI, Shawano, WI, Vernon, WI, Wood, WI. |
| Hoh Indian Tribe of the Hoh Indian Reservation, Washington | Jefferson, WA. |
| Hopi Tribe of Arizona | Apache, AZ, Coconino, AZ, Navajo, AZ. |
| Houlton Band of Maliseet Indians of Maine | Aroostook, ME.[20] |
| Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona | Coconino, AZ, Mohave, AZ Yavapai, AZ. |

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

| Tribe/reservation | County/state |
|---|---|
| Huron Potawatomi, Inc., Michigan | Allegan, MI[21], Barry, MI, Branch, MI, Calhoun, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI. |
| Iowa Tribe of Kansas and Nebraska | Brown, KS, Doniphan, KS, Richardson, NE. |
| Jamestown S'Klallam Tribe of Washington | Clallam, WA, Jefferson, WA. |
| Jena Band of Choctaw Indians, Louisiana | Grand Parish, LA[22], LaSalle Parish, LA, Rapides Parish, LA. |
| Jicarilla Apache Nation, New Mexico | Archuleta, CO, Rio Arriba, NM, Sandoval, NM. |
| Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona. | Coconino, AZ, Mohave, AZ, Kane, UT. |
| Kalispel Indian Community of the Kalispel Indian Reservation, Washington. | Pend Oreille, WA, Spokane, WA. |
| Keweenaw Bay Indian Community, Michigan | Baraga, MI, Houghton, MI, Ontonagon, MI. |
| Kickapoo Tribe of Indians of the Kickapoo Reservation of Kansas | Brown, KS, Jackson, KS. |
| Kickapoo Traditional Tribe of Texas | Maverick, TX.[23] |
| Klamath Tribes of Oregon | Klamath, OR.[24] |
| Kootenai Tribe of Idaho | Boundary, ID. |
| Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin. | Sawyer, WI. |
| Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin.. | Iron, WI, Oneida, WI, Vilas, WI. |
| Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan | Gogebic, MI. |
| Leech Lake Band of Chippewa Indians of Minnesota | Beltrami, MN, Cass, MN, Hubbard, MN, Itasca, MN. |
| Little River Band of Ottawa Indians, Michigan | Kent, MI[25], Muskegon, MI, Newaygo, MI, Oceana, MI, Ottawa, MI, Manistee, MI, Mason, MI, Wexford, MI, Lake, MI. |
| Little Traverse Bay Bands of Odawa Indians, Michigan | Alcona, MI[26], Alger, MI, Alpena, MI, Antrim, MI, Benzie, MI, Charlevoix, MI, Cheboygan, MI Chippewa, MI, Crawford, MI, Delta, MI, Emmet, MI, Grand Traverse, MI, Iosco, MI, Kalkaska, MI, Leelanau, MI, Luce, MI, Mackinac, MI, Manistee, MI, Missaukee, MI, Montmorency, MI, Ogemaw, MI, Oscoda, MI, Otsego, MI, Presque Isle, MI, Schoolcraft, MI, Roscommon, MI, Wexford, MI. |
| Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota | Brule, SD, Buffalo, SD, Hughes, SD, Lyman, SD, Stanley, SD. |
| Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington. | Clallam, WA. |
| Lower Sioux Indian Community in the State of Minnesota | Redwood, MN, Renville, MN. |
| Lummi Tribe of the Lummi Reservation, Washington | Whatcom, WA. |
| Makah Indian Tribe of the Makah Reservation, Washington | Clallam, WA |
| Mashantucket Pequot Tribe of Connecticut | New London, CT.[27] |
| Mashpee Wampanoag | Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA and Suffolk, MA.[28] |
| Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan | Allegan, MI[29], Barry, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI. |
| Menominee Indian Tribe of Wisconsin | Langlade, WI, Menominee, WI, Oconto, WI, Shawano, WI. |
| Mescalero Apache Tribe of the Mescalero Reservation, New Mexico | Chaves, NM, Lincoln, NM, Otero, NM. |
| Miccosukee Tribe of Indians of Florida | Broward, FL, Collier, FL, Miami-Dade, FL, Hendry, FL. |
| Mille Lacs Band of Chippewa Indians of Minnesota | Aitkin, MN, Kanebec, MN, Mille Lacs, MN, Pine, MN. |
| Mississippi Band of Choctaw Indians, Mississippi | Attala, MS, Jasper, MS[30], Jones, MS Kemper, MS, Leake, MS, Neshoba, MS, Newton, MS, Noxubee, MS[31], Scott, MS[32], Winston, MS. |
| Mohegan Indian Tribe of Connecticut | Fairfield, CT, Hartford, CT, Litchfield, CT, Middlesex, CT, New Haven, CT, New London, CT, Tolland, CT, Windham, CT. |
| Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington | King, WA, Pierce, WA. |
| Narragansett Indian Tribe of Rhode Island | Washington, RI.[33] |
| Navajo Nation, Arizona, New Mexico and Utah | Apache, AZ, Bernalillo, NM, Cibola, NM, Coconino, AZ, Kane, UT, McKinley, NM, Montezuma, CO, Navajo, AZ, Rio Arriba, NM, Sandoval, NM, San Juan, NM, San Juan, UT, Socorro, NM, Valencia, NM. |
| Nevada | Entire State.[34] |
| Nez Perce Tribe of Idaho | Clearwater, ID, Idaho, ID, Latah, ID, Lewis, ID, Nez Perce, ID. |
| Nisqually Indian Tribe of the Nisqually Reservation, Washington | Pierce, WA, Thurston, WA. |
| Nooksack Indian Tribe of Washington | Whatcom, WA. |
| Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana. | Big Horn, MT, Carter, MT[35] Rosebud, MT. |
| Northwestern Band of Shoshoni Nation of Utah (Washakie) | Box Elder, UT.[36] |
| Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota | Bennett, SD, Cherry, NE, Custer, SD, Dawes, NE, Fall River, SD, Jackson, SD[37] Mellete, SD, Pennington, SD, Shannon, SD, Sheridan, NE, Todd, SD. |
| Oklahoma | Entire State.[38] |
| Omaha Tribe of Nebraska | Burt, NE, Cuming, NE, Monona, IA, Thurston, NE, Wayne, NE. |
| Oneida Nation of New York | Chenango, NY, Cortland, NY, Herkimer, NY, Madison, NY, Oneida, NY, Onondaga, NY. |
| Oneida Tribe of Indians of Wisconsin | Brown, WI, Outagamie, WI. |
| Onondaga Nation of New York | Onondaga, NY. |
| Paiute Indian Tribe of Utah | Iron, UT,[39] Millard, UT, Sevier, UT Washington, UT. |
| Pascua Yaqui Tribe of Arizona | Pima, AZ.[40] |

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

| Tribe/reservation | County/state |
|---|---|
| Passamaquoddy Tribe of Maine | Aroostook, ME,[41] Washington, ME. |
| Passamaquoddy Tribe of Pleasant Point, Maine | Washington, ME, south of State Route.[42] |
| Penobscot Tribe of Maine | Aroostook, ME[43], Penobscot, ME. |
| Poarch Band of Creek Indians of Alabama | Baldwin, AL[44], Escambia, AL, Mobile, AL, Monroe, AL, Escambia, FL. |
| Pokagon Band of Potawatomi Indians, Michigan and Indiana | Allegan, MI, Berrien, MI, Cass, MI, Elkhart, IN[45], Kosciusko, IN, La Porte, IN, Marshall, IN, St. Joseph, IN, Starke, IN, Van Buren, MI. |
| Ponca Tribe of Nebraska | Boyd, NE[46], Burt, NE, Charles Mix, SD, Douglas, NE, Hall, NE, Holt, NE, Knox, NE, Lancaster, NE, Madison, NE, Platte, NE, Pottawattomie, IA, Sarpy, NE, Stanton, NE, Wayne, NE, Woodbury, IA. |
| Port Gamble Indian Community of the Port Gamble Reservation, Washington. | Kitsap, WA. |
| Prairie Band of Potawatomi Nation, Kansas | Jackson, KS. |
| Prairie Island Indian Community in the State of Minnesota | Goodhue, MN. |
| Pueblo of Acoma, New Mexico | Cibola, NM. |
| Pueblo of Cochiti, New Mexico | Sandoval, NM, Santa Fe, NM. |
| Pueblo of Jemez, New Mexico | Sandoval, NM. |
| Pueblo of Isleta, New Mexico | Bernalillo, NM, Torrance, NM, Valencia, NM. |
| Pueblo of Laguna, New Mexico | Bernalillo, NM, Cibola, NM, Sandoval, NM Valencia, NM. |
| Pueblo of Nambe, New Mexico | Santa Fe, NM. |
| Pueblo of Picuris, New Mexico | Taos, NM. |
| Pueblo of Pojoaque, New Mexico | Rio Arriba, NM, Santa Fe, NM. |
| Pueblo of San Felipe, New Mexico | Sandoval, NM. |
| Pueblo of San Ildefonso, New Mexico | Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM. |
| Pueblo of San Juan, New Mexico | Rio Arriba, NM. |
| Pueblo of Sandia, New Mexico | Bernalillo, NM, Sandoval, NM. |
| Pueblo of Santa Ana, New Mexico | Sandoval, NM. |
| Pueblo of Santa Clara, New Mexico | Los Alamos, NM, Sandoval, NM, Santa Fe, NM. |
| Pueblo of Santo Domingo, New Mexico | Sandoval, NM, Santa Fe, NM. |
| Pueblo of Taos, New Mexico | Colfax, NM, Taos, NM. |
| Pueblo of Tesuque, New Mexico | Santa Fe, NM. |
| Pueblo of Zia, New Mexico | Sandoval, NM. |
| Puyallup Tribe of the Puyallup Reservation, Washington | King, WA, Pierce, WA, Thurston, WA. |
| Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona. | Yuma, AZ, Imperial, CA. |
| Quileute Tribe of the Quileute Reservation, Washington | Clallam, WA, Jefferson, WA. |
| Quinault Tribe of the Quinault Reservation, Washington | Grays Harbor, WA, Jefferson, WA. |
| Rapid City, South Dakota | Pennington, SD.[47] |
| Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin | Bayfield, WI. |
| Red Lake Band of Chippewa Indians, Minnesota | Beltrami, MN, Clearwater, MN, Koochiching, MN, Lake of the Woods, MN, Marshall, MN Pennington, MN, Polk, MN, Roseau, MN. |
| Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota | Bennett, SD, Cherry, NE, Gregory, SD, Lyman, SD, Mellette, SD, Todd, SD, Tripp, SD. |
| Sac & Fox Tribe of the Mississippi in Iowa | Tama, IA. |
| Sac & Fox Nation of Missouri in Kansas & Nebraska | Brown, KS, Richardson, NE. |
| Saginaw Chippewa Indian Tribe of Michigan | Arenac, MI,[48] Clare, MI, Isabella, MI, Midland, MI, Missaukee, MI. |
| St. Croix Chippewa Indians of Wisconsin | Barron, WI, Burnett, WI, Pine, MN, Polk, WI Washburn, WI. |
| Saint Regis Mohawk Tribe, New York | Franklin, NY, St. Lawrence, NY. |
| Salt River Pima-Maricopa Indian Community of Salt River Reservation, Arizona. | Maricopa, AZ. |
| Samish Indian Tribe, Washington | Clallam, WA,[49] Island, WA, Jefferson, WA King, WA, Kitsap, WA, Pierce, WA, San Juan, WA, Skagit, WA, Snohomish, WA, Whatcom, WA. |
| San Carlos Apache Tribe of the San Carlos Reservation, Arizona | Apache, AZ, Cochise, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Pinal, AZ. |
| San Juan Southern Paiute Tribe of Arizona | Coconino, AZ, San Juan, UT. |
| Santee Sioux Nation, Nebraska | Bon Homme, SD, Knox, NE. |
| Sauk-Suiattle Indian Tribe of Washington | Snohomish, WA, Skagit, WA. |
| Sault Ste. Marie Tribe of Chippewa Indians of Michigan | Alger, MI,[50] Chippewa, MI, Delta, MI Luce, MI, Mackinac, MI, Marquette, MI Schoolcraft, MI. |
| Seminole Tribe of Florida | Broward, Fl, Collier, Fl, Miami-Dade, FL, Glades, FL, Hendry, FL. |
| Seneca Nation of New York | Allegany, NY, Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA. |
| Shakopee Mdewakanton Sioux Community of Minnesota | Scott, MN. |
| Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington. | Pacific, WA. |
| Shoshone Tribe of the Wind River Reservation, Wyoming | Hot Springs, WY, Fremont, WY, Sublette, WY. |
| Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho | Bannock, ID, Bingham, ID, Caribou, ID, Lemhi, ID[51], Power, ID. |
| Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada | Nevada, Owyhee, ID. |
| Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota. | Codington, SD, Day, SD, Grant, SD, Marshall, SD, Richland, ND, Roberts, SD, Sargent, ND, Traverse, MN. |
| Skokomish Indian Tribe of Skokomish Reservation, Washington | Mason, WA. |

CONTRACT HEALTH SERVICE DELIVERY AREAS AND SERVICE DELIVERY AREAS—Continued

| Tribe/reservation | County/state |
|---|---|
| Skull Valley Band of Goshute Indians of Utah | Tooele, UT. |
| Snoqualmie Tribe, Washington | King, WA,[52] Snohomish, WA, Pierce, WA, Island, WA, Mason, WA. |
| Sokaogon Chippewa Community, Wisconsin | Forest, WI. |
| Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado | Archuleta, CO, La Plata, CO, Montezuma, CO, Rio Arriba, NM, San Juan, NM. |
| Spirit Lake Tribe, North Dakota | Benson, ND, Eddy, ND, Nelson, ND, Ramsey, ND. |
| Spokane Tribe of the Spokane Reservation, Washington | Ferry, WA, Lincoln, WA, Stevens, WA. |
| Squaxin Island Tribe of the Squaxin Island Reservation, Washington | Mason, WA. |
| Standing Rock Sioux Tribe of North and South Dakota | Adams, ND, Campbell, SD, Corson, SD, Dewey, SD, Emmons, ND, Grant, ND, Morton, ND, Perkins, SD, Sioux, ND, Walworth, SD, Ziebach, SD. |
| Stockbridge Munsee Community, Wisconsin | Menominee, WI, Shawano, WI. |
| Stillaguamish Tribe of Washington | Snohomish, WA. |
| Suquamish Indian Tribe of the Port Madison Reservation, Washington | Kitsap, WA. |
| Swinomish Indians of the Swinomish Reservation, Washington | Skagit, WA. |
| Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota | Dunn, ND, Mercer, ND, McKenzie, ND, McLean, ND, Mountrail, ND, Ward, ND. |
| Tohono O'odham Nation of Arizona | Maricopa, AZ, Pima, AZ, Pinal, AZ. |
| Tonawanda Band of Seneca Indians of New York | Genesee, NY, Erie, NY, Niagara, NY. |
| Tonto Apache Tribe of Arizona | Gila, AZ. |
| Trenton Service Unit, North Dakota and Montana | Divide, ND,[53] McKenzie, ND, Williams, ND, Richland, MT, Roosevelt, MT, Sheridan, MT. |
| Tulalip Tribes of the Tulalip Reservation, Washington | Snohomish, WA. |
| Tunica-Biloxi Indian Tribe of Louisiana | Avoyelles, LA, Rapides, LA.[54] |
| Turtle Mountain Band of Chippewa Indians of North Dakota | Rolette, ND. |
| Tuscarora Nation of New York | Niagara, NY. |
| Upper Sioux Community, Minnesota | Chippewa, MN, Yellow Medicine, MN. |
| Upper Skagit Indian Tribe of Washington | Skagit, WA. |
| Ute Indian Tribe of the Uintah & Ouray Reservation, Utah | Carbon, UT, Daggett, UT, Duchesne, UT, Emery, UT, Grand, UT, Rio Blanco, CO, Summit, UT, Uintah, UT, Utah, UT, Wasatch, UT. |
| Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico and Utah. | Apache, AZ, La Plata, CO, Montezuma, CO, San Juan, NM, San Juan, UT. |
| Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts | Dukes, MA.[55] |
| Washoe Tribe of Nevada & California | Entire State of NV Entire State of CA, except for the counties listed in footnote. |
| White Earth Band of Chippewa Indians of Minnesota | Becker, MN, Clearwater, MN, Mahnomen, MN Norman, MN, Polk, MN. |
| White Mountain Apache Tribe of the Fort Apache Reservation, Arizona | Apache, AZ, Coconino, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Navajo, AZ. |
| Winnebago Tribe of Nebraska | Dakota, NE, Dixon, NE, Monona, IA, Thurston, NE, Wayne, NE, Woodbury, IA. |
| Yankton Sioux Tribe of South Dakota | Bon Homme, SD, Boyd, NE, Charles Mix, SD, Douglas, SD, Gregory, SD, Hutchinson, SD Knox, NE. |
| Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona | Yavapai, AZ. |
| Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona | Yavapai, AZ. |
| Ysleta Del Sur Pueblo of Texas | El Paso, TX.[56] |
| Zuni Tribe of the Zuni Reservation, New Mexico | Apache, AZ, Cibola, NM, McKinley, NM, Valencia, NM. |

[1] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for "members of the Tribe" by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

[2] Entire State of Alaska is included as a CHSDA by regulation (42 CFR 136.22(a)(1)).

[3] Aroostook Band of Micmac was recognized by Congress on November 26, 1991 through the Aroostook Band of Micmac Settlement Act. Aroostook County was defined as the SDA.

[4] Special programs established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations and historically services have been provided at Brigham City (Pub. L. 88–358).

[5] Entire State of California, excluding counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura, is designated a CHSDA (25 U.S.C. 1680).

[6] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[7] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[8] Historically part of the Coleville Service Unit population since 1970.

[9] Members of the Tribe residing in these counties were specified as eligible for Federal services and benefits without regard to the existence of a Federal Indian reservation (Pub. L. 98–481, and H. Rept. No. 98–904).

[10] Confederated Tribes of Grande Ronde Community of Oregon recognized by Pub. L. 98–165, signed into law on November 22, 1983, provides for eligibility in these six counties without regard to the existence of a reservation.

[11] In order to carry out the Congressional intent of the Siletz Restoration Act, Pub. L. 95–195, as expressed in H. Report No. 95–623, at page 4, Siletz Tribal members residing in these counties are eligible for contract health services.

[12] Historically part of the Yakama Service Unit population since 1979.

[13] Contract Health Service Delivery Area expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(6)) to include city limits of Elton, LA.

[14] Cow Creek Band of Umpqua Indians of Oregon recognized by Pub. L. 97–391, signed into law on December 29, 1983. House Rept. No. 97–862 designates Douglas, Jackson, and Josephine Counties as a service area without regard to the existence of a reservation. The IHS later exercised administrative discretion to add Coos, Deshutes, Klamath and Lane counties to the service delivery area.

[15] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638. It is proposed that Columbia County, OR, Kittitas, WA and Wahkiakum County, WAS be added to the existing SDA.

[16] Historically part of Crow Service Unit population.

[17] Historically part of the Grand Traverse Service Unit population since 1980.

[18] Historically part of Kansas Service Unit since 1979. Special programs established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations and historically services have been provided at Haskell (H. Rept. No. 95–392).

[19] The counties included in this CHSDA were designated by regulation (42 CFR 136.22(a)(5)).

[20] Public Law 97–428 provides for eligibility in or around the Town of Houlton without regard to existence of a reservation.

[21] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[22] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[23] Texas Band of Kickapoo was recognized by Pub. L. 97–429, signed into law on January 8, 1983.The Act provides for eligibility for Kickapoo Tribal members residing in Maverick County without regard to the existence of a reservation.

[24] Legislative history states that for the purpose of Federal services and benefits ''members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation''. (Pub. L. 99–398, Sec. 2(2)).

[25] The Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians were recognized by Congress (Pub. L. 103–324, Sec.4 (b)(2)) and the listed counties were designated as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[26] The Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians were recognized by Congress (Pub. L. 103–324, Sec.4 (b)(2)) and the listed counties were designated as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[27] Mashantucket Pequot Indian Claims Settlement Act, Pub. L. 98–134, signed into law on October 18, 1983, provides for a reservation in New London.

[28] This is a newly recognized Tribe, as documented at 72 FR 8007, February 22, 2007. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[29] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[30] Choctaw Indians residing in Jasper and Noxubee Counties, MS, will continue to be eligible for contract health services. These two counties were inadvertently omitted from 42 CFR 136.22.

[31] Choctaw Indians residing in Jasper and Noxubee Counties, MS, will continue to be eligible for contract health services. These two counties were inadvertently omitted from 42 CFR 136.22.

[32] Historically part of the Choctaw Service Unit population since 1970.

[33] Narragansett Indians recognized by Pub. L. 95–395, signed into law September 30, 1978. Lands in Washington County are now Federally restricted and the Bureau of Indian Affairs considers them as the Narragansett Indian Reservation.

[34] Entire State of Nevada is included as a CHSDA by regulation (42 CFR 136.22 (a)(2)).

[35] Historically part of the Northern Cheyenne Service Unit population since 1979.

[36] Land of Box Elder County, Utah, taken into trust for the Tribe in 1986.

[37] Washabaugh County, SD is part of Jackson County, SD, on November 5, 1968.

[38] Entire State of Oklahoma is included as a CHSDA by regulation (42 CFR 136.22 (a)(3)).

[39] Paiute Indian Tribe of Utah Reservation Act, Pub. L. 96–227, provides for the extension of services to these four counties without regard to the existence of a reservation.

[40] Legislative history (H.R. Report No. 95–1021) to Pub. L.95–375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the Tribes pursuant to Act of October 8, 1964. (Pub. L. 88–350) shall be deemed a Federal Indian Reservation.

[41] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians (Pub. L. 96–420; H. Rept. 96–1353).

[42] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians (Pub. L. 96–420; H. Rept. 96–1353)

[43] Included to carry out the intention of Congress to fund and provide contract health services to Penobscot and Passamaquoddy Indians (Pub. L. 96–420; H. Rept. 96–1353)

[44] Counties in the Service Unit designated by Congress for the Poarch Band of Creek Indians (see H. Rept. 98–886, June 29, 1984; Cong. Record, October 10, 1984, Pg. H11929).

[45] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[46] Ponca Restoration Act, Pub. L. 101–484, recognized members of the Tribe residing in Boyd, Douglas, Knox, Madison or Lancaster counties of Nebraska or Charles Mix county of South Dakota shall be deemed to be residing on or near a reservation. Pub. L. 104–109 added Burt, Hall, Holt, Platte, Sarpy, Stanton, and Wayne counties of Nebraska and Pottawatomie and Woodbury counties of Iowa.

[47] Special programs established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations and historically services have been provided at Rapid City.

[48] Historically part of Isabella Reservation Area and Eastern Michigan Service Unit population since 1979.

[49] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[50] The counties included in this CHSDA were designated by regulation (42 CFR 136.22(a)(4)).

[51] Historically part of the Fort Hall Service Unit population since 1979.

[52] This is a newly recognized Tribe, as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of the operating a CHS program pursuant to the ISDEAA, Pub. L. 93–638.

[53] The Secretary acting through the Service is directed to provide contract health services to Turtle Mountain Band of Chippewa Indians that reside in Trenton Service Area of Divide, Mackenzie, and Williams counties in the state of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the state of Montana (Sec. 815, Pub. L. 94–437).

[54] Historically part of the Tunica Biloxi Service Unit population since 1982.

[55] Members of the Tribe residing in Martha's Vineyard [are] deemed to be living ''on or near an Indian reservation'' for the purposes of eligibility for Federal services (Sec. 12, Pub. L.100–95).

[56] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for ''members of the Tribe'' by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

Dated: August 29, 2012.

**Yvette Roubideaux,**

*Director, Indian Health Service.*

[FR Doc. 2012–22593 Filed 9–12–12; 8:45 am]

**BILLING CODE 4165–16–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Image Analysis Software for Quantitative Evaluation of Striation Patterns and Their Defects in Skeletal Muscles**

*Description of Technology:* Available for licensing is software written in MatLab for evaluating striation patters in images of skeletal muscle fibers for better sensitivity in the quantitation of skeletal muscle disorders. Skeletal muscles have a regular, periodic organization (the periodicity of the sarcomeres), which is not only structural but also functional. Muscle pathologies create disorder in the normally periodic myofibrils. Objective grading of muscle morphology is necessary to assess muscle health, compare biopsies, and evaluate treatments and the evolution of disease.

*Potential Commercial Applications:* Drug development for muscular disorders.

*Competitive Advantages:* Automated analysis of sarcomere dysplasia for objective grading of muscle morphology.

*Development Stage:* Prototype.

*Inventors:* Wenhua Liu and Evelyn Ralston (NIAMS).

*Publications:*

1. Plotnikov SV, *et al.* Measurement of muscle disease by quantitative second-harmonic generation imaging. J Biomed Opt. 2008 Jul–Aug;13(4):044018. [PMID 19021346].
2. Friedrich O, *et al.* Microarchitecture is severely compromised but motor protein function is preserved in dystrophic mdx skeletal muscle. Biophys J. 2010 Feb 17;98(4):606–16. [PMID 20159157].
3. Llewellyn ME, *et al.* Minimally invasive high-speed imaging of sarcomere contractile dynamics in mice and humans. Nature 2008 Aug 7;454(7205):784–8. [PMID 18600262].

*Intellectual Property:* HHS Reference No. E–264–2012/0—Software Research Tool. Patent protection is not being pursued for this technology.

*Licensing Contact:* Michael Shmilovich; 301–435–5019; *shmilovm@mail.nih.gov.*

*Collaborative Research Opportunity:* The Light Imaging Section of NIAMS, NIH, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize software for image analysis of cells and tissues and skeletal muscle. For collaboration opportunities, please contact Wenhua Liu at *liuw5@mail.nih.gov* or 301–451–4815.

**Capillary Viscometer for Measuring Viscosity of Macromolecular Solutions of Biological Relevance**

*Description of Technology:* A capillary-based device and system for measuring the rheological properties of solutions of synthetic and biological polymers. The device automatically serially dilutes and varies the flow rate of a sample, permitting measurement of solution viscosity across wide ranges of concentration and shear rate without changing samples. The device can rapidly and accurately assay solute stability, solute-solvent and solute-solute interactions in solutions of proteins and other macromolecules of biotechnological and pharmaceutical interest, as well as solution injectability.

*Potential Commercial Applications:* Rapid characterization of composition-dependent rheological properties of candidate biopharmaceuticals and industrial polymers.

*Competitive Advantages:*

- Automatic variation of solute concentration
- Automatic variation of shear rate
- Direct measurement of solution injectability

*Development Stage:*

- Prototype
- *In vitro* data available

*Inventors:* Allen Minton and Asaf Grupi (NIDDK).

*Intellectual Property:* HHS Reference No. E–231–2012/0—US Provisional Application No. 61/691,209 filed 20 Aug 2012.

*Licensing Contact:* Michael Shmilovich; 301–435–5019; *shmilovm@mail.nih.gov*.

*Collaborative Research Opportunity:* The National Institute of Diabetes and Digestive and Kidney Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize automated capillary viscometer. For collaboration opportunities, please contact Allen P. Minton at *minton@helix.nih.gov* or Asaf Grupi at *grupia@gmail.com*.

**Use of Erythropoietin and Derivatives for Treatment of Hypertension**

*Description of Technology:* Erythropoietin (EPO), a natural hormone produced by kidneys is associated with stimulation of red blood cell production. Recombinant human erythropoietin (rhEPO) is currently used for treatment of anemia and has powerful cardioprotective properties. Hypertension remains a major health problem and a serious risk factor for stroke and chronic heart failure. Researchers at the NIH have discovered that administering a therapeutically effective dose of rhEPO or an EPO derivative including carbamylated erythropoietin (CEPO) and Helix B surface peptide (HBSP), have an acutely reducing both systolic and diastolic blood pressure, via Nitric Oxide (NO) signaling. Long-term administration of derivative of EPO, HBSP, prevents elevation of arterial blood pressure in an animal model of hypertension. Unlike long-term treatment with rhEPO, administration of EPO derivatives, such as HBSP, does not stimulate excessive red cell production and will be useful in the development of anti-hypertensive drugs.

*Potential Commercial Applications:* Therapeutics for treatment of hypertension.

*Competitive Advantages:*

- Administration of EPO and derivatives does not stimulate excessive red blood cell production
- This technology utilizes activation of natural vasodilation mechanisms

• rhEPO and EPO derivatives provide tissue-protective properties, which none of existing antihypertensive drugs does

*Development Stage:*

• Early-stage
• Pre-clinical
• *In vitro* data available

*Inventors:* Mark Talan, Ismayil Ahmet, Edward Lakatta (all of NIA).

*Publication:* Ahmet I, *et al.* Acute hemodynamic effects of erythropoietin do not mediate its cardioprotective properties. Biolog Open 2012, in press.

*Intellectual Property:*

• HHS Reference No. E–158–2012/0—U.S. Provisional Application No. 61/636,547 filed 20 Apr 2012
• HHS Reference No. E–158–2012/1—U.S. Provisional Application No. 61/638,328 filed 25 Apr 2012
• HHS Reference No. E–158–2012/2—U.S. Provisional Application No. 61/656,698 filed 07 Jun 2012

*Licensing Contact:* Fatima Sayyid, M.H.P.M.; 301–435–4521; *Fatima.Sayyid@nih.hhs.gov*.

*Collaborative Research Opportunity:* The National Institute on Aging is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize new anti-hypertensive drug based of non-erythropoietic derivatives of erythropoietin that combines vasodilative and tissue protective properties. For collaboration opportunities, please contact Vio Conley, M.S. at *conleyv@mail.nih.gov*.

**High-Affinity Mouse Monoclonal Antibodies to Glypican-3 (GPC3) for Treatment of Cancer**

*Description of Technology:* Liver cancer is the fifth most common cancer in the world, with hepatocellular cancer (HCC) representing the preponderance of these liver cancers. As with many cancers, positive prognosis for a patient diagnosed with HCC correlates with the early detection of the disease. Unfortunately, HCC is usually detected at a late stage in its development, leading to poor prognosis for most patients. As a result, there is great interest and value in developing new agents which can detect the presence of HCC in a patient at an early stage.

Glypican-3 (GPC3) is a cell surface heparan sulfate glycoprotein that is expressed on the vast majority of HCC cells. The correlation between GPC3 expression and HCC makes GPC3 an attractive candidate for studying the disease progression and treatment of HCC. The presence, progression and treatment of this disease can potentially be monitored by tracking the level of expression of GPC3 on cells. This can be accomplished using monoclonal antibodies which recognize only GPC3, particularly the cell surface domain of the protein. This invention concerns the generation of several monoclonal antibodies that are specific for the cell surface domain of GPC3 (YP6, YP7, YP8, YP9 and YP9.1), and which can be used either as therapeutic candidates for treating GPC3-related diseases or as research reagents for studying the role of GPC3 in HCC.

*Potential Commercial Applications: Monoclonal antibodies for use as therapeutics, including:*

• Treatment of HCC as a stand-alone antibody
• Treatment of HCC as an antibody-drug conjugate, such as an immunotoxin

Antibodies for use as research materials, including:

• Detection of cells that express GPC3 for monitoring HCC disease progression and treatment
• Immunostaining for tumor imaging
• ELISA and immunohistochemistry applications
• Any other antibody-related research use, including immunoprecipitation, western blot analysis, etc.

*Competitive Advantages:*

• Higher binding affinity (subnanomolar levels) than commercially available GPC3 antibodies such as 1G12
• Increased binding activity potentially improves therapeutic value through improved specificity and lower effective drug concentrations
• Recognition of cells with low levels of GPC3 expression
• Able to bind to wild-type GPC3 (conjugated to heparan sulfate) better than the GPC3 core protein (lacking heparan sulfate)

*Development Stage:*

• Early-stage
• *In vitro* data available
• *In vivo* data available (animal)

*Inventors:* Mitchell Ho *et al.* (NCI).

*Publications:*

1. Ho M, Kim H. Glypican-3: A new target for cancer immunotherapy. Eur J Cancer. 2011 Feb;47(3):333–8. [PMID 21112773].
2. Ho M. Advances in liver cancer antibody therapies: A focus on glypican-3 and mesothelin. BioDrugs. 2011 Oct 1;25(5):275–84. [PMID 21942912].
3. Phung Y, *et al.* High-affinity monoclonal antibodies to cell surface tumor antigen glypican-3 generated through a combination of peptide immunization and flow cytometry screening. MAbs. 2012 Sep 1;4(5):592–9. [PMID: 22820551].

*Intellectual Property:* HHS Reference No. E–136–2012/0—U.S. Provisional Application No. 61/654,232 filed 01 Jun 2012.

*Related Technology:* HHS Reference No. E–130–2011/0—U.S. Provisional Application No. 61/477,020 filed 19 Apr 2011; PCT Application No. PCT/US2012/034186 filed 19 Apr 2012.

*Licensing Contact:* David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov*.

*Collaborative Research Opportunity:* The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize liver cancer therapy and diagnostics, humanization, antibody drug/toxin conjugates. For collaboration opportunities, please contact John Hewes, Ph.D. at *hewesj@mail.nih.gov.*

**New Targeted Therapy for Acute Myeloid Leukemia and Acute Lymphoblastic Leukemia**

*Description of Technology:* The invention describes the use of benzodiazepine compounds for the treatment of acute myeloid leukemia (AML) and acute lymphoblastic leukemia (ALL). Specifically, the compounds can be used to treat core binding factor (CBF) leukemias, which are a subgroup of leukemia associated with the generation of fusion genes, arising from the binding between the transcription factors: Core binding factor-beta (CBF?) and runt-related transcription factor 1 (RUNX1). The compounds described in this invention have been found to inhibit the binding of CBFβ and RUNX1, resulting in selectively killing leukemia cells in culture and suppressing leukemia in a mouse model.

In addition, the binding of runt-related transcription factors from the RUNX family have been implicated in the development of other diseases, including (but not limited to): Platelet disorders, solid tumours (*e.g.,* lymphoma, breast cancer, osteosarcoma) and bone diseases (*e.g.,* osteoporosis, cleidocranial dysplasia and intervertebral disk degeneration). Thus, the use of these compounds may represent new targeted therapies for AML and ALL as well as other RUNX-related disorders.

*Potential Commercial Applications:*

• Targeted drug therapies for AML and ALL.
• Combination chemotherapies for AML and ALL.
• Therapies for other RUNX related disorders, including platelet disorders, solid tumours (*e.g.,* lymphoma, breast cancer, osteosarcoma) and bone diseases

(*e.g.,* osteoporosis, cleidocranial dysplasia and intervertebral disk degeneration).

*Competitive Advantages:*

- Proof of concept demonstrated in a mouse model.
- Compounds have been previously tested in clinical studies for anti-HIV drugs.

*Development Stage:*

- Early-stage.
- Pre-clinical.
- *In vitro* data available.
- *In vivo* data available (animal).

*Inventors:* Pu Paul Liu (NHGRI), Wei Zheng (NCATS), Juan J. Marugan (NCATS), Noel T. Southall (NCATS), Lea Cunningham (NCI).

*Publication:* Cunningham L, *et al.* Identification of benzodiazepine Ro5–3335 as an inhibitor of CBF leukemia through quantitative high throughput screen against RUNX1–CBFβ interaction. Proc Natl Acad Sci USA. 2012 Sep 4;109(36):14592–7. [PMID 22912405].

*Intellectual Property:* HHS Reference No. E–060–2011/0—

- U.S. Provisional Application No. 61/453,863 filed 17 Mar 2011
- PCT Application No. PCT/US2012/029169 filed 15 Mar 2012

*Licensing Contact:* Sabarni K. Chatterjee, Ph.D.; 301–435–5587; *chatterjeesa@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Human Genome Research Institute (NHGRI), Oncogenesis and Development Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize benzodiazepine compounds described above to treat CBF leukemia, AML, ALL, and/or other RUNX-related disorders. Please contact Claire T. Driscoll, Director of NHGRI Technology Transfer Office (*cdriscoll@mail.nih.gov;* 301–594–2235) for more information.

**Novel Methods for Using Biomarkers To Monitor Glucose Levels and Screen for Diabetes Risk**

*Description of Technology:* A primary goal of diabetes therapy is to improve control of blood glucose levels (known as glycemic control) in patients. Prospective studies of both Type 1 and Type 2 diabetes indicate that careful glycemic control significantly reduces the risk of microvascular, neurological, and cardiovascular complications of diabetes. The current method of monitoring glycemic control involves measuring levels of the intracellular hemoglobin (HbA1C). However, levels of HbA1C reflect glycemic control over a timeframe of several months and are susceptible to a variety of perturbing factors such as hematologic disorders, kidney disease, aspirin or penicillin use, or alcohol intake.

This technology describes a family of novel glycated peptide and protein biomarkers for glycemic control, as well as a method to monitor glycemic control in diabetic patients. In contrast to intracellular HbA1C, this technology detects glycated plasma proteins, which may reflect changes in glycemic control more rapidly and with more sensitivity. A diagnostic test developed using this technology could be envisioned to supplement or replace current HbA1C-based glycemic monitoring and screen individuals for risk of diabetes.

*Potential Commercial Applications:*

- Diagnostic test to measure glycemic control in diabetic patients
- Diagnostic test to screen patients for risk of developing diabetes

*Competitive Advantages:*

- Detects plasma proteins rather than intracellular markers
- May provide more rapid and sensitive detection than currently used methods

*Development Stage:*

- Early-stage
- *In vitro* data available

*Inventor:* Perry J. Blackshear (NIEHS).

*Intellectual Property:* HHS Reference No. E–057–2005/0—

- PCT Application No. PCT/US2007/063385 filed 06 Mar 2007
- U.S. Application No. 12/281,909 filed 27 Oct 2008

*Licensing Contact:* Tara Kirby, Ph.D.; 301–435–4426; *tarak@mail.nih.gov.*

**A Novel Glucocorticoid Receptor Cofactor for Use as an Adjunct to Steroid-Based Therapies**

*Description of Technology:* Methods of using STAMP (SRC–1 and TIF–2 Associated Modulatory Protein) polypeptides for modulating steroid or nuclear receptor activity, alone or in combination with a steroid or nuclear receptor modulator. The novel protein, STAMP, modulates the trans-activation properties of glucocorticoid receptors and other steroid receptors. STAMP may be useful as a steroid-sparing agent for decreasing the severity of unwanted side-effects during steroid treatment, particularly in long-term treatment for chronic disease.

Steroid hormones such as androgens and glucocorticoids are used in the treatment of many diseases. They act to regulate many physiological responses by binding to steroid receptors. However, because steroid receptors are expressed in many tissues, efforts to therapeutically modify the effects of steroid hormones on a specific tissue or on a specific receptor of the steroid receptor family often cause undesirable effects in other tissues or on other receptors.

*Potential Commercial Applications:* Adjunct to steroid-based therapies for diseases such as arthritis, asthma, inflammatory and autoimmune diseases.

*Competitive Advantages:*

- Reduce the severity of unwanted side-effects from conventional steroid hormone therapies.
- Particularly beneficial for long-term therapies.

*Development Stage:*

- Early-stage
- *In vitro* data available

*Inventors:* S. Stoney Simons and Yuanzheng He (NIDDK).

*Publications:*

1. He Y, *et al.* STAMP alters the growth of transformed and ovarian cancer cells. BMC Cancer. 2010 Apr 7;10:128. [PMID 20374646]
2. He Y, Simons SS Jr. STAMP, a novel predicted factor assisting TIF2 actions in glucocorticoid receptor-mediated induction and repression. [PMID 17116691]
3. He Y, *et al.* Modulation of induction properties of glucocorticoid receptor-agonist and -antagonist complexes by coactivators involves binding to receptors but is independent of ability of coactivators to augment transactivation. [PMID 12376547]

*Intellectual Property:* HHS Reference No. E–056–2004/0—U.S. Patent No. 7,867,500 issued 11 Jan 2011.

*Licensing Contact:* Tara Kirby, Ph.D.; 301–435–4426; *tarak@mail.nih.gov.*

Dated: September 7, 2012.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2012–22497 Filed 9–12–12; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases B Subcommittee. MID–B October 2012.
*Date:* October 9, 2012.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact Person:* Nancy Lewis Ernst, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–7383, *nancy.ernst@nih.gov.*

*Name of Committee:* Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee.
*Date:* October 11, 2012.
*Time:* 10 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).
*Contact Person:* Michelle M. Timmerman, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–451–4573, *timmermanm@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 7, 2012.

**David Clary,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–22480 Filed 9–12–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR–11–259: Pregnancy in Women with Disabilities.
*Date:* October 2, 2012.
*Time:* 11 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).
*Contact Person:* Priscah Mujuru, RN, MPH, DRPH, COHNS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *mujurup@mail.nih.gov.*

*Name of Committee:* Immunology Integrated Review Group; Innate Immunity and Inflammation Study Section.
*Date:* October 4–5, 2012.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Aloft Washington National Harbor, 156 Waterfront Street, Oxon Hill, MD.
*Contact Person:* Tina McIntyre, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, 301–594–6375, *mcintyrt@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodevelopment, Plasticity, and Regeneration.
*Date:* October 9, 2012.
*Time:* 1 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:* Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Muscle and Bone, Function, Metabolism and Regeneration.
*Date:* October 9, 2012.
*Time:* 1:30 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:* Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

*Name of Committee:* Cell Biology Integrated Review Group; Development—2 Study Section.
*Date:* October 11, 2012.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.
*Contact Person:* Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

*Name of Committee:* Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.
*Date:* October 11, 2012.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.
*Contact Person:* Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–357–9112, *smirnove@csr.nih.gov.*

*Name of Committee:* Genes, Genomes, and Genetics Integrated Review Group; Therapeutic Approaches to Genetic Diseases Study Section.
*Date:* October 11, 2012.
*Time:* 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
*Contact Person:* Michael K Schmidt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2214, MSC 7890, Bethesda, MD 20892, (301) 435–1147, *mschmidt@mail.nih.gov.*

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.
*Date:* October 11–12, 2012.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Sheraton Delfina Santa Monica, 530 Pico Boulevard, Santa Monica, CA 90405.
*Contact Person:* Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

*Name of Committee:* Cell Biology Integrated Review Group; Biology of the Visual System Study Section.
*Date:* October 11–12, 2012.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Michael H Chaitin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202,

MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

*Name of Committee:* Healthcare Delivery and Methodologies Integrated Review Group; Biomedical Computing and Health Informatics Study Section.

*Date:* October 11, 2012.

*Time:* 9 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Melinda Jenkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–437–7872, *jenkinsml2@mail.nih.gov.*

*Name of Committee:* Healthcare Delivery and Methodologies Integrated Review Group; Societal and Ethical Issues in Research Study Section.

*Date:* October 12, 2012.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications

*Place:* Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Karin F Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov.*

*Name of Committee:* Digestive, Kidney and Urological Systems Integrated Review Group; Urologic and Genitourinary Physiology and Pathology.

*Date:* October 12, 2012.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crowne Plaza Hotels and Resorts, 1480 Crystal Drive, Arlington, VA 22202.

*Contact Person:* Ryan G Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@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: September 7, 2012.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–22481 Filed 9–12–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2012–0053]**

## Homeland Security Science and Technology Advisory Committee (HSSTAC)

**AGENCY:** Science and Technology Directorate, DHS.

**ACTION:** Committee Management; Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Homeland Security Science and Technology Advisory Committee (HSSTAC) will meet on September 27–28, 2012 in Washington, DC The meeting will be open to the public.

**DATES:** The HSSTAC will meet Thursday, September 27, 2012, 9 a.m.–4:30 p.m. and Friday, September 28, 2012, 9 a.m.–3:30 p.m. The meeting may close early if the committee has completed its business.

**ADDRESSES:** The meeting will be held at the Department of Homeland Security (DHS), Science and Technology Directorate, 1120 Vermont Avenue NW. (Room 5–212), Washington DC.

All visitors must pre-register in order to gain entrance to the building. To register, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, below. Alternatively, you may register via this Web site: *https://www.signup4.net/Public/ap.aspx?EID=20124214E.* Please provide your name, citizenship, organization (if any), title (if any), email address (if any), and telephone number.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed under **FOR FURTHER INFORMATION CONTACT**, below.

The materials that are provided to committee members will also be provided to the public. Materials that are sent to committee members in advance will be posted on the public Web site below at the same time. Materials that are provided to committee members at the meeting will be made available to any members of the public present at the same time, and also posted to the public Web site below as soon as possible after the meeting. Check this Web site after Sept. 12: *http://www.dhs.gov/homeland-security-science-and-technology-advisory-committee-hsstac.*

To facilitate public participation, we invite public comment on the issues to be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** below. Comments may be submitted orally or in writing, or both. If submitting in writing, please include the docket number (DHS–2012–0053) and submit by one of these methods before September 25:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: mary.hanson@hq.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–254–6176.
- *Mail:* Mary Hanson, HSSTAC Executive Director, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received by the HSSTAC, go to *http://www.regulations.gov.*

A period is allotted for oral public comment on September 28 after DHS officials provide briefings on each issue listed below and prior to the members making their recommendations. Speakers are asked to pre-register as such, and to limit their comments to three minutes or less. Please note that the public comment period may end before the time indicated, following the last call for comments. To register as a speaker, contact the person listed below.

**FOR FURTHER INFORMATION CONTACT:** Mary Hanson, HSSTAC Executive Director, Science and Technology Directorate, Department of Homeland Security, 245 Murray Lane, Bldg. 410, Washington, DC 20528, 202–254–5866(O), 202–254–5823 (F), *mary.hanson@hq.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). The HSSTAC was established and operates in accordance with the provisions of the FACA. The committee addresses areas of interest and importance to the Under Secretary for Science and Technology, such as new developments in systems engineering, cyber-security, knowledge management and how best to leverage related technologies funded by other federal agencies and by the private sector. It also advises the Under Secretary on policies, management processes, and organizational constructs as needed.

*Agenda:* Because this committee was recently reconstituted under a new

charter, this first meeting will include administrative briefings and orientation. On the first day, members will receive introductory and administrative briefings from DHS officials about the Department of Homeland Security. On the second day, members will focus on the following issues: How Technology Can Address Homeland Security Challenges, Accelerating Innovation Through Systems Analysis, and Leveraging Industry for Impact. Members will first receive briefings and ''problem statements'' on these issues from Department officials, discuss and deliberate various approaches and responses, hear comments from the public, then recommend next steps to address the issue. At the end of the meeting and following input from the committee, Department officials will prioritize the issues discussed and provide direction to the committee, including the possible establishment of subcommittees to address the highest priorities.

Dated: September 5, 2012.

**Mary Hanson,**

*Executive Director, Homeland Security Science and Technology Advisory Committee.*

[FR Doc. 2012–22545 Filed 9–12–12; 8:45 am]

BILLING CODE 9110–9F–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2012–0029; OMB No. 1660–0098]**

### Agency Information Collection Activities: Proposed Collection; Comment Request, Citizen Corps Council Registration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, 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 an extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the online registration process for Citizen Corps Councils and Community Emergency Response Team programs.

**DATES:** Comments must be submitted on or before November 13, 2012.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2010–XXXX. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

All submissions received must include the agency name and 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 read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jenelle Cardone, Individual and Community Preparedness Division Supervisory Program Specialist, FEMA, 202–786–9463 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** Citizen Corps was launched as a Presidential Initiative, Executive Order 13254, in 2002 with a mission to harness the power of every individual through education, training, and volunteer service to make communities safer, stronger, and better prepared for the threats of terrorism, crime, public health issues, and disasters of all kinds. The Community Emergency Response Team Program offers training that prepares people to help themselves, their families and their neighbors in the event of a disaster in their community.

In order to fulfill its mission, the Federal Emergency Management Agency (FEMA) Individual and Community Preparedness Division (ICPD) require Citizen Corps Councils and Community Emergency Response Team Programs to submit profiles electronically through its online information collection process and forms. The Citizen Corps Council registration form will allow FEMA and State personnel to ensure that prospective Councils/CERTs have the support of the appropriate government officials in their area, ensure a dedicated coordinator is assigned to the Council, and will provide an efficient way to track the effectiveness of the nationwide network of Councils and CERTs. This continuing registration process will allow the Individual and Community Preparedness Division to collect information that is more usable and provide a more efficient way to track the effectiveness of the nationwide network of Councils and CERT's.

**Collection of Information**

*Title:* Citizen Corps Council Registration.

*Type of Information Collection:* Extension, without change, of a currently approved information collection.

*OMB Number:* 1660–0098.

*FEMA Forms:* FEMA Form 646–0–10ONL, Citizen Corps Council Registration.

*Abstract:* FEMA's Community Preparedness Division would like to renew a currently approved collection for its registration of State, local, Tribal and territorial Councils and Community Emergency Response Teams. The registration process allows for new Councils to submit information on the Council or CERT to the State Citizen Corps Program Manager for approval. The revised registration process will allow for the collection of more valuable information and the tool is more user-friendly for Citizen Corps Councils and CERT's.

*Affected Public:* State, local or Tribal Government.

*Number of Respondents:* 3,750.

*Number of Responses:* 7,500.

*Estimated Total Annual Burden Hours:* 7,500 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

| Type of respondent | Form name/form No. | Number of respondents | Number of responses per respondent | Total Number of responses | Avg. burden per response (in hours) | Total annual burden (in hours) | Avg. hourly wage rate | Total annual respondent cost |
|---|---|---|---|---|---|---|---|---|
| State, local or Tribal Government. | FEMA Form 646–0–10ONL/Citizen Corps Council Registration. | 3,750 | 2 | 7,500 | 1 hour | 7,500 | $25.90 | $194,250.00 |
| Total ..... | ..... | 3,750 | ..... | 7,500 | ..... | 7,500 | ..... | 194,250.00 |

*Estimated Cost:* The estimated annual cost to respondents for the hour burden is $194,250.00. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $377,030.00.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: September 6, 2012.

**Charlene D. Myrthil,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2012–22505 Filed 9–12–12; 8:45 am]

**BILLING CODE 9111–05–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1262]**

### Changes in Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

**DATES:** These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

**ADDRESSES:** The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact

stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Alabama: | | | | | | |
| Baldwin | City of Gulf Shores (12–04–2462P). | The Honorable Robert S. Craft, Mayor, City of Gulf Shores, P.O. Box 299, Gulf Shores, AL 36547. | Community Development Department, 1905 West 1st Street, Gulf Shores, AL 36547. | *http://www.bakeraecom.com/index.php/alabama/baldwin/.* | August 13, 2012 | 015005 |
| Mobile | City of Mobile (12–04–0822P). | The Honorable Samuel L. Jones, Mayor, City of Mobile, P.O. Box 1827, Mobile, AL 36633. | City Hall, Engineering Department, 205 Government Street, 3rd Floor, Mobile, AL 36644. | *http://www.bakeraecom.com/index.php/alabama/mobile/.* | August 15, 2012 | 015007 |
| Mobile | City of Saraland (11–04–6989P). | The Honorable Howard Rubenstein, Mayor, City of Saraland, 716 Saraland Boulevard South, Saraland, AL 36571. | City Hall, 716 Saraland Boulevard South, Saraland, AL 36571. | *http://www.bakeraecom.com/index.php/alabama/mobile/.* | August 9, 2012 | 010171 |
| Mobile | Unincorporated areas of Mobile County (11–04–6989P). | The Honorable Connie Hudson, President, Mobile County Board of Commissioners, P.O. Box 1443, Mobile, AL 36633. | Mobile County Government Plaza, Engineering Department, 205 Government Street, 3rd Floor, South Tower, Mobile, AL 36644. | *http://www.bakeraecom.com/index.php/alabama/mobile/.* | August 9, 2012 | 015008 |
| Mobile | Unincorporated areas of Mobile County (11–04–6442P). | The Honorable Connie Hudson, President, Mobile County Board of Commissioners, P.O. Box 1443, Mobile, AL 36633. | Mobile County Government Plaza, Engineering Department, 205 Government Street, 3rd Floor, South Tower, Mobile, AL 36644. | *http://www.bakeraecom.com/index.php/alabama/mobile/.* | September 7, 2012 | 015008 |
| Arizona: | | | | | | |
| Maricopa | City of Tempe (11–09–3942P). | The Honorable Hugh Hallman, Mayor, City of Tempe, P.O. Box 5002, Tempe, AZ 85280. | City Hall, Engineering Department, 31 East 5th Street, Tempe, AZ 85281. | *http://www.r9map.org/Docs/11-09-3942P-040054-102IAC.pdf.* | August 10, 2012 | 040054 |
| Maricopa | Town of Guadalupe (11–09–3942P). | The Honorable Alma Yolanda Solarez, Mayor, Town of Guadalupe, 9241 South Avenida Del Yaqui, Guadalupe, AZ 85283. | Town Hall, 9050 South Avenida Del Yaqui, Guadalupe, AZ 85283. | *http://www.r9map.org/Docs/11-09-3942P-040111-102IAC.pdf.* | August 10, 2012 | 040111 |
| Maricopa | Town of Wickenburg (11–09–3181P). | The Honorable Kelly Blunt, Mayor, Town of Wickenburg, 155 North Tegner Street, Suite A, Wickenburg, AZ 85390. | Town Hall, 155 North Tegner Street, Wickenburg, AZ 85390. | *http://www.r9map.org/Docs/11-09-3181P-040056-102IAC.pdf.* | August 24, 2012 | 040056 |
| Maricopa | Town of Wickenburg (12–09–0272P). | The Honorable Kelly Blunt, Mayor, Town of Wickenburg, 155 North Tegner Street, Suite A, Wickenburg, AZ 85390. | Town Hall, 155 North Tegner Street, Wickenburg, AZ 85390. | *http://www.r9map.org/Docs/12-09-0272P-040056-102IAC.pdf.* | August 10, 2012 | 040056 |
| Maricopa | Unincorporated areas of Maricopa County (11–09–3942P). | The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003. | Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009. | *http://www.r9map.org/Docs/11-09-3942P-040037-102IAC_1.pdf.* | August 10, 2012 | 040037 |
| Maricopa | Unincorporated areas of Maricopa County (11–09–3181P). | The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003. | Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009. | *http://www.r9map.org/Docs/11-09-3181P-040037-102IAC.pdf.* | August 24, 2012 | 040037 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Pima ..... | Unincorporated areas of Pima County (12–09–0547P). | The Honorable Ramon Valadez, Chairman, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, AZ 85701. | 97 East Congress Street, 3rd Floor, Tucson, AZ 85701. | *http://www.r9map.org/Docs/12-09-0547P-040073-102IC.pdf.* | September 4, 2012 | 040073 |
| Yavapai ..... | Town of Prescott Valley (11–09–1612P). | The Honorable Harvey C. Skoog, Mayor, Town of Prescott Valley, 7501 East Civic Circle, Prescott Valley, AZ 86314. | Town Hall, Engineering Division, 7501 East Civic Circle, Prescott Valley, AZ 86314. | *http://www.r9map.org/Docs/11-09-1612P-040121-102IAC.pdf.* | September 7, 2012 | 040121 |
| Yavapai ..... | Unincorporated areas of Yavapai County (11–09–1612P). | The Honorable Thomas Thurman, Chairman, Yavapai County Board of Supervisors, 10 South 6th Street, Cottonwood, AZ 86326. | Yavapai County Flood Control District, 500 South Marina Street, Prescott, AZ 86303. | *http://www.r9map.org/Docs/11-09-1612P-040093-102IAC.pdf.* | September 7, 2012 | 040093 |
| Arkansas: Benton | City of Bella Vista (11–06–4526P). | The Honorable Frank E. Anderson, Mayor, City of Bella Vista, P.O. Box 5655, Bella Vista, AR 72714. | 406 Town Center East, Bella Vista, AR 72714. | *http://www.rampp-team.com/lomrs.htm.* | August 23, 2012 ... | 050511 |
| California: | | | | | | |
| Los Angeles | Unincorporated areas of Los Angeles County (12–09–0924P). | The Honorable Zev Yaroslavsky, Chairman, Los Angeles County Board of Supervisors, 500 West Temple Street, Room 821, Los Angeles, CA 90012. | Los Angeles County Department of Public Works, 900 South Fremont Avenue, Alhambra, CA 91803. | *http://www.r9map.org/Docs/12-09-0924P-065043-102IAC.pdf.* | August 13, 2012 ... | 065043 |
| Riverside ..... | Unincorporated areas of Riverside County (12–09–1186P). | The Honorable John F. Tavaglione, Chairman, Riverside County Board of Supervisors, P.O. Box 1646, Riverside, CA 92502. | Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92502. | *http://www.r9map.org/Docs/12-09-1186P-060245-102IAC.pdf.* | August 20, 2012 ... | 060245 |
| San Diego .... | City of San Diego (12–09–0919P). | The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101. | Development Services Center, 1222 1st Avenue, 3rd Floor, San Diego, CA 92101. | *http://www.r9map.org/Docs/12-09-0919P-060295-102IAC.pdf.* | August 24, 2012 ... | 060295 |
| San Diego .... | City of San Diego (12–09–1244P). | The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101. | Development Services Center, 1222 1st Avenue, 3rd Floor, San Diego, CA 92101. | *http://www.r9map.org/Docs/12-09-1244P-060295-102IAC.pdf.* | August 20, 2012 ... | 060295 |
| Santa Barbara. | City of Goleta (12–09–0332P). | The Honorable Edward Easton, Mayor, City of Goleta, 130 Cremona Drive, Suite B, Goleta, CA 93117. | City Hall, 130 Cremona Drive, Goleta, CA 93117. | *http://www.r9map.org/Docs/12-09-0332P-060771-102IAC.pdf.* | September 10, 2012. | 060771 |
| Santa Barbara. | City of Santa Barbara (11–09–3358P). | The Honorable Helene Schneider, Mayor, City of Santa Barbara, P.O. Box 1990, Santa Barbara, CA 93101. | City Administrator, 735 Anacapa Street, Santa Barbara, CA 93101. | *http://www.r9map.org/Docs/11-09-3358P-060335-102IAC.pdf.* | August 13, 2012 ... | 060335 |
| Santa Barbara. | Unincorporated areas of Santa Barbara County (11–09–3358P). | The Honorable Doreen Farr, Chair, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, CA 93101. | Santa Barbara County Public Works, Department, Water Resources Division, Flood, Control and Water Conservation District, 123 East Anapamu Street, Santa Barbara, CA 93101. | *http://www.r9map.org/Docs/11-09-3358P-060331-102IAC.pdf.* | August 13, 2012 ... | 060331 |
| Santa Barbara. | Unincorporated areas of Santa Barbara County (12–09–0332P). | The Honorable Doreen Farr, Chair, Santa Barbara County Board of Supervisors, 105 East Anapamu Street, Santa Barbara, CA 93101. | Santa Barbara County Public Works, Department, Water Resources Division, Flood, Control and Water Conservation District, 123 East Anapamu Street, Santa Barbara, CA 93101. | *http://www.r9map.org/Docs/12-09-0332P-060331-102IAC.pdf.* | September 10, 2012. | 060331 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Sierra | Unincorporated areas of Sierra County (12–09–0381P). | The Honorable Peter W. Huebner, Chairman, Sierra County Board of Supervisors, 100 Courthouse Square, Suite 11, Downieville, CA 95936. | Sierra County Department of Planning, Sierra Courthouse Annex, 101 Courthouse Square, Downieville, CA 95936. | *http://www.r9map.org/Docs/12-09-0381P-060630-102IAC.pdf.* | September 7, 2012 | 060630 |
| Sierra | Unincorporated areas of Sierra County (12–09–0382P). | The Honorable Peter W. Huebner, Chairman, Sierra County Board of Supervisors, 100 Courthouse Square, Suite 11, Downieville, CA 95936. | Sierra County Department of Planning, Sierra Courthouse Annex, 101 Courthouse Square, Downieville, CA 95936. | *http://www.r9map.org/Docs/12-09-0382P-060630-102DA.pdf.* | August 24, 2012 | 060630 |
| Colorado: | | | | | | |
| Arapahoe | City of Centennial (12–08–0025P). | The Honorable Cathy Noon, Mayor, City of Centennial, 13133 East Arapahoe Road, Centennial, CO 80112. | Southeast Metro Stormwater Authority, 76 Inverness Drive East, Suite A, Centennial, CO 80112. | *http://www.bakeraecom.com/index.php/colorado/arapahoe/.* | August 3, 2012 | 080315 |
| Arapahoe | City of Greenwood Village (12–08–0132P). | The Honorable Ron Rakowsky, Mayor, City of Greenwood Village, 6060 South Quebec Street, Greenwood Village, CO 80111. | City Hall, 6060 South Quebec Street, Greenwood Village, CO 80111. | *http://www.bakeraecom.com/index.php/colorado/arapahoe/.* | August 10, 2012 | 080195 |
| Arapahoe | Unincorporated areas of Arapahoe County (12–08–0025P). | The Honorable Nancy N. Sharpe, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, CO 80166. | Arapahoe County Public Works and Development, 10730 East Briarwood Avenue, Suite 100, Centennial, CO 80112. | *http://www.bakeraecom.com/index.php/colorado/arapahoe/.* | August 3, 2012 | 080011 |
| El Paso | City of Colorado Springs (11–08–1101P). | The Honorable Steve Bach, Mayor, City of Colorado Springs, P.O. Box 1575, Mail Code 0601, Colorado Springs, CO 80903. | City Administration, 30 South Nevada Avenue, Colorado Springs, CO 80903. | *http://www.bakeraecom.com/index.php/colorado/el-paso/.* | August 13, 2012 | 080060 |
| Routt | Unincorporated areas of Routt County (11–08–0639P). | The Honorable Douglas B. Monger, Chairman, Routt County Board of Commissioners, P.O. Box 773598, Steamboat Springs, CO 80477. | Routt County Courthouse, 136 6th Street, Steamboat Springs, CO 80477. | *http://www.bakeraecom.com/index.php/colorado/routt/.* | September 4, 2012 | 080156 |
| Florida: | | | | | | |
| Broward | Town of Hillsboro Beach (12–04–2643P). | The Honorable Dan Dodge, Mayor, Town of Hillsboro Beach, 1210 Hillsboro Mile, Hillsboro Beach, FL 33062. | City Hall, 1210 Hillsboro Mile, Hillsboro Beach, FL 33062. | *http://www.bakeraecom.com/index.php/florida/broward/.* | August 10, 2012 | 120040 |
| Lee | Unincorporated areas of Lee County (11–04–5887P). | The Honorable Frank Mann, Chairman, Lee County Board of Commissioners, P.O. Box 398, Fort Myers, FL 33902. | Lee County Community Development Department, 1500 Monroe Street, 2nd Floor, Fort Myers, FL 33901. | *http://www.bakeraecom.com/index.php/florida/lee-5/.* | August 10, 2012 | 125124 |
| Manatee | Unincorporated areas of Manatee County (12–04–1509P). | The Honorable John R. Chappie, Chairman, Manatee County Board of Commissioners, P.O. Box 1000, Bradenton, FL 34206. | Manatee County Building Division, Floodplain Section, 2nd Floor, 1112 Manatee Avenue West, Bradenton, FL 34205. | *http://www.bakeraecom.com/index.php/florida/manatee/.* | August 20, 2012 | 120153 |
| Monroe | Village of Islamorada (12–04–1361P). | The Honorable Michael Reckwerdt, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036. | Village Hall, 87000 Overseas Highway, Islamorada, FL 33036. | *http://www.bakeraecom.com/index.php/florida/monroe-3/.* | August 3, 2012 | 120424 |
| Georgia: Forsyth | Unincorporated areas of Forsyth County (12–04–0122P). | The Honorable Jim Boff, Chairman, Forsyth County Board of Commissioners, 110 East Main Street, Cumming, GA 30040. | 110 East Main Street, Suite 100, Cumming, GA 30040. | *http://www.bakeraecom.com/index.php/georgia/forsyth/.* | August 3, 2012 | 130312 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Kentucky: Fayette | Lexington-Fayette Urban County Government (11–04–7454P). | The Honorable Jim Gray, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507. | Lexington-Fayette Urban County Government, Division of Planning, Current Planning Section, 101 East Vine Street, Lexington, KY 40507. | http://www.bakeraecom.com/index.php/kentucky/fayette/. | August 14, 2012 ... | 210067 |
| Maryland: Montgomery. | Town of Poolesville (11–03–2517P). | The Honorable Paul E. Kuhlman, President, Town of Poolesville Commissioners, 19721 Beall Street, Poolesville, MD 20837. | Town Hall, 1910 Fisher Avenue, Suite C, Poolesville, MD 20837. | *http://www.rampp-team.com/lomrs.htm.* | August 23, 2012 ... | 240118 |
| Nevada: Clark ..... | City of North Las Vegas (12–09–1067P). | The Honorable Shari L. Buck, Mayor, City of North Las Vegas, 2250 Las Vegas Boulevard North, North Las Vegas, NV 89030. | Public Works Department, 2200 Civic Center Drive, North Las Vegas, NV 89030. | *http://www.r9map.org/Docs/12-09-1067P-320007-102D.pdf.* | August 10, 2012 ... | 320007 |
| New Mexico: | | | | | | |
| Bernalillo ..... | City of Albuquerque (12–06–0106P). | The Honorable Richard J. Berry, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103. | 600 2nd Street Northwest, Albuquerque, NM 87102. | *http://www.rampp-team.com/lomrs.htm.* | August 23, 2012 ... | 350002 |
| Doña Ana .... | City of Las Cruces (11–06–2357P). | The Honorable Ken Miyagishima, Mayor, City of Las Cruces, 700 North Main Street, Las Cruces, NM 88001. | 700 North Main Street, Las Cruces, NM 88001. | *http://www.rampp-team.com/lomrs.htm.* | August 24, 2012 ... | 355332 |
| Sandoval ..... | City of Rio Rancho (12–06–0106P). | The Honorable Thomas E. Swisstack, Mayor, City of Rio Rancho, 3200 Civic Center Circle Northeast, Rio Rancho, NM 87144. | 3200 Civic Center Circle Northeast, Rio Rancho, NM 87144. | *http://www.rampp-team.com/lomrs.htm.* | August 23, 2012 ... | 350146 |
| New York: Westchester. | Village of Scarsdale (11–02–2126P). | The Honorable Miriam Levitt Flisser, Mayor, Village of Scarsdale, 1001 Post Road, Scarsdale, NY 10583. | Village Hall, 1001 Post Road, Scarsdale, NY 10583. | *https://www.rampp-team.com/lomrs.htm.* | October 9, 2012 ... | 360932 |
| North Carolina: Mecklenburg. | City of Charlotte (12–04–0261P). | The Honorable Anthony R. Foxx, Mayor, City of Charlotte, 600 East 4th Street, Charlotte, NC 28202. | 700 North Tryon Street, Charlotte, NC 28202. | *http://www.bakeraecom.com/index.php/northcarolina/mecklenburg-pmr-2/.* | August 27, 2012 ... | 370159 |
| Oklahoma: | | | | | | |
| Comanche ... | City of Lawton (11–06–3319P). | The Honorable Fred L. Fitch, Mayor, City of Lawton, 212 Southwest 9th Street, Lawton, OK 73501. | 103 Southwest 4th Street, Lawton, OK 73501. | *http://www.rampp-team.com/lomrs.htm.* | August 10, 2012 ... | 400049 |
| Oklahoma .... | City of The Village (12–06–0066P). | The Honorable C. Scott Symes, Mayor, City of The Village, 2304 Manchester Drive, The Village, OK 73120. | City Hall, 2304 Manchester Drive, The Village, OK 73120. | *http://www.rampp-team.com/lomrs.htm.* | August 13, 2012 ... | 400420 |
| Pennsylvania: Allegheny. | Township of O'Hara (11–03–1924P). | The Honorable Robert John Smith, Council President, Township of O'Hara, 325 Fox Chapel Road, Pittsburgh, PA 15238. | Township Office, 325 Fox Chapel Road, Pittsburgh, PA 15238. | *http://www.rampp-team.com/lomrs.htm.* | August 10, 2012 ... | 421088 |
| Texas: | | | | | | |
| Bell ..... | City of Temple (11–06–4085P). | The Honorable William A. Jones, III, Mayor, City of Temple, 2 North Main Street, Temple, TX 76501. | City Hall, 2 North Main Street, Temple, TX 76501. | *http://www.rampp-team.com/lomrs.htm.* | August 13, 2012 ... | 480034 |
| Bexar ..... | Unincorporated areas of Bexar County (12–06–0468P). | The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205. | Bexar County, Infrastructure Services Department, Public Works Division, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207. | *http://www.rampp-team.com/lomrs.htm.* | August 23, 2012 ... | 480035 |

| State and county | Location and case No. | Chief executive officer of community | Community map repository | Online location of letter of map revision | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Bexar | Unincorporated areas of Bexar County (12–06–1691X). | The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205. | Bexar County, Infrastructure Services Department, Public Works Division, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207. | *http://www.rampp-team.com/lomrs.htm.* | August 9, 2012 | 480035 |
| Dallas | City of Duncanville (11–06–3271P). | The Honorable David L. Green, Mayor, City of Duncanville, 203 East Wheatland Road, Duncanville, TX 75116. | City Hall, 203 East Wheatland Road, Duncanville, TX 75116. | *http://www.rampp-team.com/lomrs.htm.* | June 18, 2012 | 480173 |
| Galveston | City of Galveston (11–06–3812P). | The Honorable Joe Jaworski, Mayor, City of Galveston, 823 Rosenberg Street, Galveston, TX 77553. | City Hall, 823 Rosenberg Street, Galveston, TX 77553. | *http://www.rampp-team.com/lomrs.htm.* | August 10, 2012 | 485469 |
| Utah: Davis | City of Layton (12–08–0084P). | The Honorable Steve Curtis, Mayor, City of Layton, 437 North Wasatch Drive, Layton, UT 84041. | Planning Division, 437 North Wasatch Drive, Layton, UT 84041. | *http://www.bakeraecom.com/index.php/utah/davis/.* | August 13, 2012 | 490047 |
| Virginia: | | | | | | |
| City of Richmond. | City of Richmond (11–03–1762P). | The Honorable Dwight C. Jones, Mayor, City of Richmond, 900 East Broad Street, Suite 201, Richmond, VA 23219. | Department of Public Works, 900 East Broad Street, Room 704, Richmond, VA 23219. | *http://www.rampp-team.com/lomrs.htm.* | August 8, 2012 | 510129 |
| Giles | Town of Narrows (11–03–1175P). | The Honorable H. Clayton Davis, Mayor, Town of Narrows, P.O. Box 440, Narrows, VA 24124. | Town Hall, 131 Center Street, Narrows, VA 24124. | *http://www.rampp-team.com/lomrs.htm.* | August 23, 2012 | 510068 |
| Giles | Unincorporated areas of Giles County (11–03–1175P). | The Honorable Christopher P. McKlarney, Giles County Administrator, 315 North Main Street, Pearisburg, VA 24134. | Giles County Engineering and GIS Departments, 315 North Main Street, Pearisburg, VA 24134. | *http://www.rampp-team.com/lomrs.htm.* | August 23, 2012 | 510067 |

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: August 23, 2012.

**Sandra K. Knight,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2012–22503 Filed 9–12–12; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

**[Docket ID FEMA–2012–0003: Internal Agency Docket No. FEMA–B–1265]**

## Proposed Flood Hazard Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

**DATES:** Comments are to be submitted on or before December 12, 2012.

**ADDRESSES:** The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1265, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

**FOR FURTHER INFORMATION CONTACT:** Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange

(FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

**SUPPLEMENTARY INFORMATION:** FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *www.fema.gov/pdf/media/factsheets/2010/srp_fs.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

| Community | Community map repository address |
|---|---|
| **Sonoma County, California, and Incorporated Areas** | |
| Maps Available for Inspection Online at: *http://www.r9map.org/Pages/ProjectDetailsPage.aspx?choLoco=49&choProj=372* | |
| City of Petaluma | Community Development Department, 11 English Street, Petaluma, CA 95952. |
| Unincorporated Areas of Sonoma County | Sonoma County Permit and Resource Management, 2550 Ventura Avenue, Santa Rosa, CA 95403. |
| **Lander County, Nevada (All Jurisdictions)** | |
| Maps Available for Inspection Online at: *http://www.r9map.org/Pages/ProjectDetailsPage.aspx?choLoco=81&choProj=220* | |
| Unincorporated Areas of Lander County | Lander County Planning Department, 825 North Second Street, Battle Mountain, NV 89820. |

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance''.)

Dated: August 23, 2012.

**Sandra K. Knight,**

*Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2012–22504 Filed 9–12–12; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5607–N–29]**

## Notice of Proposed Information Collection: Comment Request; Revitalization Area Designation and Management

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* November 13, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Ivery Himes, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 x5628 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the

burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Revitalization Area Designation and Management.

*OMB Control Number, if applicable:* 2502–0566.

*Description of the need for the information and proposed use:* The Department accepts requests from local governments or interested nonprofit organizations to designate specified geographic areas as revitalization areas. A request must describe the nominated area in terms of census block groups.

*Agency form numbers, if applicable:* None.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 84. The number of respondents is 42, the number of responses is 12, the frequency of response is on occasion, and the burden hour per response is 2.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 6, 2012.

**Laura M. Marin,**

*Acting General Deputy Assistant Secretary for Housing—Acting General Deputy Federal Housing Commissioner.*

[FR Doc. 2012–22611 Filed 9–12–12; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5607–C–24]**

### Notice of Proposed Information Collection: Comment Request Manufactured Home Construction and Safety Standards Program

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Correction.

**SUMMARY:** On August 1, 2012, at 77 FR 45648, HUD published Manufactured Home Construction and Safety Standards Program. The forms were not listed. This document lists the forms.

**DATES:** *Comments Due Date:* November 13, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reporting Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Henry S. Czauski, Acting Deputy Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–6409 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and, (4) Minimize the burden of the collection of information on those who are to respond including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Manufactured Home Construction and Safety Standards Program.

*OMB Control Number, if applicable:* 2502–0233.

*Description of the need for the information and proposed use:* Collection of this information will result in a better determination of reporting how Primary Inspection Agencies and manufacturers request certification labels, track payment, track production, refund monies, and report missing or damaged labels to the Department or its monitoring contractor.

*Agency form numbers, if applicable:* Form HUD–101, IPIA Request for Labels; Form HUD–203, Lost Label Report; Form HUD–203B, Damage Label Report; Form HUD–301, Request and Payment for Labels; Form HUD–302, HUD Manufactured Home Monthly Production Report; Form HUD–303, Refunds due Manufacturer; and Form HUD–304, Adjustment Report.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours per response:* The total number of burden hours is 2,230. The total number of respondents is 140, the total number of responses is 4,460, the frequency of response is on occasion, and the burden hours per response is 0.5.

*Status of the proposed information collection:* This is an extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: September 7, 2012.

**Laura M. Marin,**

*Acting General Deputy Assistant Secretary for Housing—Acting Deputy Federal Housing Commissioner.*

[FR Doc. 2012–22608 Filed 9–12–12; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–MWR–INDU–10034; 6065–4000–409]**

### Draft Shoreline Restoration Management Plan and Environmental Impact Statement for Indiana Dunes National Lakeshore

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C., Section 4332(2)(c), the National Park Service announces the availability of the Draft Shoreline Restoration Management Plan and Environmental Impact Statement, Indiana Dunes National Lakeshore, Indiana.

**DATES:** The Draft Shoreline Restoration Management Plan and Environmental Impact Statement (SRMP) will be available for public comment for a 60-day public review period. Comments must be received no later than 60 days after the Environmental Protection Agency publishes its notice of availability in the **Federal Register**. Public meetings will be held; specific dates, times, and locations will be announced in the local media, on the Internet, and will also be available by contacting the park's headquarters at (219) 926–7561, extension 225.

**ADDRESSES:** A copy of the SRMP is available on the internet on the NPS

Planning, Environment, and Public Comment Web site at: *http://www.parkplanning.nps.gov/indu*. It can also be accessed through the Park's home page at *http://www.nps.gov/indu*. Copies may be obtained by making a request in writing or picked up in person at Indiana Dunes National Lakeshore, 1100 N. Mineral Springs Road, Porter, Indiana 46304; telephone (219) 926–7561, extension 225.

**FOR FURTHER INFORMATION CONTACT:** Superintendent Constantine Dillon, Indiana Dunes National Lakeshore, at the address above, or by telephone at (219) 926–7561, extension 225.

**SUPPLEMENTARY INFORMATION:** The National Park Service (NPS) has prepared a draft SRMP for Indiana Dunes National Lakeshore. The SRMP prescribes the resource conditions and restoration activities intended to maintain the shoreline over the next 15 to 20 years. The project area consists of four reaches of shoreline, Reaches 1 through 4, in an east-to-west direction. The park shoreline is not contiguous because of industrial and navigational structures, state park land, and other non-federal property.

The SRMP presents a range of reasonable management alternatives. Alternative A, the No-Action alternative, describes a continuation of current management practices, and is included as the baseline for comparing consequences of each alternative. Alternatives B, C, and D represent variations on beach nourishment activities. Alternatives B–1 and B–5 discuss beach nourishment using material from an upland source in 1- and 5-year frequencies. Beach nourishment using dredged materials in 1- and 5-year frequencies is described in Alternatives C–1 and C–5, and Alternative D outlines nourishment activities by way of a permanent sediment bypass system. Finally, the use of submerged beach-stabilizing structures is discussed in Alternative E.

The alternatives presented in this plan focus on balancing the quantities of sediment flowing through the shoreline reaches. Over the course of developing the SRMP, the alternatives were fine-tuned to accomplish this task and also address the protection of the shoreline from critical eroding areas, providing habitat opportunities, allowing for natural processes to continue, and rehabilitating the shoreline in a cost-effective manner.

For Reaches 1 and 2, the SRMP considered all alternatives and Alternative E has been selected as the Preferred Alternative. The NPS believes that this alternative provides the best combination of strategies to protect the park's unique resources and visitor experience, while improving the park's operational sustainability. Implementation of the Preferred Alternative in Reaches 1 and 2 would offer a high level of protection of natural resources along the shoreline while providing for a wide range of beneficial uses of the environment.

For Reaches 3 and 4, only dredged sources and the sediment bypass system were viable alternatives (no submerged beach-stabilizing structures in these reaches), and Alternative C–5 has been selected as the Preferred Alternative because the NPS believes that it provides for the most cost efficient and greatest potential for both foredune creation and providing protection from major storm events.

The SRMP describes the potential environmental consequences of the alternatives on coastal processes, including sediment transport and dune formation, aquatic fauna, terrestrial habitat, threatened and endangered plant and animal species, wetlands and pannes, soundscape, visitor experience, and park operations.

The SRMP also presents a discussion on terrestrial management practices as they relate to the visitor experience. As the park is a popular destination for millions of people, the impacts of human activities on the natural resources of the park are ever-present and additive.

We welcome comments on the SRMP. Before including your address, telephone number, electronic mail address, or other personal identifying information in your comments, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all submissions from organizations or businesses, from individuals identifying themselves as representatives or officials, of organizations or businesses, available for public inspection in their entirety.

Dated: July 27, 2012.

**Michael T. Reynolds,**

*Regional Director, Midwest Region.*

[FR Doc. 2012–22557 Filed 9–12–12; 8:45 am]

**BILLING CODE 4310– FH–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–784]**

## Certain Light-Emitting Diodes and Products Containing the Same; Determination To Review a Final Initial Determination in Part and Set a Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on July 9, 2012, in the above-captioned investigation.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on July 11, 2011, based on two complaints filed by OSRAM GmbH of Munich, Germany (''OSRAM''), alleging, *inter alia,* a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain light-emitting diodes and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 6,849,881 (''the '881 patent''); 6,975,011 (''the '011 patent''); 7,106,090 (''the '090 patent''); 7,151,283 (''the '283 patent''); and 7,271,425 (''the '425 patent''). 76 FR 40746 (July 11,

2011). Subsequently, the '881, the '090, and the '011, as well as certain claims of the '283 and '425 patents, were terminated from the investigation. The respondents are LG Electronics and LG Innotek Co., Ltd., both of Seoul, Republic of Korea; LG Electronics U.S.A., Inc. of Englewood Cliffs, New Jersey; and LG Innotek U.S.A., Inc. of San Diego, California (collectively, ''LG''). *Id.* The Office of Unfair Import Investigations was not named as a party to the investigation.

The evidentiary hearing in this investigation was held from April 26 through May 2, 2012. On July 9, 2012, the ALJ issued the final ID finding a violation of section 337. The ALJ issued his recommended determination on remedy and bonding on July 23, 2012. Respondent LG filed a timely petition for review of various portions of the final ID, and complainant OSRAM filed a timely response to the petition.

Having examined the record in this investigation, including the ALJ's final ID, the petition for review, and the response thereto, the Commission has determined to review:

(I) The ALJ's determination that OSRAM met the economic prong of the domestic industry requirement with respect to both asserted patents;

(II) With respect to the '283 patent:

(a) the ALJ's determination that claims 1, 3, 4, 6, 8, 22, 24, 25, 26, 29, 32, 33, and 34 of the '283 patent are not rendered obvious in view of prior art references Japanese Patent (''JP'') 345, JP 609, JP 794, and Hewes;

(b) the ALJ's determination that claim 34 of the '283 patent is not rendered obvious in view of prior art references Nikkei Article, Stevenson, Blasse, and Hewes;

(c) the ALJ's determination that claim 34 of the '283 patent is not rendered obvious in view of prior art references JP 609, Nikkei Article, Blasse, and Hewes.

The Commission has determined not to review the remainder of the final ID. The parties are requested to brief their positions on only the following issues, with reference to the applicable law and the evidentiary record:

(1) With respect to the economic prong of the domestic industry requirement:

(a) Please identify the record evidence showing that the products on which OSRAM relies for the purpose of demonstrating that it met the economic prong of the domestic industry requirement are protected by the '283 patent, as required by 19 U.S.C. 1337(a)(3);

(b) Please identify the record evidence showing that, with respect to its products protected by the '283 patent, OSRAM made qualifying investments in the '283 patent's exploitation, including engineering, research and development, as required by 19 U.S.C. 1337(a)(3)(C);

(c) Please identify the record evidence showing that OSRAM's qualifying investment in the '283 patent's exploitation, including engineering, research and development, with respect to OSRAM's products protected by the '283 patent is substantial, as required by 19 U.S.C. 1337(a)(3)(C).

(2) With respect to the '283 patent:

(a) Does the record evidence, including the disclosure in JP 609 (*see* RX–105), and OSRAM's arguments made before the European Patent Office (*see* RX–118) and USPTO (*see* RX–10002), show that JP 609 teaches a ''partial conversion'' of light?

(b) Does the record evidence, including the disclosure in the Nikkei Article (*see* RX–108), and OSRAM's arguments made before the European Patent Office (*see* RX–118), show that the Nikkei Article teaches a ''partial conversion'' of light?

(c) Assuming the evidence demonstrates that JP 609 or the Nikkei Article discloses partial conversion, please identify the record evidence that demonstrates that one of ordinary skill in the art would have been motivated to combine: (i) JP 345 (*see* RX–107), JP 609, JP 794 (*see* RX–106), and Hewes (*see* RX–101); (ii) the Nikkei Article, Stevenson (*see* RX–109), Blasse (*see* RX–110), and Hewes; or (iii) JP 609, the Nikkei Article, Blasse, and Hewes, to arrive at the claimed inventions of the '283 patent.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (Dec. 1994).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

*Written Submissions:* The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant is also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the expiration date of the '283 patent and state the HTSUS subheading(s) under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on September 21, 2012. Reply submissions must be filed no later than the close of business on September 28, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR

210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–784'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42-.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42-.46).

By order of the Commission.

Issued: September 7, 2012.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2012–22517 Filed 9–12–12; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

## Antitrust Division

## United States v. Humana Inc. and Arcadian Management Services, Inc.; Public Comment and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comment received on the proposed Final Judgment in *United States* v. *Humana Inc. and Arcadian Management Services, Inc.,* Civil Action No: 12–cv–464–RBW, which was filed in the United States District Court for the District of Columbia on September 5, 2012 together with the Response of the United States to the comment.

Copies of the comment and the response are available for inspection at the Department of Justice Antitrust Division, 450 Fifth Street NW., Suite 4100, Washington, DC 20530 (telephone: 202–307–6456), on the Department of Justice's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

**Patricia A. Brink,**

*Director of Civil Enforcement.*

**United States District Court for the District of Columbia**

*United States of America,* Plaintiff, v. *Humana Inc. and Arcadian Management Services, Inc.,* Defendants.

*Case:* 1:12–cv–00464 (RBW).

**Response of Plaintiff United States to Public Comment On the Proposed Final Judgment**

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby responds to the public comment received regarding the proposed Final Judgment in this case. The single comment received agrees that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court for entry of the proposed Final Judgment after the public comment and this response have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

**I. Procedural History**

On August 24, 2011, Humana Inc. (''Humana'') and Arcadian Management Services, Inc. (''Arcadian'') entered into a merger agreement whereby Humana agreed to acquire all of the outstanding shares of Arcadian for approximately $150 million. The United States filed a civil antitrust Complaint on March 27, 2012, seeking to enjoin Humana from acquiring Arcadian, alleging that the acquisition likely would substantially lessen competition in the sale of individual Medicare Advantage plans in forty-five counties and parishes in Arizona, Arkansas, Louisiana, Oklahoma, and Texas (''the relevant geographic markets''), in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. At the time the complaint was filed, Humana provided health insurance to approximately 35,000 Medicare Advantage enrollees in the relevant geographic markets, and Arcadian provided health insurance to over 14,700 Medicare Advantage enrollees in those markets. The loss of competition from the acquisition likely would have resulted in higher premiums and reduced benefits and services in the relevant geographic markets.

Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment and Stipulation signed by the Plaintiffs and the Defendants consenting to entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, 15 U.S.C. 16. Pursuant to those requirements, the United States also filed its Competitive Impact Statement (''CIS'') with the Court on March 27, 2012; published the proposed Final Judgment and CIS in the **Federal Register** on April 4, 2012, see 77 FR 20419; and had summaries of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, published in The Washington Post on May 5, 7, 8, 9, 10, 11, and 12 of 2012. The sixty-day period for public comment ended on July 9, 2012. The United States received one comment, as described below and attached hereto.

**II. The Investigation and the Proposed Resolution**

The proposed Final Judgment is the culmination of an investigation by the Antitrust Division of the United States Department of Justice (''Department'') of the Agreement between defendants described above. As part of its investigation, the Department issued seven Civil Investigative Demands and conducted more than fifty-three interviews of health-insurance competitors, brokers, customers, and other individuals with knowledge of the health-insurance industry. The Department carefully analyzed the information obtained and thoroughly considered all of the issues presented.

The Department found that, in each relevant geographic market, the proposed acquisition would have eliminated substantial head-to-head competition between Humana and Arcadian in the provision of Medicare Advantage plans. This competition significantly benefited thousands of seniors. If Defendants had completed the proposed transaction as structured, the loss of competition likely would have resulted in higher premiums and reduced benefits for seniors enrolled in Medicare Advantage plans in the relevant geographic markets.

After reviewing the investigative materials, the Department determined that the proposed transaction violated Section 7 of the Clayton Act, 15. U.S.C. 18. The proposed Final Judgment will eliminate the anticompetitive effects identified in the Complaint by requiring the Defendants to divest Arcadian's individual Medicare Advantage business in 34 of the 45 relevant geographic markets, and Humana's individual Medicare Advantage business in 11 of them (collectively ''the Divestiture Assets'') to one or more acquirers approved by, and on terms acceptable to, the United States. Specifically, the divestitures will eliminate the anticompetitive effects alleged in the Complaint by requiring the Defendants to divest one or more Medicare Advantage plans in each relevant geographic market to an acquirer that will compete vigorously with the merged Humana-Arcadian. The divestitures are designed to allow the acquirers of the assets to offer uninterrupted care to members of Arcadian's and Humana's divested Medicare Advantage plans.

The Divestiture Assets include all of Arcadian's and Humana's rights and obligations under the relevant Arcadian or Humana contracts with the Center for

Medicare and Medicaid Services (''CMS''). The lines of business to be divested cover approximately 12,700 individual Medicare Advantage beneficiaries.

The Defendants must satisfy the United States that a viable competitor will replace Arcadian's competitive presence in the sale of individual Medicare Advantage plans in each of the forty-five relevant geographic markets identified in the Complaint. The divestitures must be (1) made to an acquirer that has the intent and capability—including the necessary managerial, operational, technical, and financial capability—to compete effectively in the sale of Medicare Advantage products in the market, or markets, in question, and (2) accomplished so as to satisfy the United States that none of the terms of any agreement between Humana and any acquirer gives Humana the ability to interfere with the acquirer's ability to compete effectively. The proposed Final Judgment also provides that the divestiture of the Divestiture Assets may be made to one or more acquirers, provided that in each instance the United States is satisfied that the Divestiture Assets will remain viable and the divestitures will remedy the anticompetitive harm alleged in the Complaint.

Humana completed its acquisition of Arcadian on March 31, 2012. Since then, Humana has notified the United States of three proposed divestitures: (1) HealthSpring Life and Health Insurance Company, Inc., with respect to the Longview-Marshall, Amarillo, and Texarkana Plans; (2) Vantage Health Plan Inc., with respect to the Shreveport and Lake Charles Plans; and (3) WellCare of Texas, Inc., with respect to the Arizona Plans. The United States reviewed and approved the acquirer of each noticed divestiture upon concluding that each acquirer would be a long-term, viable competitor capable of preserving competition in the relevant markets that would otherwise have been lost as a result of the merger.

**III. Standard of Judicial Review**

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); see also *United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.'').

Under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62; InBev, 2009 U.S. Dist. LEXIS 84787, at *3; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[1] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' SBC Commc'ns, 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' ''prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case'').

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest'.'' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. *Maryland* v. *United States,* 460 U.S. 1001 (1983); see also *United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' SBC Commc'ns, 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459; see also InBev, 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Microsoft, 56 F.3d at 1459–60. As the United States District Court for the District of Columbia confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[2] Congress made clear its intent to

[1] Cf BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); see generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

[2] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that [n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc'ns, 489 F. Supp. 2d at 11.[3]

**IV. Summary of Public Comment and the United States' Response**

During the sixty-day comment period, the United States received only one comment, submitted by the American Medical Association (''AMA''), which is attached to this Response. In its June 4, 2012 comment, the AMA expressed its support for the United States' analysis as well as the remedy articulated in the proposed Final Judgment, stating that the action against the defendants ''address[es] the important issue of health insurer consolidation.'' AMA Comment at 1. The United States has carefully reviewed the comment and has determined that the proposed Final Judgment remains in the public interest.

The AMA is the largest association of physicians and medical students in the United States. The AMA's comment states that:

MA [Medicare Advantage] plans in competitive markets have incentives to submit lower premium bids to the Centers for Medicare and Medicaid Services (CMS), have more robust physician networks, and seek high patient satisfaction and quality in order to retain members. In contrast, less competition between MA plans may decrease the plans' incentives to maintain seniors' access to health care providers and minimize out-of-pocket costs.

Id. The comment concludes that ''[t]he AMA supports the DOJ's proposed final judgment regarding the acquisition of Arcadian by Humana and the DOJ's continued work to ensure that competition among insurers is sufficient to protect consumers.'' Id.

**V. Conclusion**

After reviewing the AMA's public comment, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the AMA's comment and this response are published in the **Federal Register**.

Dated this 5th day of September 2012.

Respectfully submitted,

/s/ Adam Gitlin
Adam Gitlin
Barry Creech (DC Bar #421070)
Barry Joyce
Edward D. Eliasberg, Jr. (DC Bar #199182)
Katrina Rouse

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June 4, 2012

Joshua H. Soven
Chief, Litigation I Section
Antitrust Division
U.S. Department of Justice
450 Fifth Street NW.
Suite 4100
Washington, DC 20530

Re: United States v. Humana Inc. and Arcadian Management Services, Inc.; Proposed Final Judgment and Competitive Impact Statement (1:12–cv–00464)

Dear Mr. Soven: On behalf of the physician and medical student members of the American Medical Association (AMA), I write in regard to the complaint and proposed final judgment filed by the Department of Justice (DOJ) regarding the acquisition of Arcadian Management Services, Inc. (''Arcadian'') by Humana Inc. (''Humana''). The AMA files these comments pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b–e) (the ''Tunney Act''), because the DOJ' s complaint and proposed final judgment address the important issue of health insurer consolidation. The consolidation of health insurance markets seriously impedes the proper functioning of health care markets overall, and oftentimes results in less care for patients, higher premiums, and interference with patient-physician relationships. The AMA supports the DOJ's careful review of health insurer mergers and the DOJ's proposed final judgment on the acquisition of Arcadian by Humana.

The DOJ's complaint asserts that the transaction would end the substantial ''head-to-head'' competition between Humana and Arcadian Medicare Advantage (MA) plans and impair competition in 45 counties located in Arizona, Arkansas, Louisiana, Oklahoma, and Texas. According to the DOJ's estimate, the acquisition would give Humana market shares ranging from 40 percent to 100 percent with respect to MA plans. These high market shares create a significant risk that the acquisition, if allowed to proceed unaltered, would give Humana anti-competitive market power in those 45 counties. MA plans in competitive markets have incentives to submit lower premium bids to the Centers for Medicare and Medicaid Services (CMS), have more robust physician networks, and seek high patient satisfaction and quality in order to retain members. In contrast, less competition between MA plans may decrease the plans' incentives to maintain seniors' access to health care providers and minimize out-of-pocket costs.

The AMA supports the DOJ's proposed final judgment regarding the acquisition of Arcadian by Humana and the DOJ's continued work to ensure that competition among insurers is sufficient to protect consumers.

Sincerely,

/s/ James L. Madara, MD

[FR Doc. 2012–22389 Filed 9–12–12; 8:45 am]

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[3] See *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298 at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

## POSTAL SERVICE

### Privacy Act of 1974; System of Records

**AGENCY:** Postal Service™.

**ACTION:** Notice of modification to existing systems of records.

**SUMMARY:** The United States Postal Service® is proposing to modify seven General and Customer Privacy Act Systems of Records. These modifications are being made to account for updates to the system location, system manager(s) and address, and notification procedures due to an organizational re-design. Also included is the addition of previously omitted disclosure information, the removal of records not retained or which are outdated, the correction of retention times, and the additional disclosure of customs records. Lastly, a new system of records is included for the Judicial Officer.

**DATES:** The revision will become effective without further notice on October 15, 2012 unless comments received on or before that date result in a contrary determination.

**ADDRESSES:** Comments may be mailed or delivered to the Records Office, United States Postal Service, 475 L'Enfant Plaza SW., Room 9431, Washington, DC 20260–1101. Copies of all written comments will be available at this address for public inspection and

photocopying between 8 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Jane Eyre, Manager, Records Office, 202–268–2608.

**SUPPLEMENTARY INFORMATION:** This notice is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition. The Postal Service™ has reviewed its systems of records and has determined that these seven General and Customer Privacy Act Systems of Records should be revised to modify system location; categories of individuals covered by the system; categories of records in the system; authority of maintenance of the system; purpose; routine uses of records maintained in the system, including categories of users and the purposes of such uses; storage; retrievability; retention and disposal; system manager(s) and address; notification procedure; record access procedures; and record source categories.

## I. Background

In 2011, the Postal Service began a significant management and organizational re-design. Many executive titles have been updated to reflect the new responsibilities of the leadership teams which resulted in changes to the location and custodian of the records.

The other system modifications reflect that some records may be provided to the Office of Government Information Services (OGIS) for the purpose of resolving disputes between FOIA requesters and federal agencies, including the Postal Service.

Updates are also being made to remove records no longer retained or which are out of date, the correction of retention times, and to clarify that agencies other than the Office of Foreign Assets Control (OFAC) may receive customs records.

Lastly, a new system of records is being added to account for information collected and stored by the Judicial Officer.

## II. Rationale for Changes to USPS Privacy Act Systems of Records

In an ongoing organizational redesign, many managerial titles and responsibilities in the Postal Service™ have been revised to reflect changes in the structure of the organization. As a result, there is a continuing need to update the information concerning Privacy Act Systems of Records to reflect changes in the location, custodian, identity, or title of responsible officials.

The Postal Service is modifying a system of records to account for the previous omission of an accounting of disclosure when records may be provided to OGIS for the purpose of resolving disputes between FOIA requesters and federal agencies, including the Postal Service.

Furthermore, it is necessary to remove outdated information and to account for data not retained, and to update retention times according to program needs. Two systems of records are being amended to clarify that agencies outside of OFAC, such as the Bureau of Industry and Security, are involved in export control and may receive customs records.

Lastly, a new system of records is being added to account for information collected and stored by the Judicial Officer.

## III. Description of Changes to Systems of Records

The Postal Service is modifying the seven systems of records listed below. Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed modifications has been sent to Congress and to the Office of Management and Budget for their evaluation. The Postal Service™ does not expect this amended notice to have any adverse effect on individual privacy rights. The Postal Service proposes amending the systems as shown below:

USPS 500.200

*System Name:* Controlled Correspondence, FOIA, and Privacy Act Disclosure Records.

USPS 600.300

*System Name:* Public and Confidential Financial Disclosure Reports.

USPS 800.000

*System Name:* Address Change, Mail Forwarding, and Related Services.

USPS 810.200

*System Name: www.usps.com* Ordering, Payment, and Fulfillment.

USPS 880.000

*System Name:* Post Office and Retail Services.

USPS 900.000

*System Name:* Identity and Document Verification Services.

## IV. Description of New System of Records

The United States Postal Service is adding a new system of records to its General Privacy Act Systems of Records Management System. This new system of records is being established to account for information being collected and stored by the Judicial Officer. The Postal Service proposes adding the system as shown below:

USPS 600.500

*System Name:* Judicial Officer Records.

Accordingly, the Postal Service proposes changes in existing systems of records and the addition of a new system of records as follows:

### USPS 500.200

**SYSTEM NAME:**

Controlled Correspondence, FOIA, and Privacy Act Disclosure Records.

**SYSTEM LOCATION:**

*[CHANGE TO READ]*

Postmaster General, Government Relations, and Consumer and Industry Affairs offices, Headquarters; Office of the Inspector General, Law Department, Headquarters and field offices; records custodian offices at USPS Headquarters and field offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

* * * * *

*[CHANGE TO READ]*

2. Individuals who have written to non-USPS government officials; congressmen and other government officials who write USPS on behalf of USPS customers, employees, or other individuals; and individuals to whom USPS announcements or greetings are regularly directed.

3. Individuals who submit inquiries and requests for information or records, including under the FOIA.

4. Individuals who submit inquiries or requests for information or records, or who contest a record, subject to the provisions of the Privacy Act and privacy complaints.

5. Individuals whose information is covered by a system of records that has been disclosed outside of the Postal Service.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

*[CHANGE TO READ]*

1. *Correspondence information:* Records related to controlled correspondence including correspondent's name, address, nature of inquiry, response, and original correspondence. May include referral letters, email correspondence, internal memoranda, logs/notes of USPS staff and other related material.

2. *Records Inquiries:* Records related to individuals who request information,

including under the FOIA or the Privacy Act, or who request amendment of a record, including name, Social Security Number, date of birth, nature of inquiry, original correspondence, response, and records from other systems of records compiled in response to the inquiry. May also include referral letters, email correspondence, internal memoranda, logs/notes of USPS staff and other related material. These files may also contain information or determinations furnished by and correspondence with other Federal agencies.

3. *General Inquiries:* Records related to inquiries or complaints concerning Postal Service records including correspondent's name, address, nature of inquiry, response, and original correspondence. May include referral letters, email correspondence, internal memoranda, logs/notes of USPS staff and other related material.

4. *Accounting of disclosure records:* The date, nature, and purpose of each disclosure of a Privacy Act covered record to any person or to another agency and the name and address of the person or agency to whom the disclosure is made.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

*[CHANGE TO READ]*

39 U.S.C. 401, 410, and 412. 5 U.S.C. 552, as amended, 5 U.S.C. 552(a).

**PURPOSE(S):**

* * * * *

*[CHANGE TO READ]*

2. To respond to inquiries or complaints concerning Postal Service records and to requests for records and information, including FOIA and Privacy Act requests, and to comply with FOIA and Privacy Act disclosure accounting and reporting requirements. The records are also used to facilitate the preparation of statistical and other reports regarding use of the FOIA.

3. To comply with Privacy Act accounting of disclosure requirements.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PRUPOSES OF SUCH USES:**

* * * * *

*[INSERT NEW TEXT]*

b. Records may be provided to the Office of Government Information Services for the purpose of resolving disputes between FOIA requesters and Federal agencies, including the Postal Service, and reviewing Postal Service policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

**RETRIEVABILITY:**

* * * * *

*[INSERT NEW TEXT]*

3. Accounting of disclosure records are retrieved by the name of the record's subject.

**RETENTION AND DISPOSAL:**

*[CHANGE TO READ]*

Correspondence records are retained 4 years. FOIA and Privacy Act-related records are cut off at the end of each fiscal or calendar year, respectively, and retained 6 years thereafter. Accounting of disclosure records are retained for five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made. Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

**SYSTEM MANAGER(S) AND ADDRESS:**

* * * * *

*[CHANGE ORDER TO READ]*

For FOIA and Privacy Act requests: General Counsel and Executive Vice President, 475 L'Enfant Plaza SW., Washington, DC 20260.

For other correspondence in this system: Vice President, Government Relations and Public Policy, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

## USPS 600.300

**SYSTEM NAME:**

Public and Confidential Disclosure Reports.

**SYSTEM LOCATION:**

*[CHANGE TO READ]*

USPS Headquarters, Ethics Office.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

*[CHANGE TO READ]*

Employees required to file public or confidential financial disclosure reports, including the Postmaster General, Deputy Postmaster General, USPS Chief Ethics Officer, administrative law judges, the Governors of the Postal Service, and other USPS employees determined by regulation.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

*[CHANGE TO READ]*

1. *Public Financial Disclosure Report:* Standard Form OGE Form 278 and supplemental statements including the individual's name, title, work location, employment status, personal financial records, and reports related thereto.

2. *Executive Branch Personnel Confidential Financial Disclosure Report:* Office of Government Ethics. OGE Form 450 and supplemental statements including the individual's name, title, work location, employment status, personal financial records, and reports related thereto.

**SYSTEM MANAGER(S) AND ADDRESS:**

Ethics Office, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

**NOTIFICATION PROCEDURE:**

*[CHANGE TO READ]*

Individuals wanting to know if information about them is maintained in this system of records must address inquiries as follows: For all OGE Form 450 filers, to the Ethics Office, USPS Headquarters. For field and Headquarters OGE Form 278 filers, to the system manager.

**RECORD ACCESS PROCEDURES:**

*[CHANGE TO READ]*

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6. Requests for OGE Form 278 reports must be submitted using OGE Form 201.

## USPS 800.000

**SYSTEM NAME:**

Address Change, Mail Forwarding, and Related Services.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

*[CHANGE TO READ]*

1. *Customer information:* Name, title, signature, customer number, old address, new address, filing date, email address(es), telephone numbers and other contact information.

* * * * *

*[CHANGE TO READ]*

6. *Records from service providers* for identity verification.

*[DELETE THE FOLLOWING TEXT]*

7. *Optional customer information:* Information a customer chooses to save to apply to future transactions, such as names, addresses, proof of identification, billing, and other information used to request a service.

*[RENUMBER REMAINING BULLETS]*

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

*[CHANGE TO READ]*

39 U.S.C. 401(2), 403, and 404(a)(1).

**PURPOSE:**

*[CHANGE TO READ]*

1. To provide mail forwarding and change of address services, including local community information, and move related advertisements.

* * * * *

*[DELETE THE FOLLOWING TEXT]*

4. To support investigations related to law enforcement for fraudulent transactions.

*[RENUMBER REMAINING BULLET]*

* * * * *

**ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

*[CHANGE TO READ]*

h. *Disclosure at Customer's Request.* If the customer elects, change of address information may be disclosed to government agencies or other entities.

* * * * *

**STORAGE**

[CHANGE TO READ]

Records generated from the source document are recorded on the Forwarding Control System file server and on tapes at CFS units. Electronic change-of-address records and related service records are also stored on disk and/or magnetic tape in a secured environment. Change-of-address records are consolidated in a national change-of-address (NCOA) file at the USPS IT Eagan Host Computing Services Center. Selected extracts of NCOA are provided in the secure data format represented by the NCOA$^{Link}$ product to a limited number of firms under contract or license agreement with USPS.

* * * * *

**RETRIEVABILITY**

* * * * *

*[CHANGE TO READ]*

For electronic records: By name, address, date, ZIP Code™, and customer number for electronic change of address and related service records; by name, address, and email address for customer service records.

**RETENTION AND DISPOSAL**

* * * * *

*[CHANGE TO READ]*

2. Delivery units access COA records from the Change-Of-Address Reporting System (COARS) database, which retains 2 years of information from the COA effective date. The physical change-of-address order is retained in the CFS unit for 30 days if it was scanned, or 18 months if it was manually entered into the national database.

* * * * *

**SYSTEM MANAGER(S) AND ADDRESS:**

*[ADD TEXT]*

Vice President, Product Information, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

*[CHANGE TO READ]*

Vice President, Delivery and Post Office Operations, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

**RECORD SOURCE CATEGORIES:**

*[CHANGE TO READ]*

Customers, personnel, contractors, service providers, and for call center operations, commercially available sources of names, addresses, and telephone numbers. For emergency change-of-addresses only, commercially available sources of names, previous addresses, and dates of birth. For alternative authentication, sources of names, previous and new addresses, dates of birth, and driver's state and license number.

## USPS 810.200

**SYSTEM NAME:**

*www.usps.com* Ordering, Payment, and Fulfillment.

**PURPOSE:**

* * * * *

*[CHANGE TO READ]*

6. To satisfy reporting requirements for customs and export control purposes.

* * * * *

**ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

* * * * *

*[CHANGE TO READ]*

Records may be disclosed to the Office of Foreign Assets Control, the Bureau of Industry and Security, and other government authorities charged with enforcing export control laws, rules, and policies, including 50 U.S.C. 1702.

**RETENTION AND DISPOSAL:**

* * * * *

*[ADD TEXT STARTING WITH NUMBER 2]*

2. Customs declaration records stored in electronic data systems are retained 5 years, and then purged according to the requirement of domestic and foreign customs services. Other hard-copy customs declaration records are retained 30 days.

*[CHANGE TO READ]*

3. Other records related to shipping services and domestic and international labels are retained up to 90 days.

* * * * *

*[RENUMBER REMAINING BULLETS AND CORRECT NUMBERING TO READ 1 THROUGH 8]*

**SYSTEM MANAGER(S) AND ADDRESS:**

*[CHANGE TO READ]*

Chief Marketing/Sales Officer and Executive Vice President, United States Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

* * * * *

## USPS 880.000

**SYSTEM NAME:**

Post Office and Retail Services.

**SYSTEM LOCATION:**

*[CHANGE TO READ]*

USPS Headquarters, Consumer and Industry Affairs; Integrated Business Solutions Services Centers; Accounting Service Centers; and USPS facilities, including Post Offices and contractor locations.

**RETENTION AND DISPOSAL:**

* * * * *

*[CHANGE TO READ]*

3. Domestic and international Extra Services records are retained 2 years. Records relating to Post Office boxes and caller services are retained up to 2 years after the customer relationship ends.

* * * * *

## USPS 900.000

**SYSTEM NAME:**

International Services.

**PURPOSE:**

* * * * *

*[CHANGE TO READ]*

4. To satisfy reporting requirements for customs and export control purposes.

* * * * *

**ROUTINE USES OF RECORDS IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

* * * * *

*[CHANGE TO READ]*

b. Records may be disclosed to the Office of Foreign Assets Control, the Bureau of Industry and Security, and other government authorities charged with enforcing export control laws, rules, and policies, including 50 U.S.C. 1702.

* * * * *

**RETENTION AND DISPOSAL:**

*[CHANGE TO READ]*

1. Customs declaration records stored in electronic data systems are retained 5 years, and then purged according to the requirements of domestic and foreign customs services.

2. Other customs declaration records are retained 30 days.

* * * * *

*[ADD NEW TEXT/SYSTEM OF RECORD]*

**USPS 600.500**

**SYSTEM NAME:**

Judicial Officer Records.

**SYSTEM LOCATION:**

Judicial Officer Department, USPS Headquarters Library

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

1. Persons identified in proceedings before, and decisions of, the U.S. Postal Service Judicial Officer Department; including complainants, respondents, petitioners, and disputants and their representatives.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

1. *Initial and Final Decisions Provided for public posting on USPS.com:* Initial and Final Decisions that have been reviewed for inclusion of Social Security Numbers or equivalent non-publicly-available personally identifiable information and redacted as required before being furnished for posting and public availability on the U.S. Postal Service public Web site, *www.usps.com*.

2. *Judicial Officer Department Administrative Decision-related information:* Records related to persons identified as parties (or their representatives) in published Judicial Officer Administrative Decisions, including name and such information as: Date of birth, Social Security Number (SSN), Employee Identification Number, organizational and employee affiliations, work-related and/or personal mailing addresses, email addresses, and phone number(s) as well as additional identity verification information.

3. *Judicial Officer Department Administrative Proceedings-related information:* Records related to persons identified as parties (or their representatives) in Judicial Officer proceedings that do not lead to published decisions, including name and such information as: Date of birth, Social Security Number (SSN), Employee Identification Number, organizational and employee affiliations, work-related and/or personal mailing addresses, email addresses, and phone number(s) as well as additional identity verification information; details of circumstances described in the proceedings documentation, including business names, addresses, activities, and any relevant or explanatory details provided to the Judicial Officer Department.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

39 U.S.C. 204; 39 CFR parts 951, 952, 953, 954, 957, 958, 959, 960, 961, 962, 963, 964, 965, and 966.

**PURPOSE(S):**

1. To enable USPS Judicial Officer Department Administrative proceedings.

2. To make Initial and Final USPS Judicial Officer Department Administrative Decisions available to the public.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Standard routine uses 1. through 11. apply.

a. Initial and Final Judicial Officer Department Administrative Decisions are made available to the public (after redaction of Social Security Numbers or equivalent non-publicly-available personally identifiable information) on the U.S. Postal Service public Web site, *www.usps.com*.

b. Records provided in the course of litigation at the request of any party to a pending or completed proceeding are considered Disclosures Incident to Legal Proceedings.

c. Records presented or displayed or otherwise disclosed during the course of a public hearing conducted in connection with any Judicial Officer Department are considered Disclosures Incident to Legal Proceedings. Requests can be made that any specifically confidential records be reviewed only in camera and kept under seal.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Automated database, computer storage media, and paper. Initial and Final USPS Judicial Officer Department Administrative Decisions are stored in online formats on USPS.com.

**RETRIEVABILITY:**

By individual name, USPS docket number; or by USPS designation of applicable 39 U.S.C. Part number; Initial and Final USPS Judicial Officer Administrative Decisions (after redaction of Social Security Numbers or equivalent non-publicly-available personally identifiable information) may be retrieved on USPS.com by year, party name, docket number, or by use of full text searches.

**SAFEGUARDS:**

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel. Unsupervised access to records is limited to individuals whose official duties require such access. Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

**RETENTION AND DISPOSAL:**

1. Judicial Officer Department Administrative Proceedings records are retained for 20 years.

2. Judicial Officer Initial and Final Administrative Decisions are retained indefinitely.

3. Initial and Final Administrative Decisions furnished for posting and public availability on the U.S. Postal Service public Web site, *www.usps.com,* are retained indefinitely.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

**SYSTEM MANAGER(S) AND ADDRESS:**

Judicial Officer, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

**NOTIFICATION PROCEDURE:**

Individuals wanting to know if information about them is maintained in this system of records must address inquiries to the system manager, and provide the following information: The full name of the subject individual; and, if applicable and known, the names of complainants, respondents, petitioners, disputants, and/or their representatives, and the dates of decisions, or proceedings.

**RECORD ACCESS PROCEDURES:**

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

**CONTESTING RECORD PROCEDURE:**

See Notification Procedure and Record Access Procedures above.

**RECORD SOURCE CATEGORIES:**

Subject individuals; their counsel or other representatives; postal inspectors; Prohibitory Order Processing Center personnel; members of the Judicial Officer Department; attorneys for USPS;

attorneys for mailers; witnesses; postmasters; and persons identified in proceedings and decisions of the U.S. Postal Service Judicial Officer Department.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Records in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access as permitted by 5 U.S.C. 552a(d)(5). The USPS has also claimed exemption from certain provisions of the Act for several of its other systems of records at 39 CFR 266.9. To the extent that copies of exempted records from those other systems are incorporated into this system, the exemptions applicable to the original primary system continue to apply to the incorporated records.

* * * * *

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2012–22511 Filed 9–12–12; 8:45 am]

**BILLING CODE 7710–12–P**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Nanoscale Science, Engineering, and Technology Subcommittee; Committee on Technology, National Science and Technology Council; Public Engagement Through Nano.gov Webinar

**AGENCY:** Executive Office of the President, Office of Science and Technology Policy.

**ACTION:** Notice of webinar.

**SUMMARY:** The National Nanotechnology Coordination Office (NNCO), on behalf of the Nanoscale Science, Engineering, and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC), will hold a webinar on September 20, 2012 to provide an open forum to answer questions and hear suggestions related to the National Nanotechnology Initiative's (NNI) public Web site, *Nano.gov. Nano.gov,* the primary mechanism for public engagement, was redesigned in April 2011. NNCO is seeking public comment and recommendations on potential updates to, improvements on, and opportunities for public engagement through Nano.gov.

**DATES:** Thursday, September 20, 2012 from 12:15 p.m. until 1 p.m.

**ADDRESSES:** For information about the webinar, please see *www.nano.gov.*

*Submitting Questions:* Questions may be submitted before the webinar to *webinar@nnco.nano.gov* beginning at noon (EDT) Wednesday, September 19, 2012 and will be accepted until the close of the webinar at 1 p.m. Thursday,

September 20, 2012. Questions submitted to *webinar@nnco.nano.gov* will be answered in the order received during the 20 minute question-and-answer segment of the webinar. The moderator reserves the right to group similar questions and to skip questions which are either repetitive or not germane to the topic.

Information about the webinar is posted at *www.nano.gov.*

The webinar will feature brief comments by public engagement and Web site subject area experts, followed by approximately 20 minutes to answer audience questions.

**FOR FURTHER INFORMATION CONTACT:** For information regarding this Notice, please contact Marlowe Epstein-Newman, telephone (703) 292–7128, National Nanotechnology Coordination Office. Email: *webinar@nnco.nano.gov.*

**Ted Wackler,**

*Deputy Chief of Staff and Assistant Director.*

[FR Doc. 2012–22676 Filed 9–12–12; 8:45 am]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67804; File No. TP 12–10]**

### Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to iShares, Inc. and iShares MSCI Frontier 100 Index Fund Pursuant to Exchange Act Rule 10b–17(b)(2) and Rule 101(d) and 102(e) of Regulation M

September 7, 2012.

By letter dated September 7, 2012 (the ''Letter''), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for iShares, Inc. (the ''Company'') on behalf of the Company, the iShares MSCI Frontier 100 Index Fund (the ''Fund''), any national securities exchange on or through which shares issued by the Fund (''Shares'') may subsequently trade, and persons or entities engaging in transactions in Shares (collectively, the ''Requestors'') requested exemptions, or interpretive or no-action relief, from Rule 10b–17 of the Securities Exchange Act of 1934, as amended (''Exchange Act'') and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares (''Creation Units'').

The Company was organized on August 31, 1994, as a Maryland corporation. The Company is registered with the Commission under the Investment Company Act of 1940, as amended (''1940 Act''), as an open-end management investment company. The Company currently consists of approximately 50 investment series or portfolios. The Requestors request relief related to the Fund, a newly created series of the Company. The Fund will invest in stocks consisting of the component securities of the MSCI Frontier Markets 100 Index (the ''Index''), consistent with the Fund's investment strategy. The Fund will use a ''passive'' or indexing approach to try to achieve the Fund's investment objectives. The Index is a free float-adjusted market-capitalization index designed to measure equity market performance of a subset of the MSCI Frontier Markets index while putting greater emphasis on tradability and liquidity as compared to the larger MSCI Frontier Markets index.

The Requestors represent, among other things, the following:

- Shares of the Fund will be issued by the Company, an open-end management investment company that is registered with the Commission;
- The Company will continuously redeem Creation Units at net asset value (''NAV'') and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Fund will be listed and traded on the NYSE Arca (the ''Exchange'');
- The Fund will hold 20 or more portfolio securities with no one portfolio security constituting more than 25% of the Fund;
- The Fund will be managed to track a particular index all the components of which have publicly available last sale trade information;
- The intra-day proxy value of the Fund per share and the value of the Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Exchange (normally 9:30 a.m., Eastern time), BlackRock Fund Advisors (an investment advisor registered under the Investment Advisors Act of 1940 that serves as the Fund's advisor) and Blackrock Investments, LLC (a broker-dealer who is registered with the Commission under the Exchange Act and acts as the Fund's principal

underwriter as defined in Section 2(a)(29) of the 1940 Act), through the National Securities Clearing Corporation, will make available the identities and quantities of the securities and other assets held by the Fund which will form the basis for their calculation of NAV at the end of the business day;

- The Exchange or other market information provider will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing on a per-share basis, the current value of the securities and cash to be deposited as consideration for the purchase of Creation Units;
- The arbitrage mechanism will be facilitated by the transparency of the Fund's portfolio and the availability of the intra-day indicative value, the liquidity of securities and other assets held by the Fund, ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges;
- The Fund will invest solely in liquid securities;
- The Fund will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors believe that arbitrageurs are expected to take advantage of price variations between the Fund's market price and its NAV; and
- A close alignment between the market price of Shares and the Fund's NAV is expected.

**Regulation M**

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[1] However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exception from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares and the Fund as described in more detail below.

**Rule 101 of Regulation M**

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any ''distribution participant'' and its ''affiliated purchasers'' from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security, which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines ''distribution'' to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Company is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Company an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.[2]

**Rule 102 of Regulation M**

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Company is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Fund and that a close alignment between the market price of Shares and the Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Company an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

**Rule 10b–17**

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, in particular that the concerns that the Commission raised in adopting Rule 10b–17 generally will not be implicated if exemptive relief, subject to the conditions below, is granted to the Company because market participants will receive timely notification of the existence and timing of a pending distribution,[3] we find that it is appropriate in the public interest, and consistent with the protection of investors to grant the Company a conditional exemption from Rule 10b–17.

**Conclusion**

*It is hereby ordered,* pursuant to Rule 101(d) of Regulation M, that the Company, based on the representations and facts presented in the Letter and subject to the condition contained in this order, is exempt from the requirements of Rule 101 with respect to the Fund, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Fund to bid for or purchase such Shares during their participation in such distribution.

This exemptive relief is subject to the condition that such transactions in Shares of the Fund or any related securities including those deposited with the Fund or received from the Fund as part of the creation or redemption process are not made for the purpose of creating actual, or apparent, active trading in or raising or otherwise affecting the price of such securities.

[1] While ETFs operate under exemptions from the definitions of ''open-end company'' under Section 5(a)(1) of the 1940 Act and ''redeemable security'' under Section 2(a)(32) of the 1940 Act, the ETFs and their securities do not meet those definitions.

[2] Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an ''attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period'' within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

[3] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

*It is further ordered,* pursuant to Rule 102(e) of Regulation M, that the Company, based on the representations and the facts presented in the Letter and subject to the condition contained in this order, is exempt from the requirements of Rule 102 with respect to the Fund, thus permitting the Fund to redeem Shares of the Fund during the continuous offering of such Shares.

This exemptive relief is subject to the condition that such transactions in Shares of the Fund or any related securities including those deposited with the Fund or received from the Fund as part of the creation or redemption process are not made for the purpose of creating actual, or apparent, active trading in or raising or otherwise affecting the price of such securities.

*It is further ordered,* pursuant to Rule 10b–17(b)(2), that the Company, based on the representations and the facts presented in the Letter and subject to the conditions contained in this order, is exempt from the requirements of Rule 10b–17 with respect to transactions in the shares of the Fund.

This exemptive relief is subject to the following conditions:

- The Company will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Company will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemption shall discontinue transactions involving the Shares of the Fund under the circumstances described above and in the Letter, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–22522 Filed 9–12–12; 8:45 am]

**BILLING CODE 8011–01–P**

[4] 17 CFR 200.30–3(a)(6) and (9).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67806; File No. SR–NYSEArca–2012–97]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to Eliminate the Tape A Step Up Tier, Modify the Remaining Tape Step Up Tiers and Introduce an Alternative Method of Qualifying for Tier 1

September 7, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 27, 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 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 the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') to (i) eliminate the Tape A Step Up Tier; (ii) modify the remaining Tape Step Up Tiers to exclude ETP Holders that qualify for the Cross-Asset Tier or Investor Tier 4; and (iii) introduce an alternative method of qualifying for Tier 1. The Exchange proposes to implement the fee changes on September 1, 2012. 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 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 the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) eliminate the Tape A Step Up Tier; (ii) modify the remaining Tape Step Up Tiers to exclude ETP Holders that qualify for the Cross-Asset Tier or Investor Tier 4; and (iii) introduce an alternative method of qualifying for Tier 1. The Exchange proposes to implement the fee changes on September 1, 2012.

The Exchange proposes to eliminate the Tape A Step Up Tier, which currently provides for a $0.0029 per share fee for orders of qualifying ETP Holders that take liquidity from the Book in Tape A Securities.[4] The Exchange has determined to eliminate the Tape A Step Up Tier because it has generally not incentivized ETP Holders to submit additional liquidity in Tape A Securities.

The Exchange also proposes to specify in the Fee Schedule that ETP Holders that qualify for the Cross-Asset Tier or Investor Tier 4 would not be eligible to qualify for the Tape B and Tape C Step Up Tiers and the Tape C Step Up Tier 2.[5] Currently, Investor Tier 1–3 ETP Holders are ineligible to qualify for the reduced fees provided under the Tape B and Tape C Step Up Tiers and the Tape C Step Up Tier 2. The Exchange believes that the credit per share of $0.0030 is sufficient enough that an ETP Holder

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Because the first instance of footnote 4 in the Fee Schedule, which describes average daily volume (''ADV''), is currently included within the Tape A Step Up Tier, the Exchange proposes to instead make the first instance of footnote 4 in the Fee Schedule appear with the proposed new footnote 4 reference in Tier 1.

[5] As described above, the Exchange has proposed to eliminate the Tape A Step Up Tier.

that qualifies for the Cross-Asset Tier or Investor Tier 4 should not also be eligible for the reduced fees applicable to the Tape B and Tape C Step Up Tiers and the Tape C Step Up Tier 2.

Finally, the Exchange proposes to introduce an alternative method of qualifying for Tier 1. Currently, an ETP Holder must provide liquidity an average daily share volume per month of 0.70% or more of the U.S. consolidated ADV (''CADV'')[6] to qualify for Tier 1 and the applicable rates thereunder. As proposed, an ETP Holder, including a Market Maker, could alternatively qualify for Tier 1 by (a) providing liquidity an average daily share volume per month of 0.15% or more of the U.S. CADV and (b) being affiliated with an NYSE Arca Options Trading Permit (''OTP'') Holder or OTP Firm that provides an ADV of electronic posted executions (including all account types, e.g., Firm, Customer, Broker Dealer or Market Maker) in Penny Pilot issues on NYSE Arca Options of at least 100,000 contracts during the month, of which at least 25,000 contracts must be for the account of a Market Maker.[7] The Exchange believes that, by providing for an additional method of qualifying for Tier 1, this proposed change will provide a greater incentive to attract additional equity and option liquidity so as to qualify for the Tier 1 rates.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed rule change is reasonable because eliminating the Tape A Step Up Tier would remove a pricing tier from the Fee Schedule that has generally not incentivized ETP Holders to submit additional liquidity in Tape A Securities. Removal of the Tape A Step Up Tier is also equitable and not unfairly discriminatory because it would be eliminated for all ETP Holders.

The Exchange believes that making ETP Holders that qualify for the Cross-Asset Tier or Investor Tier 4 ineligible to qualify for the Tape B and Tape C Step Up Tiers and the Tape C Step Up Tier 2 is reasonable because the ETP Holders that qualify for the Cross-Asset Tier or Investor Tier 4 would already receive a higher credit for such executions and would therefore not require the added economic incentive of decreased execution fees in order to encourage greater amounts of liquidity. Furthermore, the Exchange believes that this is equitable and not unfairly discriminatory because all ETP Holders that qualify for the Cross-Asset Tier or Investor Tier 4 would be ineligible to qualify for the Tape B and Tape C Step Up Tiers and the Tape C Step Up Tier 2.

The Exchange also believes that the proposed rule change is reasonable because the proposed new method of qualifying for Tier 1 would provide ETP Holders, including Market Makers, with an additional method of qualifying for the applicable rates thereunder. In this regard, the Exchange believes that the Tier 1 rates are reasonable because they would directly relate to the activity of an ETP Holder and an affiliated OTP Holder or OTP Firm on NYSE Arca Options, thereby encouraging increased trading activity on both the NYSE Arca equity and option markets. Additionally, the Exchange believes that the proposed change is reasonable because the opportunity to qualify for the Tier 1 rates would incentivize ETP Holders to provide liquidity on the Exchange and would result in rates that are reasonably related to an exchange's market quality that is associated with higher volumes. In this regard, the proposal is also designed to bring additional posted order flow to NYSE Arca Options, so as to provide additional opportunities for all OTP Holders and OTP Firms to trade on NYSE Arca Options. Accordingly, the Exchange believes that this may incentivize ETP Holders and their affiliates to increase the orders sent directly to the Exchange's equity and option markets and therefore provide liquidity that supports the quality of price discovery and promotes market transparency.

The Exchange also believes that the proposed thresholds for the new method of qualifying for Tier 1 are reasonable because they are designed to encourage increased trading activity on both the NYSE Arca equity and option markets. The Exchange also believes that the proposed thresholds are reasonable because they are comparable to thresholds that are already in place on the Exchange. For example, while the proposed equities threshold of 0.15% is lower than that of the Cross-Asset Tier (i.e., 0.45%), it is balanced by the proposed options threshold of 100,000 contracts, which is higher than that of the Cross-Asset Tier (i.e., 90,000 contracts). Furthermore, while the options threshold for the Cross-Asset Tier considers only Customer executions, the proposed options threshold considers executions for all account types (e.g., Firm, Customer, Broker Dealer and Market Maker). The Exchange also believes that the proposed thresholds are reasonable because they are comparable to the thresholds that are already in place on at least one other exchange. Specifically, the NASDAQ Stock Market provides a credit of $0.0029 per share when a member adds displayed liquidity that is greater than 0.15% of U.S. CADV and greater than 100,000 total contracts (added and removed) on the NASDAQ Options Market. Additionally, requiring that at least 25,000 of the 100,000 contract threshold be for the account of a Market Maker on NYSE Arca Options is reasonable because it would reasonably ensure that an ETP Holder that qualifies for Tier 1 according to this newly proposed method is affiliated with an OTP Holder or OTP Firm that submits option volume that is not exclusively for Customers.[10]

The proposed new method of qualifying for Tier 1 is also equitable and not unfairly discriminatory because it would be available to all ETP Holders on an equal and non-discriminatory basis. In this regard, the Exchange notes that ETP Holders that are not affiliated with an OTP Holder or OTP Firm on NYSE Arca Options would continue to have the opportunity to qualify for Tier 1 by satisfying the existing requirements, which would not change as a result of this proposal.

[6] U.S. CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape and excludes volume on days when the market closes early.

[7] The Exchange notes that the Fee Schedule currently includes a Cross-Asset Tier for which qualification is similarly determined based on an ETP Holder's equity activity on the Exchange as well as the option activity of an affiliated OTP Holder or OTP Firm on NYSE Arca Options. For purposes of the proposed alternative Tier 1 qualifying method, and as is the case for the existing Cross-Asset Tier, an affiliate of an ETP Holder would be a person or firm that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the ETP Holder. *See* NYSE Arca Rule 1.1(b). Also, as provided under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of $0.01 as part of a pilot program that is currently scheduled to expire on December 31, 2012.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] The Cross-Asset Tier is designed to incentivize additional liquidity from ETP Holders that are affiliated with OTP Holders or OTP Firms that submit Customer flow on NYSE Arca Options.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed change reflects this competitive environment.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (f)(2) of Rule 19b–4 [12] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

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–NYSEArca–2012–97 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–2012–97. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–97 and should be submitted on or before October 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–22523 Filed 9–12–12; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67720; File No. SR–NYSEArca–2012–89]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Offer Certain Proprietary Options Data Products

August 23, 2012.

*Correction*

In notice document 2012–21386, appearing on pages 52769–52771 in the issue of Thursday, August 30, 2012, make the following correction:

On page 52769, in the second column, the Release No. and File No., which were inadvertently omitted from the document heading, are added to read as set forth above.

[FR Doc. C1–2012–21386 Filed 9–12–12; 8:45 am]

BILLING CODE 1505–01–D

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67719; File No. SR–NYSEMKT–2012–40]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Offer Certain Proprietary Options Data Products

August 23, 2012

*Correction*

In notice document 2012–21385, appearing on pages 52767–52769 in the issue of Thursday, August 30, 2012, make the following correction:

On page 52767, in the second column, the Release No. and File No., which were inadvertently omitted from the document heading, are added to read as set forth above.

[FR Doc. C1–2012–21385 Filed 9–12–12; 8:45 am]

BILLING CODE 1505–01–D

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67798; File No. SR–FINRA–2012–042]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded in Specified Pool Transactions and SBA-Backed Asset-Backed Securities Transactions

September 7, 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 August 29, 2012, the 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. 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 6700 Series and Trade Reporting and Compliance Engine (''TRACE'') dissemination protocols regarding the reporting and dissemination of transactions in TRACE-Eligible Securities that are: (1) Agency Pass-Through Mortgage-Backed Securities traded in Specified Pool Transactions (''MBS Specified Pool transactions'') and (2) Asset-Backed Securities backed by loans guaranteed as to principal and interest by the Small Business Administration (''SBA-Backed ABS'') and traded either in Specified Pool Transactions or to be announced (''TBA'') (collectively, ''SBA-Backed ABS transactions'').[3]

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

On April 18, 2012, the SEC approved the TBA Amendments to provide for the dissemination of MBS TBA transactions, subject to dissemination caps, and concomitant reductions in the reporting periods for such transactions, which will become effective November 5, 2012.[4] FINRA is proposing to expand transparency further in the market for Asset-Backed Securities in the proposed rule change, which provides for the dissemination of MBS Specified Pool and SBA-Backed ABS transactions, subject to dissemination caps, and concomitant reductions in the reporting periods for such transactions.

FINRA proposes to amend Rule 6730 to reduce, in two stages, the time frames to report MBS Specified Pool and SBA-Backed ABS transactions. FINRA also proposes minor clarifying amendments to Rule 6730(a)(3)(D) and (E) to specify that the reporting requirements set forth therein apply solely to MBS TBA transactions. In connection with such changes, FINRA proposes amendments in Rule 6710 to the definitions of ''Agency Pass-Through Mortgage-Backed Security,'' ''To Be Announced ('TBA'),'' and ''Specified Pool Transaction,'' and a new defined term, ''SBA-Backed ABS.'' Finally FINRA proposes to amend Rule 6750 to provide for the dissemination of MBS Specified Pool and SBA-Backed ABS transactions, and proposes to establish, as part of TRACE dissemination protocols, the specific data elements of the transactions that will be disseminated as well as a $10 million dissemination cap for such transactions.

MBS Specified Pool Transactions

Generally, Agency Pass-Through Mortgage-Backed Securities are traded either TBA or in Specified Pool Transactions as defined in Rule 6710(u) and (x), respectively. In MBS Specified Pool transactions, on the date of trade (trade date), the seller agrees to deliver to the buyer a specific Agency Pass-Through Mortgage-Backed Security identifiable by a unique identification number, representing a specific pool of mortgage loans. In an MBS TBA transaction, the mortgage pools to be delivered are described (*e.g.,* by program, interest rate, type of residential mortgage, maturity) but are not specifically identified, and will not be identified until shortly before settlement. While the majority of Agency Pass-Through Mortgage-Backed Securities are traded TBA, the daily volume of MBS Specified Pool transactions represents significant economic activity in mortgage-related securities, and FINRA believes that additional transparency in such securities is appropriate. The reported transaction data shows that MBS Specified Pool transaction pricing is strongly correlated to (and in general is priced at a premium over) the pricing of similar mortgage pools traded in the substantially larger MBS TBA market. Moreover, the two market sectors exhibit similar trading characteristics, and the same programs dominate both markets. For example, approximately 98 percent of the total volume in MBS Specified Pool transactions, and approximately 95 percent of the total volume in MBS TBA transactions, occurs in securities backed by single-family mortgage loans.[5] Accordingly, the TRACE data sets are complimentary and the dissemination of the additional pricing information for MBS Specified Pool transactions will further improve

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The terms TRACE-Eligible Security, Agency Pass-Through Mortgage-Backed Security, Specified Pool Transaction, Asset-Backed Security and To Be Announced are defined in, respectively, Rule 6710(a), Rule 6710(v), Rule 6710(x), Rule 6710(m) and Rule 6710(u). The definition of SBA-Backed ABS is proposed in Rule 6710(bb).

[4] The proposed rule text includes the amendments to the FINRA Rule 6700 Series to provide for reduced reporting times and dissemination of transactions in TRACE-Eligible Securities that are Agency Pass-Through Mortgage-Backed Securities that are traded To Be Announced (''TBA'') (''MBS TBA transactions''), which were approved by the SEC and will become effective November 5, 2010. *See* Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (Order Approving File No. SR–FINRA–2012–020) and *Regulatory Notice* 12–26 (May 2012) (''TBA Amendments'').

The TBA Amendments distinguished between MBS TBA transactions for good delivery (''MBS TBA transactions GD'') and not for good delivery (''MBS TBA transactions NGD''). In response to comments, FINRA proposed a longer period to timely report, and lower dissemination caps for, MBS TBA transactions NGD than the requirements proposed for MBS TBA transactions GD.

[5] Over half of all transactions in MBS Specified Pool transactions, and approximately 77 percent of all transactions in MBS TBA transactions, occur in Federal National Mortgage Association (''Fannie Mae'') program securities. The information is based on FINRA staff's review of all Asset-Backed Securities transactions reported to TRACE from May 16, 2011 through October 31, 2011.

transparency in the Agency Pass-Through Mortgage-Backed Securities market.

SBA-Backed ABS Transactions

SBA-Backed ABSs are Asset-Backed Securities created from pooling loans made to small business by banks and other financial institutions in conformity with the program requirements of the Small Business Administration (''SBA''). Loans that meet the SBA's requirements are guaranteed by SBA as to the timely payment of principal and interest, and pools are then created to issue SBA-Backed Asset-Backed Securities.

SBA-Backed ABS also are traded TBA and in Specified Pool Transactions.[6] Like Agency Pass-Through Mortgage-Backed Securities discussed above, such TBA trading may occur because market participants may anticipate with some certainty the creation of loan pools and are aware of the pool characteristics, and the extent to which such loan pools are fungible with previously-settled SBA-Backed ABS. FINRA proposes that both types of SBA-Backed ABS transactions be subject to dissemination.

Amendments to Defined Terms

FINRA proposes to define ''SBA-Backed ABS'' in proposed Rule 6710(bb) as an Asset-Backed Security issued in conformity with a program of the Small Business Administration (''SBA''), for which the timely payment of principal and interest is guaranteed by the SBA, representing ownership interest in a pool (or pools) of loans and structured to ''pass through'' the principal and interest payments made by the borrowers in such loans to the holders of the security on a pro rata basis.

In connection with the proposed addition of the definition of SBA-Backed ABS, FINRA also proposes amendments to the definitions of ''To Be Announced ('TBA')'' and ''Specified Pool Transaction'' in Rule 6710(u) and Rule 6710(x), respectively. Both definitions currently apply only to Agency Pass-Through Mortgage-Backed Securities. As amended, both terms would include transactions in SBA-Backed ABS.[7] In addition, FINRA proposes amendments to the definition of ''Agency Pass-Through Mortgage-Backed Security'' in Rule 6710(v) to incorporate minor, technical changes to the defined term.[8]

Reduction of Reporting Period

Currently, Asset-Backed Securities transactions (except certain pre-issuance transactions in collateralized mortgage obligations (''CMOs'') and real estate mortgage investment conduits (''REMICs'')) that are executed on a business day through 5:00:00 p.m. Eastern Time must be reported to TRACE on the Trade Date during TRACE System Hours, as provided in Rule 6730(a)(3)(A)(i), subject to the exceptions for transactions executed after 5:00:00 p.m. and during times when the TRACE System is not open in Rule 6730(a)(3)(A)(ii) and (iii). In contrast, secondary market transactions in all other TRACE-Eligible Securities must be reported within 15 minutes of the Time of Execution.[9] With certain exceptions, transaction information on such TRACE-Eligible Securities is disseminated as soon as the transaction is reported, and the 15-minute reporting requirement results in meaningful price transparency for market participants trading such securities.[10] In addition, effective November 5, 2012, MBS TBA transactions will be disseminated, and, in connection with their dissemination, the timeframes for timely reporting such transactions will be reduced to provide market participants meaningful and timely price information about MBS TBA transactions.[11]

In connection with proposing that MBS Specified Pool and SBA-Backed ABS transactions be disseminated, FINRA proposes to reduce the reporting timeframes for such transactions for the same reasons. The proposed reduction of the reporting timeframes would occur in two stages to permit industry participants time to adjust policies and procedures and to make required technological changes, as also done in connection with the TBA Amendments.

The requirements to report MBS Specified Pool and SBA-Backed ABS transactions are set forth in, respectively, proposed Rule 6730(a)(3)(F) and proposed Rule 6730(a)(3)(G). First, FINRA proposes to reduce the reporting period for MBS Specified Pool and SBA-Backed ABS transactions from no later than the close of the TRACE system on Trade Date to no later than two hours (*i.e.,* 120 minutes) from the Time of Execution for the duration of the proposed MBS Specified Pool Pilot Program and the proposed SBA-Backed ABS Pilot Program in, respectively, proposed Rule 6730(a)(3)(F)(i) and proposed Rule 6730(a)(3)(G)(i).[12] Like the reporting requirements currently in effect for other TRACE-Eligible Securities, FINRA also proposes exceptions to the 120-minute timeframe for transactions executed near the end of the business day or when the TRACE system is not open.[13] Second, after the pilot programs

[6] SBA-Backed ABS transactions constitute a very minor portion of all Specified Pool Transactions. SBA-Backed ABS Specified Pool Transactions account for only 0.41 percent of the combined total volume of all Specified Pool Transactions (*i.e.,* the total volume of Agency Pass-Through Mortgage Backed-Securities and SBA-Backed ABS traded in Specified Pool Transactions).

[7] As revised, Rule 6710(u) would provide:

''To Be Announced'' (''TBA'') means a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) or an SBA-Backed ABS as defined in paragraph (bb) where the parties agree that the seller will deliver to the buyer a pool or pool(s) of a specified face amount and meeting certain other criteria but the specific pool or pool(s) to be delivered at settlement is not specified at the Time of Execution, and includes TBA transactions ''for good delivery'' (''GD'') and TBA transactions ''not for good delivery'' (''NGD'').

As revised, Rule 6710(x) would provide:

''Specified Pool Transaction'' means a transaction in an Agency Pass-Through Mortgage-Backed Security as defined in paragraph (v) or an SBA-Backed ABS as defined in paragraph (bb) requiring the delivery at settlement of a pool or pool(s) that is identified by a unique pool identification number at the Time of Execution.

[8] As revised, Rule 6710(v) would provide:

''Agency Pass-Through Mortgage-Backed Security'' means a type of Asset-Backed Security issued in conformity with a program of an Agency or a Government-Sponsored Enterprise (''GSE''), for which the timely payment of principal and interest is guaranteed by the Agency or GSE, representing ownership interest in a pool (or pools) of mortgage loans structured to ''pass through'' the principal and interest payments to the holders of the security on a pro rata basis.

[9] The term Time of Execution is defined in Rule 6710(d).

[10] *See* Rule 6750(b) for exceptions to dissemination. *See also supra* note 4 regarding the TBA Amendments and dissemination of MBS TBA transactions.

[11] *See supra* note 4. Under the TBA Amendments, which become effective November 5, 2012, MBS TBA transactions GD must be reported generally within 45 minutes of the Time of Execution until May 10, 2013 (reduced to 15 minutes after May 10, 2013), and MBS TBA transactions NGD be reported within 120 minutes until May 10, 2013 (reduced to 60 minutes after May 10, 2013). Both reporting requirements are subject to exceptions for transactions executed close to the end of the business day or when the TRACE system is not open.

[12] Proposed Rule 6730(a)(3)(F)(i) and proposed Rule 6730(a)(3)(G)(i) each incorporate by reference Rule 6730(a)(3)(E)(i)a. through d., which provides for a 120-minute reporting timeframe in Rule 6730(a)(3)(E)(i)b.

Each of the pilot programs would expire after approximately 180 days. To accommodate member requests that, if possible, rule changes requiring technology changes occur on a Friday, proposed Rule 6730(a)(3)(F)(i) and proposed Rule 6730(a)(3)(G)(i) provide that the MBS Specified Pool Pilot Program and the SBA-Backed ABS Pilot Program each would expire on a Friday (*i.e.,* on the 180th day, if a Friday, or, if the 180th day is not a Friday, on the Friday next occurring that the TRACE system is open).

[13] *See* proposed Rule 6730(a)(3)(F)(i) and proposed Rule 6730(a)(3)(G)(i), which incorporate by reference Rule 6730(a)(3)(E)(i)a., c., and d., which apply to transactions executed near the end of the business day or when the TRACE system is not open. Under Rule 6730(a)(3)(E)(i)a., transactions

Continued

expire, the reporting periods for MBS Specified Pool and SBA-Backed ABS transactions would be reduced from no later than two hours (120 minutes) from the Time of Execution to no later than one hour (60 minutes) from the Time of Execution, as set forth in, respectively, proposed Rule 6730(a)(3)(F)(ii) and proposed Rule 6730(a)(3)(G)(ii).[14] Currently, approximately 84 percent of MBS Specified Pool and SBA-Backed ABS transactions are reported within two hours of execution, and approximately 75 percent are reported within one hour of execution.

After the 60-minute reporting requirement is implemented, FINRA will continue to review the reporting of MBS Specified Pool and SBA-Backed ABS transactions and may recommend further reductions in the reporting period.

FINRA also proposes minor clarifying amendments to Rule 6730(a)(3)(D) and (E) to specify that the reporting requirements set forth therein apply solely to MBS TBA transactions.

Dissemination

Amendment to Rule 6750

Although members began reporting transactions in Asset-Backed Securities to TRACE on May 16, 2011, FINRA currently does not disseminate publicly Asset-Backed Securities transaction data reported to TRACE as provided in Rule 6750(b)(4). However, on November 5, 2012, transparency in Asset-Backed Securities transactions will increase significantly with the dissemination of MBS TBA transactions, which represent approximately 87 percent of the average daily volume traded in all Asset-Backed Securities.[15] After obtaining the SEC's approval to disseminate such transaction information, FINRA continued to examine transactions in Asset-Backed Securities to determine if FINRA should propose to disseminate additional Asset-Backed Securities. The SEC has been supportive of such efforts.[16]

FINRA has reviewed the data reported for Asset-Backed Securities other than MBS TBA transactions, including MBS Specified Pool and SBA-Backed ABS transactions, and studied the total volume of MBS Specified Pool and SBA-Backed ABS transactions, the concentration of trading in such securities, and the pricing disparity among various types of MBS Specified Pool and SBA-Backed ABS transactions to understand their liquidity and fungibility. The market activity reported and reviewed reveals that for MBS Specified Pool transactions, the market is generally active and liquid, and with liquidity comparable to that of corporate bonds.[17] Based on the review, FINRA believes that it is appropriate to amend Rule 6750 to provide for the immediate dissemination of MBS Specified Pool and SBA-Backed ABS transaction information, and that such dissemination will benefit market participants by improving transparency in both market segments. Specifically, Rule 6750(b)(4) would be amended to provide that FINRA will not disseminate information on a transaction in a TRACE-Eligible Security that is an Asset-Backed Security, except: (A) An Agency Pass-Through Mortgage-Backed Security; and (B) an SBA-Backed ABS.[18] Thus, information would be disseminated on MBS Specified Pool and SBA-Backed ABS transactions immediately upon receipt of the transaction report and no later than 120 minutes, or, after the expiration of the applicable pilot program, no later than 60 minutes, from the Time of Execution.[19]

Dissemination Protocols

*SBA-Backed ABS Transactions Traded TBA.* The dissemination protocols applicable to SBA-Backed ABS transactions traded TBA would be the same as the dissemination protocols for MBS TBA transactions NGD and subject to the dissemination cap discussed below. Generally, such securities will be disseminated immediately upon receipt of transaction information, and the standard data elements will be displayed.[20]

*MBS and SBA-Backed ABS Specified Pool Transactions.* FINRA proposes to modify the dissemination protocols for MBS Specified Pool transactions and SBA-Backed ABS traded in Specified Pool Transactions (collectively ''MBS and SBA-Backed ABS Specified Pool transactions'') from those initially proposed by FINRA, to strike a balance between certain anonymity concerns and providing meaningful transparency.[21] Unlike the dissemination protocols for other disseminated TRACE-Eligible Securities, including MBS TBA transactions, FINRA proposes not to disseminate the CUSIP of the MBS or the SBA-Backed ABS Specified Pool transaction.[22] Instead, certain specified data elements that are integral to describing and valuing the security traded, with numeric values expressed within specific ranges (*i.e.,* the information will be truncated and, depending on the data element, rounded up or down) would be disseminated. Although FINRA has determined not to disseminate the specific CUSIP of the

executed on a business day at or after 12:00:00 a.m. Eastern Time through 7:59:59 a.m. Eastern Time must be reported the same day no later than 120 minutes after the TRACE system opens. Under Rule 6730(a)(3)(E)(i)c., transactions executed on a business day less than 120 minutes before 6:30:00 p.m. Eastern Time (the time the TRACE system closes) must be reported no later than 120 minutes after the TRACE system opens the next business day (T + 1), and if reported on T + 1, designated ''as/of'' and include the date of execution. Under Rule 6730(a)(3)(E)(i)d., transactions executed on a business day at or after 6:30:00 p.m. Eastern Time through 11:59:59 p.m. Eastern Time or on a Saturday, a Sunday, a federal or religious holiday or other day on which the TRACE system is not open at any time during that day (determined using Eastern Time) must be reported the next business day (T + 1), no later than 120 minutes after the TRACE system opens, designated ''as/of'' and include the date of execution.

[14] Proposed Rule 6730(a)(3)(F)(ii) and proposed Rule 6730(a)(3)(G)(ii)—the ''post-pilot program'' reporting provisions—incorporate by reference the reporting requirements set forth in Rule 6730(a)(3)(E)(ii)a. through d., including the exceptions to the requirement to report within 60 minutes that apply to transactions executed near the end of the business day or when the TRACE system is not open in Rule 6730(a)(3)(E)(ii)a., c., and d.

[15] *See supra* note 4.

[16] *See* Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262, 9265 (March 1, 2010) (Order Approving File No. SR–FINRA–2009–065).

[17] Liquidity as measured by par value traded is comparable to corporate bonds. Although MBS TBA transactions account for approximately 93 percent of all trading in Agency Pass-Through Mortgage-Backed Securities, the average daily volume of MBS Specified Pool transactions is significant—approximately $17.5 billion is traded daily on average, in approximately 3,000 trades per day. The information is based on FINRA staff's review of all Asset-Backed Securities transactions reported to TRACE from May 16, 2011 through October 31, 2011.

[18] *See supra,* note 4.

[19] FINRA continues to review Asset-Backed Security transaction information in other sectors of the Asset-Backed Securities market and, at a later date, may propose that transactions in other Asset-Backed Securities be disseminated.

[20] Standard data elements include, among other things, CUSIP, time of transaction, size (subject to dissemination caps), price, counterparty type (customer or dealer), and buy/sell indicator. FINRA has represented that the CUSIP for a TBA transaction identifies the issuer and the characteristics of the pools of mortgages that can be delivered to satisfy a TBA transaction but differs from a standard CUSIP in that it is not unique to a security and will be re-assigned to future TBA transactions requiring delivery of the same type of pools on the same month of delivery. *See* email dated September 4, 2012 from Sharon Zackula of FINRA to Geoffrey Pemble, Special Counsel, Commission and Michael Bradley, Attorney-Advisor, Commission.

[21] *See* Item C of this filing for a discussion of SR–FINRA–2012–021.

[22] FINRA notes that notwithstanding the proposed changes to dissemination protocols, FINRA is not proposing to change any of the reporting requirements applicable to such securities, including the requirement to report the CUSIP number.

security, FINRA believes that investor [sic] must be provided sufficient information such that the investor can appropriately interpret the price transparency provided by the TRACE data. Part of the valuation analysis of any Asset-Backed Security includes a projection of its cash flow which in turn relies on assumptions about prepayment rates. FINRA believes that the data elements outlined below provide information that will allow market participants to perform such analysis.

MBS Specified Pool Transactions

In lieu of a CUSIP, the following information would be disseminated for each MBS Specified Pool transaction reported to TRACE: Product type; amortization type; issuing agency; coupon; original maturity; weighted average coupon (''WAC''); weighted average maturity (''WAM''); weighted average loan age (''WALA''); average loan size (''ALS''); and original loan-to-value (''original LTV'') information. Each data element (except issuing agency, product type and amortization type) would be provided in ranges (truncated and disseminated after rounding) to further reduce the potential for ''reverse engineering'' transaction data to determine the identification of a market participant and/or the participant's trading strategies. FINRA believes that these data elements will permit investors to meaningfully assess the value and price of the security. If in the future, FINRA identifies additional data elements that would significantly improve transparency using this approach, FINRA may add such data elements to the dissemination protocol for MBS Specified Pool transactions discussed herein.

Product type, amortization type, issuing agency, coupon and original maturity would be disseminated to permit identification of the security type traded. Product type refers to the type of properties (or real-estate related projects) subject to the mortgages underlying the Agency-Pass Through Mortgage-Backed Security (*e.g.,* single family residential dwelling mortgage loans, multi-family residential dwelling mortgage loans, or project loans). Amortization type identifies the underlying mortgage types (*e.g.,* level payment, adjustable rate mortgages (''ARMs'') or balloons). Issuing agency refers to the Agency or Government-Sponsored Enterprise (GSE) that issues the certificate and guarantees the payment of principal and interest of the Agency Pass-Through Mortgage-Backed Security (*e.g.,* Fannie Mae, the Federal Home Loan Mortgage Corporation (''Freddie Mac'') and the Government National Mortgage Association (''Ginnie Mae'')). Coupon refers to the stated annual percentage rate of interest paid on the Agency-Pass Through Mortgage-Backed Security, and would be disseminated after rounding down to the nearest quarter percentage point (*e.g.,* an interest rate of 5.12 percent would be disseminated at 5.00 percent). Original maturity refers to the original stated term after which the principal amount of the security is due to be repaid in full, or the end of the life of the Agency-Pass Through Mortgage-Backed Security (*e.g.,* 30 years (expressed as 360 months)). Original maturity would be disseminated after rounding up to the nearest 10 (*e.g.,* an original maturity of 358 months would be disseminated at 360).

In addition, FINRA will disseminate WAC, WAM, WALA, ALS, and original LTV to provide information on recent and historic cash flows and prepayments, and permit investors to develop projections or assumptions regarding future payments, prepayments, and cash flows. WAC is the weighted average interest rate of the underlying mortgage loans or pools that serve as collateral for a mortgage security, weighted by the size of the principal loan balances.[23] WAC would be disseminated after truncating to a single decimal (*e.g.,* WAC of 7.13% would be disseminated as 7.1). WAM is the weighted average number of months to the final payment of each loan backing an Agency Pass-Through Mortgage-Backed Security (or other mortgage-backed security), weighted by the size of the principal loan balances.[24] WAM would be disseminated rounded down to the nearest 10 (*e.g.,* WAM of 87 months would be disseminated as 80). WALA is the weighted average number of months since the date of the loan origination of the mortgages (*i.e.,* the age of the loans) backing an Agency Pass-Through Mortgage Security (or other mortgage-backed security), weighted by the size of the principal loan balances. WALA would be disseminated rounded up to the nearest 10 (*e.g.,* WALA of 163 months would be disseminated as 170). Current ALS is obtained by dividing the current mortgage loan outstanding principal balance by the number of loans that remain outstanding. ALS would be rounded down to the nearest 25 (*e.g.,* an ALS of 113 *(i.e.,* $113,000 average loan size) would be disseminated as 100). Original LTV ratio expresses the amount of a first mortgage lien as a percentage of the total appraised value of real property, and also would be disseminated rounded down to the nearest 25 (*e.g.,* an original LTV of 92 (*i.e.,* 92 percent) would be disseminated as 75).

The data elements are publicly available as they are published on a monthly basis by the issuing agency. Upon receipt of a transaction report, the TRACE system will automatically disseminate the above data elements corresponding to the CUSIP reported in lieu of disseminating the CUSIP number.

Dissemination of SBA-Backed ABS Traded in Specified Pool Transactions

For Specified Pool transactions in SBA-Backed ABS, FINRA generally proposes that dissemination protocols be established that are substantially similar to those discussed above for MBS Specified Pool transactions. The dissemination protocols would result in the dissemination of substantially the same data elements for SBA-Backed ABS Specified Pool transactions as those disseminated for MBS Specified Pool transactions, in lieu of the dissemination of the specific CUSIP. Specifically, upon receipt of a transaction report, FINRA would disseminate amortization type; coupon; original maturity; WAC; WAM; and WALA, except that such values would be based on SBA-backed pooled loans. The values, like those for MBS Specified Pool transactions, would be rounded and truncated prior to dissemination to reduce the possibility of potential identification of a market participant by ''reverse engineering'' of a transaction. In addition, if in the future, FINRA identifies additional data elements that would significantly improve transparency using this approach, FINRA may add such data elements to the dissemination protocol for SBA-Backed ABS Specified Pool transactions.

FINRA believes that, in the absence of disseminating CUSIP data, disseminating the information set forth above will help ensure meaningful price transparency, by providing relevant information commonly used to identify, value and price MBS and SBA-Backed ABS Specified Pool transactions. FINRA believes that its proposal strikes the appropriate balance in achieving meaningful transparency while significantly reducing the potential to ''reverse engineer'' transaction data to

[23] WAC is calculated by weighting the interest rate of each mortgage loan in the pool by the amount of the mortgage outstanding.

[24] WAM is calculated by weighting the remaining number of months to maturity for each mortgage loan in the pool by the amount of the mortgage outstanding.

identify a market participant and/or determine its trading strategies.[25]

Dissemination Caps

FINRA has established TRACE dissemination caps for disseminated TRACE data generally, such that the actual size of a transaction over a certain par value is not displayed in disseminated TRACE transaction data. For TRACE-Eligible Securities that are rated Investment Grade, the dissemination cap is $5 million (''$5MM''), and the size of transactions in excess of $5MM is displayed as ''$5MM+.'' For TRACE-Eligible Securities that are rated Non-Investment Grade, the dissemination cap is $1 million (''$1MM''), and the size of a transaction in excess of $1MM is displayed as ''$1MM+.'' [26] As of November 5, 2012, a $25 million (''$25MM'') dissemination cap will apply to MBS TBA transactions GD (with the size of a transaction in excess of $25MM displayed as ''$25MM+'') and a $10 million (''$10MM'') dissemination cap will apply to MBS TBA transactions NGD (with the size of a transaction in excess of $10MM displayed as ''$10MM+'').[27]

FINRA has analyzed the distribution of MBS Specified Pool and SBA-Backed ABS transactions to determine an appropriate dissemination cap, and proposes a $10 million (''$10MM'') dissemination cap for MBS Specified Pool and SBA-Backed ABS transactions initially. Accordingly, the size of MBS Specified Pool and SBA-Backed ABS transactions greater than $10 million would be displayed in disseminated data as ''$10MM+.'' In setting the dissemination caps, FINRA took into account the liquidity and trading activity in these segments, and at $10 million, approximately nine percent of transactions and approximately 80 percent of par value traded would be disseminated subject to the $10MM cap.[28] FINRA believes that the proposed dissemination caps will allow the marketplace time to adjust to the new levels of transparency.

As dissemination of MBS Specified Pool and SBA-Backed ABS transactions is implemented, FINRA will continue to review the volume of and liquidity in these securities, and may recommend that such dissemination caps be set at higher levels to provide additional transparency to market participants.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 270 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[29] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change to increase fixed income market transparency is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, generally to protect investors and the public because transparency in MBS Specified Pool and SBA-Backed ABS transactions will enhance the ability of investors and other market participants to identify and negotiate fair and competitive prices for these securities, and because the dissemination of price and other information publicly will promote just and equitable principles of trade among participants in the more transparent market, and will aid in the prevention of fraudulent and manipulative acts and practices in the Asset-Backed Securities market.

*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*

On April 2, 2012, FINRA filed with the Commission SR–FINRA–2012–021 (''April 2012 Filing''), a proposed rule change to amend the Rule 6700 Series and TRACE dissemination protocols regarding the reporting and dissemination of (1) MBS Specified Pool transactions and (2) SBA-Backed ABS traded either in Specified Pool Transactions or to be announced (''TBA'') (collectively, ''SBA-Backed ABS transactions''). Specifically, FINRA proposed to amend Rule 6730 to reduce, in two stages, the time frames to report MBS Specified Pool and SBA-Backed ABS transactions. FINRA also proposed minor clarifying amendments to Rule 6730(a)(3)(D) and (E) to specify that the reporting requirements set forth therein apply solely to MBS TBA transactions. In connection with such changes, FINRA proposed amendments to the definitions of ''To Be Announced ('TBA'),'' ''Specified Pool Transaction,'' and ''Agency Pass-Through Mortgage-Backed Security'' and a new defined term, ''SBA-Backed ABS.'' Finally, FINRA proposed to amend Rule 6750 to provide for the dissemination of MBS Specified Pool and SBA-Backed ABS transactions, and proposed to establish, as part of TRACE dissemination protocols, a $10 million dissemination cap for such transactions. A copy of the Form 19b–4 and original Exhibit 5 of the April 2012 Filing is attached as Exhibit 2a.

On April 19, 2012, the April 2012 Filing was published for comment in the **Federal Register**.[30] A copy of the **Federal Register** release is attached as Exhibit 2b. SEC received two comment letters in response.[31] A list of the comment letters received in response to

[25] As noted above, with respect to both MBS and SBA-Backed ABS Specified Pool transactions, if FINRA identifies additional data elements that would significantly improve transparency, FINRA may add such data elements to the dissemination protocols for such securities.(*e.g.,* FICO).

[26] The dissemination caps for Investment Grade corporate bonds limit the display of actual size for approximately 1.6 percent of trades representing approximately 48 percent of total par value traded, and, for Agency Debt Securities, approximately 6 percent of trades representing approximately 74 percent of total par value traded. The dissemination cap for Non-Investment Grade corporate bonds limits the display of actual size for approximately 15 percent of trades representing approximately 84 percent of total par value traded. The information is based on a review of all transactions in Investment Grade corporate bonds, Agency Debt Securities and Non-Investment Grade corporate bonds reported to TRACE from May 16, 2011 through January 4, 2012.

The terms Investment Grade, Non-Investment Grade and Agency Debt Security are defined in, respectively, Rule 6710(h), Rule 6710(i) and Rule 6710(l).

[27] *See supra* note 4.

[28] *See supra* note 4. The proposed dissemination caps for MBS TBA transactions GD would limit display of actual size for approximately 20 percent of trades representing approximately 84 percent of par value traded and for MBS TBA transactions NGD would limit the display of actual size for approximately 42 percent of trades representing approximately 85 percent of par value traded. The information is based on a review of all MBS TBA, MBS Specified Pool and SBA-Backed ABS transactions reported to TRACE from May 16, 2011 through January 4, 2012.

[29] 15 U.S.C. 78*o*–3(b)(6).

[30] *See* Securities Exchange Act Release No. 66804 (April 13, 2012), 77 FR 23524 (April 19, 2012) (Notice of Filing of File No. SR–FINRA–2012–021).

[31] *See* Letter from Chris Killian, Managing Director, Securities Industry and Financial Markets Association (''SIFMA''), to Elizabeth M. Murphy, Secretary, SEC, dated May 10, 2012 (''SIFMA Letter'') and Letter from Michael Nicholas, Chief Executive Officer, Bond Dealers of America (''BDA''), to Elizabeth M. Murphy, Secretary, SEC, dated May 10, 2012 (''BDA Letter'').

the April 2012 Filing is attached as Exhibit 2c. Copies of the comment letters received in response to the April 2012 Filing are attached as Exhibit 2d.

One commenter focuses its comments solely on the aspects of the proposal relating to MBS Specified Pool transactions. The commenter states that a pool traded on a specified basis (*i.e.,* by CUSIP) may not trade frequently, that most trades in pools—or at least those for smaller pools—are trades of the whole pool, which means that most pools are owned by a single investor, or two or three investors, instead of being widely held, and that most market participants track which pools they trade to and from their various counterparties. As a result, the commenter is concerned that FINRA's proposal to disseminate such a security's CUSIP as part of disseminated transaction information will compromise sensitive information regarding investors' trading strategies, volumes, identities and positions, and, over time, market participants will be able to ''reverse engineer'' and develop quite detailed and precise estimates of other participants strategies and positions. The commenter expresses concern that the impact of ''such diminution of confidentiality,'' especially regarding positions and strategy, may be quite negative and impair participation and liquidity in the market for such instruments.[32] The second commenter discusses the same issues raised by the first,—though the second commenter raises such issues in connection with SBA-Backed TBA transactions as well as MBS and SBA-Backed Specified Pool transactions.[33] Both commenters recommend that certain information be withheld from dissemination. One commenter recommended that pool number and CUSIP information, regardless of size, should be omitted.[34] The other commenter recommended that for pools with an original face amount below $1 billion, the CUSIP information not be shown on disseminated trade reports for a three to six month period.[35] This commenter also recommended that FINRA reduce the dissemination cap to $1 million.[36] In addition, one commenter was concerned that broker-dealers affiliated with banks can effect MBS Specified Pool and SBA-Backed ABS transactions through the bank and avoid reporting such transactions to TRACE, giving such broker-dealers an unfair advantage.[37]

FINRA withdrew the April 2012 Filing on July 12, 2012, prior to filing a response to comments. Accordingly, the comments to the April 2012 Filing and FINRA's responses are discussed below.

After careful consideration of the commenters' concerns, in this proposed rule change, FINRA proposes to modify the transaction dissemination protocols such that the disseminated information regarding MBS and SBA-Backed ABS Specified Pool transactions would not include the CUSIP of such securities. Instead, as detailed above, FINRA proposes to disseminate specific reference data elements, including information widely used to project cash flows and pre-payments, in specific ranges. FINRA believes that this approach would significantly limit the ability to ''reverse engineer'' transaction data to determine trading strategies and identities while providing valuable information about the mortgages/loans that are in MBS and SBA-Backed ABS Specified Pool transactions.

The information set forth above will help provide meaningful price transparency, by providing relevant information commonly used to identify, value and price MBS and SBA-Backed ABS Specified Pool transactions. FINRA believes that the proposed rule change strikes the appropriate balance in achieving meaningful transparency while significantly reducing the potential for ''reverse engineering'' transaction data to determine trading strategies and/or participant identification. If in the future, FINRA identifies additional data elements that would significantly improve transparency, FINRA may add such data elements to the dissemination protocols for such securities (*e.g.,* FICO).

In addition, FINRA believes that the $10 million dissemination cap is appropriate and does not propose to reduce it. As noted in the proposed rule change and the April 2012 Filing, the size of MBS Specified Pool and SBA-Backed ABS transactions greater than $10 million would be displayed in disseminated data as ''$10MM+.'' At this level, approximately nine percent of transactions and approximately 80% of par value traded would be subject to the $10MM cap. FINRA believes this data is consistent with respect to dissemination caps for other securities.[38]

Finally, with respect to the commenter's concern that a broker-dealer affiliated with a bank may run MBS Specified Pool and SBA-Backed ABS transactions through the bank's balance sheet and avoid reporting such transactions to TRACE, FINRA notes that the statutory standard requires that FINRA's proposed rules not impose any burden on competition not necessary or appropriate in furtherance of the Act. FINRA believes that increased transparency in the securities trading market appropriately furthers the purposes the Act. As FINRA has previously noted, it defeats the purposes of the Act by referring to market participants that may not be subject to the Act (in whole or in part), as a basis for not approving the proposed rule change.[39] Such a standard would undo much, if not all, regulation of broker-dealers and markets necessary for the protection of investors and the efficiency, competitiveness and integrity of securities markets. FINRA believes that the fact that there may be market participants that are not subject to the Act should not delay the reporting and dissemination of MBS Specified Pool and SBA-Backed ABS transactions and related changes regarding the reporting of such transactions.

## 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

[32] *See* SIFMA Letter, p. 3.

[33] *See* BDA Letter, pp. 1 and 2. (See, for example, the second commenter's statements: ''Much of the market in the Agency Specified Pool Securities is driven by institutional investors who take the time to research the performance of pools, to develop a strategy to generate a profit and ultimately to execute on that strategy.''; ''* * * the pools can be smaller in size and a single investor frequently owns the entire pool * * *''; regarding smaller pools, ''* * * the market easily knows who these investors are and what pools they own.''; ''When a single investor owns a large percentage of a specified pool, if the FINRA proposal were finalized in its current form, the market would be able to know that this investor is buying or selling and the market would then be able to track this investor's activity, and reverse engineer and capitalize on its strategy.''; and, ''* * * a more fair approach to investors is if broker-dealers are allowed to omit the pool number and CUSIP information from TRACE dissemination regardless of the size of the transaction.'').

[34] *See* BDA letter, p. 1.

[35] *See* SIFMA Letter, p. 3.

[36] *See* SIFMA Letter, p. 3.

[37] *See* BDA Letter, p. 2.

[38] *See* note 21 and note 23 of the Form 19b–4 and Exhibit 1, respectively, in SR–FINRA–2012–021.

[39] *See* Response to Comments on SR–FINRA–2009–010 (Proposed Rule Change Relating to Expansion of TRACE to Include Agency Debt Securities and Primary Market Transactions).

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2012–042 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–042. 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 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 Number SR–FINRA–2012–042 and should be submitted on or before October 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–22555 Filed 9–12–12; 8:45 am]

**BILLING CODE 8011–01–P**

[40] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67799; File No. SR–NYSEArca–2012–86]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain NYSE Arca Rules To Replace References to ''NYSE Amex'' With ''NYSE MKT'' Reflecting the Recent Name Change of NYSE Amex LLC to NYSE MKT LLC

September 7, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 28, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange proposes to amend certain NYSE Arca rules to replace references to ''NYSE Amex'' with ''NYSE MKT'' to reflect the recent name change of NYSE Amex LLC to NYSE MKT LLC. 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend certain NYSE Arca rules to replace references to ''NYSE Amex'' with ''NYSE MKT'' to reflect the recent name change of NYSE Amex LLC to NYSE MKT LLC.[4]

The Exchange proposes to replace references to NYSE Amex in NYSE Arca Rule 6.96 with references to NYSE MKT. The Exchange also proposes to replace a reference to American Stock Exchange, a predecessor of NYSE Amex, in NYSE Arca Rule 5.25 with a reference to NYSE MKT.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and Section 6(b)(5) of the Act,[6] 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange is proposing to replace references to NYSE Amex with NYSE MKT, which would reflect the current name of NYSE MKT and is, therefore, in the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[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. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR–NYSEAmex–2012–32).

[5] 15 U.S.C. 78f(b).

[6] 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*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8] 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 Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[10][sic] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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–NYSEArca–2012–86 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–2012–86. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–86, and should be submitted on or before October 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67800; File No. SR–NYSE–2012–40]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Certain NYSE Rules To Replace References to ''NYSE Amex'' With ''NYSE MKT'' Reflecting the Recent Name Change of NYSE Amex LLC to NYSE MKT LLC

September 7, 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 August 28, 2012, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend certain NYSE rules to replace references to ''NYSE Amex'' with ''NYSE MKT'' to reflect the recent name change of NYSE Amex LLC to NYSE MKT LLC. 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 self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend certain NYSE rules to replace references to ''NYSE Amex'' with ''NYSE MKT'' to reflect the recent name change of NYSE Amex LLC to NYSE MKT LLC.[3]

The Exchange proposes to replace references to NYSE Amex in Rules 2, 17, 18, 36, 70, and 103B with references to NYSE MKT. NYSE MKT does not propose to rename the NYSE Amex options business; therefore, references to ''NYSE Amex Options'' and the ''NYSE Amex Options Trading Floor'' in Rules 6A, 36, and 70 would not be changed. In addition, the Exchange does not propose to make any changes to temporary rules or rules that are no longer applicable (e.g., Rules 300.10T and 715 and Listed Company Manual Sections 902.02, 902.08, and 902.09).[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and Section 6(b)(5) of the Act,[6] 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, 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 would add clarity to the Exchange's rules by correctly reflecting the current name of NYSE MKT, which is in the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

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–NYSE–2012–40 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–2012–40. 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–NYSE–2012–40 and should be submitted on or before October 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–22520 Filed 9–12–12; 8:45 am]

**BILLING CODE 8011–01–P**

[3] *See* Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR–NYSEAmex–2012–32).

[4] The Exchange has certain rules that are temporary or that are no longer applicable in that these rules relate to temporary pilots, grace periods, historical transactions, or legacy rules that are no longer applicable. As such, the Exchange does not believe it is necessary to amend these rules that contain references to NYSE Amex and American Stock Exchange.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67803; File No. SR–FINRA–2012–041]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend the Customer and Industry Codes of Arbitration Procedure Relating to Subpoenas and to Arbitrator Authority To Direct the Appearance of Associated Person Witnesses and the Production of Documents Without Subpoenas

September 7, 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 August 24, 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. 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 Customer and Industry Codes of Arbitration Procedure (collectively ''Codes''), to provide that when specified industry parties seek the appearance of witnesses or the production of documents from FINRA members (and individuals associated with the members) that are not parties to the arbitration, FINRA arbitrators shall issue orders for the appearance of witnesses or the production of documents, instead of issuing subpoenas. The proposed rule change would add procedures for non-parties to object to subpoenas and arbitrator orders of production (''arbitrator orders''). It would also standardize procedures under the Codes relating to: Service of motions for subpoenas and arbitrator orders; service of issued subpoenas and arbitrator orders; and time frames for responding to subpoenas and arbitrator orders, making them operationally consistent.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA is proposing to amend the Codes to provide that, when specified industry parties seek the appearance of witnesses or the production of documents from FINRA members (and individuals associated with the members) that are not parties to the arbitration, FINRA arbitrators shall issue orders for the appearance of witnesses or the production of documents, instead of issuing subpoenas, and to standardize certain procedures relating to subpoenas and arbitrator orders.

Subpoenas

The Codes give arbitrators the authority to issue subpoenas to parties and non-parties. Subpoena Rules 12512 and 13512 (''Subpoena Rules'') set forth procedures for a party to make a motion for a subpoena. A party must make a written motion requesting that an arbitrator issue a subpoena to a party or non-party. The motion must include a draft subpoena and the party must serve the motion on each other party. The party may not serve the motion or draft subpoena on a non-party. The Subpoena Rules also detail how a party may object to a subpoena and reply to an objection. If the arbitrator issues a subpoena, the party that requested the subpoena must serve the subpoena at the same time and in the same manner on all parties and, if applicable, on any non-party receiving the subpoena. Finally, the Subpoena Rules describe how parties must share documents produced under a subpoena.

The Subpoena Rules do not address who bears the costs of production under a subpoena issued to either a party or a non-party. In practice, arbitrators resolve disputes between parties, and between parties and non-parties, relating to costs associated with subpoenas. In addition, the Subpoena Rules do not provide a means for non-parties to object to subpoenas served upon them. As a matter of practice, FINRA permits non-parties to file objections to subpoenas. The objections may include a request for the arbitrators to determine who pays the costs of production.

Arbitrator Orders

The Codes authorize arbitrators to order FINRA firms, their employees, and/or their associated persons to appear and to produce documents without using the subpoena process. Unlike the Subpoena Rules, Rules 12513 and 13513 (''Order Rules'') expressly address the costs relating to non-party production by firms and their employees/associated persons. The Order Rules provide that, unless the panel directs otherwise, the party requesting the appearance of witnesses or the production of documents from non-parties pays the reasonable costs of the appearance and/or production.

Proposed Amendments to the Subpoena Rules

FINRA believes that a party firm's responsibility to reimburse a non-party firm (or its employees or associated persons) for production costs should be the same regardless of whether the party firm requests a subpoena or an arbitrator order. FINRA also believes that members and associated persons would be better served by requesting an arbitrator order. Arbitrator orders offer an efficient mechanism for obtaining the appearance of witnesses and production of documents from FINRA members and their employees. While the Codes provide an enforcement mechanism for subpoenas and arbitrator orders,[3] typically, once an arbitrator issues a subpoena, non-compliance is handled away from the arbitration forum through the courts. Conversely, FINRA staff and the arbitrators who are familiar with the case handle requests for arbitrator orders. Another advantage to using an arbitrator order is that arbitrator orders are not subject to the geographical limitations contained in subpoena statutes.

Arbitrator orders are cost effective for forum users because members and associated persons avoid the costs and risks associated with court proceedings. FINRA does not believe that the proposal would impact firms' ability to obtain documents and witnesses at the forum.

Since the Codes provide a mechanism through the Order Rules for seeking production of documents and witnesses without resorting to the subpoena process, FINRA believes that arbitrators should use this mechanism first. FINRA is proposing to amend the Subpoena Rules to provide that unless circumstances dictate the need for a subpoena, arbitrators shall not issue subpoenas to non-party FINRA members and/or employees or associated persons of non-party FINRA members at the

[3] IM–12000 states that it may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2010 for a member or a person associated with a member to fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the Code (see Customer Code of Arbitration Procedure Part I—Interpretative Material, Definitions, Organization and Authority).

request of FINRA members and/or employees or associated persons of FINRA members. The proposal states that if the arbitrators determine that the request for the appearance of witnesses or the production of documents should be granted, then the arbitrators should order the appearance of such persons or the production of documents from such persons or non-party FINRA members under the Order Rules. An arbitrator might order a subpoena if, for example, a firm failed to produce documents pursuant to an arbitrator order, or if a former associated person of a FINRA member has left the industry and the arbitrator believes that an arbitrator order would not be effective.

Under the proposed rule change, FINRA would add new Rules 12512(g) and 13512(g) to address costs when a FINRA member and/or employee or associated person requests a subpoena directed to a non-party FINRA member and/or employee or associated person. If an arbitrator issues a subpoena, the party requesting the subpoena shall pay the reasonable costs of the non-party's appearance and/or production, unless the panel directs otherwise.

Finally, FINRA is proposing to add new Rules 12512(e) and 13512(e) to provide a mechanism for non-parties to object to a subpoena that an arbitrator issues to them. Under the new provisions, if a non-party receiving a subpoena objects to the scope or propriety of the subpoena, the non-party may, within 10 calendar days of service of the subpoena, file written objections with the Director. The Director shall forward a copy of the written objections to the arbitrator and all other parties. The party that requested the subpoena may respond to the objections within 10 calendar days of receipt of the objections. After considering all objections, the arbitrator responsible for issuing the subpoena shall rule promptly on the objections. The proposed amendments would codify FINRA's current practice relating to objections.

Proposed Amendments to the Order Rules

As stated above, the Order Rules authorize arbitrators to order FINRA firms, their employees, and/or their associated persons to appear and to produce documents without using the subpoena process. The rules also provide that unless the panel directs otherwise, the party requesting the appearance of witnesses or the production of documents from non-parties pays the reasonable costs of the appearance and/or production.

FINRA is proposing to amend the Order Rules to incorporate the procedures outlined in the Subpoena Rules for making, objecting to, and serving motions, and which detail how parties must share documents received from non-parties. Finally, FINRA is proposing to amend the Order Rules to provide for non-party objections to an arbitrator's order. The proposed rule change will standardize FINRA's procedures relating to Arbitrator Orders.

Arbitrators' Authority To Assess Production Costs

As stated above, under proposed new Rules 12512(g) and 13512(g), if the arbitrators issue a subpoena, the party requesting the subpoena shall pay the reasonable costs of the non-party's appearance and/or production, unless the panel directs otherwise. If a dispute arises regarding who pays the production costs and whether a stated amount is reasonable, the proposed rule change allows the arbitrators to determine the reasonable costs and to assess responsibility for paying them. The amendments would codify the current practice relating to how FINRA handles such disputes. The proposed rule change eliminates the current disparity between how the Codes treat costs under the Subpoena Rules and the Order Rules for member requests to non-party members for the appearance of witnesses and production of documents.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would eliminate a disparity between how the Codes treat costs under the Subpoena Rules and the Order Rules for member requests to non-party members for the appearance of witnesses and production of documents and could lower discovery costs to member firms and their associated persons and employees. The proposed amendments would also enhance the user experience at the forum by standardizing certain procedures relating to subpoenas and arbitrator orders.

[4] 15 U.S.C. 78o–3(b)(6).

*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. The proposal would enhance the efficiency of the FINRA forum for FINRA members and their associated persons and employees because it would require them to use the Order Rules for obtaining the appearance of witnesses and the production of documents from non-party FINRA firms (and their associated persons and employees) during an arbitration proceeding. It would also remove the financial burden associated with document production for non-party FINRA firms (and their associated persons and employees) that must produce documents because the proposed rule change requires the firm party requesting documents to bear the reasonable cost of the non-party's production. Due to the nature of the proposed rule change, FINRA does not believe that the proposal will impact competition or capital formation. The proposed rule change aims to enhance the efficiency of the forum for its users, as explained above, and seeks to ensure that the arbitrators assess the reasonable costs of discovery during an arbitration proceeding to the industry parties involved in the dispute.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2012–041 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2012–041. 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 Number SR–FINRA–2012–041 and should be submitted on or before October 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–22521 Filed 9–12–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67802; File No. 4–652]**

### Technology and Trading Roundtable

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of roundtable discussion; date change.

**SUMMARY:** The Securities and Exchange Commission will host a one day roundtable entitled ''Technology and Trading: Promoting Stability in Today's Markets'' to discuss ways to promote stability in markets that rely on highly automated systems. The market technology roundtable, which was scheduled for September 14, 2012, will now be held on October 2, 2012. The roundtable at the Securities and Exchange Commission's Washington, DC headquarters is open to the public and will be webcast. As previously announced, the event will begin with a discussion on preventing errors, focusing on current best practices and practical constraints for creating, deploying and operating mission-critical systems, including those used to automatically generate and route orders, match trades, confirm transactions, and disseminate data. The afternoon session will focus on error response, with experts discussing how the market might employ independent filters, objective tests, and other real-time processes or crisis-management procedures to detect, limit, and possibly terminate erroneous market activities when they occur, thereby limiting the impact of such errors.

**DATES:** The roundtable discussion will take place on October 2, 2012. The Commission will accept comments regarding issues addressed at the roundtable until October 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Arisa Tinaves, Special Counsel, at (202) 551–5676, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

By the Commission.
Dated: September 7, 2012

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–22487 Filed 9–12–12; 8:45 am]

BILLING CODE 8011–01–P

## DEPARTMENT OF STATE

**[Public Notice 8021]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''The English Prize: The Capture of the Westmorland, an Episode of the Grand Tour''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The English Prize: The Capture of the Westmorland, an Episode of the Grand Tour,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Yale Center for British Art, New Haven, CT, from on or about October 4, 2012, until on or about January 13, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 6, 2012.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2012–22561 Filed 9–12–12; 8:45 am]

BILLING CODE 4710–05–P

## DEPARTMENT OF STATE

**[Public Notice 8024]**

### Culturally Significant Object Imported for Exhibition Determinations: ''Steve McQueen''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to

the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Steve McQueen,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The Art Institute of Chicago, Chicago, IL, from on or about October 21, 2012, until on or about January 6, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 7, 2012.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2012–22567 Filed 9–12–12; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF STATE

**[Public Notice 8023]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Opera Nobile: Masterpieces From Ancient Italy''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Opera Nobile: Masterpieces from Ancient Italy,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Princeton University Art Museum, Princeton, NJ, from on or about September 17, 2012, until on or about September 15, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 6, 2012.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2012–22565 Filed 9–12–12; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Air Traffic Procedures Advisory Committee

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

**SUMMARY:** The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures.

**DATES:** The meeting will be held Monday, October 1, Tuesday, October 2, and Wednesday, October 3, 2012 from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Gaylord Hotel & Resort National Harbor, MD 801355.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary Norek, ATPAC Executive Director, 800 Independence Avenue SW., Washington, DC 20591.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held Monday, October 1, Tuesday, October 2, and Wednesday, October 3, 2012 from 8:30 a.m. to 5 p.m.

The agenda for this meeting will cover a continuation of the ATPAC's review of present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes;
2. Submission and Discussion of Areas of Concern;
3. Discussion of Potential Safety Items;
4. Report from Executive Director;
5. Items of Interest; and
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify Mr. Gary Norek no later than September 28, 2012. Any member of the public may present a written statement to the ATPAC at any time at the address given above.

Issued in Washington, DC, on September 4, 2012.

**Gary A. Norek,**

*Executive Director, Air Traffic Procedures Advisory Committee.*

[FR Doc. 2012–22575 Filed 9–12–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2012–0115; Notice 1]**

### Mercedes-Benz USA, LLC, on Behalf of Daimler AG, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Receipt of petition.

**SUMMARY:** Mercedes-Benz USA, LLC (MBUSA),[1] on behalf of itself and its parent company Daimler AG (DAG)[2], has determined that certain model year 2012 Mercedes-Benz C-Class (204 platform) passenger cars manufactured

[1] Mercedes-Benz USA, LLC, is a U.S. company that manufacturers and imports motor vehicles.

[2] Daimler AG, is a German company that manufactures motor vehicles.

between March and August 2011, do not fully comply with paragraph S4.3(d) of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.* MBUSA has filed an appropriate report dated May 4, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), MBUSA submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of MBUSA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

*Vehicles involved:* Affected are approximately 1,479 model year 2012 Mercedes-Benz C-Class (204 platform) passenger vehicles manufactured between March and August 2011.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject 1,479 [3] vehicles that MBUSA no longer controlled at the time it determined that the noncompliance existed.

*Noncompliance:* MBUSA explains that the noncompliance is that the vehicle placard on the affected vehicles incorrectly identifies the tire size designation of the spare tire in the vehicle.

*Rule text:* Paragraph S4.3(d) of FMVSS No. 110 requires in pertinent part:

S4.3 *Placard.* Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3(a) through (g), and may show, at the manufacturer's option, the information specified in S4.3(h) and (i), on a placard permanently affixed to the driver's side B-pillar. * * *

(b) Tire size designation, indicated by the headings ''size'' or ''original tire size'' or ''original size,'' and ''spare tire'' or ''spare,'' for the tires installed at the time of the first purchase for purposes other than resale. * * *

**Summary of MBUSA's Analysis and Arguments**

MBUSA explains that while the vehicle placard incorrectly identifies the designated spare tire size corresponding to the actual size of the spare tire originally installed in the vehicle, the recommended cold tire inflation pressure for the spare tire is correctly stated. In addition, all information required under S4.3 for maintaining and replacing the front and rear tires, as well as vehicle weight and seating capacity, is correct.

MBUSA also stated that if a vehicle owner were to question the correct spare tire size they would be able to check the size by comparing it with the size stamped on the sidewall of the originally provided spare tire. If the vehicle owner were to attempt to put a spare tire of the size indicated on the vehicle placard on the spare tire rim originally provided with the vehicle, it would be immediately apparent that the tire is too large to be installed on the rim and hold any inflation pressure. Both the actually provided spare tire and a tire of the size indicated on the vehicle placard for the spare tire meet the FMVSS No. 110 loading requirements at the recommended cold inflation pressure stated on the vehicle placard. Both the originally installed spare tire and a spare tire of the size listed on the vehicle placard, when inflated to the labeled recommended cold inflation pressure, are appropriate to handle the vehicle maximum loads.

MBUSA has additionally informed NHTSA that it has corrected future production and that all other required markings are present and correct.

MBUSA is not aware of any incidents or customer complaints related to the noncompliant vehicle placard.

MBUSA also expressed its belief that NHTSA has previously granted similar petitions.

In summation, MBUSA believes that the described noncompliance of its vehicle placards regarding the spare tire size is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

*Comments:* Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. *By hand delivery to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

[3] MBUSA's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt MBUSA as a vehicle manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the 1,479 affected vehicles. However, a decision on this petition will not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after MBUSA notified them that the subject noncompliance existed.

*Comment Closing Date:* October 15, 2012.

**Authority:** 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: September 6, 2012.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2012–22559 Filed 9–12–12; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2012–0116; Notice 1]**

### BMW of North America, LLC, a Subsidiary of BMW AG, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Receipt of petition.

**SUMMARY:** BMW of North America, LLC (BMW),[1] a subsidiary of BMW AG,[2] Munich, Germany, has determined that certain model year 2012 MINI Cooper Countryman passenger cars with optional three passenger rear seating manufactured between August 1, 2011 and May 23, 2012, do not fully comply with paragraph S4.3(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 110, *Tire selection and rims and motor home/recreation vehicle trailer load carrying capacity information for motor vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less.* BMW has filed an appropriate report dated June 1, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), BMW submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of BMW's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

*Vehicles Involved:* Affected are approximately 5,700 model year 2012 MINI Cooper Countryman passenger vehicles with optional three passenger rear seating manufactured between August 1, 2011 and May 23, 2012.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject 5,700[3] vehicles that BMW no longer controlled at the time it determined that the noncompliance existed.

*Noncompliance:* BMW explains that the noncompliance is that the vehicle placard on the affected vehicles incorrectly identifies the rear designated seating capacity as ''2'' when in fact it should be ''3,'' and the total designated seating capacity as ''4'' when in fact it should be ''5.''

*Rule Text:* Paragraph S4.3(b) of FMVSS No. 110 requires in pertinent part:

S4.3 *Placard.* Each vehicle, except for a trailer or incomplete vehicle, shall show the information specified in S4.3(a) through (g), * * *, on a placard permanently affixed to the driver's side B-pillar. * * *

(b)Designated seated capacity (expressed in terms of total number of occupants and number of occupants for each front and rear seat location);* * *

### Summary of BMW'S Analysis and Arguments

BMW states that while the vehicle placard incorrectly identifies the vehicle seating capacity, this noncompliance is inconsequential to motor vehicle safety for the following reasons:

1. It would become clear to a vehicle owner that the rear seat of the affected vehicles contains three sets of seat belts, and provides adequate space for three people to occupy the rear seat and that the vehicle in fact does accommodate five passengers not four as labeled.

2. The tire pressure value on the vehicle placard is correct. In fact, the recommended tire inflation pressure for both the five passenger and the four passenger vehicles is the same. Therefore, there is no risk of under-inflation.

3. The vehicle capacity weight listed on the vehicle placard is correct, and is the same for Countryman model vehicles built for four or five occupants. Therefore, there is no risk of overloading.

4. The vehicle's Monroney label[4] contains a listing of all options that have been equipped on the affected vehicles. The option regarding the rear seat for three occupants is noted on the Monroney label; therefore, an owner would have been notified at time of purchase of the vehicle that the rear seat is equipped to accommodate three occupants.

5. The vehicle Owner's Manual contains information pertaining to the vehicle's tires, tire pressure, and the vehicle capacity weight. Therefore, if owners check the Owner's Manual, correct information is available for their use.

6. BMW also provides vehicle drivers with help determining the correct tire, tire pressure and loading information by way of toll-free telephone numbers for MINI Roadside Assistance™ (available 24 hours/day)and MINI Customer Relations.

7. BMW has received no customer complaints and are unaware of any accidents or injuries regarding this noncompliance of the affected vehicles.

BMW has additionally informed NHTSA that it has corrected future production and that all other required markings are present and correct.

BMW also expressed its belief that NHTSA has previously granted similar petitions.

In summation, BMW believes that the described noncompliance of its vehicle placards regarding seating capacity is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

*Comments:* Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

[1] BMW of North America, LLC, is a U.S. company that manufacturers and imports motor vehicles.

[2] BMW AG, is a German company that manufacturers motor vehicles.

[3] BMW's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt BMW as a vehicle manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the 5,700 affected vehicles. However, a decision on this petition will not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after BMW notified them that the subject noncompliance existed.

[4] *Automobile Information Disclosure Act* (AIDA), 15 U.S.C. 1231–1233

b. *By hand delivery to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/*. Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment Closing Date:* October 15, 2012.

**Authority:** 49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8.

Issued on: September 6, 2012.

**Claude H. Harris, Director,**

*Office of Vehicle Safety Compliance.*

[FR Doc. 2012–22569 Filed 9–12–12; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2012–0028; Notice 2]**

### Morgan Olson, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of Petition Denial.

**SUMMARY:** Morgan Olson, LLC (Morgan Olson),[1] has determined that certain model year 2009, 2010, and 2011 Morgan Olson walk-in van-type trucks having a gross vehicle weight rating (GVWR) over 4,536 kg and manufactured between September 1, 2009, and January 18, 2012, do not fully comply with paragraph S4.2.1 of Federal Motor Vehicle Safety Standard (FMVSS) No. 206, *Door Locks and Door Retention Components.* Morgan Olson has filed an appropriate report dated January 19, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Morgan Olson has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. The National Highway Traffic Safety Administration (NHTSA) published a notice of receipt of the petition, with a 30-day public comment period, on March 29, 2012, in the **Federal Register** (77 FR 19055). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2012–0028.''

*Contact Information:* For further information on this decision contact Mr. Tony Lazzaro, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5304, facsimile (202) 366–7002.

*Relevant Requirements of FMVSS No. 206:* FMVSS No. 206 paragraph S4.2.1 requires in pertinent part that each sliding door system shall be equipped with either: (a) At least one primary door latch system, or (b) a door latch system with a fully latched position and a door closure warning system. The door closure warning system shall be located where it can be clearly seen by the driver.

A ''primary door latch'' is defined in FMVSS No. 206 paragraph S3 as ''a latch equipped with both a fully latched position and a secondary latch position and is designated as a 'primary door latch' by the manufacturer.'' A ''secondary latched position'' refers to ''the coupling condition of the latch that retains the door in a partially closed position.'' FMVSS No. 206 paragraph S3.

A ''door closure warning system'' is defined in FMVSS No. 206 paragraph S3 as ''a system that will activate a visual signal when a door latch system is not in its fully latched position and the vehicle ignition system is activated.''

*Vehicles involved:* Affected are approximately 6430 Morgan Olson model year 2009, 2010, and 2011 walk-in van-type trucks.

*Noncompliance:* Morgan Olson states that the affected vehicles do not contain a primary door latch system or door closure warning system as prescribed by paragraph S4.2.1 of FMVSS No. 206.

*Summary of Morgan Olson's Analysis and Arguments:* By way of background, the sliding door latch requirements contained in paragraph S4.2.1 of FMVSS No. 206 were adopted in February 2007 as part of a broader upgrade to the Agency's existing door latch and retention requirements. *See Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components, Final Rule,* 72 FR 5385 (Feb. 6, 2007) [hereinafter 2007 Final Rule]. The effective date of these requirements was September l, 2009.

As set forth in Morgan Olson's noncompliance report, as a result of an erroneous interpretation as to the scope of FMVSS No. 206's application, Morgan Olson mistakenly believed that the requirement for either a primary door latch system or door closure warning system applied only to its vehicles having a GVWR under 4,536 kg.

In describing the operation of the affected doors Morgan Olson explains that when the sliding door is closed but not latched, there is a ½ inch gap between the door and its frame. Morgan Olson states that therefore, the rubber seal in the door jam as well as the exterior paint are clearly visible. Morgan Olson further states that when the door is latched, none of this is visible. Morgan Olson also explains that its customers are mostly delivery companies whose drivers are trained commercial drivers, and that a trained commercial driver, such as one driving

[1] Morgan Olson is a manufacturer of motor vehicles.

a walk-in van manufactured by Morgan Olson, would immediately notice this gap and realize that the door is not latched. Morgan Olson also asserts that even if the driver did not notice that the door was not latched by means of observing the ½ inch gap, the door would slowly begin to slide open as the vehicle began to accelerate, which a driver would certainly notice. Morgan Olson contends that if the sliding door is not latched, this would be apparent to the driver as soon as he accelerates.

In addition, Morgan Olson argues that this noncompliance in walk-in van type vehicles is distinguishable from the primary focus of FMVSS No. 206 sliding door standards. Morgan Olson states that in adopting the standards, NHTSA noted a particular concern with sliding door failures in passenger vans, which often contain children in the back seat(s).[2] Morgan Olson explains that with passenger vans, the sliding doors are situated behind the driver and therefore out of the driver's line of sight, and that this is not true for the subject trucks that are used for commercial purposes and driven by commercial drivers without passengers.

In summary, Morgan Olson contends that the noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing notification of noncompliance as required by 49 U.S.C. 30118 and remedying the noncompliance as required by 49 U.S.C. 30120, should be granted.

*Comments:* NHTSA published a notice of the petition in the **Federal Register** to allow an opportunity for members of the public to present information, views, and arguments on the subject petition. As noted earlier, no comments were received. The Agency notes that an absence of opposing argument and data does not require the Agency to grant the petition.[3]

## NHTSA'S Consideration of Morgan Olson's Inconsequentiality Petition

*General Principles:* Federal motor vehicle safety standards are adopted only after the Agency has determined, following notice and comment, that the standards are objective and practicable and ''meet the need for motor vehicle safety.'' *See* 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with a FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to comply with a FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a remedy without charge. 49 U.S.C. 30118–30120. However, Congress has recognized that, under some limited circumstances, a noncompliance could be ''inconsequential'' to motor vehicle safety. ''Inconsequential'' is not defined either in the statute or in NHTSA's regulations. Rather, the Agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based on the specific facts before it. The relevant issue in determining inconsequentiality is whether the noncompliance in question is likely to significantly increase the safety risk to individuals of accidents or to individual occupants who experience the type of injurious event against which the standard was designed to protect. *See General Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897 (Apr. 14, 2004).

There have been instances in the past where NHTSA has determined that a manufacturer has met its burden of demonstrating that a noncompliance is inconsequential to safety, such as noncompliances concerning labeling where the discrepancy with the safety standard was determined not to lead to any misunderstanding, especially where sources of the correct information were available (e.g. in the vehicle owner's manual). *See General Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004).

The burden of establishing the inconsequentiality of a failure to comply with a performance requirement in a standard is substantially higher and more difficult to meet. Consequently, the Agency has determined that only a few such noncompliances are truly inconsequential. *Id.*

In their petition, Morgan Olson argues that when the sliding doors are closed but not latched, there is a small (½ inch) gap between the door and the frame. Moreover, Morgan Olson asserts that even if the driver does not notice the gap in the door prior to driving the vehicle, as the vehicle begins to move the door will slide open and alert the driver. Morgan Olson further states that with passenger vans, the sliding doors are situated behind the driver and out of their line of sight and that this is not the case with commercial drivers who will be immediately able to see either a gap or the door sliding open if it is not latched.

FMVSS No. 206 requires that a sliding door system be equipped with either (a) at least one primary door latch system, or (b) a door latch system with a fully latched position and a door closure warning system. Since the noncompliant vehicles are equipped with a door latch system with a fully latched position (but not a primary door latch system), in order to comply with FMVSS No. 206 the vehicles would also need to have a door closure warning system. Such a system is automatic and does not require the driver to make observations of the door. The subject vehicles do not have such a system. Without a warning system, the driver would have to look away from driving to see a door gap. The Agency does not consider a door gap to be a sufficient alert to the driver that the door is not fully latched. The Notice of Proposed Rulemaking for the 2007 amendments to FMVSS No. 206 explained the scope of the safety risks associated with the ejection of vehicle occupants through vehicle doors. *See Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components and Side Impact Protection, Notice of Proposed Rulemaking,* 69 FR 75020, 75024–75025. The Agency noted that ''[d]oor ejections, due to non-rollover door openings, account for 23 percent of the total non-rollover ejections with known routes * * * [and of] those ejected through a sliding door, each year approximately 20 people are killed and 30 people are seriously injured, based on the 1995–2003 data from NASS.'' *Id.* Based on this safety risk analysis, the Agency concluded that ''this exposure is [not] acceptable when measures can be taken to minimize the likelihood that a sliding door would open in a crash.'' 69 FR 75025. Accordingly, the Agency proposed the FMVSS No. 206 side sliding door latch requirements to ''assure vehicle occupants that a sliding door is completely closed.'' 69 FR 75026.

Morgan Olson's arguments in support of its petition do not allay these safety concerns. Morgan Olson's petition acknowledges that the vehicle driver may not notice the small gap in the door before the vehicle begins to move. Moreover, having the door unexpectedly slide open while the vehicle is driven can create a potential distraction to the driver, especially considering any attempts by the driver to close the door while the vehicle is in motion. In addition, accidents can occur even at low speeds when a vehicle is

[2] *Federal Motor Vehicle Safety Standards; Door Locks and Door Retention Components, Final Rule,* 72 FR 5385, 5387 (Feb. 6, 2007).

[3] *Dorel Juvenile Group; Denial of Appeal of Decision on Inconsequential Noncompliance,* 75 FR 507, 510 (Jan. 5, 2010).

accelerated into motion, and may include impact with another vehicle including a vehicle moving at higher speed. Therefore, in light of these safety risks, the Agency finds that the door gap on the subject vehicles is not an acceptable replacement for a door closure warning system.

Morgan Olson also asserts that the sliding door standards were ''particularly concerned with children riding in the rear seats of passenger vans.'' Although the Agency did note in the NPRM that it was ''[a]dditionally * * * concerned that the individuals with the greatest exposure to sliding door failures are children,'' 69 FR 75025, the Agency never indicated that child passenger safety was the only safety concern addressed by the standard. In short, the Agency believes that there are valid concerns that occupants other than children of the subject vehicles are exposed to an increased risk of accidents and injuries, particularly those associated with occupant ejection, compared to occupants of compliant vehicles.

In addition, the Agency is aware of at least one occupant ejection through an open sliding side door of a commercial vehicle similar to those that are the subject of this petition. A walk-in van-type delivery truck was involved in an accident in 2009 at an intersection in Florida in which the driver of the delivery truck was ejected through an open sliding side door and sustained injuries. The delivery truck, after being stopped at a stop sign, entered the intersection and struck the side of a crossing vehicle causing the vehicles to become engaged and spin together. The delivery truck driver, who was not wearing a safety belt, was ejected into the roadway.[4]

As noted earlier, the subject noncompliance was the result of Morgan Olson's previous misunderstanding that the requirement for either a primary door latch system or door closure warning system applied only to its vehicles having a GVWR under 4,536 kg. Applicability of the standard to vehicles Over 4,536 kg GVWR was addressed by the Agency in response to the Final Rule, Petitions for Reconsideration (see 75 FR 7370). In response to a question from TriMark Corporation dealing with applicability of the standard to Class 7/8 heavy trucks in excess of a GVWR of 4,536 kg (10,000 lb), the Agency stated ''Regarding Class 7/8 heavy trucks, these vehicles fall under the definition of truck as defined in 49 CFR 571.3. FMVSS No. 206 applied to trucks, regardless of their GVWR, prior to the February 2007 final rule, as does the amended FMVSS No. 206. S2 of amended FMVSS No. 206 states that the standard applies to ''passenger cars, multipurpose passenger vehicles, *and* trucks, *and* buses with a gross vehicle weight rating (GVWR) of 4,536 kg or less'' (emphasis added). In other words, the February 2007 final rule applies to all passenger cars, multipurpose passenger vehicles, and trucks, regardless of their GVWR, and is also applicable to buses with a GVWR of 4,536 kg (10,000 lb) or less.''[5]

*Decision:* In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Morgan Olson's petition is hereby denied, and the petitioner must notify owners, purchasers and dealers pursuant to 49 U.S.C. 30118 and provide a remedy in accordance with 49 U.S.C. 30120.

If Morgan Olson believes that vehicles it will produce in the future should not be subject to any currently applicable FMVSS No. 206 requirements, Morgan Olson may consider petitioning the Agency for rulemaking. The appropriate type of petition to request a change in a rule is one filed under 49 CFR Part 552 *Petitions for Rulemaking, Defect, and Non-Compliance Orders.*

**Authority:** 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: September 6, 2012.

**Nancy Lummen Lewis,**

*Associate Administrator for Enforcement.*

[FR Doc. 2012–22547 Filed 9–12–12; 8:45 am]

BILLING CODE 4910–59–P

[4] Florida Department of Highway Safety and Motor Vehicles; HSMV Crash Report Number 90163273, dated January 6, 2009.

[5] 75 FR 7378.

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2012–0133]**

### Public Hearing to Determine Whether ZAP Has Met Notification and Remedy Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of public hearing.

**SUMMARY:** NHTSA will hold a public hearing on whether ZAP,[1] a publicly owned company based in Santa Rosa, California, has reasonably met its obligations to notify owners, purchasers, and dealers of noncompliances with Federal Motor Vehicle Safety Standard (FMVSS) No. 122, *Motorcycle brake systems,* and to remedy those noncompliances in two recalls involving Model Year (MY) 2008 ZAP Xebra three-wheeled vehicles, which ZAP imported from China.

**DATES:** The public hearing will be held beginning at 10 a.m. ET on October 9, 2012 in the Oklahoma City room of the U.S. Department of Transportation Conference Center, located at 1200 New Jersey Avenue SE., Washington, DC 20590. NHTSA recommends that all persons attending the proceedings arrive at least 45 minutes early in order to facilitate entry into the Conference Center. NHTSA cannot ensure that late arrivals will be permitted access to the hearing. Attendees are strongly discouraged from bringing laptop computers to the hearing, as they will be subject to additional security measures. If you wish to attend or speak at the hearing, you must register in advance no later than October 2, 2012 (and September 28, 2012 for non-U.S. citizens), by following the instructions in the *Procedural Matters* section of this notice. NHTSA will consider late registrants to the extent time and space allows, but cannot ensure that late registrants will be able to attend or speak at the hearing. To ensure that NHTSA has an opportunity to consider comments, NHTSA must receive written comments by October 2, 2012.

**ADDRESSES:** You may submit comments to the docket number identified in the heading of this document by any of the following methods:

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

Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

[1] ZAP also does business as ZAP Jonway. *See http://www.zapworld.com/.*

**FOR FURTHER INFORMATION CONTACT:** For registration to attend or speak at the public hearing: Sabrina Fleming, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (Telephone: 202–366–9896) (Fax: 202–366–3081). For hearing procedures: Kerry Kolodziej, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (Telephone: 202–366–5263) (Fax: 202–366–3820). Information regarding the recalls is available on NHTSA's Web site: *http://www.safercar.gov.* To find these recalls: (1) In the drop-down menu under ''Safety Recalls,'' search for a recall by vehicle; (2) select model year 2008; (3) select ZAP as the make; (4) select Xebra as the model; and (5) click ''Retrieve Recalls.'' Once information on the recalls is displayed, clicking on the ''Document Search'' buttons will display recall-related documents.

**SUPPLEMENTARY INFORMATION:** Pursuant to 49 U.S.C. 30118(e) and 30120(e), and 49 CFR 557.6(d) and 557.7, NHTSA has decided to hold a public hearing on whether ZAP has reasonably met its obligations under the National Traffic and Motor Vehicle Safety Act, as amended (Safety Act), to provide notifications regarding the MY 2008 ZAP Xebra's noncompliances with FMVSS No. 122, *Motorcycle brake systems* (49 CFR 571.122), and to remedy those noncompliances. The noncompliances are the subject of two recall campaigns, Recall Nos. 09V–177/12V–230 and 09V–385/12V–363.

## I. Initiation of a Recall

A manufacturer of a motor vehicle that decides in good faith that the vehicle does not comply with an applicable FMVSS must notify NHTSA by submitting a Defect and Noncompliance Information Report, commonly referred to as a Part 573 Report. 49 U.S.C. 30118(c); 49 CFR 573.6. A Part 573 Report shall be submitted not more than 5 working days after a noncompliance with a FMVSS has been determined to exist. 49 CFR 573.6(b). The manufacturer must subsequently file quarterly reports with NHTSA containing information including the status of the manufacturer's recall notification campaign and the number of vehicles that have been remedied. 49 CFR 573.7.

Pursuant to the Safety Act, a ''manufacturer'' of a motor vehicle includes both a person manufacturing or assembling motor vehicles, and a person importing motor vehicles for resale. 49 U.S.C. 30102(a)(5). Both the importer of a motor vehicle and the vehicle's fabricating manufacturer are responsible for any noncompliance determined to exist in the vehicle. 49 CFR 573.5(a). As to imported motor vehicles, compliance with recall regulations by either the fabricating manufacturer or the importer of the vehicle shall be considered compliance by both. 49 CFR 573.3(b).

## II. Notification Requirements

In addition to its notification to NHTSA, if the manufacturer of a motor vehicle decides in good faith that the vehicle does not comply with an applicable FMVSS, the manufacturer must notify owners, purchasers, and dealers of the vehicle of the noncompliance. 49 U.S.C. 30118(c); *see* 49 CFR part 573; 49 CFR part 577.[2]

The manufacturer must send a notification of the noncompliance, by first class mail, to each person registered under State law as the owner of the vehicle and whose name and address are reasonably ascertainable by the manufacturer through State records or other available sources. 49 U.S.C. 30119(d); 49 CFR 577.7(a)(2)(i).[3] If the owner cannot be reasonably ascertained, the manufacturer shall notify the most recent purchaser known to the manufacturer. 49 U.S.C. 30119(d); 49 CFR 577.7(a)(2)(i). As explained in NHTSA's Safety Recall Compendium: ''It is critically important that owners be informed promptly of unreasonable risks to their safety and failures of their products to meet minimum safety standards, and even in those cases where the manufacturer may not have perfected its free remedy or may not have sufficient parts to be able to remedy all the recalled products for all owners immediately. Accordingly, it is expected that manufacturers issue their owner notification letters within 60 days of making a safety defect or noncompliance decision.'' [4]

Additionally, a manufacturer must send notifications to dealers and distributors, as specified by 49 CFR 577.13. These notifications must be sent within a reasonable time after the manufacturer first decides that a noncompliance exists. 49 U.S.C. 30119(c); 49 CFR 577.7(a). The notifications must include an advisory that it is a violation of Federal law for a dealer to deliver a new motor vehicle covered by the notification under a sale or lease until the noncompliance is remedied. 49 CFR 577.13; *see* 49 U.S.C. 30112(a)(1) (prohibiting a person from selling or offering for sale a vehicle that does not comply with an applicable FMVSS).

On its own motion or on petition of any interested person, NHTSA may conduct a hearing to decide whether a manufacturer has reasonably met its notification requirements. 49 U.S.C. 30118(e). If NHTSA decides that the manufacturer has not reasonably met the notification requirements, it shall order the manufacturer to take specified action to meet those requirements and may take any other action authorized by the Safety Act, including assessing civil penalties. *See* 49 U.S.C. 30118(e), 30165(a)(1). A person that violates the Safety Act, including the notification requirements, or regulations prescribed thereunder, is liable to the United States Government for a civil penalty of not more than $6,000 for each violation. A separate violation occurs for each motor vehicle and for each failure to perform a required act. The maximum penalty for a related series of violations is $17,350,000. 49 U.S.C. 30165(a)(1); 49 CFR 578.6.

## III. Remedy Requirements

A manufacturer of a noncomplying motor vehicle is required to remedy the vehicle without charge. 49 U.S.C. 30120(a). The manufacturer may remedy the noncompliance by repairing the vehicle, by replacing the vehicle with an identical or reasonably equivalent vehicle, or by refunding the purchase price, less a reasonable allowance for depreciation. 49 U.S.C. 30120(a). If a manufacturer decides to repair a noncomplying motor vehicle and the repair is not done adequately within a reasonable time, the manufacturer shall replace the vehicle without charge with an identical or reasonably equivalent vehicle, or refund the purchase price, less a reasonable allowance for depreciation. 49 U.S.C. 30120(c).

On its own motion or on application by any interested person, NHTSA may conduct a hearing to decide whether a manufacturer has reasonably met the remedy requirements. 49 U.S.C. 30120(e). If NHTSA decides that the manufacturer has not reasonably met

[2] A manufacturer is required to furnish NHTSA with a copy of each communication involving a recall that the manufacturer issued to, or made available to, more than one dealer, distributor, lessor, lessee, other manufacturer, owner, or purchaser, no later than five working days after the end of the month in which it is issued. 49 CFR 579.5.

[3] Among other things, the notification to owners must contain a clear description of the noncompliance, an evaluation of the risk to motor vehicle safety reasonably related to the noncompliance, the measures to be taken to obtain a remedy of the noncompliance, and the earliest date on which the noncompliance will be remedied without charge. 49 U.S.C. 30119(a); *see* 49 CFR part 577.

[4] NHTSA, Safety Recall Compendium at 7–8, *http://www-odi.nhtsa.dot.gov/cars/problems/recalls/documents/recompendium.pdf.*

the remedy requirements, it shall order the manufacturer to take specified action to meet those requirements, including by ordering the manufacturer to refund the purchase price of the noncomplying vehicles, less a reasonable allowance for depreciation. 49 U.S.C. 30120(a), (c), (e). NHTSA may also take any other action authorized by the Safety Act, including assessing civil penalties. *See* 49 U.S.C. 30120(e), 30165(a)(1). A person that violates the Safety Act, including the remedy requirements, or regulations prescribed thereunder, is liable to the United States Government for a civil penalty of not more than $6,000 for each violation. A separate violation occurs for each motor vehicle and for each failure to perform a required act. The maximum penalty for a related series of violations is $17,350,000. 49 U.S.C. 30165(a)(1); 49 CFR 578.6.

## IV. MY 2008 ZAP Xebra

ZAP is the importer of the MY 2008 ZAP Xebra and the registered agent for the fabricating manufacturer, China Qingqi Group Inc./Qingqi Group Motorcycle Co. Ltd. (''Qingqi Group'') of China. The MY 2008 ZAP Xebra is an electric, three-wheeled vehicle with a sedan or truck body style. As a three-wheeled vehicle, the MY 2008 ZAP Xebra is subject to the FMVSSs for motorcycles. *See* 49 CFR 571.3(b).

### *A. NHTSA's Investigation of the MY 2008 ZAP Xebra*

In late 2008, NHTSA tested a NHTSA-owned MY 2008 ZAP Xebra for compliance with FMVSS No. 122, *Motorcycle brake systems,* at Transportation Research Center Inc. (TRC) in East Liberty, Ohio.[5]

NHTSA identified multiple apparent noncompliances with FMVSS No. 122. Two of the apparent noncompliances related to the stopping distance requirements of FMVSS No. 122. First, the vehicle did not comply with the first effectiveness requirement of FMVSS No. 122, S5.2.1, *Service brake system,* because the service brakes were not capable of stopping the motorcycle from 30 m.p.h. within 54 feet during NHTSA's testing. Second, following the burnishing procedure specified in the Standard, the vehicle did not comply with FMVSS No. 122, S5.3, *Service brake system—second effectiveness,* because the service brakes were not capable of stopping the motorcycle from 30 m.p.h. within 43 feet during NHTSA's testing. Due to these apparent noncompliances with the stopping distance requirements, NHTSA terminated its testing of the vehicle after the second effectiveness test.

At various times, NHTSA also observed three additional apparent noncompliances with other requirements of FMVSS No. 122. First, the vehicle did not comply with FMVSS No. 122, S5.1.2.1, *Master cylinder reservoirs,* because it did not have a separate reservoir for each brake circuit with each reservoir filler opening having its own cover, seal, and cover retention device. Second, the vehicle did not comply with FMVSS No. 122, S5.1.2.2, *Reservoir labeling,* because the label was not correctly worded and some of the letters were not at the minimum required height. Finally, the vehicle did not comply with FMVSS No. 122, S5.1.3.1, *Failure indicator lamp,* because the vehicle did not have a failure indicator lamp (which is required to activate for pressure failure, low fluid, and momentarily when the ignition switch is turned to the ''on'' or ''start'' position).

NHTSA notified ZAP of the apparent noncompliances with the stopping distance and reservoir labeling requirements on April 9, 2009.[6] NHTSA notified ZAP of the apparent noncompliance with the master cylinder reservoir requirement on August 21, 2009.[7] NHTSA notified ZAP of the apparent noncompliance with the failure indicator lamp requirement on approximately June 9, 2010.[8]

### *B. ZAP's Notifications to NHTSA of FMVSS No. 122 Noncompliances*

#### 1. Initial Recall Campaigns (Recall Nos. 09V–177 and 09V–385)[9]

ZAP first notified NHTSA that the MY 2008 ZAP Xebra was noncompliant with the FMVSS No. 122 stopping distance requirements by submitting to NHTSA a Part 573 Report prepared on May 18, 2009.[10] NHTSA assigned Recall Number 09V–177 to this recall campaign.

In a second Part 573 Report, prepared on September 30, 2009, ZAP notified NHTSA of its decision that the MY 2008 ZAP Xebra does not comply with FMVSS No. 122, S1.2.1, *Master cylinder reservoirs.*[11] NHTSA assigned Recall Number 09V–385 to this recall campaign. ZAP subsequently submitted an untimely petition for inconsequential noncompliance, *see* 49 CFR 556.4(c), which NHTSA denied on November 25, 2009.[12] ZAP then submitted an amended Part 573 Report, prepared on December 9, 2009, for this noncompliance.[13]

Most recently, ZAP reported that there are 691 vehicles subject to the recalls.[14]

#### 2. Renewed Recall Campaigns (Recall Nos. 12V–230 and 12V–363)

At NHTSA's request, ZAP initiated renewed recall campaigns for these FMVSS No. 122 noncompliances. After several months of delay,[15] ZAP submitted a new Part 573 Report, prepared May 18, 2012, addressing the noncompliance with the stopping distance requirements.[16] NHTSA assigned Recall Number 12V–230 to this renewed recall campaign (previously designated as Recall No. 09V–177). ZAP later submitted a new Part 573 Report, prepared on July 18, 2012, for the noncompliance with the master cylinder reservoir requirement.[17] NHTSA assigned Recall Number 12V–363 to this renewed recall campaign (previously designated as Recall No. 09V–385).

#### 3. Other Apparent Noncompliances Identified by NHTSA

As discussed above, NHTSA also identified apparent noncompliances with FMVSS No. 122, S5.1.2.2, *Reservoir labeling,* and with FMVSS No. 122, S5.1.3.1, *Failure indicator lamp.* To date, ZAP has not submitted a Part 573 Report to notify NHTSA that it has

[5] *See* NHTSA, Safety Compliance Testing for FMVSS 122, Final Report No. 122–TRC–10–004 (Nov. 8, 2010). The test report is publicly available by searching on *http://www.nhtsa.gov/cars/problems/comply/.*

[6] Letter from H. Thompson, NHTSA to G. Starr, ZAP (Apr. 9, 2009).

[7] Email from S. Seigel, NHTSA to J. Long, ZAP (Aug. 21, 2009).

[8] Phone call log of S. Seigel, NHTSA (June 9, 2010).

[9] The Part 573 Reports and other documents relevant to the recalls are available at *www.safercar.gov.*

[10] Recall No. 09V–177, Part 573 Report (prepared May 18, 2009). Although ZAP submitted the Part 573 Report to NHTSA, it stated that Qingqi Group decided on April 27, 2009 that the noncompliance existed. Compliance with recall regulations by either the fabricating manufacturer or the importer of a vehicle is considered compliance by both. 49 CFR 573.3(b). Nothing herein limits Qingqi Group's responsibilities and liabilities for the noncompliances of these vehicles.

[11] Recall No. 09V–385, Part 573 Report (prepared Sept. 30, 2009). Based on this Part 573 Report, ZAP decided that the noncompliance existed on September 30, 2009.

[12] Letter from C. Harris, NHTSA to J. Long, ZAP (Nov. 25, 2009).

[13] Recall No. 09V–385, Amended Part 573 Report (prepared Dec. 9, 2009).

[14] Recall 09V–177, Quarterly Report (dated July 30, 2012); Recall 09V–385, Quarterly Report (dated July 30, 2012). ZAP initially reported there were 738 vehicles subject to the recalls, but has not explained why the number has changed. *See* Recall No. 09V–177, Part 573 Report II; Recall No. 09V–385, Part 573 Report § II.

[15] *See* Letter from S. Schneider, ZAP to H. Thompson and S. Seigel, NHTSA (Dec. 10, 2011); Letter from S. Schneider, ZAP to H. Thompson, NHTSA (Apr. 2, 2012).

[16] Recall No. 12V–230, Part 573 Report (prepared May 18, 2012).

[17] Recall No. 12V–363, Part 573 Report (prepared July 18, 2012).

decided in good faith that the MY 2008 ZAP Xebra does not comply with these aspects of FMVSS No. 122.[18] However, as discussed below, ZAP's repair remedy does purport to address these apparent noncompliances.

*C. ZAP's Recall Notifications to Owners, Purchasers, and Dealers*

1. Initial Recall Campaigns (Recall Nos. 09V–177 and 09V–385)

ZAP used an internal customer warranty database as its sole source of contact information for its recall notifications to owners and/or purchasers.[19] ZAP repeatedly represented to NHTSA that it was working to obtain information on registered owners.[20] However, as of its July 30, 2012 response to a Special Order from NHTSA seeking additional information regarding the recalls, ZAP stated that it still had not obtained contact information for registered owners of MY 2008 ZAP Xebras, from State records or other available sources.[21] *See* 49 CFR 577.7(a)(2)(i).

ZAP provided NHTSA with inconsistent information on when it began notifying purchasers and/or owners of the recalls. In its July 30, 2012 response to the Special Order, ZAP stated that it sent its first owner notification letter for Recall No. 09V–177 on September 21, 2009, and for Recall No. 09V–385 on January 29, 2010.[22] However, in quarterly reports, also dated July 30, 2012, ZAP indicated that it began notifying purchasers of both recalls in January of 2010. ZAP's owner letters indicated that owners should contact a dealer as soon as possible to arrange for repair.[23]

Despite NHTSA's request in its Special Order to ZAP dated July 13, 2012, ZAP failed to provide NHTSA with a complete list of owners to whom it sent a notification letter for Recall Nos. 09V–177 and 09V–385.[24] Therefore, it is not known whether ZAP sent a notification letter to each individual or business listed in its customer warranty database.[25] In ZAP's most recent quarterly reports to NHTSA for these recalls, dated July 30, 2012, ZAP did not provide a date that its notification to purchasers was completed, instead responding that the notification process was continuing.[26] In its response to NHTSA's Special Order, ZAP explained that it plans to send additional notifications once it confirms through vehicle testing that it has an effective repair remedy.[27]

In October 2011, NHTSA requested that ZAP renotify owners of Recall Nos. 09V–177 and 09V–385.[28] *See* 49 U.S.C. 30119(e). In its Special Order, NHTSA asked ZAP to provide a list including name, address, and date for each owner to whom ZAP sent a renotification letter for these recalls.[29] ZAP failed to respond.[30] Thus, it appears that ZAP has not sent out any renotification letters, despite repeatedly promising to do so.[31]

It also appears ZAP never sent MY 2008 ZAP Xebra dealers the required notification of Recall Nos. 09V–177 and 09V–385. *See* 49 CFR 577.13. ZAP has not sent NHTSA a representative copy of any dealer notification. Although ZAP's customer warranty database appears to include some dealers, it is not clear whether it includes all MY 2008 ZAP Xebra dealers. Furthermore, as noted above, NHTSA is not aware whether ZAP sent each individual and business listed in that database a notification.[32] Moreover, the notifications ZAP sent were addressed to owners and did not include information required to be disclosed to dealers, including the advisory regarding sales or leases of noncompliant vehicles.[33] *See* 49 CFR 577.13. Dealers, including ZAP's wholly owned subsidiary, Voltage Vehicles, have continued to offer for sale and sell MY 2008 ZAP Xebras despite the recalls.[34]

2. Renewed Recall Campaigns (Recall Nos. 12V–230 and 12V–363)

ZAP has not sent out any notification letters to owners, purchasers, or dealers of the renewed recall campaigns.[35] ZAP represented in its July 30, 2012 response to the Special Order that it does not plan to send additional notifications until it confirms through vehicle testing that it has an effective repair remedy.[36] ZAP did not indicate any plans to send dealer notifications for the renewed recall campaigns.

*D. ZAP's Repair Remedy*

ZAP elected the remedy of repairing the FMVSS No. 122 noncompliances subject to the recalls. *See* 49 U.S.C. 30120(a). However, as of the end of July 2012, ZAP conceded none of the vehicles subject to the recalls has been fully and successfully repaired.[37] While

[18] ZAP likewise has not notified owners, purchasers, and dealers regarding these apparent noncompliances.

[19] *See* ZAP, Response to Special Order, Interrogatory No. 6 (July 30, 2012).

[20] *See* Letter from S. Schneider, ZAP to H. Thompson and S. Seigel, NHTSA (Dec. 10, 2011); Letter from S. Schneider, ZAP to H. Thompson, NHTSA (Apr. 2, 2012); Letter from S. Schneider, ZAP to J. Timian, NHTSA (May 28, 2012).

[21] *See* ZAP, Response to Special Order, Interrogatory No. 8 (July 30, 2012). ZAP represented in its Special Order response that it had entered into a contract with R.L. Polk to search for registered owners of the vehicles, and that it would take R.L. Polk approximately a month to complete the work. ZAP, Response to Special Order, Interrogatory No. 8 (July 30, 2012).

[22] ZAP, Response to Special Order, Interrogatory No. 6 (July 30, 2012).

[23] ZAP, Response to Special Order, Sch. D–E (July 30, 2012).

[24] *See* NHTSA, Special Order to ZAP, Interrogatory No. 6 (July 13, 2012). NHTSA's regulations require each manufacturer of a motor vehicle to maintain a list of the names and addresses of registered owners, as determined through State motor vehicle registration records or other sources or the most recent purchasers where the registered owners are unknown, for all vehicles involved in a noncompliance notification campaign. The list shall include the VIN for each vehicle and the status of remedy with respect to each vehicle. Each vehicle manufacturer shall also maintain a list of the names and addresses of all dealers and distributors to which a noncompliance notification was sent. 49 CFR 573.8(a).

[25] ZAP's customer warranty database only appears to include contact information related to approximately 116 MY 2008 ZAP Xebras (identified by VIN). Based on its most recent quarterly reports, dated July 30, 2012, there are 691 vehicles subject to these recalls.

[26] Recall 09V–177, Quarterly Report (dated July 30, 2012); Recall 09V–385, Quarterly Report (dated July 30, 2012).

[27] ZAP, Response to Special Order, Interrogatory Nos. 8–9 (July 30, 2012).

[28] *See, e.g.,* Letter from R. Willard, NHTSA to S. Schneider, ZAP (Oct. 6, 2011) (Recall No. 09V–177); Letter from R. Willard, NHTSA to S. Schneider, ZAP (Oct. 11, 2011) (Recall No. 09V–385).

[29] NHTSA, Special Order to ZAP, Interrogatory No. 6 (July 13, 2012).

[30] *See* ZAP, Response to Special Order, Interrogatory No. 6 (July 30, 2012).

[31] *See* Letter from S. Schneider, ZAP to H. Thompson and S. Seigel, NHTSA (Dec. 10, 2011); Letter from S. Schneider, ZAP to H. Thompson, NHTSA (Apr. 2, 2012); *see also* Letter from J. Timian, NHTSA, to S. Schneider, ZAP (Mar. 9, 2012) (indicating that NHTSA had not received draft renotification letters or evidence of renotification).

[32] ZAP's customer warranty database indicates that some vehicles are still for sale, despite the prohibition against offering for sale a motor vehicle that does not comply with applicable FMVSSs. *See* 49 U.S.C. 30112(a)(1); ZAP, Response to Special Order, Sch. F (July 30, 2012).

[33] ZAP, Response to Special Order, Sch. D–E (July 30, 2012).

[34] *See, e.g., http://www.voltagevehicles.com/;* Letter from S. Schneider, ZAP to J. Timian, NHTSA (May 28, 2012) (indicating that ZAP has 9 vehicles ''sold—in inventory,'' which are reserved for certain customers).

[35] *See* ZAP, Response to Special Order, Interrogatory No. 6 (July 30, 2012).

[36] *See* ZAP, Response to Special Order, Interrogatory Nos. 8–9 (July 30, 2012). In its Part 573 Reports initiating the renewed recalls, ZAP indicated that it will send notices to purchasers of the MY 2008 ZAP Xebra sedan once it has confirmed through vehicle testing that it has an effective repair remedy. According to those Part 573 Reports, 337 of the 691 vehicles subject to the recalls are sedans. ZAP did not indicate that it plans to send notifications to owners and purchasers of MY 2008 ZAP Xebra trucks, which are 354 of the 691 vehicles subject to the recalls.

[37] *See* Recall 09V–177, Quarterly Report (dated July 30, 2012) (indicating ''[s]ince we have not successfully passed the Testing, none of the

ZAP previously reported that some vehicles had been remedied, ZAP acknowledged that those vehicles will need to be re-remedied.[38]

After recalling the vehicles, ZAP claimed that, in 2009, it developed a successful repair remedy that was over engineered for stopping and not economically feasible.[39] ZAP elected not to implement this remedy, and contracted with Wilwood Engineering (Wilwood) to develop a different repair remedy. Wilwood provided ZAP with a report in April 2010 recommending certain modifications for the vehicle to meet the requirements of FMVSS No. 122.[40] Wilwood's recommendations addressed the stopping distance and master cylinder requirements, which are the subject of the recalls. Additionally, Wilwood recommended that, to meet FMVSS No. 122, the reservoirs or caps need to have a warning statement (FMVSS No. 122, S5.1.2.2), and the indicator on the dash needs to have a legend that reads ''Brake Failure'' and needs to turn on momentarily when the key is moved to the ''on'' or ''start'' position (FMVSS No. 122, S5.1.3.1).[41]

After receiving Wilwood's recommendations, between May and December 2010, ZAP purported to repair the NHTSA-owned MY 2008 ZAP Xebra.[42] Prior to retesting its vehicle, NHTSA made repeated inquiries of ZAP to confirm that ZAP performed its proposed repair remedy on the vehicle. After ZAP was unresponsive to NHTSA's informal requests,[43] NHTSA sent a formal Information Request (IR) to ZAP on November 22, 2011.[44] ZAP responded on December 10, 2011.[45] ZAP stated in its response that it was unable to confirm what modifications were made to the NHTSA-owned vehicle and vehicles in the field, and that additional modifications may be necessary to the vehicles to ensure full compliance with FMVSS No. 122. ZAP also indicated that it would use an independent third-party testing facility to confirm that its repair remedy would make the vehicles compliant with FMVSS No. 122.[46]

NHTSA sent a second IR to ZAP on March 9, 2012 to obtain additional information regarding the status of the recalls.[47] ZAP responded on April 2, 2012.[48] ZAP stated that it had contracted with KARCO Engineering (KARCO) in January 2012 to test a repaired MY 2008 ZAP Xebra, and that the vehicle failed to meet the FMVSS No. 122 stopping distance requirements based on KARCO's testing. KARCO retested the vehicle in March 2012, and it again failed to meet the stopping distance requirements. ZAP indicated that it had since made additional modifications to the vehicle and would send the vehicle back to KARCO for further testing. ZAP represented that it expected to be able to implement a repair remedy by July 15, 2012.[49]

In May and June 2012, KARCO again tested a MY 2008 ZAP Xebra sent to it by ZAP, and that vehicle also failed to meet the stopping distance requirements of FMVSS No. 122.[50] KARCO's test report further indicated that the vehicle's brake failure indicator lamp did not meet the minimum height requirement of three-thirty seconds of an inch.[51] *See* 49 CFR 571.122, S5.1.3.1(d).[52]

After informally learning that the vehicle failed KARCO's most recent testing, NHTSA sent Special Orders to ZAP and to KARCO on July 13, 2012 to obtain additional information about the recalls and KARCO's testing. ZAP and KARCO each responded on July 30, 2012. ZAP represented in its response, made under oath, that it has developed a repair remedy to bring the MY 2008 Xebra into full compliance with FMVSS No. 122.[53] ZAP cited the recommendations provided to it by Wilwood in April 2010 as the basis for its contention that this remedy will bring the vehicles into full compliance.[54] ZAP did not provide any test results or other information demonstrating that its repair remedy will make the vehicles fully compliant with FMVSS No. 122, and instead indicated that it planned further testing at KARCO to confirm its belief that this latest repair remedy is effective.[55] However, according to KARCO's response to NHTSA's Special Order, no further testing was planned.[56]

ZAP's Special Order response also provided contradictory information regarding the substance of its repair remedy. In one portion of its response, ZAP indicated that the repair remedy it contends will make the vehicles fully compliant with FMVSS No. 122 is the same remedy it performed on the vehicle which failed KARCO's testing.[57] However, another portion of ZAP's response indicated that additional modifications are needed to the vehicle.[58]

ZAP provided a copy of procedures for its repair remedy in response to the

reported vehicles fixed can be reported as successfully completed'').

[38] *See* ZAP, Response to Special Order, Interrogatory No. 9 (July 30, 2012). NHTSA has also received complaints from MY 2008 ZAP Xebra owners that their vehicles were not repaired. *See www-odi.nhtsa.dot.gov/complaints* (NHTSA ODI Nos. 10320166 and 10415384).

[39] Letter from S. Schneider, ZAP to H. Thompson, NHTSA (Apr. 2, 2012).

[40] *See* ZAP, Response to Special Order, Sch. C (July 30, 2012).

[41] ZAP, Response to Special Order, Sch. C at 6 (July 30, 2012).

[42] *See* Letter from H. Thompson, NHTSA, to S. Schneider, ZAP (Nov. 22, 2011).

[43] ZAP has also repeatedly failed to file required quarterly reports regarding the recalls. *See, e.g.,* Letter from R. Willard, NHTSA to S. Schneider, ZAP (Oct. 6, 2011) (Recall No. 09V–177); Letter from R. Willard, NHTSA to S. Schneider, ZAP (Oct. 11, 2011) (Recall No. 09V–385).

[44] Letter from H. Thompson, NHTSA, to S. Schneider, ZAP (Nov. 22, 2011).

[45] Letter from S. Schneider, ZAP to H. Thompson, NHTSA (Dec. 10, 2011).

[46] Letter from S. Schneider, ZAP to H. Thompson, NHTSA (Dec. 10, 2011).

[47] Letter from J. Timian, NHTSA, to S. Schneider, ZAP (Mar. 9, 2012).

[48] Letter from S. Schneider, ZAP to H. Thompson, NHTSA (Apr. 2, 2012). At that time, ZAP represented that if it has not developed a successful repair remedy by September 30, 2012, it will initiate a repurchase campaign. However, ZAP subsequently claimed to have developed a repair remedy that will bring the recalled vehicles into full compliance with FMVSS No. 122. ZAP, Response to Special Order, Interrogatory No. 1 (July 30, 2012).

[49] Letter from S. Schneider, ZAP to H. Thompson, NHTSA (Apr. 2, 2012). Although ZAP recognized at that time that it had not yet developed a repair remedy that brings the vehicles into full compliance with FMVSS No. 122, it continued to report to NHTSA that it had remedied vehicles. *See* Recall No. 09V–177, Quarterly Report (May 7, 2012).

[50] *See* KARCO, Response to Special Order, Interrogatory No. 1 (July 30, 2012). According to KARCO, the vehicle initially did not pass the first effectiveness test. ZAP requested that KARCO make modifications to the vehicle; through trial and error modifications, the vehicle subsequently passed the first effectiveness test. However, the vehicle could not pass the second effectiveness test, and testing was terminated. KARCO, Response to Special Order, Interrogatory No. 1 (July 30, 2012).

[51] KARCO, Response to Special Order, Ex. Test Report for ZAP Jonway, 2008 ZAP Xebra at 3, 10 (test date: May 16, 2012–June 27, 2012).

[52] As of July 30, 2012, KARCO indicated that no further testing was planned. *See* KARCO, Response to Special Order, Interrogatory No. 3 (July 30, 2012). ZAP, on the other hand, indicated in its July 30, 2012 response to NHTSA's Special Order that it planned to send its mechanic to KARCO between August 6 and 20, 2012 to make further modifications to the vehicle, which would then be retested by KARCO. ZAP, Response to Special Order, Interrogatory Nos. 4, 5 (July 30, 2012). However, as of August 20, 2012, KARCO indicated that ZAP had picked up the vehicle from KARCO's facility.

[53] ZAP, Response to Special Order, Interrogatory No. 1 (July 30, 2012). The repair remedy identified by ZAP in response to the Special Order included the heading ''Xebra 2008—Dealer Power Brake Recall Fix—Version 6.'' *See* ZAP, Response to Special Order, Sch. B at 3 (July 30, 2012). However, a later version (Version 7) of this document was attached as Exhibit A to ZAP's earlier Part 573 Report for Recall No. 12V–230.

[54] *See* ZAP, Response to Special Order, Interrogatory No. 2 (July 30, 2012).

[55] *See* ZAP, Response to Special Order, Interrogatory Nos. 4–5 (July 30, 2012).

[56] *See* KARCO, Response to Special Order, Interrogatory No. 3 (July 30, 2012).

[57] *Compare* ZAP, Response to Special Order, Interrogatory Nos. 1–2 (July 30, 2012), *with* ZAP, Response to Special Order, Request for the Production of Documents Nos. 1–2 (July 30, 2012).

[58] *See* ZAP, Response to Special Order, Interrogatory No. 4 (July 30, 2012).

Special Order.[59] The repair remedy purports to address the noncompliances with the stopping distance and master cylinder reservoir requirements, which are the subject of the recalls. The remedy also purports to address the apparent noncompliances NHTSA identified with FMVSS No. 122, S5.1.2.2, *Reservoir labeling,* and FMVSS No. 122, S5.1.3.1, *Failure indicator lamp,* despite the fact that ZAP has never submitted a Part 573 Report acknowledging the MY 2008 ZAP Xebra is noncompliant with those provisions. However, ZAP's procedures to address the reservoir labeling and the failure indicator lamp do not satisfy the requirements of FMVSS No. 122.[60] Moreover, ZAP has failed to provide notifications to NHTSA and to owners, purchasers, and dealers of these noncompliances as required by 49 U.S.C. 30118 and 49 CFR Parts 573 and 577.[61]

Furthermore, ZAP proposes to remedy the vehicles by either sending each customer an installation kit or having the customer send the vehicle to ZAP, to have ZAP complete the installation of the remedy.[62] Thus, an owner would either need to bring its vehicle to Santa Rosa, California (where ZAP is located), or install the remedy based on ZAP's kit.[63] The procedures for the repair remedy are over twenty pages long and require, among other things, placing the vehicle on a car lift and removing all of its wheels, removing and replacing brake reservoirs, removing and replacing brake pressure sensors, replacing brake lines, replacing brake pads, installing a proportioning valve, and rewiring brake sensors and floats.[64]

Over three years has passed since ZAP initially recalled the MY 2008 ZAP Xebra. Although ZAP continues to elect a repair remedy, it has failed to successfully repair any vehicles. Moreover, contrary to its representation, under oath, in response to NHTSA's Special Order, ZAP has provided no evidence that it has developed a repair remedy that would bring the recalled vehicles into full compliance with FMVSS No. 122.

## V. Decision to Conduct a Public Hearing

NHTSA has decided that it is necessary to conduct a public hearing to decide whether ZAP has reasonably met the notification and remedy requirements under 49 U.S.C. 30118 and 30120. *See* 49 U.S.C. 30118(e), 30120(e); 49 CFR 557.6(d), 557.7. NHTSA will conduct the public hearing in the Oklahoma City room of the U.S. Department of Transportation Conference Center, located on the first floor of the West Building at 1200 New Jersey Avenue SE., Washington, DC 20590. Any interested person may make written and/or oral presentations of information, views, and arguments on whether ZAP has reasonably met the notification and/or remedy requirements. There will be no cross-examination of witnesses. 49 CFR 557.7.

NHTSA will consider the views of participants in deciding whether ZAP has reasonably met the notification and/or remedy requirements under 49 U.S.C. 30118 and 30120, and in developing the terms of an order (if any) requiring ZAP to take specified action as the remedy for the noncompliances and/or take other action. 49 U.S.C. 30118(e), 30120(e); 49 CFR 557.8.

*Procedural Matters:* Interested persons may participate in these proceedings through written and/or oral presentations. Persons wishing to attend must notify Sabrina Fleming, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (Telephone: 202–366–9896) (Fax: 202–366–3081), before the close of business on October 2, 2012 (and September 28, 2012 for non-U.S. citizens). Each person wishing to attend must provide his or her name and country of citizenship. Non-U.S. citizens must also provide date of birth, title or position, and passport or diplomatic ID number, along with expiration date. Each person wishing to make an oral presentation must also specify the amount of time that the presentation is expected to last, his or her organizational affiliation, phone number, and email address. NHTSA will prepare a schedule of presentations. Depending upon the number of persons who wish to make oral presentations and the anticipated length of those presentations, NHTSA may add an additional day or days to the hearing, and/or may limit the length of oral presentations.

The hearing will be held at a site accessible to individuals with disabilities. Individuals who require accommodations, such as sign language interpreters, should contact Ms. Kerry Kolodziej using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above no later than September 28, 2012. A transcript of the proceedings will be placed in the docket for this notice at a later date.

Persons who wish to file written comments should submit them so that they are received by NHTSA no later than October 2, 2012. Instructions on how to submit written comments to the docket is located under the **ADDRESSES** section of this notice.

**Authority:** 49 U.S.C. 30118(e), 30120(e); 49 CFR 557.6(d), 557.7; delegations of authority at 49 CFR 1.95(a), 501.2(a)(1), and 49 CFR 501.8.

Issued: September 7, 2012.

**Daniel C. Smith,**

*Senior Associate Administrator for Vehicle Safety.*

[FR Doc. 2012–22612 Filed 9–12–12; 8:45 am]

**BILLING CODE 4910–59–P**

[59] ZAP, Response to Special Order, Sch. A–B (July 30, 2012).

[60] The reservoir labeling is not worded as required by FMVSS No. 122, S5.1.2.2. *See* ZAP, Response to Special Order, Sch. B at 10. It also appears that the labeling may not be permanently affixed, as required. *See* KARCO, Response to Special Order, Ex. Test Report for ZAP Jonway, 2008 ZAP Xebra at A6 (test date: May 16, 2012–June 27, 2012) (showing peeling label). The failure indicator lamp also does not have the legend ''Brake Failure,'' as required by FMVSS No. 122, S1.3.1(d). *See* KARCO, Response to Special Order, Ex. KARCO 036–KARCO 037 (July 30, 2010) (photographs produced for ''May 2012 Testing''). According to KARCO, the lamp's lettering also does not comply with the height requirements of the Standard. KARCO, Response to Special Order, Ex. Test Report for ZAP Jonway, 2008 ZAP Xebra at 3, 10 (test date: May 16, 2012–June 27, 2012).

[61] The potential penalty for each violation of such requirements is $6,000. 49 U.S.C. 30165(a)(1); 49 CFR 578.6.

[62] *See* Recall No. 12V–230, Part 573 Report § VI (prepared May 18, 2012); Recall No. 12V–363, Part 573 Report § VI (prepared July 18, 2012).

[63] This conflicts with the notifications sent to owners, which told owners: ''Please contact your ZAP/Voltage Vehicles dealer as soon as possible to arrange a service date so the dealer may order the necessary parts for the repair * * * Your ZAP/Voltage Vehicles dealer is best equipped to obtain parts and provide service to ensure that your vehicle is corrected as promptly as possible.'' ZAP, Response to Special Order, Sch. D–E (July 30, 2012). While there was no mention of a repair kit in the owner letters, ZAP indicated that it sent 56 kits out to customers. *See* ZAP, Response to Special Order, Interrogatory No. 7 (July 30, 2012).

[64] ZAP, Response to Special Order, Sch. B (July 30, 2012).

# DEPARTMENT OF THE TREASURY

## Submission for OMB Review; Comment Request

September 10, 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 October 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 (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 (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or 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.*

**Bureau of the Public Debt (BPD)**

*OMB Number:* 1535–0004.
*Type of Review:* Extension without change of a currently approved collection.
*Title:* Special Form of Request for Payment of U.S. Savings and Retirement Securities Where Use of a Detached Request is Authorized.
*Form:* PD F 1522 E.
*Abstract:* The information is requested to establish ownership and request for payment of United States Savings Bonds, Savings Notes, Retirement Plan Bonds, and Individual Retirement Bonds.
*Affected Public:* Individuals or Households.
*Estimated Total Burden Hours:* 14,000.

*OMB Number:* 1535–0014.
*Type of Review:* Extension without change of a currently approved collection.
*Title:* Claim for Lost, Stolen or Destroyed United States Registered Securities.
*Form:* PD F 1025 E.
*Abstract:* The information is requested to establish ownership and support a request for relief due to the loss, theft, or destruction of United States Registered Securities.
*Affected Public:* Individuals or Households.
*Estimated Total Burden Hours:* 460.

*OMB Number:* 1535–0015.
*Type of Review:* Extension without change of a currently approved collection.
*Title:* Report/Application for Relief on Account of Loss, Theft or Destruction of U.S. Bearer Securities (Organizations).
*Form:* PD F 1022 E.
*Abstract:* The information is requested to establish ownership and support a request for relief due to the loss, theft, or destruction of United States Bearer Securities.
*Affected Public:* Private Sector: Businesses or other for-profits.
*Estimated Total Burden Hours:* 92.

*OMB Number:* 1535–0016.
*Type of Review:* Extension without change of a currently approved collection.
*Title:* Report/Application for Relief on Account of Loss, Theft, or Destruction of U.S. Bearer Securities (Individuals).
*Form:* PD F 1022–1 E.
*Abstract:* The information is requested to establish ownership and support a request for relief due to the loss, theft, or destruction of United States Bearer Securities owned by individuals.
*Affected Public:* Individuals or Households.
*Estimated Total Burden Hours:* 92.

*OMB Number:* 1535–0048.
*Type of Review:* Revision of a currently approved collection.
*Title:* Certificate of Identity.
*Form:* PD F 0385 E.
*Abstract:* The information is requested to establish the identity of the owner of U.S. Savings Securities in a claim for payment by a disinterested person.
*Affected Public:* Individuals or Households.
*Estimated Total Burden Hours:* 835.

*OMB Number:* 1535–0064.
*Type of Review:* Revision of a currently approved collection.
*Title:* Description of United States Savings Bonds Series HH/H and Description of United States Bonds/Notes.
*Form:* PD F 2490 E, 1980 E.
*Abstract:* The information collected is necessary to obtain information describing an owner's holding of United States Securities.
*Affected Public:* Individuals or Households.
*Estimated Total Burden Hours:* 800.

*OMB Number:* 1535–0067.
*Type of Review:* Extension without change of a currently approved collection.
*Title:* Affidavit of Forgery for United States Savings Bonds.
*Form:* PD F 0974 E.
*Abstract:* The information is requested to establish whether the registered owner signed the request for payment or if the signature was a forgery.
*Affected Public:* Individuals or Households.
*Estimated Total Burden Hours:* 625.

*OMB Number:* 1535–0100.
*Type of Review:* Extension without change of a currently approved collection.
*Title:* Affidavit by Individual Surety.
*Form:* PD F 4094 E.
*Abstract:* The information is requested to support a request to serve as surety for an indemnification agreement on a Bond of Indemnity.
*Affected Public:* Individuals or Households.
*Estimated Total Burden Hours:* 460.

**Robert Dahl,**
*Treasury PRA Clearance Officer.*

[FR Doc. 2012–22543 Filed 9–12–12; 8:45 am]
BILLING CODE 4810–39–P

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900—0741]**

## Proposed Information Collection (VA Subcontracting Report for Service Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Concerns) Activity; Comment Request

**AGENCY:** Office of Small and Disadvantaged Business Utilization, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to collect information from subcontractors to compare information obtained from subcontracting plans submitted by prime contractors in order to determine the accuracy of the data reported by prime contractors.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before November 13, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or Mark J. Taylor (00SB), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *mark.taylor@va.gov.* Please refer to ''OMB Control No. 2900–0741'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Mark Taylor at (202) 632–5514 or FAX (202) 632–5833.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OSDBU invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OSDBU's functions, including whether the information will have practical utility; (2) the accuracy of OSDBU's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* VA Subcontracting Report for Service Disabled Veteran-Owned Small Business and Veteran-Owned Small Business Concerns, VA Form 0896a.

*OMB Control Number:* 2900–0741.

*Type of Review:* Extension.

*Abstract:* VA Form 0896a will be used to collect information from subcontractors to compare information obtained from subcontracting plans submitted by prime contractors in order to determine the accuracy of the data reported by prime contractors.

*Affected Public:* Business or other for-profit.

*Estimated Annual Burden:* 646 hours.

*Estimated Average Burden per Respondent:* 2 hours.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 323.

Dated: September 7, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–22488 Filed 9–12–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0744]**

### Proposed Information Collection (Call Center Satisfaction Survey): Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed from Veterans regarding their recent experience in contacting VA call centers.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before November 13, 2012.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0744'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* VBA Call Center Satisfaction Survey.

*OMB Control Number:* 2900–0744.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VBA maintains a commitment to improve the overall quality of service for Veterans. Feedback from Veterans regarding their recent experience to the VA call centers will provide VBA with three key benefits to: (1) Identify what is most important to Veterans; (2) determine what to do to improve the call center experience; and (3) serve to guide training and/or operational activities aimed at enhancing the quality of service provided to Veterans and active duty personnel.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 3,600 hours.

*Estimated Average Burden per Respondent:* 6 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 36,000.

Dated: September 7, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–22489 Filed 9–12–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0001]**

### Proposed Information Collection (Veteran's Application for Compensation and/or Pension) Activity: Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act (PRA) of

1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's eligibility, dependency, and income, as applicable, for compensation and/or pension benefit sought.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before November 13, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0001'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:*

a. Veteran's Application for Compensation and/or Pension, VA Form 21–526.

b. Veteran's Supplemental Claim Application, VA Form 21–526b.

c. Authorization and Consent Release Information to the Department of Veterans Affairs (VA), VA Form 21–4142.

*OMB Control Number:* 2900–0001.

*Type of Review:* Extension of a currently approved collection.

*Abstracts:*

a. Veterans complete VA Form 21–526 to initially apply for compensation and/or pension benefits.

b. Veterans who previously filed a claim using VA Form 21–526, and who wish to request an increase in a service-connected condition, reopen their claim for a previously denied claim, and/or file a claim for a new service-connected condition must complete VA Form 21–526b. VA Form 21–526b will be used for supplemental disability or ancillary benefit claims.

c. Veterans who need VA's assistance in obtaining non-VA medical records must complete VA Form 21–4142.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:*

a. VA Form 21–526—391,708.

b. VA Form 21–526b—50,000.

c. VA Form 21–4142—823.

*Estimated Average Burden per Respondent:*

a. VA Form 21–526—1 hour.

b. VA Form 21–526b—15 minutes.

c. VA Form 21–4142—5 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:*

a. VA Form 21–526—391,708.

b. VA Form 21–526b—200,000.

c. VA Form 21–4142—3,292.

Dated: September 7, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–22490 Filed 9–12–12; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0525]**

## Proposed Information Collection (VA MATIC Enrollment/Change); Comment Request

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments for information needed to process the insurer's request.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before November 13, 2012.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0525 in any correspondence. During the comment period, comments may be viewed online through FDMS at *www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* VA MATIC Enrollment/Change, VA Form 29–0165.

*OMB Control Number:* 2900–0525.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Claimants complete VA Form 29–0165 to enroll in VA MATIC or change their financial institution from which VA currently deducts his/her Government Life Insurance premium.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,250 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 5,000.

Dated: September 7, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–22495 Filed 9–12–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0319]**

### Agency Information Collection (Fiduciary Agreement) Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before October 15, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0319'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 632–7583 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0319.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Fiduciary Agreement, VA Form 21–4703.

*OMB Control Number:* 2900–0319.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 21–4703 is a legal binding contract between VA and Federally appointed fiduciaries receiving VA funds on behalf beneficiaries who were determined to be incompetent or under legal disability by reason of minority or court action. The form outlines the fiduciary's responsibility regarding the use of VA funds.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 2, 2012, at pages 39345–39346.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,467 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 17,600.

By direction of the Secretary.

Dated: September 7, 2012.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–22496 Filed 9–12–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0554]**

### Agency Information Collection (Homeless Providers Grant and Per Diem Program) Activities Under OMB Review

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before October 15, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0554'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, fax (202) 632–7583 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0554.''

**SUPPLEMENTARY INFORMATION:**

*Titles:*

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN.

e. Compliance Reports for Per Diem and Special Needs Grants. No form needed. May be reported to VA in standard business narrative.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA.

g. Compliance Reports for Technical Assistance Grants. No form needed. May be reported to VA in standard business narrative.

*OMB Control Number:* 2900–0554.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA Form 10–0361 series, Homeless Providers Grant and Per Diem Program, will be used to evaluate applicants' eligibility to receive a grant and/or per diem payments, apply the specific criteria to rate and rank each application; and to obtain information necessary to ensure that Federal funds are awarded to applicants who are financially stable and who will conduct the program for which grant and/or per diem award was made.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 2, 2012, at pages 39342–39343.

*Affected Public:* Not-for-profit institutions.

*Estimated Total Annual Burden:*

a. Homeless Providers Grant and Per Diem Program, Capital Grant

Application, VA Form 10–0361–CG—3,500 hours.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—2,000 hours.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—3,000 hours.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—4,000 hours.

e. Compliance Reports for Per Diem and Special Needs Grants—1,500 hours.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—250 hours.

g. Compliance Reports for Technical Assistance Grants—90 hours.

*Estimated Average Burden per Respondent:*

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—35 hours.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—10 hours.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—20 hours.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—20 hours.

e. Compliance Reports for Per Diem and Special Needs Grants—5 hours.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—10 hours.

g. Compliance Reports for Technical Assistance Grants—2.25 hours.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:*

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—100.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—200.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—150.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—200.

e. Compliance Reports for Per Diem and Special Needs Grants—300.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—25.

g. Compliance Reports for Technical Assistance Grants—10.

Dated: September 7, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–22494 Filed 9–12–12; 8:45 am]

**BILLING CODE 8320–01–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–NEW (NCA Emerging Burial Survey Needs)]**

## Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** National Cemetery Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine Veteran's satisfaction with their current burial benefits within the National Cemetery System and what role, if any, new offerings might play in the future.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before November 13, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Mechelle Powell, National Cemetery Administration (41D1), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *mechelle.powell@va.gov.* Please refer to ''OMB Control No. 2900—NEW (NCA Emerging Burial Survey Needs)]'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Mechelle Powell at (202) 461–4114 or Fax (202) 273–6695.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Titles:* NCA Emerging Burial Survey Needs.

a. 2012 Veterans Burial Benefits Survey.

b. Focus Group.

c. New and Emerging Burial Practices Study: Structured Interview Guide.

*OMB Control Number:* 2900—NEW (NCA Emerging Burial Survey Needs).

*Type of Review:* New collection.

*Abstract:* NCA has over the past several years made significant efforts to evaluate its burial program. In 2008, NCA completed the first comprehensive evaluation of its burial benefits program, which included a nation-wide survey of Veterans that, among other things, assessed the reasons that Veterans choose—or do not choose—burial in a national cemetery. Although the survey assessed what types of interment practices were currently available through NCA and evaluated Veterans' preferences for existing interment practices, it did not determine Veterans' preferences for interment options that were beyond what was currently offered by VA at that time. NCA now seeks to both update their understanding of the Veterans' satisfaction with NCA's current services, and to understand what additional internment options might be of interest to our Veterans and how they would view the inclusion of these options at the national cemeteries or other venues. The survey and focus groups will form the basis for review of various policies and the performance of follow-on research into specific emerging interment options.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:*

a. 2012 Veterans Burial Benefits Survey—3,572 hours.

b. Focus Group—240 hours.

c. New and Emerging Burial Practices Study: Structured Interview Guide—75 hours.

*Estimated Average Burden per Respondent:*

a. 2012 Veterans Burial Benefits Survey—14 minutes.

b. Focus Group—90 minutes.

c. New and Emerging Burial Practices Study: Structured Interview Guide—90 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:*

a. 2012 Veterans Burial Benefits Survey—15,307.

b. Focus Group—160.

c. New and Emerging Burial Practices Study: Structured Interview Guide—50.

Dated: September 7, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–22493 Filed 9–12–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0042]**

### Agency Information Collection (Statement of Accredited Representative in Appealed Case) Activities Under OMB Review

**AGENCY:** Board of Veterans' Appeals, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Board of Veterans' Appeals, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before October 15, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0042'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 632–7583 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0042.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement of Accredited Representative in Appealed Case, VA Form 646.

*OMB Control Number:* 2900–0042.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* A recognized organization, attorney, agent, or other authorized person representing VA claimants before the Board of Veterans' Appeals complete VA Form 646 to provide identifying data describing the basis for their claimant's disagreement with the denial of VA benefits. VA uses the data collected to identify the issues in dispute and to prepare a decision responsive to the claimant's disagreement.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 2, 2012, at page 39346.

*Affected Public:* Not-for-profit institutions.

*Estimated Annual Burden:* 44,551.

*Estimated Average Burden per Respondent:* 60 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 44,551.

Dated: September 7, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–22492 Filed 9–12–12; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0017]**

### Agency Information Collection (Annual-Final Report and Account) Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before October 15, 2012.

**ADDRESSES:** Submit written comments on the collection of information through *www.regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0017'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, Fax (202) 632–7583 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0017.''

**SUPPLEMENTARY INFORMATION:** *Titles:*

a. Annual-Final Report and Account, VA Form 21–4706.

b. Federal Fiduciary's Account, VA Form 21–4706b.

c. Court Appointed Fiduciary's Account, VA Form 21–4706c.

d. Account Book, VA Form 21–4718.

e. Certificate of Balance on Deposit and Authorization to Disclose Financial Records (Pursuant to Title 38, U.S.C., Chapter 55 and Title 12, U.S.C., Chapter 35), VA Form 21–4718a.

*OMB Control Number:* 2900–0017.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA maintains supervision of the distribution and use of VA benefits paid to fiduciaries on behalf of VA claimants who are incompetent, a minor, or under legal disability. The forms are used to verify beneficiaries' deposit remaining at a financial institution against a fiduciary's accounting. The following forms will be used to ensure claimants' benefits payments are administered properly.

a. VA Forms 21–4706, 4706b and 4706c are used by estate to determine proper usage of benefits paid to fiduciaries. The 21–4706 and 21–4706b are both necessary to conform to requirement of various State courts.

b. VA Form 21–4718 is provided to VA fiduciaries to submit accountings to either State courts or the VA. It is not a reporting form per se, but a vehicle to assist the fiduciary in accurately maintaining records of monies received and spent.

c. VA Form 21–4718a—Fiduciaries are required to obtain certifications that

the balances remaining on deposit in financial institutions as shown on accountings are correct. Certifying official at a financial institution completing the form must affix the institution's official seal or stamp. The data collected is used to appoint an appropriate fiduciary for a VA beneficiary and to prevent fiduciaries from supplying false certification, embezzling funds, and possibly prevent and/or identify fraud, waste and abuse of government funds paid to fiduciaries on behalf of VA beneficiaries.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 2, 2012, at pages 39341–39342.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:*

a. Annual-Final Report and Account, VA Form 21–4706—1,100.

b. Federal Fiduciary's Account, VA Form 21–4706b—6,300.

c. Court Appointed Fiduciary's Account, VA Form 21–4706c—2,000.

d. Account Book, VA Form 21–4718—20,000.

e. Certificate of Balance on Deposit and Authorization to Disclose Financial Records, VA Form 21–4718a—166.

*Estimated Average Burden per Respondent:*

a. Annual-Final Report and Account, VA Form 21–4706—30 minutes.

b. Federal Fiduciary's Accounts, VA Form 21–4706b—27 minutes.

c. Court Appointed Fiduciary's Account, VA Form 21–4706c—30 minutes.

d. Account Book, VA Form 21–4718—2½ hours.

e. Certificate of Balance on Deposit and Authorization to Disclose Financial Records, VA Form 21–4718a—3 minutes.

*Frequency of Response:* Annually.

*Estimated Number of Respondents:*

a. Annual-Final Report and Account, VA Form 21–4706—2,200.

b. Federal Fiduciary's Accounts, VA Form 21–4706b—14,000.

c. Court Appointed Fiduciary's Account, VA Form 21–4706c—4,000.

d. Account Book, VA Form 21–4718—8,000.

e. Certificate of Balance on Deposit and Authorization to Disclose Financial Records, VA Form 21–4718a—3,312.

Dated: September 7, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–22491 Filed 9–12–12; 8:45 am]

BILLING CODE 8320–01–P

# FEDERAL REGISTER

Vol. 77 Thursday,

No. 178 September 13, 2012


Part II

## Department of Health and Human Services

42 CFR Part 37

Specifications for Medical Examinations of Underground Coal Miners; Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**42 CFR Part 37**

**[Docket No. CDC–2011–0013; NIOSH–225]**

**RIN 0920–AA21**

## Specifications for Medical Examinations of Underground Coal Miners

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** This final rule modifies the Department of Health and Human Services (HHS) regulations for medical examinations of underground coal miners. Existing regulations established specifications for providing, interpreting, classifying, and submitting film-based roentgenograms (now commonly called chest radiographs or X-rays) of underground coal miners. The revised standards modify the requirements to permit the use of film-based radiography systems and add a parallel set of standards permitting the use of digital radiography systems. An additional amendment requires coal mine operators to provide the National Institute for Occupational Safety and Health (NIOSH) with employee rosters to assist the Coal Workers' Health Surveillance Program in improving participation by miners.

**DATES:** This final rule is effective October 15, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of October 15, 2012.

**FOR FURTHER INFORMATION CONTACT:** Anita Wolfe, Public Health Analyst, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, 1095 Willowdale Road, MS B208, Morgantown, WV 26505, Telephone (888) 480–4042 (this is a toll-free number). Information requests can also be submitted by email to *cwhsp@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** The preamble to this notice of final rulemaking is organized as follows:

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I. Public Participation
II. Background
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  B. Impact of Rulemaking
III. Summary of Final Rule and Response to Public Comments
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  F. Executive Order 12988 (Civil Justice)
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  J. Plain Writing Act of 2010
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### I. Public Participation

HHS received comments from 11 individuals and organizations. Four of the commenters are B Readers; two are West Virginia physicians; one is a private citizen; and one is a U.S. Senator. Comments were also submitted on behalf of the National Council on Radiation Protection and Measurements (NCRP), the American Society of Radiologic Technologists, and a law firm representing two coal companies and the West Virginia Coal Workers' Pneumoconiosis Fund.

### II. Background

All mining work generates fine particles of dust in the air. Coal miners who inhale excessive dust are known to develop a group of diseases of the lungs and airways, including chronic bronchitis, emphysema, chronic obstructive pulmonary disease, silicosis, and coal workers' pneumoconiosis (CWP).[1] To address such threats to the U.S. coal mining workforce, the Coal Mine Health and Safety Act was enacted in 1969 (Pub. L. 91–173) and amended by the Federal Mine Safety and Health Act of 1977 (Pub. L. 95–164, 30 U.S.C. 801 *et seq.*) (Mine Act). The statutes included an enforceable 2 milligrams per cubic meter limit on respirable dust exposure during underground coal mine work (30 U.S.C. 842(b)(2)). The science available at that time indicated that enforcement of this limit would greatly reduce the development of CWP, but could not ensure that all miners would be protected from developing disabling or lethal disease.

The NIOSH Coal Workers' Health Surveillance Program (CWHSP), also mandated by the Mine Act, was developed to detect CWP and prevent progression in individual miners, while at the same time providing information for evaluation of temporal and geographic trends in pneumoconiosis. The Mine Act grants NIOSH general authority to issue regulations as the Institute deems appropriate in carrying out provisions of the Act and specifically directs that medical examinations for underground coal miners shall be given in accordance with specifications prescribed by NIOSH (30 U.S.C. 843(a), 957).

To inform each miner of his or her health status, the Act requires that underground coal mine operators offer new workers a chest roentgenogram (hereafter chest radiograph or X-ray) through an approved facility as soon as possible after employment starts. Three years later a miner must be offered a second chest radiograph. If this second examination reveals evidence of pneumoconiosis, the miner is entitled to a third chest radiograph 2 years after the second. Further, all miners working in an underground coal mine must be offered a chest radiograph approximately every 5 years. All chest radiographs are to be given in accordance with specifications prescribed by the Secretary of Health and Human Services (30 U.S.C. 843(a)).

Chest radiographs taken for the CWHSP are assessed by qualified and licensed physicians who are A or B Readers. A Readers are physicians who interpret chest radiographs for clinical purposes. They will have demonstrated knowledge of the International Labour Office (ILO) Classification of Radiographs of Pneumoconioses by completing a NIOSH-approved course or submitting six radiographs with satisfactory classifications, as specified in 42 CFR 37.51. B Readers are physicians who have demonstrated proficiency in the use of the ILO classification system by taking and passing a specially-designed proficiency examination offered by NIOSH, as specified in 42 CFR 37.51.

HHS proposed amendments to the existing part 37 regulations in a document published in January, 2012 (77 FR 1360, January 9, 2012).

#### *A. Scope of Rulemaking*

Existing regulations under 42 CFR part 37 provide rules and specifications for giving, interpreting, classifying, and submitting chest radiographs as required under section 203 of the Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 843). Those rules will remain in effect. This rulemaking does not substantially alter the current standards.

Significantly, the new rule expands the availability of chest radiographic examinations by establishing additional

[1] Petsonk EL, Parker JE [2008]. Coal workers' lung diseases and silicosis. In: Fishman AP, Elias J, Fishman J, Grippi M, Senior R, Pack A eds. Fishman's Pulmonary Diseases and Disorders. 4th ed. New York: McGraw-Hill, pp. 967–980.

options for giving, interpreting, classifying, and submitting digitally-acquired radiographs under the same scope as the existing rule does for film radiographs. The final rule establishes the minimum specifications for methods, procedures, quality assurance, documentation, and equipment including computer software for facilities seeking approval to perform and submit digital radiographic examinations as well as the physician readers who interpret, classify, and submit reports using those radiographs. The final rule also makes limited changes to general requirements to reflect current terminology (such as the use of ''radiograph'' instead of ''roentgenogram'' which is no longer commonly used), practice or needs, such as requiring mine operators to provide a roster of current miners to NIOSH, which uses this information to promote miner participation in the Coal Workers' Health Surveillance Program. The final rule does not modify existing requirements for miner radiographic examinations, eligibility, or other rights, including transfer of affected miners in accordance with 30 CFR part 90.

*B. Impact of Rulemaking*

The U.S. Department of Labor (DOL) will likely amend its Black Lung Benefits Act (BLBA) program regulations to correspond with this final rule. The BLBA provides disability compensation and medical benefits to miners disabled by pneumoconiosis and monthly compensation to their eligible survivors (30 U.S.C. 901–944). Because DOL is required to consult with NIOSH on the development of criteria for medical tests for coal miners (30 U.S.C. 902(f)(1)(D)), DOL has modeled its technical requirements for chest radiographs on those adopted by NIOSH for the Coal Workers' Health Surveillance Program (see 20 CFR 718.102 and 20 CFR part 718 Appendix A). DOL's Occupational Safety and Health Administration (OSHA) might enable the use of digital chest images for medical surveillance under its asbestos regulations for general industry, shipyard employment, and construction (29 CFR 1910.1001 Appendix E, 29 CFR 1915.1001 Appendix E, and 29 CFR 1926.1101 Appendix E, respectively). OSHA's asbestos regulations include requirements for screening asbestos-exposed individuals using chest radiography. Enabling the use of modern digital chest imaging in that setting will involve similar technical considerations as are addressed in this final rule. However, OSHA's asbestos regulations are not linked by statute or regulation to this final rule.

The DOL standards refer to chest ''roentgenograms,'' an outdated term which NIOSH is replacing with the more contemporary ''radiograph.'' The DOL standards also rely upon the same ILO standards for the classification of radiographs, and might need to be amended to comport with the 2011 version of the ILO Classification, as referenced in this final rule. Finally, the DOL standards refer to film-based images and might need to be expanded to refer to digitally-acquired images in order to allow for such images to be used for purposes of determining eligibility for compensation.

## III. Summary of Final Rule and Response to Public Comments

This final rule establishes new requirements for digital radiography under existing part 37 of 42 CFR—Specifications for Medical Examinations of Underground Coal Miners. The new provisions supplement and update the existing requirements for film-screen radiographs by establishing standards for digital radiographs. The following is a section-by-section introduction to each rule section, including a summary of the public comments and NIOSH responses to them. In general, the commenters are supportive of this rulemaking and welcome its implementation. Commenters offered thoughtful and practical suggestions for improvement of the final rule text, and HHS has adopted many of those suggestions.

Table 1 matches the current regulatory provisions with the corresponding final provisions. The final regulatory text is provided in the last section of this notice.

TABLE 1—CURRENT AND FINAL PROVISIONS

| Current regulation | Final regulation |
|---|---|
| 37.2 Definitions | 37.2 Definitions. |
| 37.3 Chest roentgenograms required for miners | 37.3 Chest radiographs required for miners. |
| 37.4 Plans for chest roentgenographic examinations | 37.4 Plans for chest radiographic examinations. |
| 37.5 Approval of plans | 37.5 Approval of plans. |
| 37.6 Chest roentgenographic examinations conducted by the Secretary. | 37.6 Chest radiographic examinations conducted by the Secretary. |
| 37.7 Transfer of affected miner to less dusty area | 37.7 Transfer of affected miner to less dusty area. |
| 37.8 Roentgenographic examination at miner's expense | 37.8 Radiographic examination at miner's expense. |
| | 37.10 Standards incorporated by reference. |
| 37.20 Miner identification document | 37.20 Miner identification document. |
| 37.40 General provisions | 37.40 General provisions. |
| 37.41 Chest roentgenogram specifications | 37.41 Chest radiograph specifications—film. |
| 37.42 Approval of roentgenographic facilities | 37.42 Chest radiograph specifications—-digital radiography systems. |
| 37.43 Protection against radiation emitted by Roentgenographic equipment. | 37.43 Approval of radiographic facilities that use film. |
| | 37.44 Approval of radiographic facilities that use digital radiography systems. |
| | 37.45 Protection against radiation emitted by radiographic equipment. |
| 37.50 Interpreting and classifying chest roentgenogram | 37.50 Interpreting and classifying chest radiographs—film. |
| 37.51 Proficiency in the use of systems for classifying the pneumoconioses. | 37.51 Interpreting and classifying chest radiographs—digital radiography systems. |
| 37.52 Method of obtaining definitive interpretations | 37.52 Proficiency in the use of systems for classifying the pneumoconioses. |
| 37.53 Notification of abnormal roentgeno graphic findings | 37.53 Method of obtaining definitive interpretations. |
| | 37.54 Notification of abnormal radiographic findings. |
| 37.60 Submitting required chest roentgenograms and miner identification documents. | 37.60 Submitting required chest radiographs and miner identification documents. |
| 37.70 Review of interpretations | 37.70 Review of interpretations. |
| 37.80 Availability of records | 37.80 Availability of records. |
| 37.200 Scope | 37.200 Scope. |

TABLE 1—CURRENT AND FINAL PROVISIONS—Continued

| Current regulation | Final regulation |
|---|---|
| 37.201 Definitions | 37.201 Definitions. |
| 37.202 Payment for autopsy | 37.202 Payment for autopsy. |
| 37.203 Autopsy specifications | 37.203 Autopsy specifications. |
| 37.204 Procedure for obtaining payment | 37.204 Procedure for obtaining payment. |

*Section 37.1 Scope*

This existing section provides the scope of these provisions, and remains unchanged from the current regulation. HHS received no comments on this section.

*Section 37.2 Definitions*

HHS amends a number of terms in the existing § 37.2 to reflect updated terminology and references.

*Comment:* One commenter supports and agrees with the definition of ''radiologic technologist'' included in Section 37.2 but suggests that the definition contained in this section be amended to *require* the individual to have ''completed a formal training program in radiography leading to a certificate, an associate degree, or a bachelor's degree and participated in the voluntary initial certification and annual renewal of registration for radiologic technologists in radiography offered by the American Registry of Radiologic Technologists.'' The definition proposed by HHS would make those credentials ''optimal,'' but not required.

*HHS response:* HHS considers the described training, certification, and ongoing renewals as optimum for radiologic technologists. However, because State and Territorial governments have regulatory authority for oversight of radiologic technologists, the Federal government cannot require such credentials. Accordingly, the commenter's suggestion cannot be implemented.

*Section 37.3 Chest Radiographs Required for Miners*

This existing section requires mine operators to provide miners an opportunity to receive a chest radiograph. HHS amends this provision to delete and replace outdated text. HHS received no comments on § 37.3.

*Section 37.4 Plans for Chest Radiographic Examinations*

This existing section requires that mine operators submit to NIOSH a Coal Mine Operator's Plan (Form CDC/NIOSH (M)2.10, OMB 0920–0020, exp. June 30, 2014) for chest radiographic examinations, including the beginning and ending dates of the 6-month period for voluntary examinations, and the name and location of the approved X-ray facility or facilities. HHS received no comments on § 37.4.

*Section 37.5 Approval of Plans*

This existing section outlines the process undertaken by the Secretary of HHS to approve or deny approval of a Coal Mine Operator's Plan (Form CDC/NIOSH (M)2.10, OMB 0920–0020, exp. June 30, 2014). HHS amends this section to redact outdated text and to correct gender-exclusive language. HHS received no comments on § 37.5.

*Section 37.6 Chest Radiographic Examinations Conducted by the Secretary*

This existing section details the conditions under which the HHS Secretary will determine whether to conduct a chest radiographic examination. HHS amends this section to replace outdated text with current terminology. HHS received no comments on § 37.6.

*Section 37.7 Transfer of Affected Miner to Less Dusty Area*

Under 30 CFR part 90, miners whose radiographs show specific categories of pneumoconiosis are offered the right to frequent workplace dust monitoring, and transfer to another position in an area of the mine where the concentration of respirable dust in the mine atmosphere is in compliance with MSHA requirements in 30 CFR 90.3. HHS received no comments on § 37.7.

*Section 37.8 Radiographic Examination at Miner's Expense*

This existing section provides for any miner who wishes to obtain a radiographic examination at his or her own expense. HHS received no comments on § 37.8.

*Section 37.10 Standards Incorporated by Reference*

HHS has added § 37.10 to consolidate all of the standards incorporated by reference in Part 37. There are no substantive changes to the referenced standards.

*Section 37.20 Miner Identification Document*

This existing section requires the completion of a Miner Identification Document (Form CDC/NIOSH (M)2.9, OMB 0920–0020, exp. June 30, 2014) for each miner when the chest radiograph is made. HHS received no comments on § 37.20.

*Section 37.40 General Provisions*

This existing section outlines general provisions for chest radiographic examinations. HHS received no comments on § 37.40. However, paragraph (c) is edited to indicate that a radiograph may also be performed by a radiologic technologist to comport with the requirements in §§ 37.41 and 37.42.

*Section 37.41 Chest Radiograph Specifications—Film*

This existing section establishes performance standards for the acquisition of chest radiographs using film-screen technology. HHS amends this section to update terminology and standards. In response to comments, discussed below, subsection (c) is amended to require that chest radiographs be performed by either a physician or a person working under the supervision of a physician, or by a radiologic technologist. Subsection (d) is amended in response to a comment to § 31.42, below, to specify that the size of the focal spot should be described as the measured size and not the nominal size. Subsection (n) is also amended in response to comments (see below) to require that each radiograph be marked with the miner's date of birth, in addition to the identification of the facility where it was made, the miner's Social Security number, and the date on which the X-ray was made.

*Comment:* One commenter supports the change to subsection (c), requiring that a radiologic technologist perform chest radiography using film. According to the commenter, a registered radiologic technologist in radiography is educationally prepared and clinically competent to perform chest radiography. Several commenters do not approve of the proposed requirement, asserting that when radiographs of miners under this regulation are taken

by State approved and licensed radiology facilities in a physician's office or clinic and that X-ray is performed under the direct supervision of a facility medical or osteopathic physician, it is not necessary to employ a radiology technician. Commenters state that allowing other trained professionals to make radiographs will improve the availability of surveillance health examination in mining regions.

*HHS response:* The intent of the wording in this section is to assure that coal miners are provided high quality radiographic examinations using professionally-accepted methods that minimize radiation exposure. In order to optimize quality, safety, and accessibility goals, the wording of § 37.41(c) has been edited to indicate that the X-ray may be made either a physician or a person working under the supervision of a physician, or by a radiologic technologist.

*Comment:* One commenter states that use of Social Security number as an identifier is increasingly difficult. The individual suggests that for examinations under this regulation, the image file or DICOM header include the date of birth of the individual whose chest is imaged.

*HHS response:* HHS concurs and has accordingly modified the regulatory text in § 37.41(n) to require that the X-ray also be marked with the miner's date of birth.

*Section 37.42 Chest Radiograph Specifications—Digital Radiography Systems*

This new section establishes performance standards for the acquisition of chest radiographs using digital radiography systems, including digital radiography and computed radiography. Section 37.42(b), (c), (d), and (i)(4) is amended in response to comments, as discussed below. Section 37.42(i)(5)(i)(A) is amended to include DICOM Standard PS 3.3–2001, Annex A, Computed Radiography Image Information Object Definition. This section title was inadvertently omitted, and references an image information object which was already a required component of older CR equipment models.

*Comment:* One commenter notes that the regulations ''do not require certification that the individual digital image taken both complied with the specifications of 42 CFR 37.42 and that the facility where the digital image was taken has been approved, and that its approval was current under 42 CFR 37.44, when the digital image was taken.'' The comment suggests either the recording form be revised or alternatively, a web-based listing of NIOSH-approved radiographic facilities be made available.

*HHS response:* CWHSP will continue to maintain a web-based listing of radiographic facilities that are NIOSH-approved under 42 CFR part 37, including directions and maps to locate approved facilities. (See, *http://www.cdc.gov/niosh.*)

*Comment:* One commenter indicates that the size of the detector specified in § 37.42(b) would exclude one prominent equipment provider, and also would unnecessarily prohibit use of larger detectors. The commenter further suggests that the specification of a 5 megapixel matrix size be eliminated since the requirements for pixel pitch and detector size are sufficient, and these are not entirely consistent with the specified matrix size. The commenter further expresses concern that the requirement that ''Spatial resolution shall be at least 2.4 line pair per millimeter'' is not adequately defined. The commenter offers several methods to clarify the requirement, including the suggestion that the modulation transfer function be included in the system performance requirements in § 37.42(i)(4).

*HHS response:* In response to this comment, the text of the final rule is modified to specify only pixel pitch and detector size, without a specific matrix size. Specifically, HHS has omitted the proposed maximum size for image detectors. The final rule text now specifies a minimum area and width for detectors which will accommodate the equipment mentioned in the comment (§ 37.42(b)). Per the commenter's suggestion, § 37.42(i)(4) is also amended to address the modulation transfer function (MTF). However, HHS reminds stakeholders that under § 37.42(i)(6), NIOSH retains the discretion to evaluate image quality by requiring the facility to include a test object on each X-ray.

*Comment:* One commenter states that when radiographs of miners under this regulation are taken by State-approved and licensed radiology facilities in a physician's office or clinic and that X-ray is performed under the direct supervision of a facility medical or osteopathic physician, it is not necessary to employ a radiologic technologist (§ 37.42(c)).

*HHS Response:* In order to optimize quality, safety, and accessibility goals, the wording of § 37.42(c) has been edited to indicate that the X-ray may be made by either a physician or a person working under the supervision of a physician, or by a radiologic technologist.

*Comment:* A commenter suggests that, in relation to the specifications for X-ray generators in 37.42(d), the size of the focal spot should be described as the measured size and not the nominal size.

*HHS response:* HHS has amended the final rule text to specify the measured, rather than nominal width of the focal point. A similar change is made to § 37.41(d), specifications for film radiographs.

*Comment:* One commenter suggests that the application of edge enhancement techniques in image processing may result in inaccurate appearances and emphasizes the importance of using full uncompressed DICOM image files, and requiring medical grade monitors (§ 37.42(i)).

*HHS response:* HHS concurs with the commenter and believes that the provisions in § 37.42(i) appropriately restrict use of edge enhancement techniques, require compression of DICOM image files to be fully reversible (lossless), and stipulate that the image display devices must meet the Grayscale Standard Display Function for diagnostic monitors specified in DICOM Part 14.

*Comment:* One commenter recommends that § 37.42(i)(5)(ii)(A) be amended to require that the image file or DICOM header include the date of birth of the individual whose chest is imaged. Another commenter indicates that determining whether imaging parameters have been met will be difficult because only basic information is contained in the DICOM header, thus placing a burden on small hospitals attempting to comply with quality assurance standards.

*HHS response:* HHS concurs that the miner's date of birth should be required for film radiographs. For digital radiographs, unique identification of each miner, chest image, facility, and date and time of the examination are encoded within the image information object according to Part 3 (PS 3.3–2009) of the DICOM standard, as specified in § 37.42. Accordingly, HHS has not amended the text of § 37.42(i)(5)(ii)(A).

With regard to the quality assurance standards, since the inception of the Program, there has been a continuing concern for both safety and image properties, and quality assurance has always been a component of the 42 CFR Part 37 specifications. In this final rule, this professionally recommended and prudent element is being extended to cover the newly permitted digital imaging systems.

*Comment:* A commenter expresses concern that images will be rejected and deleted even if, due to emergency situations, patients may be elderly, too

ill for a high quality standard PA image, etc. The commenter further states that all images have useful information, and that no images should be discarded (§ 37.42(i)(11)).

*HHS response:* The rule allows each physician reader to maintain his or her individual professional judgment in determining the quality of an image that is to be classified. The rule does not specifically require deletion of image files, but requires that when an image is deemed suboptimal and imaging is immediately repeated to obtain a better quality image, the original suboptimal file be fully deleted or rendered permanently inaccessible. The requirement to delete image files after they are transferred to NIOSH or if found substandard and thus immediately repeated is entirely analogous to the current rules regarding destruction of copies of film radiographs, and is only intended to assure maintenance of worker confidentiality for participants in the mandated Program. Approved facilities are permitted to forward to NIOSH all files of chest radiographic examinations that they have performed for any eligible coal miner, independent of image quality.

*Section 37.43 Approval of Radiographic Facilities That Use Film*

Section 37.43 comprises the current requirements in existing § 37.42—Approval of roentgenographic facilities. HHS received no comments on § 37.43.

*Section 37.44 Approval of Radiographic Facilities That Use Digital Radiography Systems*

Section 37.44 establishes standards for the approval of radiographic facilities that use digital radiography systems. These standards mirror those for film-screen technology.

*Comment:* A commenter states that it is the position of the American Society of Radiologic Technologists that radiographic technique charts be used by persons performing radiography and that all health care facilities make radiographic technique charts available to persons performing radiography. The commenter is pleased to see this position reflected by the inclusion of the provision in § 37.44(g)(2) along with the requirement that facilities have in place a documented quality assurance program.

*HHS response:* HHS appreciates this comment.

*Section 37.45 Protection Against Radiation Emitted by Radiographic Equipment*

This provision requires that radiographic equipment conform to applicable State, territorial, and Federal regulations. Where no State, Territorial or Federal regulations apply, the section incorporates by reference the recommendations of the National Council on Radiation Protection and Measurements (NCRP).

*Comment:* A commenter representing the NCRP provided updated references to the publications of his organization for the text of the regulation.

*HHS response:* HHS appreciates the comment and has amended the final rule text accordingly.

*Section 37.50 Interpreting and Classifying Chest Radiographs—Film*

Procedures for classifying radiographs are unchanged from the existing § 37.50, but for updating the requirement that images be interpreted and classified in accordance with the Guidelines for the Use of the ILO International Classification of Radiographs for Pneumoconioses, 2011 edition.[2] HHS received no comments on § 37.50. HHS is changing the rule text in § 37.50(a) and (c) to clarify that the Guidelines are being incorporated by reference.

*Section 37.51 Interpreting and Classifying Chest Radiographs—Digital Radiography Systems*

Section 37.51 establishes requirements for the classification of radiographs. Of note, the ILO has recently authorized the use of the ILO Classification for digital images and authorized a set of standard digital image files for use during classification. HHS is changing the rule text in § 37.51(b) and (c) to clarify that the Guidelines are being incorporated by reference.

*Comment:* A commenter observes that it can be difficult for a reader to load the subject images on his or her picture archiving and communication (PACS) system, due to software issues from the system manufacturers. The commenter further states that that software in most PACS systems does not permit viewing of the miner radiograph side-by-side with another image folder, such as the ILO standard images.

*HHS response:* NIOSH is aware of this concern, and has applied considerable resources and effort to make available a specific software package (NIOSH BViewer®) which is designed to address this issue (the BViewer software is available for free download at *http://www.cdc.gov/niosh/topics/chestradiography/digital-images.html*). Although initially it is anticipated that some readers may have difficulty in displaying the standard ILO images along with the miner radiograph, over time, NIOSH believes that PACS manufacturers will incorporate software with functionality similar to B Viewer to further ameliorate this concern.

*Section 37.52 Proficiency in the Use of Systems for Classifying the Pneumoconioses*

This section establishes the A and B Reader approval programs, and is modified from existing § 37.51 to make clarifications in the current requirements and update older terminology. HHS received no comments on § 37.52.

*Section 37.53 Method of Obtaining Definitive Interpretations*

Section 37.53 maintains the standards in existing § 37.52, which establishes that radiographs will be independently interpreted by an A Reader and B Reader, or two B Readers, whose classifications must be in agreement as defined in § 37.53(b); if sufficient agreement is lacking, NIOSH will obtain a third interpretation.

*Comment:* One commenter indicates that if the B Reader feels the image is satisfactory for identifying the abnormality, then it should not be disqualified if quality assurance standards have not been met. The commenter feels technical issues should not be used to disqualify evidence and therefore deny benefits if the individual is not able to return for repeat testing, and suggests that consensus among 2 or more B Readers be required where the quality of an image is in dispute.

*HHS response:* A digital or screen film radiograph will not be disqualified for technical reasons if two or more B Readers do not find it unreadable and are able to classify it. The B Reader rates the quality of the image and classifies it for the presence and severity of findings associated with pneumoconiosis, but does not assess whether the facility making the image complied with the quality assurance specifications in Part 37. The rule does not constrain the reader in determining whether the image is either satisfactory or unreadable due to quality issues. Thus, responding to this comment does not necessitate a change to the rule text.

[2] International Labour Office [2011]. Guidelines for the use of ILO International Classification of Pneumoconiosis, revised edition 2011). Geneva, Switzerland: International Labour Organization. Occupational Safety and Health Series No. 22 (Rev. 2011).

*Section 37.54 Notification of Abnormal Radiographic Findings*

Section 37.54, redesignated from § 37.53, would be revised to update outdated terminology. The provision would also allow the first reader to communicate certain information directly to the miner, including abnormal findings other than pneumoconiosis. As discussed below, § 37.54(b) is amended in response to public comment.

*Comment:* One commenter believes that the side-by-side review referenced in § 37.54(b) can be confusing to the miner, and that all information regarding X-ray results should be communicated at one time. The commenter suggests that because the evaluation of findings other than pneumoconiosis does not require a B Reader, this section should permit the comparisons to be done by any licensed physician, and/or that the miner be provided with copies of the relevant images so that their personal physician can perform the comparison. Finally, the commenter suggests that communication about health issues be to the miner, and not the designated physician to reduce the chance of failure of important communications. Another commenter recommends that NIOSH utilize available in-house medical expertise to complete the ''side-by-side'' readings. Outside consultation could still be obtained, where deemed useful or necessary.

*HHS response:* HHS agrees with commenters that the use of a B Reader to interpret findings other than pneumoconiosis is unnecessary. In response to these comments, HHS has amended § 37.54(b) to indicate that, instead of a B Reader, NIOSH will arrange for a licensed physician to compare the most recent image and interpretation to older ones and inform the miner of any significant changes or progression of disease or other comments. The rule text is also changed to clarify that the Department means to refer to abnormal findings other than pneumoconiosis and substitutes the phrase ''abnormality of cardiac shape or size'' for ''enlarged heart.''

*Section 37.60 Submitting Required Chest Radiographs and Miner Identification Documents*

Section 37.60 is essentially unchanged from existing § 37.60, which establishes the protocol for submitting radiographs. HHS received no comments on § 37.60.

*Section 37.70 Review of Interpretations*

This section is amended only to update terminology. HHS received no comments on § 37.70.

*Section 37.80 Availability of Records for Radiographs*

Section 37.80 remains unchanged from the existing requirement, although terminology in this section is updated. HHS received no comments on § 37.80.

*Section 37.200 Scope*

Section 37.200 remains unchanged from the existing explanation that provisions in this subpart establish conditions under which pathologists will be paid to conduct autopsies on deceased miners. HHS received no comments on § 37.200.

*Section 37.201 Definitions*

Section 37.201 retains the existing definitions for Secretary, miner, and pathologist, but updates ''ALFORD,'' in the existing provision to ''NIOSH.'' HHS received no comments on § 37.201.

*Section 37.202 Payment for Autopsy*

Section 37.202 retains the existing provision setting forth circumstances under which a pathologist may be paid by the Secretary for performing an autopsy. HHS received no comments on § 37.202.

*Section 37.203 Autopsy Specifications*

Section 37.203 retains the existing standards establishing the manner in which autopsies are conducted. HHS received no comments on § 37.203.

*Section 37.204 Procedure for Obtaining Payment*

Section 37.204 retains the existing procedure for submitting a claim for payment to NIOSH (''NIOSH'' replaces ''ALFORD'' in the rule text). HHS has received no comments on § 37.204.

## IV. Regulatory Assessment Requirements

*A. Executive Order 12866 and Executive Order 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule is being treated as a ''significant'' action under E.O. 12866. It provides for the use of digital radiography systems in the Coal Workers' Health Surveillance Program (CWHSP) administered by NIOSH under 42 CFR part 37, in cooperation with coal mine operators, to monitor and protect the health of U.S. coal miners, particularly for the prevention of coal workers' pneumoconiosis. The current regulations at 42 CFR part 37 only allow for the use of film-screen radiography systems in this program. The addition of digital X-ray standards in part 37 does not require mine operators to change their plans to accommodate digital radiographs, but it is expected to substantially increase the amount of access miners will have to radiograph facilities because the use of film-screen radiography is declining markedly throughout the United States and specifically in areas where coal mining is located and where coal miners live. In fact, many clinics participating in the Program have indicated that they are maintaining their outdated X-ray film capabilities only because of Program requirements, and that they intend to switch to digital radiography when NIOSH allows its use by promulgating this final rule. In general, most health care facilities have abandoned the use of film-based X-rays. Mammography was the last mainstream radiology procedure that required use of film; many facilities made the final switch to digital several years ago when digital mammography systems became available.

Increased access to radiograph facilities that offer digital X-rays is expected to result in cost savings to coal miners because they will not have to drive as far to visit an approved clinic.

Digital radiographs are more cost-effective than their film-based counterparts because they do not require costly chemical processing, they eliminate the need for a separate device to develop the image, and they avoid costs associated with managing and archiving hard-copy images. Over the past 5 years approximately 100 clinics have submitted film-screen radiographs to CWHSP. NIOSH queried several clinics on the costs associated with film-screen radiography, including equipment maintenance, chemicals, film, and processing. Based on the responses, it is estimated that the cost to facilities of maintaining film X-ray technology to provide radiographs for approximately 2,500 coal miners is between $7,000 and $15,000 per clinic per year. Because NIOSH expects that most facilities participating in the Program will switch entirely to digital radiography when this rule is

promulgated, we estimate a first year cost savings to facilities that currently provide both film and digital radiographs of between $700,000 and $1,500,000 after they have discontinued the use of film radiographs.

Although this rule does not require any facility to upgrade to digital technology, facilities that choose to do so will necessarily incur costs associated with its acquisition. HHS invited public comment on these estimates and received one comment asserting that meeting the rule's quality assurance standards will be prohibitively expensive for small facilities. As discussed here, HHS expects that facilities voluntarily upgrading to digital technology will necessarily incur costs associated with acquiring the technology and meeting regulatory standards. However, the quality assurance standards in this rule reflect standard industry practice and should not create burdens for small facilities already using, or planning to use, digital chest imaging and wishing to join the CWHSP.

Furthermore, the final rule does not require any radiography facility to perform digital radiographs for this NIOSH program. Facilities may continue to perform film-screen radiography under the current requirements of Part 37 applicable to film-screen radiography, which would not be substantially changed by this final rule.

The provisions for using the DICOM standard and incorporating by reference standard best practices for digital radiography used in lung imaging ensure that the final requirements reflect standard practice and technology. For these reasons, the rule provisions allowing for the use of digital radiography and specifying equipment and practice parameters would not impose any additional costs on coal mine operators who provide for their miners' participation in this program nor on the radiography facilities that serve the participating coal miners.

The final rule establishes a new requirement for coal mine operators to provide to NIOSH a roster of current miners under § 37.4(a)(3). The provision of this roster to NIOSH is current practice by almost all of the approximately 500 U.S. underground coal mine operators; therefore codifying this practice in regulation will not result in any additional cost to mine operators. For these reasons, the final rule is not considered economically significant, as defined in sec. 3(f)(1) of E.O. 12866.

The rule is consistent with the requirements of 42 U.S.C. 7384n(c). The rule does not interfere with State, local, or tribal governments in the exercise of their governmental functions.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations. This rule establishes standards for the delivery of digitally-acquired chest radiographs for underground coal miners. It does not impose any new requirements on small radiographic facilities that participate in the Coal Workers' Health Surveillance Program (CWHSP) administered by NIOSH under 42 CFR part 37. These facilities may continue to exclusively use film-screen technology for radiography under provisions that would be essentially unchanged by this rulemaking. The rule will benefit these facilities by allowing and facilitating their transition to digital radiography for the purposes of this program. In this respect, the reliance in the rule on the DICOM standards, standard technology, and current best practices for lung imaging radiography ensure that the rule is consistent with current medical practices in digital radiography. It should also be noted that if this standard permits some facilities to switch entirely to digital imaging, rather than maintaining two duplicate technologies, the facilities may be able to achieve savings in radiography operating costs, as discussed in the Executive Orders 12866 and 13563 analysis above. The final rule also introduces a substantial benefit in allowing the participation in CWHSP of radiography facilities that solely use digital radiography; such facilities currently are prohibited from participation due to the current lack of digital radiography standards for CWHSP under part 37.

This final rule is expected to increase access to medical facilities for small and larger coal mine operators, since many medical facilities exclusively use digital radiography or are transitioning to this technology. The rule may also decrease the cost to coal mine operators of providing X-ray screenings to miners. Lower cost is likely to be one of the factors in the trend among radiography facilities to adopt or switch entirely to digital radiography. In any event, allowing and facilitating the provision of digital radiography under part 37 will impose no new costs on small coal mine operators.

The final rule establishes a new requirement for coal mine operators to provide to NIOSH a roster of current miners under § 37.4(a)(3). The provision of this roster to NIOSH is current practice by almost all coal mine operators. HHS estimates that, of 488 underground coal mines that can be considered small as of the first quarter of 2011,[3] 130 coal mine plans are submitted to the Agency annually. HHS further estimates that a clerical worker spends 0.5 hours per year preparing the roster. According to the Bureau of Labor Statistics, the average salary of a coal mine clerical worker is $17.38/hour; HHS estimates the annual cost for an individual coal mine operator to supply a roster to NIOSH is approximately $9 and the total cost to all coal mines combined amounts to approximately $1170 annually. In HHS's judgment, this $9 cost would not be significant for any coal mine operator. Therefore, a regulatory flexibility analysis as provided for under the RFA is not required. HHS certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

*C. Paperwork Reduction Act*

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* requires an agency to invite public comment on, and to obtain OMB approval of, any regulation that requires 10 or more people to report information to the agency or to keep certain records. This final rule continues to impose the same information collection requirements as under the current rule, including the submission of the following forms:

- Roentgenographic Interpretation Form [CDC/NIOSH (M)2.8]
- Miner Identification Document [CDC/NIOSH (M)2.9]
- Coal Mine Operator's Plan [CDC/NIOSH (M)2.10]
- Facility Certification Document [CDC/NIOSH (M)2.11]
- Interpreting Physician Certification Document [CDC/NIOSH (M)2.12]
- Consent, Release, and History Form [CDC/NIOSH (M)2.6]

These forms are approved by OMB for data collected under the CWHSP (OMB Control No. 0920–0020, exp. June 30, 2014).

The additional reporting burden associated with the Coal Mine Operator's Plan which requires underground coal mine operators to submit a roster of current employees (§ 37.4(a)(3)), and the Facility

[3] U.S. Department of Labor, Mine Safety and Health Administration. Mining Industry Accident, Injuries, Employment, and Production Data—Address & Employment Self-Extracting Files. *http://www.msha.gov/stats/part50/p50y2k/aetable.htm.* Accessed June 26, 2012.

Certification Document which is required of participating digital radiography facilities (§ 37.44(a)(2)), are both accounted for in the OMB information collection approval referenced above. There is no additional recordkeeping burden associated with the quality assurance program referenced in § 37.44(g) because this provision reflects standard industry practice and does not impose any new recordkeeping requirements.

| Type of respondent | Form name and No. | Number of respondents | Number of responses per respondent | Hours/ response | Response burden (in hrs) |
|---|---|---|---|---|---|
| Physicians (B Readers) | Roentgenographic Interpretation Form—CDC/NIOSH (M) 2.8. | 10,000 | 1 | 3/60 | 500 |
| Miners | Miner Identification Document—CDC/NIOSH (M) 2.9 | 5,000 | 1 | 20/60 | 1,667 |
| Coal Mine Operators | Coal Mine Operator's Plan—CDC/NIOSH (M) 2.10 | 200 | 1 | 30/60 | 100 |
| Supervisors at X-ray Facilities. | Facility Certification Document—CDC/NIOSH (M) 2.11. | 100 | 1 | 30/60 | 50 |
| Physicians (B Readers) | Interpreting Physician Certification Document—CDC/NIOSH (M) 2.12. | 300 | 1 | 10/60 | 50 |
| Spirometry Test—Coal Miners. | No form involved | 2,500 | 1 | 20/60 | 833 |
| X-ray—Coal Miners | No form involved | 5,000 | 1 | 15/60 | 1250 |
| Pathologist | (Invoice) | 50 | 1 | 5/60 | 4 |
| Pathologist | (Final diagnosis) | 50 | 1 | 5/60 | 4 |
| Next-of-Kin | Consent, Release, and History Form—CDC.NIOSH (M) 2.6. | 50 | 1 | 15/60 | 13 |
| Totals | | 23,250 | | | 4,471 |

*D. Small Business Regulatory Enforcement Fairness Act*

As required by Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the Department will report the promulgation of this rule to Congress prior to its effective date. The report will state that the Department has concluded that this rule is not a ''major rule'' because it is not likely to result in an annual effect on the economy of $100 million or more.

*E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector ''other than to the extent that such regulations incorporate requirements specifically set forth in law.'' For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased annual expenditures in excess of $100 million by State, local or tribal governments in the aggregate, or by the private sector. For 2012, the inflation adjusted threshold is $139 million.

*F. Executive Order 12988 (Civil Justice)*

This rule has been drafted and reviewed in accordance with Executive Order 12988, ''Civil Justice Reform,'' and will not unduly burden the Federal court system. Chest radiograph interpretations that result in a finding of pneumoconiosis may be an element in claim processing and adjudication conducted by DOL's Black Lung Compensation Program. This final rule would affect radiographs submitted to DOL for the purpose of reviewing and administering those claims. This rule has been reviewed carefully to eliminate drafting errors and ambiguities.

*G. Executive Order 13132 (Federalism)*

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' The rule does 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.''

*H. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)*

In accordance with Executive Order 13045, HHS has evaluated the environmental health and safety effects of this rule on children. HHS has determined that the rule would have no effect on children.

*I. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)*

In accordance with Executive Order 13211, HHS has evaluated the effects of this rule on energy supply, distribution or use, and has determined that the rule will not have a significant adverse effect.

*J. Plain Writing Act of 2010*

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS has attempted to use plain language in promulgating the final rule consistent with the Federal Plain Writing Act guidelines.

## V. Final Rule

### List of Subjects in 42 CFR Part 37

Black lung benefits, Incorporation by reference, Lung diseases, Mine safety and health, Occupational safety and health, Pneumoconiosis, Respiratory and pulmonary diseases, Underground coal mining, Workers' compensation, X-rays.

### Text of the Rule

For the reasons discussed in the preamble, the Department of Health and Human Services amends 42 CFR part 37 as follows:

## PART 37—SPECIFICATIONS FOR MEDICAL EXAMINATIONS OF UNDERGROUND COAL MINERS

■ 1. The authority citation for part 37 continues to read as follows:

**Authority:** Sec. 203, 83 Stat. 763 (30 U.S.C. 843), unless otherwise noted.

### Subpart—Chest Radiographic Examinations

■ 2. Revise § 37.1 to read as follows:

**§ 37.1 Scope.**

The provisions of this subpart set forth the specifications for giving, interpreting, classifying, and submitting chest radiographs required by section 203 of the Act to be given to

underground coal miners and new miners.

■ 3. Revise § 37.2 to read as follows:

**§ 37.2 Definitions.**

Any term defined in the Federal Mine Safety and Health Act of 1977 and not defined below will have the meaning given it in the Act. As used in this subpart:

*Act* means the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801, *et seq.*).

*Chest radiograph* means a single posteroanterior radiographic projection or radiograph of the chest at full inspiration recorded on either film or digital radiography systems.

*Convenient time and place with respect to the conduct of any examination under this subpart* means that the examination must be given at a reasonable hour in the locality in which the miner resides or a location that is equally accessible to the miner. For example, examinations at the mine during, immediately preceding, or immediately following work and a ''no appointment'' examination at a medical facility in a community easily accessible to the residences of a majority of the miners working at the mine, will be considered of equivalent convenience for purposes of this paragraph.

*Digital radiography systems,* as used in this context, include both Digital Radiography (DR) and Computed Radiography (CR).

(1) *Computed radiography (CR)* is the term for digital X-ray image acquisition systems that detect X-ray signals using a cassette-based photostimulable storage phosphor. Subsequently, the cassette is processed using a stimulating laser beam to convert the latent radiographic image to electronic signals which are then processed and stored so they can be displayed.

(2) *Digital radiography (DR)* is the term used for digital X-ray image acquisition systems in which the X-ray signals received by the image detector are converted nearly instantaneously to electronic signals without movable cassettes.

*ILO Classification* means the below-referenced classification of radiographs of the pneumoconioses system devised by an international committee of the International Labour Office (ILO), including a complete set of standard film radiographs or digital chest image files available from the ILO or other set of chest image files accepted by NIOSH as equivalent.

*MSHA* means the Mine Safety and Health Administration, Department of Labor.

*Miner* means any individual including any coal mine construction worker who is working in or at any underground coal mine, but does not include any surface worker who does not have direct contact with underground coal mining or with coal processing operations.

*NIOSH* means the National Institute for Occupational Safety and Health (NIOSH), located within the Centers for Disease Control and Prevention (CDC). Within NIOSH, the Division of Respiratory Disease Studies (DRDS), Box 4258, Morgantown, WV 26504, formerly called the Appalachian Laboratory for Occupational Safety and Health, is the organizational unit that has programmatic responsibility for the chest radiographic examination program.

*NIOSH representative* means employees of CDC/NIOSH and employees of CDC contractors.

*Operator* means any owner, lessee, or other person who operates, controls, or supervises an underground coal mine or any independent contractor performing services or construction at such mine.

*Panel of B Readers* means the group of physicians that are currently approved by NIOSH as B Readers.

*Pre-placement physical examination* means any medical examination that includes a chest radiographic examination given in accordance with the specifications of this Part to a person not previously employed by the same operator. Such examinations should be conducted consistent with applicable law, including the Americans with Disabilities Act of 1990, which provides that pre-placement examinations take place only after an offer of employment has been made and subject to certain restrictions (42 U.S.C. 12112(d)).

*Qualified medical physicist* means an individual who is trained in evaluating the performance of radiographic equipment including radiation controls and facility quality assurance programs, and has the relevant current certification by a competent U.S. national board, or unrestricted license or approval from a U.S. State or territory.

*Radiographic technique chart* means a table that specifies the types of cassette, intensifying screen, film or digital detector, grid, filter, and lists X-ray machine settings (timing, kVp, mA) that enables the radiographer to select the correct settings based on the body habitus or the thickness of the chest tissue.

*Radiologic technologist* means an individual who has met the requirements for privileges to perform general radiographic procedures and for competence in using the equipment and software employed by the examining facility to obtain chest images as specified by the State or Territory and examining facility in which such services are provided. Optimally, such an individual will have completed a formal training program in radiography leading to a certificate, an associate degree, or a bachelor's degree and participated in the voluntary initial certification and annual renewal of registration for radiologic technologists offered by the American Registry of Radiologic Technologists.

*Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

*Soft copy* means the image of a coal miner's chest radiograph acquired using a digital radiography system, viewed at the full resolution of the image acquisition system using an electronic medical image display device.

■ 4. Revise § 37.3 to read as follows:

**§ 37.3 Chest radiographs required for miners.**

(a) *Voluntary examinations.* Every operator must provide to each miner who is employed in or at any of its underground coal mines and who was employed in underground coal mining prior to December 30, 1969, or who has completed the required examinations under § 37.3(b) an opportunity for a chest radiograph in accordance with this subpart:

(1) Following August 1, 1978 NIOSH will notify the operator of each underground coal mine of a period within which the operator may provide examinations to each miner employed at its coal mine. The period must begin no sooner than October 15, 2012 and end no later than a date specified by NIOSH separately for each coal mine. The termination date of the period will be approximately 5 years from the date of the first examination that was made on a miner employed by the operator in its coal mine under the former regulations of this subpart adopted July 27, 1973. Within the period specified by NIOSH for each mine, the operator may select a 6-month period within which to provide examinations in accordance with a plan approved under § 37.5.

*Example:* NIOSH finds that between July 27, 1973, and March 31, 1975, the first radiograph for a miner who was employed at mine Y and who was employed in underground coal mining prior to December 30, 1969, was made on January 1, 1974. NIOSH will notify the operator of mine Y that the operator may select and designate on

its plan a 6-month period within which to offer its examinations to its miners employed at mine Y. The 6-month period must be scheduled between August 1, 1978 and January 1, 1979 (5 years after January 1, 1974).

(2) For all future voluntary examinations, NIOSH will notify the operator of each underground coal mine when sufficient time has elapsed since the end of the previous 6-month period of examinations. NIOSH will specify to the operator of each mine a period within which the operator may provide examinations to its miners employed at its coal mine. The period must begin no sooner than 3½ years and end no later than 4½ years subsequent to the ending date of the previous 6-month period specified for a coal mine either by the operator on an approved plan or by NIOSH if the operator did not submit an approved plan. Within the period specified by NIOSH for each mine, the operator may select a 6-month period within which to provide examinations in accordance with a plan approved under § 37.5.

*Example:* NIOSH finds that examinations were previously provided to miners employed at mine Y in a 6-month period from July 1, 1979, to December 31, 1979. NIOSH notifies the operator at least 3 months before July 1, 1983 (3½ years after December 31, 1979) that the operator may select and designate on its plan the next 6-month period within which to offer examinations to its miners employed at mine Y. The 6-month period must be scheduled between July 1, 1983, and July 1, 1984 (between 3½ and 4½ years after December 31, 1979).

(3) Within either the next or future period(s) specified by NIOSH to the operator for each of its coal mines, the operator of the coal mine may select a different 6-month period for each of its mines within which to offer examinations. In the event the operator does not submit an approved plan, NIOSH will specify a 6-month period to the operator within which miners must have the opportunity for examinations.

(b) *Mandatory examinations.* Every operator must provide to each miner who begins working in or at a coal mine for the first time after December 30, 1969:

(1) An initial chest radiograph, as soon as possible, but in no event later than 6 months after commencement of employment. An initial chest radiograph given to a miner according to former regulations for this subpart prior to August 1, 1978 will also be considered as fulfilling this requirement.

(2) A second chest radiograph, in accordance with this subpart, 3 years following the initial examination if the miner is still engaged in underground coal mining. A second radiograph given to a miner according to former regulations under this subpart prior to August 1, 1978 will be considered as fulfilling this requirement.

(3) A third chest radiograph 2 years following the second chest radiograph if the miner is still engaged in underground coal mining and if the second radiograph shows evidence of category 1 (1/0, 1/1, 1/2), category 2 (2/1, 2/2, 2/3), category 3 (3/2, 3/3, 3/+) simple pneumoconioses, or complicated pneumoconioses (ILO Classification).

(c) NIOSH will notify the miner when he or she is due to receive the second or third mandatory examination under (b) of this section. Similarly, NIOSH will notify the coal mine operator when the miner is to be given a second examination. The operator will be notified concerning a miner's third examination only with the miner's written consent, and the notice to the operator must not state the medical reason for the examination nor that it is the third examination in the series. If the miner is notified by NIOSH that the third mandatory examination is due and the operator is not so notified, availability of the radiographic examination under the Coal Mine Operator's Plan (Form CDC/NIOSH (M)2.10) will constitute the operator's compliance with the requirement to provide a third mandatory examination even if the miner refuses to take the examination.

(d) The opportunity for chest radiographs to be available by an operator for purposes of this subpart must be provided in accordance with a plan that has been submitted and approved in accordance with this subpart.

■ 5. Amend § 37.4 by revising paragraphs (a) introductory text, (a)(3), (a)(4), (a)(6), (a)(7), and (d) through (f) to read as follows:

**§ 37.4 Plans for chest radiographic examinations.**

(a) Every plan for chest radiographic examinations of miners must be submitted on the Coal Mine Operator's Plan form (Form CDC/NIOSH (M)2.10) to NIOSH within 120 calendar days after August 1, 1978. In the case of a person who after August 1, 1978, becomes an operator of a mine for which no plan has been approved, that person must submit a plan within 60 days after such event occurs. A separate plan must be submitted by the operator and by each construction contractor for each underground coal mine that has a MSHA identification number. The plan must include:

* * * * *

(3) The proposed beginning and ending date of the 6-month period for voluntary examinations (see § 37.3(a)), the estimated number of miners to be given or offered examinations during the 6-month period under the plan, and a roster specifying the names and current home mailing addresses of each miner covered by the plan;

(4) The name and location of the approved X-ray facility or facilities, and the approximate date(s) and time(s) of day during which the radiographs will be given to miners to enable a determination of whether the examinations will be conducted at a convenient time and place;

* * * * *

(6) The name and address of the A or B Reader who will interpret and classify the chest radiographs. In the event a plan lists an approved facility with a digital radiography system, the name and address of the physician(s) who will perform the initial clinical interpretation.

(7) Assurances that:

(i) The operator will not solicit a physician's radiographic or other findings concerning any miner employed by the operator,

(ii) Instructions have been given to the person(s) giving the examinations that duplicate radiographs or copies of radiographs (including, for digital radiographs, copies of electronic files) will not be made, and to the extent that it is technically feasible for the imaging system used, digital radiographs and all related digital files must be permanently deleted from the facility records or rendered permanently inaccessible following the confirmed transfer of such data to NIOSH, and that (except as may be necessary for the purpose of this subpart) the physician's radiographic and other findings, as well as the occupational history information obtained from a miner will not be disclosed in a manner that would permit identification of the individual with their information, and

(iii) The radiographic examinations will be made at no charge to the miner.

* * * * *

(d) The operator must advise NIOSH of any change in its plan. Each change in an approved plan is subject to the same review and approval as the originally approved plan.

(e) The operator must promptly display in a visible location on the bulletin board at the mine its proposed plan or proposed change in plan when it is submitted to NIOSH. The proposed

plan or change in plan must remain posted in a visible location on the bulletin board until NIOSH either grants or denies approval of it at which time the approved plan or denial of approval must be permanently posted. In the case of an operator who is a construction contractor and who does not have a bulletin board, the construction contractor must otherwise notify its employees of the examination arrangements. Upon request, the contractor must show NIOSH written evidence that its employees have been notified.

(f) Upon notification from NIOSH that sufficient time has elapsed since the previous period of examinations, the operator will resubmit its plan for each of its coal mines to NIOSH for approval for the next period of examinations (see § 37.3(a)(2)). The plan must include the proposed beginning and ending dates of the next period of examinations and all information required by paragraph (a) of this section.

■ 6. Revise § 37.5 to read as follows:

**§ 37.5 Approval of plans.**

(a) If, after review of any plan submitted pursuant to this subpart, the Secretary determines that the action to be taken under the plan by the operator meets the specifications of this subpart and will effectively achieve its purpose, the Secretary will approve the plan and notify the operator(s) submitting the plan of the approval. Approval may be conditioned upon such terms as the Secretary deems necessary to carry out the purpose of § 203 of the Act.

(b) Where the Secretary has reason to believe that he or she will deny approval of a plan the Secretary will, prior to the denial, give reasonable notice in writing to the operator(s) of an opportunity to amend the plan. The notice must specify the ground upon which approval is proposed to be denied.

(c) If a plan is denied approval, the Secretary must advise the operator(s) in writing of the reasons for the denial.

■ 7. Amend § 37.6 by revising paragraphs (a) and (d) to read as follows:

**§ 37.6 Chest radiographic examinations conducted by the Secretary.**

(a) The Secretary will give chest radiographs or make arrangements with an appropriate person, agency, or institution to give the chest radiographs and with A or B Readers to interpret the radiographs required under this subpart in the locality where the miner resides, at the mine, or at a medical facility easily accessible to a mining community or mining communities, under the following circumstances:

* * * * *

(d) Operators of mines selected by NIOSH to participate in the National Study of Coal Workers' Pneumoconiosis (an epidemiological study of respiratory diseases in coal miners) and who agree to cooperate will have all their miners afforded the opportunity to have a chest radiograph required hereunder at no cost to the operator. For future examinations and for mandatory examinations each participating operator must submit an approvable plan.

■ 8. Amend § 37.7 by revising paragraph (a) to read as follows:

**§ 37.7 Transfer of affected miner to less dusty area.**

(a) Any miner who, in the judgment of the Secretary based upon the interpretation of one or more of the miner's chest radiographs, shows category 1 (1/0, 1/1, 1/2), category 2 (2/1, 2/2, 2/3), or category 3 (3/2, 3/3, 3/+) simple pneumoconioses, or complicated pneumoconioses (ILO Classification) must be afforded the option of transferring from his or her position to another position in an area of the mine where the concentration of respirable dust in the mine atmosphere is in compliance with the MSHA requirements in 30 CFR 90.3.

* * * * *

■ 9. Revise § 37.8 to read as follows:

**§ 37.8 Radiographic examination at miner's expense.**

Any miner who wishes to obtain an examination at the miner's own expense at an approved facility and to have the complete examination submitted to NIOSH may do so, provided that the examination is made no sooner than 6 months after the most recent examination of the miner submitted to NIOSH. NIOSH will provide an interpretation and report of the examinations made at the miner's expense in the same manner as if it were submitted under an operator's plan. Any change in the miner's transfer rights under the Act that may result from this examination will be subject to the terms of § 37.7.

■ 10. Add § 37.10 to read as follows:

**§ 37.10 Standards incorporated by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, NIOSH must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at NIOSH, Division of Respiratory Disease Studies, 1095 Willowdale Road, Morgantown, WV 26505. To arrange for an inspection at NIOSH, call 304–285–5749. Copies are also available for inspection at 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.*

(b) American Association of Physicists in Medicine, Order Department, Medical Physics Publishing, 4513 Vernon Blvd., Madison, WI 53705, *http://www.aapm.org/pubs/reports:*

(1) AAPM On-Line Report No. 03, Assessment of Display Performance for Medical Imaging Systems, April 2005, into § 37.51(d) and (e).

(2) AAPM Report No. 14, Performance Specifications and Acceptance Testing for X-Ray Generators and Automatic Exposure Control Devices, Report of the Diagnostic X-Ray Imaging Committee Task Group on Performance Specifications and Acceptance Testing for X-Ray Generators and Automatic Exposure Control Devices, published by the American Institute of Physics for AAPM, January 1985, into §§ 37.42(h) and 37.44(g).

(3) AAPM Report No. 31, Standardized Methods for Measuring Diagnostic X-Ray Exposures, Report of Task Group 8, Diagnostic X-Ray Imaging Committee, published by the American Institute of Physics, July 1990, into § 37.44(g).

(4) AAPM Report No. 74, Quality Control in Diagnostic Radiology, Report of Task Group 12, Diagnostic X-Ray Imaging Committee, published by Medical Physics Publishing for AAPM, July 2002, into §§ 37.42(h), 37.43(f), and 37.44(g).

(5) AAPM Report No. 93, Acceptance Testing and Quality Control of Photostimulable Storage Phosphor Imaging Systems, October 2006, into §§ 37.42(i) and 37.44(g).

(6) AAPM Report No. 116, An Exposure Indicator for Digital Radiography, Report of AAPM Task Group 116, published by AAPM, July 2009, into § 37.44(g).

(c) American College of Radiology, 1891 Preston White Dr., Reston, VA 20191, *http://www.acr.org/~/media/ACR/Documents/PGTS/guidelines/Reference_Levels.pdf:*

(1) ACR Practice Guideline for Diagnostic Reference Levels in Medical X-Ray Imaging, Revised 2008 (Resolution 3), into §§ 37.42(i) and 37.44(g).

(2) [Reserved]

(d) International Labour Office, CH–1211 Geneva 22, Switzerland, *http://www.ilo.org/publns:*

(1) Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, Revised Edition 2011, into §§ 37.50(a), 37.50(c), and 37.51(b).

(2) [Reserved]

(e) National Council on Radiation Protection and Measurements, NCRP Publications, 7910 Woodmont Avenue, Suite 400, Bethesda, MD 20814–3095, Telephone (800) 229–2652, *http://www.ncrppublications.org:*

(1) NCRP Report No. 102, Medical X-ray, Electron Beam, and Gamma-Ray Protection for Energies Up to 50 MeV (Equipment Design, Performance, and Use), issued June 30, 1989, into § 37.45.

(2) NCRP Report No. 105, Radiation Protection for Medical and Allied Health Personnel, issued October 30, 1989, into § 37.45.

(3) NCRP Report No. 147, Structural Shielding Design for Medical X-Ray Imaging Facilities, revised March 18, 2005, into § 37.45.

(f) National Electrical Manufacturers Association, 1300 N. 17th Street, Rosslyn, VA 22209, *http://medical.nema.org:*

(1) DICOM Standard PS 3.3–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 3: Information Object Definitions, copyright 2011, into § 37.42(i).

(2) DICOM Standard PS3.4–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 4: Service Class Specifications, copyright 2011, into § 37.42(i).

(3) DICOM Standard PS 3.10–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 10: Media Storage and File Format for Media Interchange, copyright 2011, into § 37.42(i).

(4) DICOM Standard PS 3.11–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 11: Media Storage Application Profiles, copyright 2011, into § 37.42(i).

(5) DICOM Standard PS 3.12–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 12: Media Formats and Physical Media for Media Interchange, copyright 2011, into §§ 37.42(i) and 37.44(a).

(6) DICOM Standard PS 3.14–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 14: Grayscale Standard Display Function, copyright 2011, into §§ 37.42(i)(5) and 37.51(d).

(7) DICOM Standard PS 3.16–2011, Digital Imaging and Communications in Medicine (DICOM) standard, Part 16: Content Mapping Resource, copyright 2011, § 37.42(i).

■ 11. Revise § 37.20 to read as follows:

**§ 37.20 Miner identification document.**

As part of the radiographic examination, a Miner Identification Document (Form CDC/NIOSH (M)2.9) which includes an occupational history questionnaire must be completed for each miner at the facility where the radiograph is made at the same time the chest radiograph required by this subpart is given.

■ 12. Revise the undesignated center heading and § 37.40 to read as follows:

**Specifications for Performing Chest Radiographic Examinations**

**§ 37.40 General provisions.**

(a) The chest radiographic examination must be given at a convenient time and place.

(b) The chest radiographic examination consists of the chest radiograph, and a complete Roentgenographic Interpretation Form (Form CDC/NIOSH (M)2.8), and Miner Identification Document (Form CDC/NIOSH (M)2.9).

(c) A radiographic examination must be made in a facility approved in accordance with § 37.43 or § 37.44. Chest radiographs of miners under this section must be performed:

(1) By or under the supervision of a physician who makes chest radiographs in the normal course of practice and who has demonstrated ability to make chest radiographs of a quality to best ascertain the presence of pneumoconiosis; or

(2) By a radiologic technologist as defined in § 37.2.

■ 13. Amend § 37.41 as follows:

■ a. Revise the section heading.

■ b. Redesignate paragraphs (a) and (b) as paragraphs (b) and (a) respectively.

■ c. Redesignate paragraphs (c) through (m) as (d) through (n).

■ d. Add new paragraph (c).

■ e. Revise newly designated paragraphs (a), (b), (d) through (h), (i) introductory text, (i)(1) through (i)(3), (i)(7), (j)(2), (k), (m), and (n) to read as follows:

**§ 37.41 Chest radiograph specifications—film.**

(a) Miners must be disrobed from the waist up at the time the radiograph is given. The facility must provide a dressing area and for those miners who wish to use one, the facility will provide a clean gown. Facilities must be heated to a comfortable temperature.

(b) Every chest radiograph must be a single posteroanterior projection at full inspiration on a film being no less than 14 by 17 inches and no greater than 16 by 17 inches. The film and cassette must be capable of being positioned both vertically and horizontally so that the chest radiograph will include both apices and costophrenic angles. If a miner is too large to permit the above requirements, then the projection must include both apices with minimum loss of the costophrenic angle.

(c) Chest radiographs of miners under this section must be performed:

(1) By or under the supervision of a physician who makes chest radiographs in the normal course of practice and who has demonstrated ability to make chest radiographs of a quality to best ascertain the presence of pneumoconiosis; or

(2) By a radiologic technologist as defined in § 37.2.

(d) Radiographs must be made with a diagnostic X-ray machine with a maximum actual (not nominal) source (focal spot) of 2 mm, as measured in two orthogonal directions.

(e) Except as provided in this paragraph (e), radiographs must be made with units having generators that comply with the following:

(1) The generators of existing radiographic units acquired by the examining facility prior to July 27, 1973, must have a minimum rating of 200 mA at 100 kVp;

(2) Generators of units acquired subsequent to that date must have a minimum rating of 300 mA at 125 kVp.

(f) Radiographs made with battery-powered mobile or portable equipment must be made with units having a minimum rating of 100 mA at 110 kVp at 500 Hz, or of 200 mA at 110 kVp at 60 Hz.

(g) Capacitor discharge and field emission units may be used if the model of such units is approved by NIOSH for quality, performance, and safety. NIOSH will consider such units for approval when listed by a facility seeking approval under §§ 37.43 or 37.44.

(h) Radiographs must be given only with equipment having a beam-limiting device that does not cause large unexposed boundaries. The beam limiting device must provide rectangular collimation and must be of the type described in 21 CFR 1020.31(d), (e), (f), and (g). The use of such a device must be discernible from an examination of the radiograph.

(i) To ensure high quality chest radiographs:

(1) The maximum exposure time must not exceed 50 milliseconds except that with single phase units with a rating less than 300 mA at 125 kVp and subjects with chests over 28 cm posteroanterior, the exposure may be increased to not more than 100 milliseconds;

(2) The source or focal spot to film distance must be at least 6 feet;

(3) Medium speed film and medium speed intensifying screens are recommended. However, any film-screen combination, the rated ''speed'' of which is at least 100 and does not exceed 300, that produces radiographs with spatial resolution, contrast, latitude and quantum mottle similar to those of systems designated as ''medium speed'' may be employed;

* * * * *

(7) A suitable grid or other means of reducing scattered radiation must be used;

* * * * *

(j) * * *

(2) If mineral or other impurities in the processing water introduce difficulty in obtaining a high-quality radiograph, a suitable filter or purification system must be used.

(k) Before the miner is advised that the examination is concluded, the radiograph must be processed and inspected and accepted for quality by the physician, or if the physician is not available, acceptance may be made by the radiologic technologist. In a case of a substandard radiograph, another must be immediately made. All substandard radiographs must be clearly marked as rejected and promptly sent to NIOSH for disposal.

* * * * *

(m) A test object may be required on each radiograph for an objective evaluation of film quality at the discretion of NIOSH.

(n)(1) Each radiograph made hereunder must be permanently and legibly marked with:

(i) The name and address or NIOSH approval number of the facility at which it is made;

(ii) The miner's Social Security number;

(iii) The miner's date of birth; and

(iv) The date of the radiograph.

(2) No other identifying markings may be recorded on the radiograph.

**§§ 37.42 and 37.43 [Redesignated as §§ 37.43 and 37.45]**

■ 14a. Redesignate § 37.42 and § 37.43 as § 37.43 and § 37.45 respectively.

■ 14b. Add new § 37.42 to read as follows:

**§ 37.42 Chest radiograph specifications—digital radiography systems.**

(a) Miners must be disrobed from the waist up at the time the radiograph is given. The facility must provide a private dressing area and for those miners who wish to use one, the facility must provide a clean gown. Facilities must be heated to a comfortable temperature.

(b) Every digital chest radiograph taken as required under this section must be a single posteroanterior projection at full inspiration on a digital detector with sensor area being no less than 1505 cm square centimeters with a minimum width of 35cm. The imaging plate must have a maximum pixel pitch of 200μm, with a minimum bit depth of 10. Spatial resolution must be at least 2.5 line pairs per millimeter. The storage phosphor cassette or digital image detector must be positioned either vertically or horizontally so that the image includes the apices and costophrenic angles of both right and left lungs. If the detector cannot include the apices and costophrenic angles of both lungs as described, then two side-by-side images can be obtained that together include the apices and the costophrenic angles of both right and left lungs.

(c) Chest radiographs of miners under this section must be performed:

(1) By or under the supervision of a physician who makes chest radiographs in the normal course of practice and who has demonstrated ability to make chest radiographs of a quality to best ascertain the presence of pneumoconiosis; or

(2) By a radiologic technologist as defined in § 37.2.

(d) Radiographs must be made with a diagnostic X-ray machine with a maximum actual (not nominal) source (focal spot) of 2 mm, as measured in two orthogonal directions.

(e) Radiographs must be made with units having generators which have a minimum rating of 300 mA at 125 kVp. Exposure kilovoltage must be at least the minimum as recommended by the manufacturer for chest radiography.

(f) An electric power supply must be used that complies with the voltage, current, and regulation specified by the manufacturer of the machine. If the manufacturer or installer of the radiographic equipment recommends equipment for control of electrical power fluctuations, such equipment must be used as recommended.

(g) Radiographs must be obtained only with equipment having a beam-limiting device that does not cause large unexposed boundaries. The beam limiting device must provide rectangular collimation. Electronic post-image acquisition ''shutters'' available on some CR and DR systems that limit the size of the final image and that simulate collimator limits must not be used. The use and effect of the beam limiting device must be discernible on the resulting image.

(h) Radiographic technique charts must be used that are developed specifically for the X-ray system and detector combinations used, indicating exposure parameters by anatomic measurements.

(1) If automated exposure control devices are used, performance must be documented by a medical physicist utilizing the image capture systems and exposure parameters used at the facility for chest imaging, using methods recommended in AAPM Report No. 74, pages 17–18, and in AAPM Report No. 14, pages 61–62 (incorporated by reference, see § 37.10).

(2) Exposure parameters achieved during the evaluation of the automated exposure system must be recorded by the medical physicist in a written report or electronic file that is stored at the facility and available for inspection by NIOSH for a minimum of 5 years after the miner's examination.

(i) To ensure high quality digital chest radiographs:

(1) The maximum exposure time must not exceed 50 milliseconds except for subjects with chests over 28 centimeters posteroanterior, for whom the exposure time must not exceed 100 milliseconds;

(2) The distance from source or focal spot to detector must be at least 70 inches (or 180 centimeters if measured in centimeters);

(3) The exposure setting for chest images must be within the range of 100–300 equivalent exposure speeds and must comply with ACR Practice Guideline for Diagnostic Reference Levels in Medical X-Ray Imaging, Section V—Diagnostic Reference Levels For Imaging With Ionizing Radiation and Section VII—Radiation Safety in Imaging (incorporated by reference, see § 37.10). Radiation exposures should be periodically measured and patient radiation doses estimated by the medical physicist to assure doses are as low as reasonably achievable.

(4) Digital radiography system performance, including resolution, modulation transfer function (MTF), image signal-to-noise and detective quantum efficiency must be evaluated and judged acceptable by a qualified medical physicist using the specifications in AAPM Report No. 93, pages 1–68 (incorporated by reference, see § 37.10). Image management software and settings for routine chest

imaging must be used, including routine amplification of digital detector signal as well as standard image post-processing functions. Image or edge enhancement software functions must not be employed unless they are integral to the digital radiography system (not elective); in such cases, only the minimum image enhancement permitted by the system may be employed.

(5)(i) The image object, transmission and associated data storage, file format, and transmission of associated information must conform to the following components of the Digital Imaging and Communications in Medicine (DICOM) standard (incorporated by reference, see § 37.10):

(A) DICOM Standard PS 3.3–2011, Annex A—Composite Information Object Definitions, sections: Computed Radiography Image Information Object Definition; Digital X-Ray Image Information Object Definition; X-Ray Radiation Dose SR Information Object Definition; and Grayscale Softcopy Presentation State Information Object Definition.

(B) DICOM Standard PS3.4–2011, Annex B—Storage Service Class; Annex N—Softcopy Presentation State Storage SOP Classes; Annex O—Structured Reporting Storage SOP Classes.

(C) DICOM Standard PS 3.10–2011.

(D) DICOM Standard PS 3.11–2011

(E) DICOM Standard PS 3.12–2011.

(F) DICOM Standard PS 3.14–2011.

(G) DICOM Standard PS 3.16–2011.

(ii) Identification of each miner, chest image, facility, date and time of the examination must be encoded within the image information object, according to DICOM Standard PS 3.3–2011, Information Object Definitions, for the DICOM ''DX'' object. If data compression is performed, it must be lossless. Exposure parameters (kVp, mA, time, beam filtration, scatter reduction, radiation exposure) must be stored in the DX information object.

(iii) Exposure parameters as defined in the DICOM Standard PS 3.16–2011 must additionally be provided, when such parameters are available from the facility digital image acquisition system or recorded in a written report or electronic file and either transmitted to NIOSH or stored at the facility and available for inspection by NIOSH for 5 years after the examination.

(6) A specific test object may be required on each radiograph for an objective evaluation of image quality at the discretion of NIOSH.

(7) CR imaging plates must be inspected at least once a month and cleaned when necessary by the method recommended by the manufacturer;

(8) A grid or air gap for reducing scattered radiation must be used; grids must not be used that cause Moiré interference patterns in either horizontal or vertical images.

(9) The geometry of the radiographic system must ensure that the central axis (ray) of the primary beam is perpendicular to the plane of the CR imaging plate, or DR detector and is correctly aligned to the grid;

(10) Radiographs must not be made when the environmental temperatures and humidity in the facility are outside the manufacturer's recommended range of the CR and DR equipment to be used.

(11) Before the miner is advised that the examination is concluded, the radiograph must be processed and inspected and accepted for quality by the physician, or if the physician is not available, acceptance may be made by the radiologic technologist. In a case of a substandard radiograph, another must be made immediately. Unacceptable digital image files must be fully deleted immediately or rendered permanently inaccessible in the event that permanent deletion is not technologically feasible.

(j) The following are not authorized for use under this section:

(1) Digital images derived from film screen chest radiographs (*e.g.,* by scanning or digital photography); or

(2) Images that were acquired using digital systems and then printed on transparencies for back-lighted display (*e.g.,* using tradition view boxes).

■ 15. Revise newly designated § 37.43 to read as follows:

**§ 37.43 Approval of radiographic facilities that use film.**

(a) Facilities become eligible to participate in this program by demonstrating their ability to make high quality diagnostic chest radiographs by submitting to NIOSH six or more sample chest radiographs made and processed at the applicant facility and which are of acceptable quality to one or more individuals selected by NIOSH from the panel of B Readers. Applicants must also submit a radiograph of a plastic step-wedge object [1] or other test object (available on loan from NIOSH) that was made and processed at the same time with the same technique as the radiographs submitted and processed at the facility for which approval is sought. At least one chest radiograph and one test object radiograph must have been made with each unit to be used hereunder. All radiographs must have been made within 15 calendar days prior to submission and must be marked to identify the facility where each radiograph was made, the X-ray machine used, and the date each was made. The chest radiographs will be returned and may be the same radiographs submitted pursuant to § 37.50.

(b) Each radiographic facility submitting chest radiographs for approval under this section must complete and include an X-ray Facility Certification Document (Form CDC/NIOSH (M) 2.11) describing each X-ray unit to be used to make chest radiographs under the Act. The form must include:

(1) The date of the last radiation safety inspection by an appropriate licensing agency or, if no such agency exists, by a qualified expert as defined in NCRP Report No. 102 (incorporated by reference, see § 37.10);

(2) The deficiencies found;

(3) A statement that all the deficiencies have been corrected; and

(4) The date of acquisition of the X-ray unit. To be acceptable, the radiation safety inspection must have been made within 1 year preceding the date of application.

(c) Radiographs submitted with applications for approval under this section will be evaluated by one or more individuals selected by NIOSH from the panel of B Readers or by a qualified medical physicist or consultant. Applicants will be advised of any reasons for denial of approval.

(d) NIOSH or its representatives may make a physical inspection of the applicant's facility and any approved radiographic facility at any reasonable time to determine if the requirements of this subpart are being met.

(e) NIOSH may require a facility periodically to resubmit radiographs of a test object, sample radiographs, or a Facility Certification Document for quality control purposes. Approvals granted hereunder may be suspended or withdrawn by notice in writing when in the opinion of NIOSH the quality of radiographs or information submitted under this section warrants such action. A copy of a notice withdrawing approval will be sent to each operator who has listed the facility as its facility for giving chest radiographs and must be displayed on the mine bulletin board adjacent to the operator's approved plan. The approved plan will be reevaluated by NIOSH in light of this change.

(f) A formal written quality assurance program must be established at each facility addressing radiation exposures, equipment maintenance, and image

[1] The plastic step-wedge object is described in Trout ED, Kelley JP [1973]. A phantom for the evaluation of techniques and equipment used for roentgenography of the chest. Amer J Roentgenol 117(4):771–776.

quality, and must conform to the standards in AAPM Report No. 74, pages 1–19, 47–53, and 56 (incorporated by reference, see § 37.10).

(g) In conducting medical examinations pursuant to this Part, physicians and radiographic facilities must maintain the results and analysis of these examinations (including any hard copies or digital files containing individual data, interpretations, and images) consistent with applicable statutes and regulations governing the treatment of individually identifiable health information, including, as applicable, the HIPAA Privacy and Security Rules (45 CFR part 160 and subparts A, C, and E of part 164).

■ 16. Add § 37.44 to read as follows:

**§ 37.44 Approval of radiographic facilities that use digital radiography systems.**

(a) *Applications for facility approval.* (1) Facilities seeking approval must demonstrate the ability to make high quality digital chest radiographs by submitting to NIOSH digital radiographic image files of a test object (*e.g.,* a plastic step-wedge or chest phantom which will be provided on loan from NIOSH) as well as digital radiographic image files from six or more sample chest radiographs that are of acceptable quality to one or more individuals selected by NIOSH from the panel of B Readers and a qualified medical physicist or consultant, both designated by NIOSH. Image files must be submitted on standard portable media (compact or digital video disc) and formatted to meet specifications of the Digital Imaging and Communications in Medicine (DICOM) standard PS 3.12–2011 (incorporated by reference, see § 37.10). Applicants will be advised of any reasons for denial of approval. All submitted images must be made within 60 days prior to the date of application using the same technique, equipment, and software as will be used by the facility under the requested approval. At least six chest radiographs and one test object radiograph must have been made with each digital radiographic unit to be used by the facility under the requested approval. The corresponding radiographic image files must be submitted on standard portable media (compact or digital video disc) and formatted to meet specifications of the current DICOM Standard PS 3.12–2011. Documentation must include the following: the identity of the facility where each radiograph was made; the X-ray machine used; and the model, version, and production date of each image acquisition software program and hardware component. The submitted sample digital chest image files must include at least two taken with the detector in the vertical position and two in the horizontal position where the imaging system permits these positions, and at least two chest images must be from persons within the highest quartile of chest diameters (28 cm or greater).

(2) Each radiographic facility submitting chest radiographic image files for approval under this section must complete and include an X-ray Facility Certification Document (Form CDC/NIOSH (M)2.11) describing each X-ray system component, and the models and versions of image acquisition hardware and software to be used to make digital chest radiographs under the Act. The form must include:

(i) A copy of a dated report signed by a qualified medical physicist, documenting the evaluation of radiation safety and performance characteristics specified in this section for each digital radiography system;

(ii) A copy of the report of the most recent radiation safety inspection by a licensing agency, if such agency exists;

(iii) A listing of all deficiencies noted in either of the reports;

(iv) A statement that all the listed deficiencies have been corrected; and

(v) The names and relevant training and experience of facility personnel described in paragraphs (b), (d), and (e) of this section. To be acceptable, the report by the medical physicist and radiation safety inspection specified in this paragraph must have been made within 1 year prior to the date of submission of the application.

(b) Facilities must maintain ongoing licensure and certification under relevant local, State, and Federal laws and regulations for all digital equipment and related processes covered under this part.

(c) NIOSH or its representatives may make a physical inspection of the applicant's facility and any approved radiographic facility at any reasonable time to determine if the requirements of this subpart are being met.

(d) NIOSH may periodically require a facility to resubmit radiographic image files of the NIOSH-supplied test object (*e.g.,* step-wedge or chest phantom), sample radiographs, or a Facility Certification Document. Approvals granted to facilities under this section may be suspended or withdrawn by notice in writing when, in the opinion of NIOSH, deficiencies in the quality of radiographs or information submitted under this section warrant such action. A copy of a notice suspending or withdrawing approval will be sent to each operator that has listed the facility for its use under this Part and must be displayed on the mine bulletin board adjacent to the operator's approved plan. The operator's approved plan may be reevaluated by NIOSH in response to such suspension or withdrawal.

(e) A qualified medical physicist who is familiar with the facility hardware and software systems for image acquisition, manipulation, display, and storage, must be on site or available as a consultant. The physicist must be trained in evaluating the performance of radiographic equipment and facility quality assurance programs, and must be licensed/approved by a State or Territory of the United States or certified by a competent U.S. national board.

(f) Facilities must document that testing performed by a qualified medical physicist has verified that performance of each image acquisition system for which approval is sought met initial specifications and standards of the equipment manufacturer and performance testing as required under paragraphs (b), (e), and (g) of this section.

(g) A formal written quality assurance program must be established at each facility addressing radiation exposures, equipment maintenance, and image quality, and must conform to the standards in AAPM Report No. 74, pages 1–19, 47–53, and 56, and AAPM Report No. 116, sections VIII, IX, and X (incorporated by reference, see § 37.10).

(1) Applications for facility approval must include a comprehensive assessment by a qualified medical physicist within 12 months prior to application addressing the performance of X-ray generators, automatic exposure controls, and image capture systems. The assessment must comply with the following guidelines: AAPM Report No. 93, pages 1–68; AAPM Report No. 74, pages 6–11; and AAPM Report No. 14, pages 1–96 (incorporated by reference, see § 37.10).

(2) Radiographic technique charts must be used that are developed specifically for the X-ray system and detector combinations used, indicating exposure parameters by anatomic measurements. If automated exposure control devices are used, calibration for chest imaging must be documented using the actual voltages and image capture systems. Radiological exposures resulting from at least ten (randomly selected) digital chest images obtained at the facility must be monitored at least quarterly to detect and correct potential dose creep, using methods specified in AAPM Report No. 31 (incorporated by reference, see § 37.10). Radiation exposures must be compared to a professionally accepted reference level

published in the American College of Radiology (ACR) Practice Guideline for Diagnostic Reference Levels in Medical X-Ray Imaging, pages 1–6 (incorporated by reference, see § 37.10). In addition, the medical physicist must submit an annual assessment of measured or estimated radiation exposures, with specific recommended actions to minimize exposures during examinations performed under this part.

(3) For each digital radiography device and system, performance must be monitored annually in accordance with the recommendations of AAPM Report No. 93 (incorporated by reference, see § 37.10), except for the testing specifically excluded below. Documentation must be maintained on the completion of quality assurance testing, including the reproducibility of X-ray output, linearity and reproducibility of mA settings, accuracy and reproducibility of timer and kVp settings, accuracy of source-to-detector distance, and X-ray field focal spot size, selection, beam quality, congruence and collimation. For DR systems, the following tests listed in AAPM Report No. 93 are not required under this part:

(i) Section 8.4.5: Laser beam function
(ii) Section 8.4.9: Erasure Thoroughness
(iii) Section 8.4.11: Imaging Plate (IP) Throughput

(4) Facilities must maintain documentation, available for inspection by NIOSH for 5 years, of the ongoing implementation of policies and procedures for monitoring and evaluating the effective management, safety, and proper performance of chest image acquisition, digitization, processing, compression, transmission, display, archiving, and retrieval functions of digital radiography devices and systems.

(h) In conducting medical examinations pursuant to this Part, physicians and radiographic facilities must maintain the results and analysis of these examinations (including any hard copies or digital files containing individual data, interpretations, and images) consistent with applicable statutes and regulations governing the treatment of individually identifiable health information, including, as applicable, the HIPAA Privacy and Security Rules (45 CFR Part 160 and Subparts A, C, and E of Part 164).

■ 17. Revise newly designated § 37.45 to read as follows:

**§ 37.45 Protection against radiation emitted by radiographic equipment.**

Except as otherwise specified in § 37.41 and § 37.42, radiographic equipment, its use and the facilities (including mobile facilities) in which such equipment is used, must conform to applicable State or Territorial and Federal regulations. Where no applicable regulations exist, radiographic equipment, its use and the facilities (including mobile facilities) in which such equipment is used must conform to the recommendations in NCRP Report No. 102, NCRP Report No. 105, and NCRP Report No. 147 (incorporated by reference, see § 37.10).

■ 18. Revise the undesignated center heading and § 37.50 to read as follows:

## Specifications for Interpretation, Classification, and Submission of Chest Radiographs

**§ 37.50 Interpreting and classifying chest radiographs—film.**

(a) Chest radiographs must be interpreted and classified in accordance with the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (incorporated by reference, see § 37.10). Chest radiograph interpretations and classifications must be recorded on a paper or electronic Roentgenographic Interpretation Form (Form CDC/NIOSH (M)2.8).

(b) Radiographs must be interpreted and classified only by a physician who reads chest radiographs in the normal course of practice and who has demonstrated proficiency in classifying the pneumoconioses in accordance with § 37.52.

(1) Initial clinical interpretations and notification of findings other than pneumoconiosis under § 37.50(a) must be provided by a qualified physician who has all required licensure and privileges, and interprets chest radiographs in the normal course of practice.

(2) [Reserved]

(c) All interpreters, whenever interpreting chest radiographs made under the Act, must have immediately available for reference a complete set of the standard radiographs for use with the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (incorporated by reference, see § 37.10).

(d) In all view boxes used for making interpretations:

(1) Fluorescent lamps must be simultaneously replaced with new lamps at 6-month intervals;

(2) All the fluorescent lamps in a panel of boxes must have identical manufacturer's ratings as to intensity and color;

(3) The glass, internal reflective surfaces, and the lamps must be kept clean;

(4) The unit must be so situated as to minimize front surface glare.

**§§ 37.51 through 37.53 [Redesignated as §§ 37.52 through 37.54]**

■ 19a. Redesignate § 37.51 through § 37.53 as § 37.52 through § 37.54 respectively.

■ 19b. Add new § 37.51 to read as follows:

**§ 37.51 Interpreting and classifying chest radiographs—digital radiography systems.**

(a) For each chest radiograph obtained at an approved facility using a digital radiography system, a qualified and licensed physician who reads chest radiographs in the normal course of practice must provide an initial clinical interpretation and notification, as specified in § 37.54, of any significant abnormal findings other than pneumoconiosis.

(b) Chest radiographs must be classified for pneumoconiosis by physician readers who have demonstrated ongoing proficiency, as specified in § 37.52(b), in classifying the pneumoconioses in a manner consistent with the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (incorporated by reference, see § 37.10). Chest radiograph interpretations and classifications must be recorded on a paper or electronic Roentgenographic Interpretation Form (Form CDC/NIOSH (M)2.8).

(c) All interpreters, whenever classifying digitally-acquired chest radiographs made under the Act, must have immediately available for reference a complete set of NIOSH-approved standard digital chest radiographic images provided for use with the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (incorporated by reference, see § 37.10). Only NIOSH-approved standard digital images may be used for classifying digital chest images for pneumoconiosis. Modification of the appearance of the standard images using software tools is not permitted.

(d) Viewing systems should enable readers to display the coal miner's chest image at the full resolution of the image acquisition system, side-by-side with the selected NIOSH-approved standard images for comparison.

(1)(i) Image display devices must be flat panel monitors displaying at least 3 MP at 10 bit depth. Image displays and associated graphics cards must meet the calibration and other specifications of the Digital Imaging and Communications in Medicine (DICOM)

standard PS 3.14–2011 (incorporated by reference, see § 37.10).

(ii) Image displays and associated graphics cards must not deviate by more than 10 percent from the grayscale standard display function (GSDF) when assessed according to the AAPM On-Line Report No. 03, pages 1–146 (incorporated by reference, see § 37.10).

(2) Display system luminance (maximum and ratio), relative noise, linearity, modulation transfer function (MTF), frequency, and glare should meet or exceed recommendations listed in AAPM On-Line Report No. 03, pages 1–146 (incorporated by reference, see § 37.10). Viewing displays must have a maximum luminance of at least 171 cd/m$^2$, a ratio of maximum luminance to minimum luminance of at least 250, and a glare ratio greater than 400. The contribution of ambient light reflected from the display surface, after light sources have been minimized, must be included in luminance measurements.

(3) Displays must be situated so as to minimize front surface glare. Readers must minimize reflected light from ambient sources during the performance of classifications.

(4) Measurements of the width and length of pleural shadows and the diameter of opacities must be taken using calibrated software measuring tools. If permitted by the viewing software, a record must be made of the presentation state(s), including any noise reduction and edge enhancement or restoration functions that were used in performing the classification, including any annotations and measurements.

(e) Quality control procedures for devices used to display chest images for classification must comply with the recommendations of the American Association of Physicists in Medicine AAPM On-Line Report No. 03, pages 1–146 (incorporated by reference, see § 37.10).

(1) If automatic quality assurance systems are used, visual inspection must be performed using one or more test patterns recommended by the medical physicist every 6 months, or more frequently, to check for defects that automatic systems may not detect.

(2) [Reserved]

(f) Classification of CR and DR digitally-acquired chest radiographs under this Part must be performed based on the viewing of images displayed as soft copies using the viewing workstations specified in this section. Classification of radiographs must not be based on the viewing of hard copy printed transparencies of images that were digitally-acquired.

(g) The classification of chest radiographs based on digitized copies of chest radiographs that were originally acquired using film-screen techniques is not permissible under this part.

■ 20. Revise newly designated § 37.52 to read as follows:

**§ 37.52 Proficiency in the use of systems for classifying the pneumoconioses.**

(a) First or A Readers:

(1) Approval as an A Reader must continue if established prior to October 15, 2012.

(2) Physicians who desire to be A Readers must demonstrate their proficiency in classifying the pneumoconioses by either:

(i) Submitting to NIOSH from the physician's files six sample chest radiographs which are considered properly classified by one or more individuals selected by NIOSH from the panel of B Readers. The six radiographs must consist of two without pneumoconiosis, two with simple pneumoconiosis, and two with complicated pneumoconiosis (these may be the same radiographs submitted for facility approval pursuant to § 37.43 and § 37.44). The films will be returned to the physician. The interpretations must be on the Roentgenographic Interpretation Form (Form CDC/NIOSH (M)2.8), or;

(ii) Satisfactory completion, since June 11, 1970, of a course approved by NIOSH on the ILO International Classification of Radiographs of Pneumoconioses.

(b) Final or B Readers:

(1) Approval as a B Reader established prior to October 1, 1976, is hereby terminated.

(2) Proficiency in evaluating chest radiographs for radiographic quality and in the use of the ILO Classification for interpreting chest radiographs for pneumoconiosis and other diseases must be demonstrated by those physicians who desire to be B Readers by taking and passing a specially-designed proficiency examination given on behalf of or by NIOSH at a time and place specified by NIOSH. Each physician who desires to take the digital version of the examination will be provided a complete set of the current NIOSH-approved standard reference digital radiographs. Physicians who qualify under this provision need not be qualified under paragraph (a) of this section.

(c) Physicians who wish to participate in the program must familiarize themselves with the necessary components for attainment of reliable classification of chest radiographs for the pneumoconioses [2] and apply using an Interpreting Physician Certification Document (Form CDC/NIOSH (M)2.12).

■ 21. Revise newly designated § 37.53 to read as follows:

**§ 37.53 Method of obtaining definitive interpretations.**

(a) All chest radiographs which are first interpreted by an A or B Reader will be submitted by NIOSH to a B Reader qualified as described in § 37.52. If there is agreement between the two interpretations, as described in paragraph (b) of this section, the result will be considered final and reported to MSHA for transmittal to the miner. When agreement is lacking, NIOSH must obtain a third interpretation from the panel of B Readers. If any two of the three interpretations demonstrate agreement, the result must be considered the final determination. If agreement is lacking among the three interpretations, NIOSH will obtain independent classifications from two additional B Readers selected from the panel, and the final determination will be the median category derived from the total of five classifications.

(b) Two interpretations must be considered to be in agreement when they are derived from complete classifications recorded using approved paper or electronic versions of the Roentgenographic Interpretation Form (Form CDC/NIOSH (M)2.8) and received by NIOSH, and both find either stage A, B, or C complicated pneumoconiosis, or, for simple pneumoconiosis, are both in the same major category or (with one exception noted below) are within one minor category (ILO Classification 12-point scale) of each other. In the last situation, the higher of the two interpretations must be reported. The only exception to the one minor category principle is a reading sequence of 0/1, 1/0, or 1/0, 0/1, which is not considered agreement.

■ 22. Revise newly designated § 37.54 to read as follows:

**§ 37.54 Notification of abnormal radiographic findings.**

(a) Findings of, or findings suggesting, abnormality of cardiac shape or size, tuberculosis, lung cancer, or any other significant abnormal findings other than pneumoconiosis must be communicated by the first physician to interpret the radiograph to the miner indicated on the Miner Identification Document or to the miner's designated physician. A notice

[2] NIOSH Safety and Health Topic. Chest Radiography: Radiographic Classification [*http://www.cdc.gov/niosh/topics/chestradiography/radiographic-classification.html*]. Date accessed: June 27, 2012.

of the communication must be submitted to NIOSH. When significant abnormal findings are reported, NIOSH will also notify the miner to contact his or her physician.

(b) In addition, when NIOSH has more than one radiograph of a miner in its files and the most recent examination was found by the first physician to interpret the radiograph or subsequently by NIOSH B Readers to show an abnormality of cardiac shape or size, tuberculosis, cancer, complicated pneumoconiosis, and any other significant abnormal findings, NIOSH will arrange for a licensed physician to compare the most recent image and interpretation to older images and NIOSH will inform the miner of any significant changes or progression of disease or other findings.

(c) All final findings regarding pneumoconiosis will be sent to the miner by MSHA in accordance with section 203 of the Act (see 30 CFR part 90). Positive findings with regard to pneumoconiosis will be reported to the miner or to the miner's designated physician by NIOSH.

(d) NIOSH will make every reasonable effort to process the findings described in paragraph (c) of this section within 60 days of receipt of the information described in § 37.60 in a complete and acceptable form. The information forwarded to MSHA will be in a form intended to facilitate prompt dispatch of the findings to the miner. The results of an examination made of a miner may not be processed by NIOSH if the examination was made within 6 months of the date of a previous acceptable examination.

■ 23. Amend § 37.60 by revising paragraphs (a) through (d) to read as follows:

**§ 37.60 Submitting required chest radiographs and miner identification documents.**

(a) Each chest radiograph required to be made under this subpart, together with the completed Roentgenographic Interpretation Form and the completed Miner Identification Document, must be submitted together for each miner to NIOSH within 14 calendar days after the radiographic examination is given and become the property of NIOSH.

(1) When the radiograph is digital, the image file for each radiograph, together with either hard copy or electronic versions of the completed Roentgenographic Interpretation Form and the completed Miner Identification Document, must be submitted to NIOSH using the software and format specified by NIOSH either using portable electronic media, or a secure electronic file transfer within 14 calendar days after the radiographic examination. NIOSH will notify the submitting facility when it has received the image files and forms from the examination. After this notification, the facility will permanently delete, or if this is not technologically feasible for the imaging system used, render permanently inaccessible all files and forms from its electronic and physical files.

(2) [Reserved]

(b) If NIOSH deems any submission under paragraph (a) of this section inadequate, it will notify the operator of the deficiency. The operator must promptly make appropriate arrangements for the necessary reexamination.

(c) Failure to comply with paragraph (a) or (b) of this section will be cause to revoke approval of a plan or any other approval as may be appropriate. An approval that has been revoked may be reinstated at the discretion of NIOSH after it receives satisfactory assurances and evidence that all deficiencies have been corrected and that effective controls have been instituted to prevent a recurrence.

(d) Chest radiographs and other required documents must be submitted only for miners.

* * * * *

■ 24. Revise § 37.70 to read as follows:

**§ 37.70 Review of interpretations.**

(a) Any miner who believes the interpretation for pneumoconiosis reported to him or her by MSHA is in error may file a written request with NIOSH that his or her radiograph be reevaluated. If the interpretation was based on agreement between an A Reader and a B Reader, NIOSH will obtain one or more additional interpretations by B Readers as necessary to obtain agreement in accord with § 37.53, and MSHA must report the results to the miner together with notification from MSHA of any rights which may accrue to the miner in accordance with § 37.7. If the reported interpretation was based on agreement between two (or more) B Readers, the reading will be accepted as conclusive and the miner must be so informed by MSHA.

(b) Any operator who is directed by MSHA to transfer a miner to a less dusty atmosphere based on the most recent examination made subsequent to August 1, 1978, may file a written request with NIOSH to review its findings. The standards set forth in paragraph (a) of this section apply and the operator and miner will be notified by MSHA whether the miner is entitled to the option to transfer.

■ 25. Revise § 37.80 to read as follows:

**§ 37.80 Availability of records for radiographs.**

(a) Medical information and radiographs on miners will be released by NIOSH only with the written consent from the miner, or if the miner is deceased, written consent from the miner's widow or widower, next of kin, or legal representative.

(b) To the extent authorized, radiographs will be made available for examination only at NIOSH.

■ 26. Amend § 37.201 by revising paragraph (d) to read as follows:

**§ 37.201 Definitions.**

(d) *NIOSH* means the National Institute for Occupational Safety and Health, United States Public Health Service, Department of Health and Human Services, Post Office Box 4258, Morgantown, WV 26504.

■ 27. Amend § 37.202 by revising paragraphs (a)(2) and (b) to read as follows:

**§ 37.202 Payment for autopsy.**

(a) * * *

(2) Submits the findings and other materials to NIOSH in accordance with this subpart within 180 calendar days after having performed the autopsy; and

* * * * *

(b) The Secretary will pay to any pathologist entitled to payment under paragraph (a) of this section and additional $10 if the pathologist can obtain and submits a good quality copy or original of a chest radiograph (posteroanterior view) made of the subject of the autopsy within 5 years prior to his death together with a copy of any interpretation made.

■ 28. Amend § 37.204 by revising the introductory text and paragraph (b), and removing Figure 1, to read as follows:

**§ 37.204 Procedure for obtaining payment.**

Every claim for payment under this subpart must be submitted to NIOSH and must include:

* * * * *

(b) Completed PHS Consent, Release and History form (Form CDC/NIOSH (M)2.6). This form may be completed with the assistance of the pathologist, attending physician, family physician, or any other responsible person who can provide reliable information.

* * * * *

Dated: August 28, 2012.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2012–22253 Filed 9–12–12; 8:45 am]

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Part III

## Department of Defense

## General Services Administration

## National Aeronautics and Space Administration

48 CFR Chapter 1

Federal Acquisition Regulations; Final Rules

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Chapter 1**

**[Docket FAR 2012–0080, Sequence 6]**

## Federal Acquisition Regulation; Federal Acquisition Circular 2005–61; Introduction

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Summary presentation of final rules.

**SUMMARY:** This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2005–61. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.regulations.gov.*

**DATES:** For effective dates and comment dates see separate documents, which follow.

**FOR FURTHER INFORMATION CONTACT:** The analyst whose name appears in the table below in relation to each FAR case. Please cite FAC 2005–61 and the specific FAR case numbers. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–61

| Item | Subject | FAR Case | Analyst |
|---|---|---|---|
| I | United States—Korea Free Trade Agreement | 2012–004 | Davis. |
| II | Delete Outdated FAR Reference Lague to the DoD Industrial Preparedness Program | 2012–026 | Lague. |
| III | NAICS and Size Standards | 2012–021 | Morgan. |
| IV | Bid Protest and Appeal Authorities | 2012–008 | Loeb. |
| V | Technical Amendments. | | |

**SUPPLEMENTARY INFORMATION:** Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–61 amends the FAR as specified below:

### Item I—United States-Korea Free Trade Agreement (FAR Case 2012–004)

This final rule adopts without change the interim rule published in the **Federal Register** on March 7, 2012 (77 FR 13952), to implement the United States-Korea Free Trade Agreement. The Republic of Korea is already party to the World Trade Organization Government Procurement Agreement (WTO GPA). The Korea Free Trade Agreement now covers acquisition of supplies and services between $100,000 and the current WTO GPA threshold of $202,000. This final rule will not have a significant economic impact on a substantial number of small entities.

### Item II—Delete Outdated FAR Reference to the DoD Industrial Preparedness Program (FAR Case 2012–026)

This final rule amends the FAR to delete outdated references to the ''DoD Industrial Preparedness Program'', which is no longer in existence. There is no impact to the Government or small business because this program was discontinued in 1992.

### Item III—NAICS and Size Standards (FAR Case 2012–021)

This final rule amends the FAR to clarify that new North American Industry Classification System codes are not available for use in Federal contracting until the Small Business Administration publishes corresponding industry size standards. Published size standards are available on the SBA's Web site and at 13 CFR 121.201. The clarifying language is provided for informational purposes and only addresses internal Government policies and procedures. This rule will not have a significant impact on the Government, and does not impose additional requirements on small businesses.

### Item IV—Bid Protest and Appeal Authorities (FAR Case 2012–008)

This final rule amends FAR part 33 to note that there are other Federal-court related protest authorities and dispute-appeal authorities that are not covered by FAR part 33. This rule also provides contracting officers with appropriate references to their office of legal counsel and the Web site for the rules of the U.S. Court of Federal Claims. This is a final rule because it only impacts the Federal Government's internal operating procedures.

### Item V—Technical Amendments

Editorial changes are made at FAR 7.403 and 15.404–1.

Dated: September 7, 2012.

Laura Auletta,

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Federal Acquisition Circular (FAC) 2005–61 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005–61 is effective September 13, 2012, except for Item II and III which are effective October 15, 2012.

Dated: September 5, 2012.

**Amy G. Williams,**

*Acting Deputy Director, Defense, Procurement and Acquisition Policy.*

Dated: September 5, 2012.

**Joseph A. Neurauter,**

*Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.*

Dated: September 5, 2012.

**William P. McNally,**

*Assistant Administrator for Procurement, National Aeronautics and Space Administration.*

[FR Doc. 2012–22572 Filed 9–12–12; 8:45 am]

BILLING CODE 6820–EP–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 4, 25 and 52**

**[FAC 2005–61; FAR Case 2012–004; Item I; Docket 2012–0004, Sequence 1]**

**RIN 9000–AM18**

## Federal Acquisition Regulation; United States-Korea Free Trade Agreement

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are adopting as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the United States-Korea Free Trade Agreement. The Republic of Korea is already party to the World Trade Organization Government Procurement Agreement, but this trade agreement implements a lower procurement threshold.

**DATES:** *Effective Date:* September 13, 2012.

**FOR FURTHER INFORMATION CONTACT:** Ms. Cecelia L. Davis, Procurement Analyst, at 202–219–0202 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–61, FAR Case 2012–004.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** on March 7, 2012 (77 FR 13952), to implement the Free Trade Agreement with the Republic of Korea, which took effect on March 15, 2012. The comment period closed on May 7, 2012. Three respondents submitted comments on the interim rule.

The interim rule added the Republic of Korea to the definition of ''Free Trade Agreement country'' in multiple locations in the FAR. The Republic of Korea was already listed as a designated country because it is party to the WTO GPA. The excluded services for the Korea FTA are the same as for the WTO GPA. By implementation of this Korea FTA, eligible goods and services from Korea are now covered when valued at or above $100,000, rather than at or above the WTO GPA threshold of $202,000. The threshold for the Korea FTA for construction is the same as the threshold for the WTO GPA for construction.

### II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the comments in the development of the final rule. A discussion of the comments is provided as follows:

*A. Summary of Significant Changes*

The Councils have adopted the interim rule as final without change.

*B. Analysis of Public Comments*

1. Impact on U.S. Businesses and Economy

*Comment:* One respondent expressed agreement that the United States has the responsibility to do business with Free Trade Agreement countries, but was concerned that lowering the trade agreements threshold from $202,000 to $100,000 for goods and services from the Republic of Korea will damage the small American business owners' chances to compete, because of lower minimum wage in Korea. The respondent was also concerned that lowering the threshold will increase the national deficit. This respondent also stated that the rule will benefit U.S. big business owners to the detriment of small American business owners.

*Response:* DoD, GSA, and NASA issued this final rule because it implements a statute (United States-Korea Free Trade Agreement Implementation Act, Pub. L. 112–41, enacted on October 21, 2011). The Councils do not have discretion to set trade agreement thresholds.

However, as discussed in the section on Regulatory Flexibility, the lowering of the threshold from $202,000 to $100,0000 only applies to the supplies and services covered by the Korea Free Trade Agreement. For DoD, it only covers the non-defense items listed at Defense Federal Acquisition Regulations System *(DFARS) 225.401–70.* Acquisitions that are set aside or provide other form of preference for small businesses are exempt from the Korea Free Trade Agreement. FAR 19.502–2 states that acquisitions that do not exceed $150,000 (except as described in paragraph (1) of the definition of ''simplified acquisition threshold'' at 2.101) are automatically reserved exclusively for small business concerns, unless the contracting officer determines that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns.

2. Implementation in Contracts for Services

*Comment:* One respondent questioned how agencies will implement the Korea Free Trade Agreement for services.

*Response:* This question is not unique to the Korea Free Trade Agreement. The FAR does not provide provisions or clauses for the specific implementation of any trade agreements. The FAR provisions and clauses address only end products, because the provisions and clauses are necessary to—

- Waive the Buy American Act, which only applies to supplies; and
- Implement the purchase restriction at 25.403(c) for acquisitions that exceed the World Trade Organization Government Procurement Agreement (WTO GPA) threshold of $202,000. Below that threshold, there is no purchase restriction on acquisition of services from nondesignated countries.

The requirements of the Free Trade Agreements relate primarily to acquisition procedures that are already specified in the FAR, *e.g.,* FAR 5.203, Publicizing and response time; FAR 5.207, Preparation and transmittal of synopses; and FAR 15.503, Notifications to unsuccessful offerors (see FAR 25.408 for other applicable procedures).

3. Procuring Entities of the Central Level of the U.S. Government

*Comment:* One respondent requested that the final rule should include the list of the entities of the U.S. central level of Government, which have certain obligations with respect to Government procurement of goods and services.

*Response:* The FAR has not included the list of Federal entities subject to any other free trade agreement or the WTO GPA. Therefore, the Councils do not consider inclusion of such a list in the FAR for the Korea Free Trade Agreement to be necessary or appropriate.

4. Past Performance

*Comment:* One respondent expressed appreciation of the specific reference to Article 17.5.2(b) of the Korea Free Trade Agreement in the **Federal Register** preamble to the interim rule. Article 17.5.2.(b) stipulates that an agency shall not impose a condition that, in order for an offeror to be allowed to submit an offer or be awarded a contract, the offeror has been previously awarded one or more contracts by an agency of the United States Government or that the offeror has prior work experience in the United States. The respondent suggested that Office of Management and Budget

guidance on ''best practices for collecting and using current and past performance information'' be updated by adding best practices related to Articles 17.5.2(b) of the Korea Free Trade Agreement.

*Response:* Changes to the Office of Management and Budget guidance are outside the scope of this rule. The Councils note, however, that FAR 15.305(a)(2)(iv) already requires that, in the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because Korea is already a designated country under the WTO GPA. Although the rule opens up Government procurement to the goods and services of Korea at or above the threshold of $100,000, the Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions that are set aside or provide other form of preference for small businesses are exempt from coverage of the agreement. FAR 19.502–2 states that acquisitions that do not exceed $150,000 (except as described in paragraph (1) of the definition of ''simplified acquisition threshold'' at 2.101) are automatically reserved exclusively for small business concerns, unless the contracting officer determines that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns.

**V. Paperwork Reduction Act**

The rule affects the certification and information collection requirements in the provisions at FAR 52.212–3 and 52.225–4, 52.225–6, and 52.225–11 currently approved under the Office of Management and Budget Control Numbers 9000–0136, 9000–0130, 9000–0025, and 9000–0141 respectively, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible because it is just a question of which category offered goods from the Republic of Korea would be listed under.

**List of Subjects in 48 CFR Parts 4, 25, and 52**

Government procurement.

Dated: September 7, 2012.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

**Interim Rule Adopted as Final Without Changes**

■ Accordingly, the interim rule amending 48 CFR parts 4, 25, and 52, which was published in the **Federal Register** at 77 FR 13952 on March 7, 2012, is adopted as a final rule without changes.

[FR Doc. 2012–22574 Filed 9–12–12; 8:45 am]

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 6

**[FAC 2005–61; FAR Case 2012–026; Item II; Docket 2012–0026, Sequence 1]**

**RIN 9000–AM35**

## Federal Acquisition Regulation; Delete Outdated FAR Reference to the DoD Industrial Preparedness Program

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to delete references to the obsolete ''DoD Industrial Preparedness Program''.

**DATES:** *Effective Date:* October 15, 2012

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Lague, Procurement Analyst, at 202–694–8149, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–61, FAR Case 2012–026.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD, GSA, and NASA are issuing a final rule to delete references to the obsolete ''DoD Industrial Preparedness Program'' at FAR 6.302–3(b)(iv).

In 1992, DoD rescinded the following regulations for the DoD's Industrial Preparedness Program: DoD Directive 4005.1, Industrial Preparedness Program; and DoD Instruction 4005.3, Industrial Preparedness Planning. References to the program have already been removed from the Defense Federal Acquisition Regulation Supplement (DFARS) (71 FR 39004, July 11, 2006).

**II. Publication of This Final Rule for Public Comment Is Not Required by Statute**

''Publication of proposed regulations'', 41 U.S.C. 1707, is the statute which applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operation procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because it only deletes references to an obsolete program; which has neither a significant effect beyond the internal operation procedures of the agency issuing the policy, regulation, procedure or form, nor has a significant cost or administrative impact on contractors or offerors.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision, and 41 U.S.C. 1707 does not require publication for public comment.

### V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### List of Subject in 48 CFR Part 6

Government procurement.

Dated: September 7, 2012.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 6 as set forth below:

## PART 6—COMPETITION REQUIREMENTS

■ 1. The authority citation for 48 CFR part 6 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

**6.302–3 [Amended]**

■ 2. Amend section 6.302–3 by removing paragraph (b)(1)(iv); and redesignating paragraphs (b)(1)(v) through (b)(1)(vii) as paragraphs (b)(1)(iv) through (b)(1)(vi), respectively.

[FR Doc. 2012–22577 Filed 9–12–12; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 19**

**[FAC 2005–61; FAR Case 2012–021; Item III; Docket 2012–0021, Sequence 1]**

**RIN 9000–AM32**

## Federal Acquisition Regulation; NAICS and Size Standards

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to clarify that new North American Industry Classification System (NAICS) codes are not available for use in Federal contracting until the Small Business Administration (SBA) publishes corresponding industry size standards. Other corresponding changes were also made. Published industry size standards are available on SBA's Web site.

**DATES:** *Effective Date:* October 15, 2012

**FOR FURTHER INFORMATION CONTACT:** Mr. Karlos Morgan, Procurement Analyst, at 202–501–2364 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–61 FAR Case 2012–021.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Every five years the Economic Classification Policy Committee (ECPC), an interagency committee established by the Office of Management and Budget (OMB), reviews NAICS codes for potential revisions to the classification system. The ECPC determines the feasibility and adherence to the underlying principles of NAICS, determines if the proposed changes are acceptable, and makes final recommendations to OMB for additions and changes to the NAICS manual.

The Small Business Administration (SBA) is responsible for developing size standards for each NAICS category on an industry by industry basis. Before a size standard is made available for use by industry, the SBA must solicit comments from the public through the rulemaking process and then coordinate with General Services Administration to update the associated acquisition systems, to reflect industry size standards that have been adopted for new NAICS codes. SBA publishes the corresponding industry size standards on their Web site at *http://www.sba.gov/content/table-small-business-size-standards* and at 13 CFR 121.201.

Contracting officers must identify, in the solicitation or request for proposal, both the NAICS code that best describes the principal nature of the product or service being acquired and the size standard that has been established by the SBA for the NAICS code so that offerors can correctly represent themselves as a large or small business concern. The process used by OMB/ECPC for developing new NAICS codes and the process used by SBA to approve size standards for new NAICS codes, are not performed simultaneously. Therefore, it is important that new language be added to the FAR to clarify that new NAICS codes are not available for use in Federal contracting until SBA publishes corresponding industry size standards.

### II. Discussion and analysis.

This final rule revises—

(1) FAR 19.001, to remove the Uniform Resource Locator (URL) for the NAICS manual, at the end of the definition for ''Industry,'' since this information is already provided in FAR 19.102(b)(1).

(2) FAR 19.102(a) to restructure as paragraphs (a)(1) and (a)(2). FAR 19.102(a)(1) provides the updated URL for the table of small business size standards and matching NAICS codes, and FAR 19.102(a)(2) adds language in the FAR which clarifies that new NAICS codes are not available for use in Federal contracting until SBA publishes corresponding industry size standards on its Web site;

(3) FAR 19.102(b)(1) to provide the updated URL for the NAICS manual;

(4) FAR 19.102(g) to delete this information as it is already provided in FAR 19.102(a)(1); and

(5) FAR 19.303(a), which discusses the determination and selection of NAICS codes, to include a reference to FAR 19.102(a).

### III. Publication of This Final Rule for Public Comment Is Not Required by Statute.

''Publication of proposed regulations'', 41 U.S.C. 1707, is the statute which applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or

modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it does not have a significant effect beyond the internal operating procedures of the Federal Government, nor will it have a significant cost or administrative impact on contractors or offerors. These requirements affect only the internal operating procedures of the Government.

**IV. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**V. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision, and 41 U.S.C. 1707 does not require publication for public comment.

**VI. Paperwork Reduction Act**

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subject in 48 CFR Part 19**

Government procurement.

Dated: September 7, 2012.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 19 as set forth below:

## PART 19—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 19 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

**19.001 [Amended]**

■ 2. Amend section 19.001 by removing from the definition ''Industry'' the words ''(available via the Internet at *http://www.census.gov/epcd/www/naics.html*)''.

■ 3. Amend section 19.102 by—

■ a. Revising paragraph (a);

■ b. Removing from paragraph (b)(1) ''via the Internet at *http://www.census.gov/epcd/www/naics.html*'' and adding ''at *http://www.census.gov/eos/www/naics/*'' in its place; and

■ c. Removing paragraph (g) to read as follows:

**19.102 Size standards.**

(a)(1) The SBA establishes small business size standards on an industry-by-industry basis. (See 13 CFR Part 121). Small business size standards matched to industry NAICS codes are published by the Small Business Administration and are available at *http://www.sba.gov/content/table-small-business-size-standards.*

(2) NAICS codes are updated by the Office of Management and Budget through its Economic Classification Policy Committee every five years. New NAICS codes are not available for use in Federal contracting until the Small Business Administration publishes corresponding industry size standards (see 19.102(a)(1)).

* * * * *

■ 4. Amend section 19.303 by adding a new sentence at the end of paragraph (a) to read as follows:

**19.303 Determining North American Industry Classification System (NAICS) codes and size standards.**

(a) * * * For information on size standards matched to industry NAICS codes, including the use of new NAICS codes, see also 19.102(a).

* * * * *

[FR Doc. 2012–22578 Filed 9–12–12; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Part 33

**[FAC 2005–61; FAR Case 2012–008; Item IV; Docket 2012–0008, Sequence 1]**

**RIN 9000–AM31**

## Federal Acquisition Regulation; Bid Protest and Appeal Authorities

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to address bid protest and appeal authorities.

**DATES:** *Effective Date:* September 13, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Loeb, Procurement Analyst, at 202–501–0650 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FAC 2005–61, FAR Case 2012–008.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Protests are addressed at FAR subpart 33.1, and contract disputes are addressed at FAR subpart 33.2. The Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council determined that FAR part 33 should be amended to (1) note that there are other Federal-court related protest authorities and dispute-appeal authorities that are not covered by FAR part 33 and (2) provide contracting officers with appropriate references to their office of legal counsel and the Web site for the rules of the U.S. Court of Federal Claims. FAR 33.001 and 33.105 are added and FAR 33.101, Definitions, and 33.102, General, are amended by this final rule.

**II. Publication of This Final Rule for Public Comment Is Not Required by Statute**

''Publication of proposed regulations'', 41 U.S.C. 1707, is the statute which applies to the publication of the FAR. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form

(including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only refers to the statutory authorities and provides an internal requirement for contracting officers to contact their designated legal advisor for additional information whenever they become aware of any litigation related to their contracts. The FAR does not address the substance of these authorities. These requirements affect only the internal operating procedures of the Government.

**III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision, and 41 U.S.C. 1707 does not require publication for public comment.

**V. Paperwork Reduction Act**

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

**List of Subject in 48 CFR Part 33**

Government procurement.

Dated: September 7, 2012.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR part 33 as set forth below:

## PART 33—PROTESTS, DISPUTES, AND APPEALS

■ 1. The authority citation for 48 CFR part 33 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. Add section 33.001 to read as follows:

**33.001 General.**

There are other Federal court-related protest authorities and dispute-appeal authorities that are not covered by this part of the FAR, *e.g.,* 28 U.S.C. 1491 for Court of Federal Claims jurisdiction. Contracting officers should contact their designated legal advisor for additional information whenever they become aware of any litigation related to their contracts.

3. Amend section 33.101 by adding, in alphabetical order, the definition ''Protest venue'' to read as follows.

**33.101 Definitions.**

* * * * *

*Protest venue* means protests filed with the agency, the Government Accountability Office, or the U.S. Court of Federal Claims. U.S. District Courts do not have any bid protest jurisdiction.

■ 4. Amend section 33.102 by revising the first sentence of paragraph (a) to read as follows.

**33.102 General.**

(a) Without regard to the protest venue, contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency, the Government Accountability Office (GAO), or the U.S. Court of Federal Claims. * * *

* * * * *

■ 5. Add section 33.105 to read as follows.

**33.105 Protests at the U.S. Court of Federal Claims.**

Procedures for protests at the U.S. Court of Federal Claims are set forth in the rules of the U.S. Court of Federal Claims. The rules may be found at *http://www.uscfc.uscourts.gov/rules-and-forms.*

[FR Doc. 2012–22584 Filed 9–12–12; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 7 and 15

**[FAC 2005–61; Item V; Docket 2012–0079; Sequence 4]**

## Federal Acquisition Regulation; Technical Amendments

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

**DATES:** *Effective Date:* September 13, 2012.

**FOR FURTHER INFORMATION CONTACT:** The Regulatory Secretariat, 1275 First Street NE., 7th Floor, Washington, DC 20417, 202–501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–61, Technical Amendments.

**SUPPLEMENTARY INFORMATION:** In order to update certain elements in 48 CFR parts 7 and 15, this document makes editorial changes to the FAR.

**List of Subjects in 48 CFR Parts 7 and 15.**

Government procurement.

Dated: September 7, 2012.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 7 and 15 as set forth below:

■ 1. The authority citation for 48 CFR parts 7 and 15 is revised to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

## PART 7—ACQUISITION PLANNING

■ 2. Amend section 7.403 by revising paragraph (b) to read as follows:

**7.403 General Services Administration assistance.**

* * * * *

(b) Agencies may request information from the following GSA office: U.S. General Services Administration, Federal Acquisition Service, Office of

Acquisition Management, 2200 Crystal Drive, Room 806, Arlington, VA. 22202. Email: *fasam@gsa.gov.*

## PART 15—CONTRACTING BY NEGOTIATION

### 15.404–1 [Amended]

■ 3. Amend section 15.404–1 by removing from paragraph (a)(7) *''http://www.acq.osd.mil/dpap/cpf/contract_pricing_reference_guides.html''* and adding *''http://www.acq.osd.mil/dpap/cpic/cp/contract_pricing_reference_guides.html''* in its place.

[FR Doc. 2012–22588 Filed 9–12–12; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Chapter 1

**[Docket FAR 2012–0081, Sequence 6]**

## Federal Acquisition Regulation; Federal Acquisition Circular 2005–61; Small Entity Compliance Guide

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2005–61, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2005–61, which precedes this document. These documents are also available via the Internet at *http://www.regulations.gov.*

**DATES:** September 13, 2012.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2005–61 and the FAR case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755.

LIST OF RULES IN FAC 2005–61

| Item | Subject | FAR case | Analyst |
|---|---|---|---|
| I | United States-Korea Free Trade Agreement | 2012–004 | Davis. |
| II | Delete Outdated FAR Reference to the DoD Industrial Preparedness Program | 2012–026 | Lague. |
| III | NAICS and Size Standards | 2012–021 | Morgan. |
| IV | Bid Protest and Appeal Authorities | 2012–008 | Loeb. |
| V | Technical Amendments. | | |

**SUPPLEMENTARY INFORMATION:** Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR cases, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2005–61 amends the FAR as specified below:

### Item I—United States–Korea Free Trade Agreement (FAR Case 2012–004)

This final rule adopts without change the interim rule published in the **Federal Register** on March 7, 2012 (77 FR 13952), to implement the United States–Korea Free Trade Agreement. The Republic of Korea is already party to the World Trade Organization Government Procurement Agreement (WTO GPA). The Korea Free Trade Agreement now covers acquisition of supplies and services between $100,000 and the current WTO GPA threshold of $202,000. This final rule will not have a significant economic impact on a substantial number of small entities.

### Item II—Delete Outdated FAR Reference to the DoD Industrial Preparedness Program (FAR Case 2012–026)

This final rule amends the FAR to delete outdated references to the ''DoD Industrial Preparedness Program'', which is no longer in existence. There is no impact to the Government or small business because this program was discontinued in 1992.

### Item III—NAICS and Size Standards (FAR Case 2012–021)

This final rule amends the FAR to clarify that new North American Industry Classification System codes are not available for use in Federal contracting until the Small Business Administration publishes corresponding industry size standards. Published size standards are available on the SBA's Web site and at 13 CFR 121.201. The clarifying language is provided for informational purposes and only addresses internal Government policies and procedures. This rule will not have a significant impact on the Government, and does not impose additional requirements on small businesses.

### Item IV—Bid Protest and Appeal Authorities (FAR Case 2012–008)

This final rule amends FAR part 33 to note that there are other Federal-court related protest authorities and dispute-appeal authorities that are not covered by FAR part 33. This rule also provides contracting officers with appropriate references to their office of legal counsel and the Web site for the rules of the U.S. Court of Federal Claims. This is a final rule because it only impacts the Federal Government's internal operating procedures.

### Item V—Technical Amendments

Editorial changes are made at FAR 7.403 and 15.404–1.

Dated: September 7, 2012.

**Laura Auletta,**

*Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.*

[FR Doc. 2012–22589 Filed 9–12–12; 8:45 am]

BILLING CODE 6820–EP–P

# FEDERAL REGISTER

Vol. 77 Thursday,

No. 178 September 13, 2012


Part IV

## The President


Proclamation 8860—Patriot Day and National Day of Service and Remembrance, 2012

Executive Order 13626—Gulf Coast Ecosystem Restoration

Memorandum of September 10, 2012—Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

Federal Register
Vol. 77, No. 178
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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8860 of September 10, 2012**

## Patriot Day and National Day of Service and Remembrance, 2012

**By the President of the United States of America**

**A Proclamation**

On September 11, 2001, a bright autumn day was darkened by the worst attack on the American people in our history. Thousands of innocent men, women, and children perished when mighty towers collapsed in the heart of New York City and wreckage burned in Pennsylvania and at the Pentagon. They were family and friends, service members and first responders—and the tragedy of their loss left pain that will never fade and scars our country will never forget.

More than a decade later, the world we live in is forever changed. But as we mark the anniversary of September 11, we remember what remains the same: our character as a Nation, our faith in one another, and our legacy as a country strengthened by service and selflessness. In the spirit that moved rescue workers and firefighters to charge into darkness and danger that September morning, we see the same sense of moral responsibility that drove countless Americans to give of themselves in the months that followed. We offered our neighbors a hand and lined up to give blood. Many helped our Nation rebuild and recover long after the dust had settled, donating and volunteering and helping survivors who had borne so much. We were united, and the outpouring of generosity reminded us that, through challenges that have spanned from acts of terrorism to natural disasters, we go forward together as one people.

Today, as we remember the victims, their families, and the heroes who stood up during one of our country's darkest moments, I invite all Americans to reclaim that abiding spirit of compassion by serving their communities in the days and weeks ahead. From volunteering with a faith-based organization, to collecting food and clothing for those in need, to preparing care packages for our men and women in uniform, there are many ways to bring service into our everyday lives—and each of us can do something. To get involved and find a local service opportunity, visit www.Serve.gov, or www.Servir.gov for Spanish speakers.

Even the simplest act of kindness can be a way to honor those we have lost, and to help build stronger communities and a more resilient Nation. By joining together on this solemn anniversary, let us show that America's sense of common purpose need not be a fleeting moment, but a lasting virtue—not just on one day, but every day.

By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has designated September 11 of each year as ''Patriot Day,'' and by Public Law 111–13, approved April 21, 2009, the Congress has requested the observance of September 11 as an annually recognized ''National Day of Service and Remembrance.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim September 11, 2012, as Patriot Day and National Day of Service and Remembrance. I call upon all departments, agencies, and instrumentalities of the United States to display the flag of the United States at half-staff on Patriot Day and National Day of Service

and Remembrance in honor of the individuals who lost their lives on September 11, 2001. I invite the Governors of the United States and the Commonwealth of Puerto Rico and interested organizations and individuals to join in this observance. I call upon the people of the United States to participate in community service in honor of those our Nation lost, to observe this day with appropriate ceremonies and activities, including remembrance services, and to observe a moment of silence beginning at 8:46 a.m. Eastern Daylight Time to honor the innocent victims who perished as a result of the terrorist attacks of September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of September, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–22799
Filed 9–12–12; 11:15 am]
Billing code 3295–F2–P

# Presidential Documents

**Executive Order 13626 of September 10, 2012**

## Gulf Coast Ecosystem Restoration

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 311 of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321), section 1006 of the Oil Pollution Act of 1990 (33 U.S.C. 2706), and section 301 of title 3, United States Code, it is hereby ordered as follows:

**Section 1.** *Policy.* Executive Order 13554 of October 5, 2010, was issued after the blowout and explosion of the mobile offshore drilling unit *Deepwater Horizon* that occurred on April 20, 2010, and resulted in the largest oil spill in U.S. history (Deepwater Horizon Oil Spill). Executive Order 13554 recognized the Gulf Coast as a national treasure and addressed the long-standing ecological decline of that region, which was compounded by the Deepwater Horizon Oil Spill. In doing so, Executive Order 13554 established a Gulf Coast Ecosystem Restoration Task Force (Task Force) to coordinate intergovernmental efforts, planning, and the exchange of information in order to better implement Gulf Coast ecosystem restoration and facilitate appropriate accountability and support throughout the restoration process.

Since the implementation of Executive Order 13554, the Federal Government's Gulf Coast ecosystem restoration planning efforts have advanced significantly. The Task Force's Gulf of Mexico Regional Ecosystem Restoration Strategy (Strategy), created with input from Federal, State, tribal, and local governments, and thousands of involved citizens and organizations across the region, serves as a comprehensive restoration plan for addressing ecological concerns in the Gulf of Mexico. In light of the release of the Strategy, the ongoing work of the Natural Resource Damage Trustee Council (Trustee Council) under the Oil Pollution Act, and the recent passage of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) (title I, subtitle F of Public Law 112–141), this order affirms the Federal Government's Gulf Coast ecosystem restoration efforts and realigns responsibilities to ensure the most effective governmental planning and coordination to reach these goals.

**Sec. 2.** *Termination of the Gulf Coast Ecosystem Restoration Task Force.* The progress of the Task Force is noteworthy. It has completed the Strategy and the preliminary planning and coordination tasks that it was intended to produce and has significantly advanced important ecosystem restoration goals for the Gulf of Mexico. In light of the recent creation, described below, of the Gulf Coast Ecosystem Restoration Council (Gulf Restoration Council), which will build upon the Task Force's already successful collaboration between Federal, State, and tribal governments and, as directed by statute, include and incorporate in its proposed comprehensive plan the findings and information prepared by the Task Force, the Task Force shall terminate no later than 60 days after the Gulf Restoration Council commences its work. The functions of the Task Force will be performed by the Gulf Restoration Council and the Trustee Council to the extent practicable, as set forth in this order. Prior to its termination, the Task Force will provide such assistance as is appropriate to the Gulf Restoration Council.

**Sec. 3.** *The Gulf Coast Restoration Trust Fund and the Gulf Coast Ecosystem Restoration Council.*

(a) *Gulf Coast Restoration Trust Fund.* The RESTORE Act, which was signed into law as part of the Moving Ahead for Progress in the 21st Century Act (Public Law 112–141), established a mechanism for providing funding to the Gulf region to restore ecosystems and rebuild local economies damaged by the Deepwater Horizon Oil Spill. The RESTORE Act established in the Treasury of the United States the Gulf Coast Restoration Trust Fund (Trust Fund), consisting of 80 percent of an amount equal to any administrative and civil penalties paid after the date of the RESTORE Act by the responsible parties in connection with the Deepwater Horizon Oil Spill to the United States pursuant to a court order, negotiated settlement, or other instrument in accordance with section 311 of the FWPCA (33 U.S.C. 1321).

(b) *Gulf Coast Ecosystem Restoration Council.* The RESTORE Act established the Gulf Restoration Council, an independent entity charged with developing a comprehensive plan for ecosystem restoration in the Gulf Coast (Comprehensive Plan), as well as any future revisions to the Comprehensive Plan. Among its other duties, the Gulf Restoration Council is tasked with identifying projects and programs aimed at restoring and protecting the natural resources and ecosystems of the Gulf Coast region, to be funded from a portion of the Trust Fund; establishing such other advisory committees as may be necessary to assist the Gulf Restoration Council, including a scientific advisory committee and a committee to advise the Gulf Restoration Council on public policy issues; gathering information relevant to Gulf Coast restoration, including through research, modeling, and monitoring; and providing an annual report to the Congress on implementation progress. Consistent with the RESTORE Act, the Comprehensive Plan developed by the Gulf Restoration Council will include provisions necessary to fully incorporate the Strategy, projects, and programs recommended by the Task Force.

(c) Federal members of the Gulf Restoration Council and Trustee Council, as well as all Federal entities involved in Gulf Coast restoration, shall work closely with one another to advance their common goals, reduce duplication, and maximize consistency among their efforts. All Federal members are directed to consult with each other and with all non-federal members in carrying out their duties on the Gulf Restoration Council.

**Sec. 4.** *Ongoing Role of the Natural Resource Damage Assessment Trustee Council.* (a) Executive Order 13554 recognized the role of the Trustee Council, and designated trustees as provided in 33 U.S.C. 2706, with trusteeship over natural resources injured, lost, or destroyed as a result of the Deepwater Horizon Oil Spill. Specifically, Executive Order 13554 recognized the importance of carefully coordinating the work of the Task Force with the Trustee Council, whose members have statutory responsibility to assess natural resources damages from the Deepwater Horizon Oil Spill, to restore trust resources, and seek compensation for lost use of those trust resources. Section 3(b) of Executive Order 13554 instructed the Task Force to ''support the Natural Resource Damage Assessment process by referring potential ecosystem restoration actions to the * * * Trustee Council for consideration and facilitating coordination among the relevant departments, agencies, and offices, as appropriate, subject to the independent statutory responsibilities of the trustees.'' The Department of Commerce (through the National Oceanic and Atmospheric Administration), the Department of the Interior (through the Fish and Wildlife Service and the National Park Service), and the Department of Justice have worked to identify linkages and opportunities for the Task Force to complement the restoration progress of the Trustee Council.

(b) Section 7(e) of Executive Order 13554 provides that nothing in that order shall interfere with the statutory responsibilities and authority of the Trustee Council or the individual trustees to carry out their statutory responsibilities to assess natural resource damages and implement restoration actions under 33 U.S.C. 2706 and other applicable law. Agencies that were members of the Task Force shall continue to comply with these requirements.

**Sec. 5.** *Designating Trustees for Natural Resource Damage Assessment.* Given their authorities, programs, and expertise, the Environmental Protection Agency (EPA) and the Department of Agriculture (USDA) have institutional capacities that can contribute significantly to the Natural Resource Damage Assessment and restoration efforts, including scientific and policy expertise as well as experience gained in the Task Force process and other planning efforts in the Gulf area. In addition, EPA's and USDA's relevant authorities cover a range of natural resources and their supporting ecosystems, including waters, sediments, barrier islands, wetlands, soils, land management, air resources, and drinking water supplies. The inclusion of EPA and USDA as trustees participating in the Natural Resource Damage Assessment and restoration efforts will maximize coordination across the Federal Government and enhance overall efficiencies regarding Gulf Coast ecosystem restoration. Accordingly, without limiting the designations in Executive Order 12777 of October 18, 1991, or any other existing designations, and pursuant to section 2706(b)(2) of title 33, United States Code, I hereby designate the Administrator of EPA and the Secretary of Agriculture as additional trustees for Natural Resource Damage Assessment and restoration solely in connection with injury to, destruction of, loss of, or loss of use of natural resources, including their supporting ecosystems, resulting from the Deepwater Horizon Oil Spill. The addition of these Federal trustees does not, in and of itself, alter any existing agreements among or between the trustees and any other entity. All Federal trustees are directed to consult, coordinate, and cooperate with each other in carrying out all of their trustee duties and responsibilities.

The Administrator of EPA is hereby directed to revise Subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan to reflect the designations for the Deepwater Horizon Oil Spill discussed in this section.

**Sec. 6.** *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Trustee Council, or those of the Director of the Office of Management and Budget, relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Executive Order 13554 of October 5, 2010, is hereby revoked concurrent with the termination of the Task Force under the terms described in section 2 of this order.

THE WHITE HOUSE,
*Washington, September 10, 2012.*

[FR Doc. 2012–22807
Filed 9–12–12; 11:15 am]
Billing code 3295–F2–P

# Presidential Documents

**Presidential Determination No. 2012–14 of September 10, 2012**

## Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

**Memorandum for the Secretary of State [and] the Secretary of the Treasury**

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. App. 5(b) note), and a previous determination on September 13, 2011 (76 *FR* 57623, September 15, 2011), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to terminate on September 14, 2012.

I hereby determine that the continuation for 1 year of the exercise of those authorities with respect to Cuba is in the national interest of the United States.

Therefore, consistent with the authority vested in me by section 101(b) of Public Law 95–223, I continue for 1 year, until September 14, 2013, the exercise of those authorities with respect to Cuba, as implemented by the Cuban Assets Control Regulations, 31 C.F.R. Part 515.

The Secretary of the Treasury is authorized and directed to publish this determination in the **Federal Register.**

THE WHITE HOUSE,
*Washington, September 10, 2012*

[FR Doc. 2012–22819
Filed 9–12–12; 11:15 am]
Billing code 4811–33–P

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

**H.R. 1402/P.L. 112–170**

To authorize the Architect of the Capitol to establish battery recharging stations for privately owned vehicles in parking areas under the jurisdiction of the House of Representatives at no net cost to the Federal Government. (Aug. 16, 2012; 126 Stat. 1303)

**H.R. 3670/P.L. 112–171**

To require the Transportation Security Administration to comply with the Uniformed Services Employment and Reemployment Rights Act. (Aug. 16, 2012; 126 Stat. 1306)

**H.R. 4240/P.L. 112–172**

Ambassador James R. Lilley and Congressman Stephen J. Solarz North Korea Human Rights Reauthorization Act of 2012 (Aug. 16, 2012; 126 Stat. 1307)

**S. 3510/P.L. 112–173**

To prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes. (Aug. 16, 2012; 126 Stat. 1310)

**Last List August 16, 2012**

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