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Proclamation 8707 of September 2, 2011

The President

Labor Day, 2011

By the President of the United States of America

**A Proclamation**

Every day, hard-working men and women across America prove that, even in difficult times, our country is still home to the most creative, dynamic, and talented workers in the world. Generations of working people have built this country—from our highways and skylines, to the goods and services driving us in the 21st century. On Labor Day and throughout the year, we celebrate our Nation's workers, and we commit to supporting their efforts in moving our economy forward.

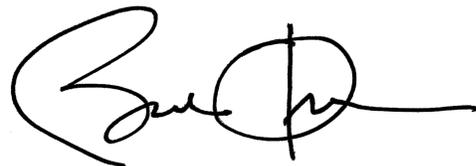
The right to organize and collectively bargain is a fundamental American value. Since its beginnings in our country, organized labor has raised our living standards and built our middle class. It is the reason we have a minimum wage, weekends away from work to rest and spend time with family, and basic protections in our workplaces. Many Americans today are given opportunities because their parents and grandparents fought for these basic rights and values. The principles upheld by the honorable laborers of generations past and their unions continue to fuel the growth of our economy and a strong middle class.

This year has seen a vigorous fight to protect these rights and values, and on this Labor Day, we reaffirm that collective bargaining is a cornerstone of the American dream. From public employees—including teachers, fire-fighters, police, and others who perform public services—to workers in private industries, these men and women hold the power of our Nation in their hands.

In the last several years, we have pulled our country back from the brink, through a series of tough economic decisions. While we have come far, great challenges still face us. Many Americans are still struggling, and many are unemployed. My Administration is working tirelessly each day to promote policies that get Americans back to work. We will always strive to keep our fundamental promise that, in America, anyone who works hard and acts responsibly can provide a better future for their children. When we come together, there is no limit to what the American workforce can do.

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 5, 2011, as Labor Day. I call upon all public officials and people of the United States to observe this day with appropriate programs, ceremonies, and activities that acknowledge the tremendous contributions of working Americans and their families.

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

A handwritten signature in black ink, appearing to be Barack Obama's signature, consisting of a large 'B' followed by a circle and a horizontal line.

# Rules and Regulations

Federal Register

Vol. 76, No. 175

Friday, September 9, 2011

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

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2010-1310; Directorate Identifier 2010-NM-067-AD; Amendment 39-16786; AD 2011-18-04]

RIN 2120-AA64

#### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been reported during operational checks that some failures of the Escape Slide \* \* \* installed on the forward passenger and service door have occurred which prevented the door from opening.

\* \* \* [T]his condition \* \* \* could delay an emergency evacuation and increase the chance of injury to passengers and flight crew \* \* \*.

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective October 14, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 14, 2011.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://>

[www.regulations.gov](http://www.regulations.gov) or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Kenny Kaulia, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2848; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 13, 2011 (76 FR 2279). That NPRM proposed to correct an unsafe condition for the specified products. MCAI Brazilian Airworthiness Directive 2009-11-01 states:

It has been reported during operational checks that some failures of the Escape Slide P/N [part number] 4A4030-2 and P/N 4A4030-4 installed on the forward passenger and service door have occurred which prevented the door from opening.

Since this condition \* \* \* could delay an emergency evacuation and increase the chance of injury to passengers and flight crew, a corrective action is required.

MCAI Brazilian Airworthiness Directive 2009-08-02 states:

It has been reported during operational checks some failures in the deployment of the Escape Slide P/N 104003-1 installed in the forward passenger and service door, preventing the door opening.

Since this condition \* \* \* could impede an emergency evacuation and increase the chance of injury to passengers and flight crew, a corrective action is required.

The required actions include modifying the escape slides of the forward passenger and service doors, and doing borescope inspections for damage of the aspirator body and inlet cross valve. Corrective actions include replacing the aspirator body. You may obtain further information by examining the MCAI in the AD docket.

#### Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

#### Request To Delay the AD

Goodrich requested that issuance of this AD be delayed until further notice pending completion of their ongoing investigations into the root cause of additional door stall events. The commenter anticipates that a reduced overhaul cycle might be required to mitigate future occurrences until a complete and final action is developed.

We disagree with the request to delay the AD. To delay this action would be inappropriate, in light of the identified unsafe condition. We might consider additional rulemaking action, however, if we receive new information indicating the need to change the AD. We have not changed the AD in this regard.

#### Request To Expand the Applicability of the AD

EMBRAER requested that post-modification part number (P/N) 4A4030-5 for the ERJ 170, and P/N 104003-2 for the ERJ 190, be included in the Applicability, Actions, and Parts Installation paragraphs of the NPRM (paragraphs (c), (g), and (i) respectively). The commenter made this request in response to reports of door stall caused by the forward escape slide of those part numbers post-modification using the version of the Goodrich service information cited in the NPRM.

We disagree with the request to add the part numbers. While we are aware of the reports of door stall caused by the forward escape slides with those other parts that had been modified per the Goodrich service information cited in the NPRM, we understand that the root cause of the door stall is still under investigation, as mentioned by the previous commenter. Further, we choose to not delay issuance of the AD as mentioned previously, because the known unsafe condition exists on the part numbers specified in the NPRM. When that investigation is complete we might take further rulemaking action. We have not changed the AD in this regard.

#### Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

### Costs of Compliance

We estimate that this AD will affect about 236 products of U.S. registry. We also estimate that it will take about 12 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Required parts will cost about \$0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$240,720, or \$1,020 per product.

### 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 above, I certify this AD:*

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 AD and placed it in the AD docket.

### 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 the NPRM, the regulatory 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.

### 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 AD:

**2011-18-04 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39-16786. Docket No. FAA-2010-1310; Directorate Identifier 2010-NM-067-AD.

#### Effective Date

- (a) This airworthiness directive (AD) becomes effective October 14, 2011.

#### Affected ADs

- (b) None.

### Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) airplanes as identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model ERJ 170-100 LR, -100 STD, -100 SE, and -100 SU airplanes; and Model ERJ 170-200 LR, -200 SU, and -200 STD airplanes; equipped with Goodrich escape slides having part number (P/N) 4A4030-2 or P/N 4A4030-4.

(2) Model ERJ 190-100 STD, -100 LR, -100 ECJ, and -100 IGW airplanes; and Model ERJ 190-200 STD, -200 LR, and -200 IGW airplanes; equipped with Goodrich escape slides having P/N 104003-1.

### Subject

(d) Air Transport Association (ATA) of America Code 25: Equipment/furnishings.

### Reason

(e) The mandatory continuing airworthiness information (MCAI) states: It has been reported during operational checks that some failures of the Escape Slide \* \* \* installed on the forward passenger and service door have occurred which prevented the door from opening. \* \* \* [T]his condition \* \* \* could delay an emergency evacuation and increase the chance of injury to passengers and flight crew \* \* \*.

### Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

### Actions

(g) Within 18 months after the effective date of this AD, modify the forward escape slide and do a borescope inspection of the aspirator body and inlet cross valve, in accordance with the Accomplishment Instructions of the Goodrich alert service bulletin identified in paragraph (g)(1) or (g)(2) of this AD, as applicable. Do all applicable corrective actions before further flight.

(1) For any forward door escape slide having P/N 4A4030-2 or P/N 4A4030-4: Goodrich Alert Service Bulletin 4A4030-25A379, original, dated August 10, 2009.

(2) For any forward door escape slide having P/N 104003-1: Goodrich Alert Service Bulletin 104003-25A380, Revision 2, dated July 7, 2009.

### Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Actions accomplished before the effective date of this AD in accordance with Goodrich Alert Service Bulletin 104003-25A380, Revision 1, dated April 15, 2009, are considered acceptable for compliance with the corresponding action specified in this AD.

### Parts Installation

(i) After 6 months from the effective date of this AD, no airplane may operate with the forward door escape slide having P/N 4A4030-2 or P/N 4A4030-4 (for Model ERJ 170 airplanes), or P/N 104003-1 (for Model

ERJ 190 airplanes), on which 18 months or more has elapsed from the slide date of manufacture (for slides that have not been repacked) or the date of last slide repack (for slides that have been repacked).

#### FAA AD Differences

**Note 1:** This AD differs from the MCAI and/or service information as follows: No differences.

#### Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Kenny Kaulia, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2848; fax (425) 227-1149. Information may be e-mailed to: [9-ANM-116-AMOC-REQUESTS@faa.gov](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov). Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

#### Related Information

(k) Refer to MCAI Brazilian Airworthiness Directive 2009-11-01, dated November 30, 2009; MCAI Brazilian Airworthiness Directive 2009-08-02, dated August 18, 2009; Goodrich Alert Service Bulletin 4A4030-25A379, original, dated August 10, 2009; and Goodrich Alert Service Bulletin 104003-25A380, Revision 2, dated July 7, 2009; for related information.

#### Material Incorporated by Reference

(l) You must use Goodrich Alert Service Bulletin 4A4030-25A379, original, dated August 10, 2009; or Goodrich Alert Service Bulletin 104003-25A380, Revision 2, dated July 7, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro

Faria Lima, 2170—Putim—12227-901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927-5852 or +55 12 3309-0732; fax +55 12 3927-7546; e-mail [distrib@embraer.com.br](mailto:distrib@embraer.com.br); Internet: <http://www.flyembraer.com>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

(4) You may also review copies of the service information that is incorporated by reference 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](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on August 12, 2011.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011-21622 Filed 9-8-11; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2011-0216; Directorate Identifier 2010-NM-197-AD; Amendment 39-16796; AD 2011-18-14]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190 Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

\* \* \* The pylon internal shear pin was found cracked during a regular check. Further investigation revealed that the failure occurred due to hydrogen embrittlement. The ANAC [Agência Nacional de Aviação Civil] is issuing this [Brazilian] AD to prevent insufficient strength of the pylon to wing attachment, which in combination with an engine imbalance caused by a fan blade out could cause pylon to wing attachment failure and consequent engine separation.

\* \* \* \* \*

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective October 14, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 14, 2011.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Cindy Ashforth, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; phone: 425-227-2768; fax: 425-227-1149; e-mail: [cindy.ashforth@faa.gov](mailto:cindy.ashforth@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 14, 2011 (76 FR 13539). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

\* \* \* The pylon internal shear pin was found cracked during a regular check. Further investigation revealed that the failure occurred due to hydrogen embrittlement. The ANAC is issuing this [Brazilian] AD to prevent insufficient strength of the pylon to wing attachment, which in combination with an engine imbalance caused by a fan blade out could cause pylon to wing attachment failure and consequent engine separation.

\* \* \* \* \*

Required actions include replacing pylon shear pins in the rear outboard and inboard shear pin assembly in the right- and left-hand pylons with new parts. You may obtain further information by examining the MCAI in the AD docket.

##### Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

##### Request for Further Inspection

JetBlue requested that, in addition to replacement of the pylon rear inboard and outboard internal shear pins, a detailed visual inspection of the pylon rear outboard and inboard external shear pins should be done to ensure that

the external shear pins have no evidence of corrosion and corrosion products, or corrosion pitting. JetBlue found external shear pins with surface corrosion and pitting.

We disagree with the request. Embraer inspected the suspect external shear pins from JetBlue and found particles of sealant and other contaminants embedded in the inner surface, but there was no sign of corrosion or damage. The material of the external shear pin is corrosion-resistant stainless steel. No change has been made to the AD in this regard.

#### Request To Clarify Service Bulletin Reference

Embraer requested that paragraph (j) of the NPRM refer to EMBRAER Service Bulletin 190LIN-54-0001, dated June 21, 2010, rather than 190LIN-54-001.

We agree with the request and have made the change in paragraph (j) of this AD.

#### Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

#### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

#### Costs of Compliance

We estimate that this AD will affect 73 products of U.S. registry. We also estimate that it will take about 10 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Required parts will cost about \$2,360 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected

parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$234,330, or \$3,210 per product.

#### 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 above, I certify this AD:*

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 AD and placed it in the AD docket.

#### 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 the NPRM, the regulatory 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.

#### 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 AD:

#### 2011-18-14 Empresa Brasileira de Aeronautica S.A. (EMBRAER):

Amendment 39-16796. Docket No. FAA-2011-0216; Directorate Identifier 2010-NM-197-AD.

#### Effective Date

- (a) This airworthiness directive (AD) becomes effective October 14, 2011.

#### Affected ADs

- (b) None.

#### Applicability

- (c) This AD applies to all Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190-100 STD, -100 LR, -100 ECJ, and -100 IGW airplanes; and Model ERJ 190-200 STD, -200 LR, and -200 IGW airplanes; certificated in any category.

#### Subject

- (d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

#### Reason

- (e) The mandatory continuing airworthiness information (MCAI) states:  
\* \* \* The pylon internal shear pin was found cracked during a regular check. Further investigation revealed that the failure occurred due to hydrogen embrittlement. The ANAC [Agência Nacional de Aviação Civil] is issuing this [Brazilian] AD to prevent insufficient strength of the pylon to wing attachment, which in combination with an engine imbalance caused by a fan blade out could cause pylon to wing attachment failure and consequent engine separation.

\* \* \* \* \*

#### Compliance

- (f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Replace Shear Pins

- (g) For Model ERJ 190-100 STD, -100 LR, -100 IGW; and ERJ 190-200 STD, -200 LR,

and -200 IGW airplanes: Within 3,000 flight hours after the effective date of this AD, replace the shear pins having part number (P/N) 190-15178-003 and P/N 190-15181-003 in the rear outboard and inboard shear pin assembly in the right- and left-hand pylons, with new shear pins having P/N 190-15178-005 and P/N 190-15181-005, respectively, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190-54-0010, dated May 19, 2010.

(h) For Model ERJ 190-100 ECJ airplanes: Within 3,000 flight hours or within 12 months after the effective date of this AD, whichever occurs first, replace the shear pins having P/N 190-15178-003 and P/N 190-15181-003, in the rear outboard and inboard shear pin assembly in the right- and left-hand pylons, with new shear pins having P/N 190-15178-005 and P/N 190-15181-005, respectively, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190LIN-54-0001, dated June 21, 2010.

#### FAA AD Differences

**Note 1:** This AD differs from the MCAI and/or service information as follows: The MCAI allows credit for previous installation of internal shear pins in accordance with EMBRAER 190 Aircraft Maintenance Manual Task 54-50-00-400, Revision 19, dated July 15, 2010. This AD does not allow credit for this task; however, under the provisions of paragraph (i) of this AD, we will consider requests for an alternative method of compliance.

#### Other FAA AD Provisions

(i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Cindy Ashforth, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2768; fax (425) 227-1149. Information may be e-mailed to: [9-ANM-116-AMOC-REQUESTS@faa.gov](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov). Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

#### Related Information

(j) Refer to MCAI Agência Nacional de Aviação Civil (ANAC) Airworthiness Directive 2010-08-02, dated September 20, 2010; and EMBRAER Service Bulletins 190-54-0010, dated May 19, 2010, and 190LIN-54-0001, dated June 21, 2010; for related information.

#### Material Incorporated by Reference

(k) You must use EMBRAER Service Bulletin 190-54-0010, dated May 19, 2010; or EMBRAER Service Bulletin 190LIN-54-0001, dated June 21, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227-901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927-5852 or +55 12 3309-0732; fax +55 12 3927-7546; e-mail [distrib@embraer.com.br](mailto:distrib@embraer.com.br); Internet <http://www.flyembraer.com>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

(4) You may also review copies of the service information that is incorporated by reference 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](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on August 19, 2011.

#### Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011-22028 Filed 9-8-11; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2011-0471; Directorate Identifier 2010-NM-219-AD; Amendment 39-16800; AD 2011-18-18]

RIN 2120-AA64

#### Airworthiness Directives; Bombardier, Inc. Model DHC-8-400 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Several operators have reported pitch oscillations and/or elevator asymmetry caution lights illumination when flying with the autopilot engaged. Investigations revealed that loose rivets in the torque tube assemblies caused relative motion between the crank arms and torque tubes.

Loose rivets could result in excessive wear and subsequent significant backlash in the driving crank arms. This condition, if left uncorrected, will progressively get worse and degrade the controllability of the aeroplane.

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective October 14, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 14, 2011.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Stephen Kowalski, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE-171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7327; fax (516) 794-5531.

#### SUPPLEMENTARY INFORMATION:

#### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 12, 2011 (76 FR 27617). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Several operators have reported pitch oscillations and/or elevator asymmetry caution lights illumination when flying with the autopilot engaged. Investigations revealed that loose rivets in the torque tube assemblies caused relative motion between the crank arms and torque tubes.

Loose rivets could result in excessive wear and subsequent significant backlash in the driving crank arms. This condition, if left

uncorrected, will progressively get worse and degrade the controllability of the aeroplane.

Required actions include doing an inspection for the part number of the left and right elevator torque tube assemblies and, if necessary, replacing the elevator torque tube assembly or replacing the elevator torque tube rivets, and re-identifying the assemblies. You may obtain further information by examining the MCAI in the AD docket.

**Comments**

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 27617, May 12, 2011) or on the determination of the cost to the public.

**Revised Service Information**

Bombardier Service Bulletin 84-27-50, Revision ‘D,’ dated September 22, 2010, has been issued for clarification,

but adds no new actions. We have updated the references in paragraphs (g), (h), (i), and (m) of this AD to include Bombardier Service Bulletin 84-27-50, Revision ‘D,’ dated September 22, 2010. We have also updated Table 1 of this AD to allow credit for Bombardier Service Bulletin 84-27-50, Revision ‘C,’ dated July 26, 2010.

**Conclusion**

We reviewed the relevant data, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

**Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in

general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

**Costs of Compliance**

We estimate that this AD will affect 66 products of U.S. registry. We also estimate the following costs to comply with this AD.

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection .....	2 × \$85 per hour = \$170 .....	None .....	\$170	\$11,220

We estimate the following costs to do any necessary replacements that would

be required based on the results of the required inspection. We have no way of

determining the number of aircraft that might need these replacements:

**ON-CONDITION COSTS**

Action	Labor cost	Parts cost	Cost per product
Replace left torque tube .....	15 work-hours × \$85 per hour = \$1,275 .....	\$4,354	\$5,629
Replace right torque tube .....	15 work-hours × \$85 per hour = \$1,275 .....	5,913	7,188

**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 above, I certify this AD:*

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 AD and placed it in the AD docket.

**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 the NPRM, the regulatory 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.

**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 AD:

**2011-18-18 Bombardier, Inc.:** Amendment 39-16800. Docket No. FAA-2011-0471; Directorate Identifier 2010-NM-219-AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective October 14, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Bombardier, Inc. Model DHC-8-400, -401, and -402 airplanes; certificated in any category; serial numbers 4001 through 4305 inclusive.

**Subject**

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states: Several operators have reported pitch oscillations and/or elevator asymmetry caution lights illumination when flying with the autopilot engaged. Investigations revealed that loose rivets in the torque tube assemblies caused relative motion between the crank arms and torque tubes.

Loose rivets could result in excessive wear and subsequent significant backlash in the

driving crank arms. This condition, if left uncorrected, will progressively get worse and degrade the controllability of the aeroplane.

**Compliance**

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Inspection for Part Number**

(g) At the applicable times identified in paragraphs (g)(1) and (g)(2) of this AD, do an inspection to determine the part numbers of the left and right elevator torque tubes, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84-27-50, Revision 'D,' dated September 22, 2010. A review of airplane maintenance records is acceptable in lieu of this inspection if the part numbers of the left and right elevator torque tubes can be conclusively determined from that review.

(1) For airplanes that have accumulated 8,000 or more total flight hours as of the effective date of this AD: Within 2,000 flight hours after the effective date of this AD.

(2) For airplanes that have accumulated less than 8,000 total flight hours as of the effective date of this AD: Within 6,000 flight hours after the effective date of this AD, but before the accumulation of 10,000 total flight hours.

**Corrective Actions**

(h) If, as a result of the inspection required by paragraph (g) of this AD, any left elevator torque tube has part number (P/N) 82760709-009, at the applicable time in paragraph (g)(1) or (g)(2) of this AD, do the actions in paragraph (h)(1) or (h)(2) of this AD.

(1) Replace the elevator torque tube with a new elevator torque tube having P/N 82760709-011, in accordance with the

Accomplishment Instructions of Bombardier Service Bulletin 84-27-50, Revision 'D,' dated September 22, 2010.

(2) Replace the rivets in each elevator torque tube assembly with Hi Lite pins having P/N B0206001AG8 and collars having P/N HST1070CY, and re-identify the elevator torque tube assembly having P/N 82760709-009, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84-27-50, Revision 'D,' dated September 22, 2010.

(i) If, as a result of the inspection required by paragraph (g) of this AD, any right elevator torque tube has P/N 82760757-009, at the applicable time in paragraph (g)(1) or (g)(2) of this AD, do the actions in paragraph (i)(1) or (i)(2) of this AD.

(1) Replace the elevator torque tube with a new elevator torque tube having P/N 82760757-011, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84-27-50, Revision 'D,' dated September 22, 2010.

(2) Replace the rivets in each elevator torque tube assembly with Hi Lite pins having P/N B0206001AG8 and collars having P/N HST1070CY, and re-identify the elevator torque tube assembly having P/N 82760757-009, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84-27-50, Revision 'D,' dated September 22, 2010.

**Credit for Actions Accomplished in Accordance With Previous Service Information**

(j) Actions done before the effective date of this AD, in accordance with the service bulletins listed in table 1 of this AD, are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 1—CREDIT SERVICE BULLETINS

Service Bulletin	Revision	Date
Bombardier Service Bulletin 84-27-50 .....	Original .....	March 3, 2010.
Bombardier Service Bulletin 84-27-50 .....	A .....	April 28, 2010.
Bombardier Service Bulletin 84-27-50 .....	B .....	May 19, 2010.
Bombardier Service Bulletin 84-27-50 .....	C .....	July 26, 2010.

**Parts Installation**

(k) As of the effective date of this AD, no person may install on any airplane an elevator torque tube assembly having P/N 82760709-009 or 82760757-009.

**FAA AD Differences**

**Note 1:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

(l) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR

39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority

(or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

**Related Information**

(m) Refer to MCAI Canadian Airworthiness Directive CF-2010-27, dated August 20, 2010; and Bombardier Service Bulletin 84-27-50, Revision 'D,' dated September 22, 2010; for related information.

**Material Incorporated by Reference**

(n) You must use Bombardier Service Bulletin 84-27-50, Revision 'D,' dated September 22, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416-375-4000; fax 416-375-4539; e-mail [thd.qseries@aero.bombardier.com](mailto:thd.qseries@aero.bombardier.com); Internet <http://www.bombardier.com>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

(4) You may also review copies of the service information that is incorporated by reference 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](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on August 23, 2011.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011-22277 Filed 9-8-11; 8:45 am]

BILLING CODE 4910-13-P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 239, 249, 269 and 274

[Release Nos. 33-9256; 34-65244; 39-2478; IC-29780]

#### Amendments To Include New Applicant Types on Form ID

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule amendments.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is amending Form ID to include additional applicant types in order to facilitate processing of the form. Form ID is the application for access codes to file on the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system. The purpose of introducing these new applicant types is to improve the Commission’s internal procedures for processing filings, including by routing Form ID filings to the appropriate internal office or division.

**DATES:** *Effective Date:* September 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Catherine Moore, Senior Special Counsel or Andrew Bernstein, Attorney-Adviser, Office of Clearance and Settlement, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE.,

Washington, DC 20549, at (202) 551-5710.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Form ID is filed by registrants, third party filers, or any of their respective agents, to whom the Commission previously has not assigned a Central Index Key (“CIK”) code, to request access codes in order to file in electronic format through EDGAR. EDGAR access codes include the CIK code, the CIK Confirmation Code (“CCC”), Password (“PW”), and Password Modification Authorization Code (“PMAC”).<sup>1</sup>

Currently, Form ID does not differentiate applicants by specific type and simply lists as possible applicant types “filer,” “filing agent,” “training agent,” “transfer agent,” and “individual.” However, the number and type of persons that use EDGAR for submitting filings has increased since Form ID was first adopted by the Commission and may increase further following the adoption of various rules under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).<sup>2</sup> Accordingly, the Commission is amending Form ID to list specific persons as applicant types on the form in order to allow the form to be assigned for processing within the Commission based on the type of applicant.

The new applicant types include persons that currently file on EDGAR but who are not separately listed on Form ID, persons that currently file forms with the Commission in paper but who may be required to file on EDGAR in the future, and persons who will be required to meet certain new filing obligations under the Securities Exchange Act of 1934 (“Exchange Act”), including provisions added by the Dodd-Frank Act. The amendments to Form ID also include corresponding definitions for each new applicant type.<sup>3</sup> New applicants should select only one entity type when completing and submitting Form ID.<sup>4</sup> If an applicant

<sup>1</sup> See EDGAR Filing Manual (Volume I) General Information (Section 2.4, Accessing EDGAR).

<sup>2</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> The definitions included in Form ID are to facilitate the correct selection of “applicant type” by a particular filer and are not intended to amend or otherwise change any provision of the federal securities laws or the regulations promulgated thereunder.

<sup>4</sup> For purposes of Form ID, the term “person” includes either an individual or entity. If the applicant is also an “individual” as defined in the current Form ID, then the applicant must apply as both an “individual” as well as another appropriate applicant type that properly characterizes it.

qualifies as more than one of the applicant types listed on the form, it should select the applicant type related to the first filing it plans to submit on EDGAR. The access codes the applicant retrieves after Form ID is approved may be used to submit filings on EDGAR for any entity type (other than transfer agent) provided that such filing complies with all other applicable rules and regulations.<sup>5</sup> Persons that have previously filed Form ID applications with the Commission are not required to re-file Form ID as a result of these amendments.

As more fully described below, the following applicant types and applicable definitions are being added to Form ID: Investment Company, Business Development Company or Insurance Company Separate Account, Institutional Investment Manager (Form 13F Filer), Non-Investment Company Applicant under the Investment Company Act of 1940, Large Trader, Clearing Agency, Municipal Advisor, Municipal Securities Dealer, Nationally Recognized Statistical Rating Organization, Security-Based Swap Data Repository, Security-Based Swap Dealer and Major Security-Based Swap Participant, and Security-Based Swap Execution Facility.

*Investment Company, Business Development Company or Insurance Company Separate Account, Institutional Investment Manager (Form 13F Filer), and Non-Investment Company Applicant Under the Investment Company Act of 1940*

Currently, a person that may fall within the applicant type of “Investment Company, Business Development Company or Insurance Company Separate Account,” “Institutional Investment Manager (Form 13F Filer),” or “Non-Investment Company Applicant under the Investment Company Act of 1940” may make submissions on EDGAR in electronic format without referencing the appropriate applicant type on Form ID. As such, the Commission is adding these specific applicant types to Form ID in order to facilitate processing of the form as filed by such persons. The applicant type of “Investment Company, Business Development Company or Insurance Company Separate Account” being added to Form ID includes persons that meet the definition of “investment company” in Section 3 of

<sup>5</sup> Persons that are transfer agents must apply for a separate set of access codes even if they already submit filings on EDGAR in another capacity. See Securities Exchange Act Release No. 54865 (December 4, 2006), 71 FR 74698 (December 12, 2006) (File No. S7-14-06).

the Investment Company Act of 1940 (“Investment Company Act”)<sup>6</sup> or otherwise register an offering of their securities on a registration form adopted by the Commission under the Investment Company Act, including management companies (within the meaning of Sections 4 and 5 of the Investment Company Act), face-amount certificate companies (within the meaning of Section 2(a)(15) of the Investment Company Act), unit investment trusts (within the meaning of Section 4 of the Investment Company Act), business development companies (within the meaning of Section 2(a)(48) of the Investment Company Act), and insurance company separate accounts (including any separate account which would be required to be registered under the Investment Company Act except for the exclusion provided by Section 3(c)(11) of such Act and which files a registration statement on Form N-3 or Form N-4). The applicant type of “Institutional Investment Manager (Form 13F Filer)” includes any person that is required to file a Form 13F under Section 13(f) of the Exchange Act and the rules promulgated thereunder.<sup>7</sup> Finally, a “Non-Investment Company Applicant under the Investment Company Act of 1940” is descriptive of the type of Form ID applicant that is submitting an application seeking an order from the Commission for an exemption from one or more provisions of the Investment Company Act and the rules promulgated thereunder.

#### Large Trader

The applicant type “Large Trader” is being added to Form ID in order for these new registrants to retrieve EDGAR access codes and subsequently register with the Commission as a large trader in accordance with new Rule 13h-1 under the Exchange Act, which will become effective as of October 3, 2011.<sup>8</sup> The definition of “Large Trader” that is being added to Form ID cross-references the definition that was adopted by the Commission in Rule 13h-1.

#### Clearing Agency

Among other things, Title VII of the Dodd-Frank Act added new provisions to the Exchange Act that require clearing agencies that clear security-based swaps to register with the Commission. It also required that the Commission adopt rules with respect to

security-based swap clearing agencies.<sup>9</sup> The Commission previously stated that it preliminarily believes that clearing agencies should in the future file compliance reports with the Commission in a tagged data format in accordance with the EDGAR database, which would utilize the existing EDGAR framework to provide electronic filings to the Commission.<sup>10</sup> The definition of “Clearing Agency” being added to Form ID cross-references the definition in Section 3(a)(23) of the Exchange Act.<sup>11</sup>

#### Municipal Advisor

Section 975 of the Dodd-Frank Act amended Section 15B of the Exchange Act to make it unlawful for “a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake a solicitation of a municipal entity or obligated person, unless the municipal advisor is registered.”<sup>12</sup> Municipal Advisors register with the Commission on Form MA-T.<sup>13</sup> This current form is temporary, however, with an expiration date of December 31, 2011.<sup>14</sup> On December 20, 2010, the Commission proposed rules relating to a permanent registration regime for municipal advisors.<sup>15</sup> The proposed permanent registration regime would require that an application for the registration of a municipal advisor must be filed electronically with the Commission on proposed new Forms MA or MA-I, as applicable, and the Commission is considering whether such applications should be filed through EDGAR.<sup>16</sup> The definition of “Municipal Advisor” on Form ID cross-references the definition in Section 15B(e)(4) of the Exchange Act.<sup>17</sup>

#### Municipal Securities Dealer

A “Municipal Securities Dealer” currently registers with the Commission in paper format on Form MSD.<sup>18</sup> The

definition of “Municipal Securities Dealer” being added to Form ID cross-references the definition in Section 3(a)(30) of the Exchange Act.<sup>19</sup>

#### Nationally Recognized Statistical Rating Organization

A Nationally Recognized Statistical Rating Organization (“NRSRO”) currently registers with the Commission in paper format on Form NRSRO<sup>20</sup> and files annual reports required under Rule 17g-3 of the Exchange Act.<sup>21</sup> The Commission has proposed amending these rules to require an NRSRO to use EDGAR in order to submit all future information and reports.<sup>22</sup> The definition of a “Nationally Recognized Statistical Rating Organization” that is being added to Form ID cross-references the definition in Section 3(a)(62) of the Exchange Act.<sup>23</sup>

#### Security-Based Swap Data Repository

The Dodd-Frank Act provided the Commission with broad authority to adopt rules governing security-based swap data repositories (“SDRs”) and to develop additional duties applicable to these SDRs. The Commission proposed Rule 13n-1 under the Exchange Act to establish the procedures by which SDRs could apply to the Commission for registration.<sup>24</sup> This proposed rule provided that an application for the registration of an SDR must be filed electronically on proposed new Form SDR with the Commission. The definition of “Security-Based Swap Data Repository” being added to Form ID cross-references the definition in Section 3(a)(75) of the Exchange Act.<sup>25</sup>

#### Security-Based Swap Dealer and Major Security-Based Swap Participant

Section 761(a) of the Dodd-Frank Act amended Section 3(a) of the Exchange Act to add definitions for, among others, the terms “security-based swap dealer” and “major security-based swap participant.”<sup>26</sup> Section 15F of the Exchange Act, added by section 764(a) of the Dodd-Frank Act, establishes requirements for registration and comprehensive oversight of security-based swap dealers and major security-

<sup>6</sup> See 15 U.S.C. 80a-3.

<sup>7</sup> See 15 U.S.C. 78m(f)(6)(A).

<sup>8</sup> See Securities Exchange Act Release No. 64976 (July 27, 2011), 76 FR 46960 (Aug. 3, 2011) (File No. S7-10-10).

<sup>9</sup> See 15 U.S.C. 78q-1(g), (i), and (j) (as amended by Section 763(b) of the Dodd-Frank Act).

<sup>10</sup> See Securities Exchange Act Release No. 64017 (March 3, 2011), 76 FR 14472 (March 16, 2011) (File No. S7-08-11).

<sup>11</sup> 15 U.S.C. 78c(a)(23).

<sup>12</sup> See 15 U.S.C. 78o-4(a)(1)(B) (as amended by Section 975(a)(1)(b) of the Dodd-Frank Act).

<sup>13</sup> 17 CFR 249.1300T.

<sup>14</sup> See Securities Exchange Act Release No. 62824 (September 1, 2010), 75 FR 54465 (September 8, 2010) (File No. S7-19-10).

<sup>15</sup> See Securities Exchange Act Release No. 63576 (December 20, 2010), 76 FR 824 (January 6, 2011) (File No. S7-45-10).

<sup>16</sup> *Id.* at 839.

<sup>17</sup> See 15 U.S.C. 78o-4(a)(1)(B) (as amended by Section 975(a)(1)(b) of the Dodd-Frank Act).

<sup>18</sup> 17 CFR 249.1100.

<sup>19</sup> 15 U.S.C. 78c(a)(30).

<sup>20</sup> 17 CFR 249b.300.

<sup>21</sup> 17 CFR 240.17g-3.

<sup>22</sup> See Securities Exchange Act Release No. 64514 (May 18, 2011), 76 FR 33420 (June 8, 2011) (File No. S7-18-11).

<sup>23</sup> 15 U.S.C. 78c(a)(62).

<sup>24</sup> See Securities Exchange Act Release No. 63347 (November 19, 2010), 75 FR 77306 (December 10, 2010) (File No. S7-35-10).

<sup>25</sup> See 15 U.S.C. 78c(a)(75) (as amended by Section 761 of the Dodd-Frank Act).

<sup>26</sup> See Public Law 111-203, § 761(a).

based swap participants.<sup>27</sup> The definition of “Major Security-Based Swap Participant” that is being added to Form ID cross-references the definition in Section 3(a)(67)(A) of the Exchange Act.<sup>28</sup> In addition, the definition of “Security-Based Swap Dealer” that is being added to Form ID cross-references the definition in Section 3(a)(71)(A) of the Exchange Act.<sup>29</sup>

#### Securities-Based Swap Execution Facility

Section 761(a) of the Dodd-Frank Act amended Section 3(a) of the Exchange Act to add definitions for, among others, the term “security-based swap execution facility.”<sup>30</sup> In accordance with Section 763 of the Dodd-Frank Act, the Commission proposed Regulation SB SEF under the Exchange Act, which was designed to create a registration framework for security-based swap execution facilities (“SB SEFs”).<sup>31</sup> Proposed rule 801(a) in Regulation SB SEF would require the registration application for SB SEFs to be filed electronically in a tagged data format with the Commission on Form SB SEF.<sup>32</sup> The definition of a “Securities-Based Swap Execution Facility” that is being added to Form ID cross-references the definition found in Section 3(a)(77) of the Exchange Act.<sup>33</sup>

The Commission believes that updating Form ID to add the above applicant types and related definitions will facilitate the processing of the form, including by routing Form ID filings to the appropriate internal office or division, and allow filers to promptly retrieve access codes and file in electronic format on EDGAR.

#### II. Procedural and Other Matters

The Administrative Procedure Act (“APA”) <sup>34</sup> generally requires an agency to publish, before adopting a rule, notice of a proposed rulemaking in the **Federal Register**.<sup>35</sup> This requirement does not apply, however, to, “interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.”<sup>36</sup> Further, the APA also

generally requires that an agency publish a rule in the **Federal Register** 30 days before the rule becomes effective.<sup>37</sup> This requirement, however does not apply where an agency finds good cause.<sup>38</sup>

The Commission is amending Form ID to include new applicant types. These new applicant types are “Investment Company, Business Development Company or Insurance Company Separate Account,” “Institutional Investment Manager (13F Filer),” “Non-Investment Company Applicant under the Investment Company Act of 1940,” “Large Trader,” “Clearing Agency,” “Municipal Advisor,” “Municipal Securities Dealer,” “Nationally Recognized Statistical Rating Organization,” “Security-Based Swap Data Repository,” “Security-Based Swap Dealer and Major Security-Based Swap Participant,” and “Securities-Based Swap Execution Facility.” The sole purpose of including these new applicant types is to improve the Commission’s internal procedures for processing filings, including routing Form ID filings to the appropriate internal office or division. Accordingly, the Commission finds that because the amendments relate solely to rules of agency organization, procedure or practice, publishing the changes for comment is unnecessary.<sup>39</sup>

The APA also generally requires publication of a rule in the **Federal Register** at least 30 days before its effective date unless the agency finds otherwise for good cause.<sup>40</sup> As noted above, the amendments to Form ID are intended solely to improve the Commission’s internal procedures for processing filings. These changes will not impose a new burden on any person to file the form with the Commission as the obligation to submit a Form ID arises from the requirement to make filings with the Commission through EDGAR in accordance with other rules and regulations issued by the Commission. Similarly, the amendments do not impose any burden on persons who have previously submitted a Form ID as

these persons will not be required to re-file the Form ID to account for the inclusion of specific applicant types. These changes will allow the Commission to process Form IDs more efficiently and will reduce the likelihood of unnecessary delays in processing. For these reasons, the Commission finds good cause for these procedural amendments to take effect immediately.

#### III. Paperwork Reduction Act

Form ID, as in effect prior to these amendments, contains “collection of information” requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”).<sup>41</sup> Specifically, there is a current approved collection of information for Form ID entitled “EDGAR Form ID” (Office of Management and Budget (“OMB”) Control No. 3235–0328). 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.

We do not believe that the amendments to Form ID necessitate an increase or decrease in the current PRA burden estimates for Form ID. Specifically, respondents to Form ID previously were required to indicate whether they are submitting the form as a “filer,” “filing agent,” “training agent,” “transfer agent,” or “individual.” The amendments we are adopting today simply add new applicant types to reflect persons that currently file on EDGAR but who are not separately listed on Form ID. These new applicant types include “Investment Company, Business Development Company or Insurance Company Separate Account,” “Institutional Investment Manager (Form 13F Filer),” “Non-Investment Company Applicant under the Investment Company Act of 1940,” “Large Trader,” “Clearing Agency,” “Municipal Advisor,” “Municipal Securities Dealer,” “Nationally Recognized Statistical Rating Organization,” “Security-Based Swap Data Repository,” “Security-Based Swap Dealer and Major Security-Based Swap Participant,” and “Securities-Based Swap Execution Facility.” Respondents will continue to be required to select an appropriate applicant type, with the sole difference being that that the list of options will increase.

The amendments to Form ID do not impose a new burden on any person to file the form with the Commission, nor do they impose any burden on persons who have previously submitted a Form

<sup>27</sup> 15 U.S.C. 78o–10 (as amended by Section 764(a) of the Dodd-Frank Act).

<sup>28</sup> See 15 U.S.C. 78c(a)(67)(A) (as amended by Section 761 of the Dodd-Frank Act).

<sup>29</sup> See 15 U.S.C. 78c(a)(71)(A) (as amended by Section 761 of the Dodd-Frank Act).

<sup>30</sup> See Public. Law 111–203, § 761(a).

<sup>31</sup> See Securities Exchange Act Release No. 63827 (February 2, 2011), 76 FR 10948 (February 28, 2011) (File No. S7–06–11).

<sup>32</sup> *Id.*

<sup>33</sup> See 15 U.S.C. 78c(a)(77) (as amended by Section 763 of the Dodd-Frank Act).

<sup>34</sup> 5 U.S.C. 551 *et seq.*

<sup>35</sup> See 5 U.S.C. 553(b).

<sup>36</sup> *Id.*

<sup>37</sup> See 5 U.S.C. 553(d).

<sup>38</sup> *Id.*

<sup>39</sup> For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act or analysis of major status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility analyses, the term “rule” means any rule for which the agency publishes a general notice of proposed rulemaking) and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

<sup>40</sup> See 5 U.S.C. 553(d)(3).

<sup>41</sup> 44 U.S.C. *et seq.*

ID as these persons will not be required to re-file the Form ID to account for the inclusion of specific applicant types. The sole change being effected by these amendments will be that new registrants will be asked to indicate a specific applicant type when completing the Form ID. To the extent that these new registrants will be required to register with the Commission and make filings on EDGAR in accordance with other Commission rules and regulations, the PRA burdens associated with those obligations will be accounted for in the context of those other rules and regulations.

The total estimated burden of filing a Form ID for a filer not currently subject to a requirement to file on EDGAR is 0.15 hours. For the reasons discussed above, we therefore believe that the overall information collection burden of Form ID would remain the same. As a result, we have not submitted the revisions to the collection of information to the Office of Management and Budget for review under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

#### IV. Economic Analysis

##### A. Consideration of Costs and Benefits

The amendments to Form ID update the form to reflect the increased use of the EDGAR database by various persons and institutions regulated by the Commission. Some of these entities currently file on EDGAR in electronic format and others may be required to file on EDGAR in the future. The amendments will facilitate the Commission's process for reviewing and processing the form and, consequently, the ability of filers to promptly retrieve the access codes needed to file on EDGAR. We do not believe these amendments will impose any significant costs on non-agency parties.

##### B. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)<sup>42</sup> of the Exchange Act requires the Commission, when making

rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 3(f) of the Exchange Act<sup>43</sup> and Section 2(c) of the Investment Company Act<sup>44</sup> require the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. We do not believe that the amendments to Form ID that reflect new entity applicant types will have any impact on competition.

#### V. Statutory Authority

We are adopting the amendments to Form ID under the authority in Section 19(a)<sup>45</sup> of the Securities Act, Sections 3(b),<sup>46</sup> 13(a),<sup>47</sup> 23(a),<sup>48</sup> and 35A<sup>49</sup> of the Exchange Act, Section 319<sup>50</sup> of the Trust Indenture Act of 1939 and Sections 30<sup>51</sup> and 38<sup>52</sup> of the Investment Company Act of 1940.

#### List of Subjects in 17 CFR Parts 239, 249, 269 and 274

Reporting and recordkeeping requirements, Securities.

#### Text of Form Amendments

For the reasons set out in the preamble, the Commission amends title 17, chapter II, of the Code of Federal Regulations as follows.

<sup>43</sup> 15 U.S.C. 78c(f).

<sup>44</sup> 15 U.S.C. 80a-2(c).

<sup>45</sup> 15 U.S.C. 77s(a).

<sup>46</sup> 15 U.S.C. 78c(b).

<sup>47</sup> 15 U.S.C. 78m(a).

<sup>48</sup> 15 U.S.C. 78w(a).

<sup>49</sup> 15 U.S.C. 78ll.

<sup>50</sup> 15 U.S.C. 77sss.

<sup>51</sup> 15 U.S.C. 80a-29.

<sup>52</sup> 15 U.S.C. 80a-37.

#### PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 1. The authority citation for part 239, continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, 80a-37, and Pub. L. No. 111-203, § 939A, 124 Stat. 1376, (2010) unless otherwise noted.

\* \* \* \* \*

#### PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 2. The authority citation for part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a *et seq.*, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

#### PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

■ 3. The authority citation for part 269 continues to read as follows:

**Authority:** 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, and 78ll(d), unless otherwise noted.

#### PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 4. The authority citation for part 274 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

\* \* \* \* \*

■ 5. Form ID (referenced in §§ 239.63, 249.446, 269.7 and 274.402 of this chapter) is revised to read as set forth in the attached Appendix A.

Dated: September 1, 2011.

By the Commission.

**Elizabeth M. Murphy,**  
*Secretary.*

**Note:** The following Appendix A will not appear in the Code of Federal Regulations.

BILLING CODE 8011-01-P

<sup>42</sup> 15 U.S.C. 78w(a).

## APPENDIX A

U.S. Securities and Exchange Commission  
Washington, DC 20549

OMB APPROVAL	
OMB Number:	3235-0328
Expires:	November 30, 2013
Estimated average burden hours per response:	0.15

## FORM ID

## UNIFORM APPLICATION FOR ACCESS CODES TO FILE ON EDGAR

## PART I—APPLICATION FOR ACCESS CODES TO FILE ON EDGAR

Name of applicant (Applicant's name as specified in its charter, except, if individual, last name, first name, middle name, suffix [e.g., "Jr."]) \_\_\_\_\_

Mailing Address or Post Office Box No. \_\_\_\_\_

City \_\_\_\_\_ State or Country \_\_\_\_\_ Zip \_\_\_\_\_

Telephone number (include Area and, if Foreign, Country Code) \_\_\_\_\_

Applicant is (see definitions in the General Instructions):

- Individual (if you check this box, you must also check another box that appropriately describes you)
- Clearing Agency
- Filer
- Filing Agent
- Institutional Investment Manager (Form 13F Filer)
- Investment Company, Business Development Company or Insurance Company Separate Account
- Large Trader
- Municipal Advisor
- Municipal Securities Dealer
- Nationally Recognized Statistical Rating Organization
- Non-Investment Company Applicant under the Investment Company Act of 1940
- Security-Based Swap Data Repository
- Security-Based Swap Dealer and Major Security-Based Swap Participant
- Security-Based Swap Execution Facility
- Training Agent
- Transfer Agent

## PART II—FILER INFORMATION (To be completed only by filers that are not individuals)

Filer's Tax or Federal Identification Number (do not enter Social Security Number) \_\_\_\_\_

Doing Business As \_\_\_\_\_

Foreign Name (if Foreign Issuer Filer and applicable) \_\_\_\_\_

Primary Business Address or Post Office Box No. (if different from mailing address) \_\_\_\_\_

City \_\_\_\_\_ State or Country \_\_\_\_\_ Zip \_\_\_\_\_

State of Incorporation \_\_\_\_\_ Fiscal Year End (mm/yy) \_\_\_\_\_

SEC 2084 (09-11)

Persons who respond to the collection of information contained in this form are  
not required to respond unless the form displays a current valid OMB control number.

**PART III—CONTACT INFORMATION (To be completed by all applicants)**

Person to receive EDGAR Information, Inquiries and Access Codes \_\_\_\_\_

Telephone Number (Include Area and, if Foreign, Country Code) \_\_\_\_\_

Mailing Address or Post Office Box No. (if different from applicant's mailing address)  
\_\_\_\_\_

City \_\_\_\_\_ State or Country \_\_\_\_\_ Zip \_\_\_\_\_

E-Mail Address \_\_\_\_\_

**PART IV—ACCOUNT INFORMATION (To be completed by filers and filing agents only)**

Person to receive SEC Account Information and Billing Invoices \_\_\_\_\_

Telephone Number (Include Area and, if Foreign, Country Code) \_\_\_\_\_

Mailing Address or Post Office Box No. (if different from applicant's mailing address)  
\_\_\_\_\_

City \_\_\_\_\_ State or Country \_\_\_\_\_ Zip \_\_\_\_\_

**PART V—SIGNATURE (To be completed by all applicants)**

Signature \_\_\_\_\_

Type or Print Name \_\_\_\_\_

Position or Title \_\_\_\_\_

Date \_\_\_\_\_

Intentional misstatements or omissions of facts constitute federal criminal violations. See 18 U.S.C. 1001.

Section 19(a) of the Securities Act of 1933 (15 U.S.C. 77s(a)), sections 13(a) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) and 78w(a)), section 319 of the Trust Indenture Act of 1939 (15 U.S.C. 77sss), and sections 30 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a-29 and 80a-37) authorize solicitation of this information. We will use this information to assign system identification to filers, filing agents, and training agents. This will allow the Commission to identify persons sending electronic submissions and grant secure access to the EDGAR system.

**FORM ID**  
**GENERAL INSTRUCTIONS**

**USING AND PREPARING FORM ID**

FORM ID must be filed by all applicant types listed on this Form, or their agents, to whom the Commission previously has not assigned a Central Index Key (CIK) code, to request the following access codes to permit filing on EDGAR:

- Central Index Key (CIK)—The CIK uniquely identifies each filer, filing agent, and training agent. We assign the CIK at the time you make an initial application. You may not change this code. The CIK is a public number.
- CIK Confirmation Code (CCC)—You will use the CCC in the header of your filings in conjunction with your CIK to ensure that you authorized the filing.
- Password (PW)—The PW allows you to log onto the EDGAR system, submit filings, and change your CCC.
- Password Modification Authorization Code (PMAC)—The PMAC allows you to change your password.

An applicant must file this Form in electronic format via the Commission's EDGAR Filer Management website. Please see Regulation S-T (17 CFR Part 232) and the EDGAR Filer Manual for instructions on how to file electronically, including how to use the access codes.

The applicant must complete the Form ID electronic filing by also submitting to the Commission a copy of a notarized paper "authenticating" document. The authenticating document must include the information required to be included in the Form ID filing, be manually signed by the applicant over the applicant's typed signature, and confirm the authenticity of the Form ID filing. Applicants may fulfill the authenticating document requirement by making a copy of the applicant's electronic Form ID filing, adding the necessary confirming language, signing it, and having the signature notarized.

If the applicant has prepared the authenticating document before making its electronic Form ID filing, it may submit the document as an uploaded Portable Document Format (PDF) attachment to the electronic filing. An applicant also may submit the authenticating document by faxing it to the Commission at (202) 504-2474 or (703) 914-4240 within two business days before or after its electronic Form ID filing. If submitted by fax after the electronic Form ID filing, the authenticating document must contain the accession number assigned to the electronic Form ID filing. If the fax is not received timely, the Form ID filing and application for access codes will not be processed, and the applicant will receive an e-mail message at the contact e-mail address included in the Form ID filing informing the applicant of the failure to process and providing further guidance. The message will state why the application was not processed.

For assistance with technical questions about electronic filing, call Filer Support at (202) 551-8900. For assistance with questions about the EDGAR rules, Division of Corporation Finance filers may call the Office of Information Technology at (202) 551-3600; and Division of Investment Management filers may call the IM EDGAR Inquiry Line at (202) 551-6989.

**You must complete all items in any parts that apply to you. If any item in any part does not apply to you, please leave it blank.**

**PART I—APPLICANT INFORMATION (To be completed by all applicants)**

Provide the applicant's name in English.

Please check one of the boxes to indicate whether you will be sending electronic submissions as a clearing agency, filer, filing agent, institutional investment manager, investment company, large trader, municipal advisor, municipal securities dealer, nationally recognized statistical rating organization, non-investment company applicant under the Investment Company Act of 1940, security-based swap data repository, security-based swap dealer, security-based swap execution facility, training agent, or transfer agent. Mark only one of these boxes per application. If you are an individual, however, also mark the "Individual" box.

For purposes of this Form, the term "person" includes either an individual or entity. In addition, please note that the following definitions are to facilitate the correct selection of "applicant type" and are not intended to amend or otherwise change any provision of the federal securities laws or the regulations promulgated thereunder. Finally, to the extent that a definition cross-references a particular statute, such definition shall also include any rules or regulations promulgated by the Commission further refining the statutory definition.

- "Individual"—A natural person.
- "Clearing Agency"—Any person that is a "clearing agency" as defined in Section 3(a)(23) of the Securities Exchange Act of 1934, as amended. (See 15 U.S.C. 78c(a)(23)).
- "Filer"—Any person on whose behalf an electronic filing is made that is not otherwise covered by another Form ID applicant type (other than "Individual", as noted in the Instructions above).
- "Filing Agent"—A financial printer, law firm, or other person, which will be using these access codes to send a filing or portion of a filing on behalf of a filer.
- "Institutional Investment Manager (Form 13F Filer)"—Any person that is required to file a Form 13F under Section 13(f) of the Securities Exchange Act of 1934, as amended. (See 15 U.S.C. 78m(f)(6)(A)).
- "Investment Company, Business Development Company or Insurance Company Separate Account"—Any person that meets the definition of "investment company" in Section 3 of the Investment Company Act of 1940, as amended (See 15 U.S.C. 80a-3), or otherwise registers an offering of its securities on a registration form adopted by the Commission under such Act, including management companies, face-amount certificate companies, unit investment trusts, business development companies, and insurance company separate accounts (including any separate account which would be required to be registered under the Investment Company Act of 1940 except for the exclusion provided by Section 3(c)(11) of such Act and which files a registration statement on Form N-3 or Form N-4).
- "Large Trader"—Any person that is a "large trader" as defined by Rule 13h-1(a)(1) under the Securities Exchange Act of 1934, as amended (See 17 CFR 240.13h-1(a)(1)).
- "Municipal Advisor"—Any person that is a "municipal advisor" as defined in Section 15B(e)(4) of the Securities Exchange Act of 1934, as amended. (See 15 U.S.C. 78o-4(e)(4)).
- "Municipal Securities Dealer"—Any person that is a "municipal securities dealer" as defined in Section 3(a)(30) of the Securities Exchange Act of 1934, as amended. (See 15 U.S.C. 78c(a)(30)).
- "Nationally Recognized Statistical Rating Organization"—Any person that is a "nationally recognized statistical rating organization" as defined in Section 3(a)(62) of the Securities Exchange Act of 1934, as amended. (See 15 U.S.C. 78c(a)(62)).
- "Non-Investment Company Applicant under the Investment Company Act of 1940"—Any person submitting an application for an order seeking an exemption under the Investment Company Act of 1940, as amended.
- "Security-Based Swap Data Repository"—Any person that is a "security-based swap data repository" as defined in Section 3(a)(75) of the Securities Exchange Act of 1934, as amended. (See 15 U.S.C. 78c(a)(75)).
- "Security-Based Swap Dealer and Major Security-Based Swap Participant"—Any person that is a "security-based swap dealer" or a "major security-based swap participant" as each term is defined in Sections 3(a)(71) and (67) of the Securities Exchange Act of 1934, as amended. (See 15 U.S.C. 78c(a)(71) and (67)).

- “Security-Based Swap Execution Facility”—Any person that is a “security-based swap execution facility” as defined in Section 3(a)(77) of the Securities Exchange Act of 1934, as amended. (*See* 15 U.S.C. 78c(a)(77)).
- “Training Agent”—Any person that will be sending only test filings in conjunction with training other persons.
- “Transfer Agent”—Any person planning to register as a Transfer Agent as defined in Section 3(a)(25) of the Securities Exchange Act of 1934, as amended, on whose behalf an electronic filing is made. (*See* 15 U.S.C. 78c(a)(25)).

**PART II—FILER INFORMATION (To be completed only by filers that are not individuals)**

The filer’s tax or federal identification number is the number issued by the Internal Revenue Service. This section does not apply to individuals. Accordingly, do not enter a Social Security number. If an investment company filer is organized as a series company, the investment company may use the tax or federal identification number of any one of its constituent series. Issuers that have applied for but not yet received their tax or federal identification number and foreign issuers that do not have a tax or federal identification number must include all zeroes. A “foreign issuer” is an entity so defined by Securities Act of 1933 (15 U.S.C. 77a *et seq.*) Rule 405 (17 CFR 230.405) and the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) Rule 3b-4(b) (17 CFR 240.3b-4(b)). Foreign issuers should include their country of organization.

A foreign issuer filer must provide its “doing business as” name in the language of the name under which it does business and must provide its foreign language name, if any, in the space so marked.

If the filer’s fiscal year does not end on the same date each year (e.g., falls on the last Saturday in December), the filer must enter the date the current fiscal year will end.

**PART III—CONTACT INFORMATION (To be completed by all applicants)**

In this section, identify the individual who should receive the access codes and other EDGAR-related information. Please include an e-mail address that will become your default notification address for EDGAR filings; it will be stored in the Company Contact Information on the EDGAR Database. EDGAR will send all subsequent filing notifications automatically to that address. You can have one e-mail address in the EDGAR Company Contact Information. For information on including additional e-mail addresses on a per filing basis, refer to Volume 1, Section 3.2.2 of the EDGAR Filer Manual.

**PART IV—ACCOUNT INFORMATION (To be completed by filers and filing agents only)**

Identify in this section the individual who should receive account information and/or billing invoices from us. We will use this information to process electronically fee payments and billings. If the address changes, update it via the EDGAR filing website, or your account statements may be returned to us as undeliverable.

**PART V—SIGNATURE (To be completed by all applicants)**

If the applicant is a corporation, partnership, trust or other entity, state the capacity in which the representative individual, who must be duly authorized, signs the Form on behalf of the applicant.

If the applicant is an individual, the applicant must sign the Form.

If another person signs on behalf of the representative individual or the individual applicant, confirm the authority of the other person to sign in writing in an electronic attachment to the Form. The confirming statement need only indicate that the representative individual or individual applicant authorizes and designates the named person or persons to file the Form on behalf of the applicant and state the duration of the authorization.

[FR Doc. 2011–22895 Filed 9–8–11; 8:45 am]

BILLING CODE 8011–01–C

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG–2011–0789]

RIN 1625–AA00

**Safety Zone; TriRock Triathlon, San Diego Bay, San Diego, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone upon the specified navigable waters of the San Diego Bay, San Diego, California, in support of a bay swim in San Diego Harbor. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 7 a.m. to 10 a.m. on September 11, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0789 and are available online by going to <http://www.regulations.gov>, inserting USCG–2011–0789 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Petty Officer David Varela, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail [charles.d.varela@uscg.mil](mailto:charles.d.varela@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

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 publishing an NPRM would be impracticable. The logistical details of the San Diego Bay swim were not finalized or presented to the Coast Guard in enough time to draft and publish an NPRM. As such, the event would occur before the rulemaking process could be completed.

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**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure public safety.

##### **Basis and Purpose**

Competitor Group is sponsoring the TriRock Triathlon, consisting of 2000 swimmers swimming a predetermined

course. The sponsor will provide three safety vessels for this event. This safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

##### **Discussion of Rule**

The Coast Guard is establishing a safety zone that will be enforced on September 11, 2011, from 7 a.m. to 10 a.m. The limits of the safety zone will be navigable waters of the San Diego Bay behind the San Diego Convention Center bound by the following coordinates including the marina; 32°42'16" N, 117°09'58" W to 32°42'15" N, 117°10'02" W then south to 32°42'00" N, 117°09'45" W to 32°42'03" N, 117°09'40" W.

This temporary safety zone is necessary to ensure unauthorized personnel and vessels remain safe by keeping clear during the bay swim. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

##### **Regulatory Analyses**

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

##### *Regulatory Planning and Review*

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 that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

This determination is based on the size and location of the temporary safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels may be allowed to transit through the designated safety zone during the specified times if they request and obtain authorization from the Captain of the Port, or designated representative.

##### *Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities.

The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the aforementioned portion of the San Diego Bay from September 11, 2011, from 7 a.m. to 10 a.m.

This temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule impacts only a small area of San Diego Harbor, and will be enforced for only seven hours. Vessel traffic can pass safely around the zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

##### *Assistance for Small Entities*

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

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

##### *Collection of Information*

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

##### *Federalism*

A rule has implications for federalism under Executive Order 13132,

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

#### *Unfunded Mandates Reform Act*

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

#### *Taking of Private Property*

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

#### *Civil Justice Reform*

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

#### *Protection of Children*

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

#### *Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *Energy Effects*

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant

energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### *Technical Standards*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

#### *Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

#### **ADDRESSES.**

#### **List of Subjects in 33 CFR Part 165**

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

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

## **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–431 to read as follows:

### **§ 165.T11–431 Safety Zone; TriRock Triathlon, San Diego Bay, San Diego, CA.**

(a) *Location.* The limits of the safety zone will be navigable waters of the San Diego Bay behind the San Diego Convention Center bound by the following coordinates including the marina; 32°42′16″ N, 117°09′58″ W to 32°42′15″ N, 117°10′02″ W then south to 32°42′00″ N, 117°09′45″ W to 32°42′03″ N, 117°09′40″ W.

(b) *Enforcement Period.* This section will be enforced from 7 a.m. to 10 a.m. on September 11, 2011. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative*, means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: August 29, 2011.

**S.M. Mahoney,**  
*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2011–23260 Filed 9–7–11; 4:15 pm]

**BILLING CODE 9110–04–P**

**POSTAL SERVICE****39 CFR Part 20****Outbound International Mailings of Lithium Batteries****AGENCY:** Postal Service™.**ACTION:** Final rule; withdrawal.

**SUMMARY:** The Postal Service is withdrawing a final rule that would incorporate new maximum limits for the outbound mailing of lithium batteries to international, or APO, FPO or DPO locations. The Postal Service also withdraws the corresponding *Code of Federal Regulations* revision to reflect these new limits.

**DATES:** The final rule published on August 25, 2011 (76 FR 53056–56057), is withdrawn effective September 9, 2011.

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

**SUPPLEMENTARY INFORMATION:** In a final rule with comment period published in the *Federal Register* on August 25, 2011, the Postal Service provided new maximum limits for mailpieces containing equipment with lithium metal or lithium-ion batteries that were to be effective October 3, 2011. These revisions were consistent with recent amendments to the Universal Postal Union (UPU) Convention and regulations as announced in International Bureau Circulars 114 and 115, dated June 14, 2011, that affected UPU Convention Articles 15 and 16, Article RL 131 of the letter post regulations, and Article RC 120 of the parcel post regulations.

The withdrawal of the revisions is necessary because of a notice to the UPU from the International Civil Aviation Organization (ICAO) on August 19, 2011, requesting that the UPU delay implementation of the aforementioned amendment until the UPU revisions could be reviewed by the ICAO Dangerous Goods Panel, and if approved, incorporated into *The Technical Instructions for the Safe Transport of Dangerous Goods by Air* manual. Therefore, the UPU has informed its member countries that the date of newly adopted UPU amendments for lithium batteries will be the subject of further notice based on the decision of the panel and any changes to the ICAO *Technical Instructions*.

Accordingly, the Postal Service withdraws its final rule published on August 25, 2011. The Postal Service also withdraws the revision to 39 CFR 20.1 whereby a new section 135.6 was added to the *Mailing Standards of the United*

*States Postal Service*, International Mail Manual (IMM®) to describe the new maximum limits for the outbound mailing of lithium batteries to international, or APO, FPO or DPO locations. The parallel changes that were to be made to other USPS publications are also withdrawn.

**Stanley F. Mires,***Chief Counsel, Legislative.*

[FR Doc. 2011–23054 Filed 9–8–11; 8:45 am]

**BILLING CODE 7710–12–P****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52****[FRL–9460–3]****Approval of Clean Air Act Prevention of Significant Deterioration Permit Issued to Avenal Power Center, LLC To Construct the Avenal Energy Project****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final Action.

**SUMMARY:** This document announces that EPA has issued a final permit decision granting the Clean Air Act Prevention of Significant Deterioration (PSD) permit application submitted by Avenal Power Center, LLC to authorize construction of the Avenal Energy Project.

**DATES:** The EPA's PSD permit for the Avenal Energy Project became effective and final agency action on August 18, 2011, when administrative review procedures were exhausted. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this permit decision, to the extent it is available, may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of September 9, 2011.

**ADDRESSES:** The documents relevant to the above-referenced action are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 9, 75 Hawthorne St., San Francisco, CA 94105. To arrange for viewing of these documents, call Shirley Rivera at (415) 972–3966.

**FOR FURTHER INFORMATION CONTACT:** Shirley Rivera, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne St., San Francisco, CA 94105. The EPA Environmental Appeals Board (EAB) decision described below is available at the following Web site: <http://www.epa.gov/eab/>.

**SUPPLEMENTARY INFORMATION:** The EPA issued a PSD permit on May 27, 2011, to Avenal Power Center, LLC for the Avenal Energy Project, granting approval to construct a new 600-megawatt natural gas-fired combined-cycle power plant in Kings County, California. The EPA issued an administrative amendment to the permit on June 21, 2011, to correct typographical errors. The EPA's Environmental Appeals Board (EAB) received four petitions for review of the permit from the following entities within 30 days of the EPA's service of notice of the issuance of the permit: (1) El Pueblo Para El Aire y Agua Limpio; (2) Greenaction for Health & Environmental Justice; (3) Sierra Club and Center for Biological Diversity; and (4) Mr. Rob Simpson. The EAB denied review of these petitions on August 18, 2011. All conditions of the Avenal Power Center, LLC permit for the Avenal Energy Project, as amended on June 21, 2011, are final and effective. Pursuant to 40 CFR 124.19(f)(1), final agency action by EPA has occurred because of the exhaustion of the agency review procedures before the EAB. The EPA Administrator has delegated authority to the EAB to issue final decisions in PSD permit appeals filed under 40 CFR part 124. 40 CFR 124.2(a).

Dated: August 31, 2011.

**Gina McCarthy,***Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 2011–22834 Filed 9–8–11; 8:45 am]

**BILLING CODE 6560–50–P****ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180****[EPA–HQ–OPP–2011–0639; FRL–8886–8]****Mandipropamid; Pesticide Tolerances for Emergency Exemptions****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This regulation establishes time-limited tolerances for residues of mandipropamid in or on basil, fresh and basil, dried. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on basil. This regulation establishes a maximum permissible level for residues of mandipropamid in or on these commodities. The time-limited tolerances expire on December 31, 2012.

**DATES:** This regulation is effective September 9, 2011. Objections and requests for hearings must be received on or before November 8, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2011-0639. All documents in the docket are listed in the docket index available in <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Marcel Howard, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; *telephone number:* (703) 305-6784; *e-mail address:* [howard.marcel@epa.gov](mailto:howard.marcel@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this action apply to me?*

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://ecfr.gpoaccess.gov/cgi/t/text/textidx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/textidx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

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

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2011-0639 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 8, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2011-0639, by one of the following methods:

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

(8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

##### **II. Background and Statutory Findings**

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing time-limited tolerances for residues of mandipropamid, 4-chloro-N-[2-[3-methoxy-4-(2-propynyloxy)phenyl]ethyl]- $\alpha$ -(2-propynyloxy)-benzeneacetamide, in or on basil, fresh at 20 parts per million (ppm) and basil, dried at 240 ppm. These time-limited tolerances expire on December 31, 2012.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of section 408 of FFDCA and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, *i.e.*, without having received any petition from an outside party.

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that “emergency conditions exist which require such exemption.” EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

### III. Emergency Exemption for Mandipropamid on Basil and FFDCA Tolerances

The Applicant stated that a new, destructive fungal pathogen, known as downy mildew (*Peronospora belbahrii*), has been identified in Illinois and it resulted in a 50% yield loss in basil production using registered alternatives. Illinois recently experienced some atypical weather conditions (high moisture and temperatures) that were conducive to the development and spread of the disease. The increase presence of the disease and the zero tolerance policy for downy mildew adopted by the distributors led basil grower to seek a spray program to maintain season-long control of this disease. The registered alternatives have been deemed inadequate for season-long control due to product application restrictions or lack of product efficacy. The Applicant stated that because of the favorable weather conditions and the inadequacy of the registered alternatives to achieve season-long control of the downy mildew, an emergency situation exists and significant economic losses will likely incur. Further, the Applicant asserts that without a suitable additional fungicide, such as mandipropamid, to address the issue, the future viability of basil industry in Illinois is threatened. After having reviewed the submission, EPA determined that an emergency condition exists for this State, and that the criteria for approval of an emergency exemption are met. EPA has authorized a specific exemption under FIFRA section 18 for the use of mandipropamid on basil for control of downy mildew in Illinois.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of mandipropamid in or on basil, fresh and basil, dried. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and

opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although these time-limited tolerances expire on December 31, 2012, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on basil, fresh and basil, dried after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether mandipropamid meets FIFRA’s registration requirements for use on basil or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of mandipropamid by a State for special local needs under FIFRA section 24(c). Nor does this tolerance by itself serve as the authority for persons in any State other than Illinois to use this pesticide on the applicable crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for mandipropamid, contact the Agency’s Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

### IV. Aggregate Risk Assessment and Determination of Safety

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

tolerance and to “ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue \* \* \*.”

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption request and the time-limited tolerances for residues of mandipropamid on basil, fresh at 20 ppm and basil, dried at 240 ppm. EPA’s assessment of exposures and risks associated with establishing time-limited tolerances follows.

#### A. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for mandipropamid used for human risk assessment is discussed in Unit III. of the final rule published in the **Federal Register** of January 16, 2008 (73 FR 2812) (FRL–8346–6).

#### B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to mandipropamid, EPA

considered exposure under the time-limited tolerances established by this action as well as all existing mandipropamid tolerances in 40 CFR 180.637. EPA assessed dietary exposures from mandipropamid in food as follows:

i. *Acute exposure.* No such effects were identified in the toxicological studies for mandipropamid; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA relied upon permanent tolerance level residues established for mandipropamid and 100 percent crop treated (PCT) information for all agricultural commodities. An unrefined chronic exposure assessment that assumes 100 PCT was conducted for the proposed Section 18 uses of mandipropamid. The parent mandipropamid is the residue of concern for tolerance monitoring, and mandipropamid and its major aquatic degradates (SYN 500003 and SYN 5044851) for the risk assessment.

iii. *Cancer.* EPA has determined that mandipropamid is classified as “not likely to be a human carcinogen” based on the absence of treatment-related increases in tumors in the rat and mouse carcinogenicity studies. Therefore, an exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for mandipropamid. Tolerance level residues and 100 PCT were assumed for all food commodities.

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

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of mandipropamid for acute exposures are estimated to be 25.2 parts per billion (ppb) for surface water and 0.05 ppb for ground water. The estimated environmental concentrations (EECs) for the aquatic degradates SYN 500003 and

SYN 504851 are estimated to be 2.32 and 8.99 ppb for surface water and 0.6 and 1.7 ppb for ground water, respectively. The combined level of mandipropamid and the degradates in surface water is 36.5 ppb.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 36.5 ppb was used to assess the contribution to drinking water.

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

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

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to mandipropamid and any other substances, and mandipropamid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that mandipropamid has a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA’s Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA’s Web site at <http://www.epa.gov/pesticides/cumulative>.

#### C. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity

and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

#### 2. Prenatal and postnatal sensitivity.

There is no evidence (quantitative or qualitative) of increased susceptibility and no residual uncertainties with regard to prenatal toxicity following *in utero* exposure to rats or rabbits (developmental studies) and prenatal and/or postnatal exposures to rats (reproduction study).

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

i. The toxicity database for mandipropamid is complete except that EPA has determined that an immunotoxicity study is required as per the revised 40 CFR part 158. However, there is no need for an additional uncertainty factor while the immunotoxicity study is completed. The overall weight of evidence in terms of hematology, clinical chemistry, organ weights, and/or histopathology indicates that mandipropamid does not directly target the immune system. Therefore, EPA does not anticipate that conducting a functional immunotoxicity study will result in a lower point of departure than currently selected for the overall risk assessment. The immunotoxicity study should be conducted in conjunction with any future petition for the section 3 registration of mandipropamid.

ii. There is no indication that mandipropamid is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional uncertainty factors (UFs) to account for neurotoxicity.

iii. There is no evidence that mandipropamid results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to

mandipropamid in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by mandipropamid.

#### D. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, mandipropamid is not expected to pose an acute risk.

2. *Chronic risk.* There are no residential uses for mandipropamid, and therefore aggregate risk is equal to that from consumption of food and water. EPA has concluded that chronic exposure to mandipropamid from food and water will utilize 44% of the cPAD for (children 1 to 2 years of age) the population group receiving the greatest exposure, while the general U.S. population utilizes 26% of the cPAD.

3. *Short-term and intermediate risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Mandipropamid is not registered or proposed for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which was previously addressed.

4. *Aggregate cancer risk for U.S. population.* As explained in this unit, mandipropamid is not likely to be carcinogenic in humans.

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

## V. Other Considerations

### A. Analytical Enforcement Methodology

Adequate enforcement methodology (German Multi-residue Method DFG S-19) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

### B. International Residue Limits

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

There are no specific Codex, Canadian or Mexican maximum residue limits (MRL) for mandipropamid in or on basil.

## VI. Conclusion

Therefore, time-limited tolerances are established for residues of mandipropamid, 4-chloro-N-[2-[3-methoxy-4-(2-propynyloxy)phenyl]ethyl]- $\alpha$ -(2-propynyloxy)-benzeneacetamide, in or on basil, fresh at 20 ppm and basil, dried at 240 ppm. These tolerances expire on December 31, 2012.

## VII. Statutory and Executive Order Reviews

This final rule establishes tolerances under sections 408(e) and 408(l)(6) of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May

22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with sections 408(e) and 408(l)(6) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

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

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

## VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of

the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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

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

Dated: August 31, 2011.

**Lois Rossi,**

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

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

■ 2. Section 180.637 is amended by revising paragraph (b) to read as follows:

**§ 180.637 Mandipropamid; tolerances for residues.**

\* \* \* \* \*

(b) *Section 18 emergency exemptions.* Time-limited tolerances specified in the following table are established for residues of the mandipropamid, 4-chloro-N-[2-[3-methoxy-4-(2-propynyloxy)phenyl]ethyl]-α-(2-propynyloxy)-benzeneacetamide in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to FFIFRA section 18 emergency exemptions. The tolerances expire on the date specified in the table.

Commodity	Parts per million	Expiration date
Basil, dried .....	240	12/31/12
Basil, fresh .....	20	12/31/12

\* \* \* \* \*

[FR Doc. 2011-22983 Filed 9-8-11; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2010-0496; FRL-8881-6]

**Dicamba; Pesticide Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of dicamba in or on teff, forage; teff, grain; teff, straw; and teff, hay. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective September 9, 2011. Objections and requests for hearings must be received on or before November 8, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2010-0496. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; *telephone number:* (703) 305-7390; *e-mail address:* [nollen.laura@epa.gov](mailto:nollen.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural

producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl). To access the harmonized test guidelines referenced in this document electronically, please go <http://www.epa.gov/ocspp> and select "Test Methods and Guidelines."

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2010-0496 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 8, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked

confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2010-0496, by one of the following methods:

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

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 22, 2010 (75 FR 65321) (FRL-8851-1), EPA issued a notice pursuant to section 408(d)(3) of FFDCFA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E7779) by IR-4, 500 College Rd. East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.227 be amended by establishing a tolerance for residues of the herbicide dicamba, 3,6-dichloro-o-anisic acid, and its metabolite 3,6-dichloro-5-hydroxy-o-anisic acid (5-OH dicamba), in or on teff, forage at 90.0 parts per million (ppm); teff, grain at 6.0 ppm; teff, straw at 30.0 ppm; and teff, hay at 40.0 ppm. That notice referenced a summary of the petition prepared on behalf of IR-4 by Helena Chemical Company, the registrant, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the tolerance expression for all established commodities to be consistent with current Agency policy. The reason for this change is explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCFA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA

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

Consistent with section 408(b)(2)(D) of FFDCFA, and the factors specified in section 408(b)(2)(D) of FFDCFA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for dicamba including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with dicamba follows.

In the **Federal Register** of April 2, 2008 (73 FR 17914) (FRL-8356-6), EPA published a final rule establishing tolerances for combined residues of the herbicide dicamba, 3,6-dichloro-o-anisic acid, and its metabolite, 3,6-dichloro-5-hydroxy-o-anisic acid in or on corn, sweet, forage at 0.50 ppm; corn, sweet, kernel plus cob with husks removed 0.04 ppm; and corn, sweet, stover at 0.50 ppm, based on EPA's conclusion that aggregate exposure to dicamba is safe for the general population, including infants and children. Since 2008, there have been no additional tolerance actions for dicamba.

As noted in this unit, the current action concerns a tolerance for dicamba on teff. Teff is an intermediate grass that is morphologically and taxonomically similar to other cereal grains, including wheat. It is used to make flour in a manner similar to wheat and other cereal grains. EPA recently assessed the proposed use of dicamba on teff. In that assessment, EPA determined that aggregate dicamba exposures and risks will not increase as a result of the addition of the proposed teff uses to the uses assessed as part of the 2008 rulemaking. Teff is not included in the Continuing Survey of Food Intakes by Individuals (CSFII). However, because it is used to make flour in a manner similar to wheat and other cereal grains,

it will likely substitute in the diet for cereal grain foods which will contain similar residues of dicamba; therefore, a significant increase in dietary exposure to residues of dicamba from consumption of teff-containing foods will not occur. Furthermore, residues of dicamba in teff livestock feeds will be similar to those in other forages, hays, and silages for which tolerances of dicamba are currently established. As such, there would be no increase in the livestock dietary burden should teff be substituted in the livestock diet for other hays and silages; residues in meat, milk, poultry and eggs will remain the same.

Further information about EPA's risk assessment and determination of safety for this action can be found at <http://www.regulations.gov> in document "2,4-D and Dicamba: Petition for the Establishment of Tolerances on Teff; Request for Registration of Latigo (EPA Reg. No. 5905-564) on Teff." in docket ID number EPA-HQ-OPP-2010-0496. Except as supplemented by the information described in this unit, EPA is relying on the safety finding in the 2008 rulemaking and the risk assessment underlying that action in establishing the tolerances for dicamba on teff, forage; teff, grain; teff, straw; and teff, hay. Further information regarding the safety finding for the last rulemaking can be found in the **Federal Register** of April 2, 2008 (73 FR 17917) (FRL-8356-6), at <http://www.epa.gov/fedrgstr/EPA-PEST/2008/April/Day-02/p6674.htm>.

For the 2008 rulemaking, the toxicity database was considered complete. However, recent changes to 40 CFR part 158 imposed new data requirements for immunotoxicity testing (OPPTS Guideline 870.7800) and acute and subchronic neurotoxicity testing (OPPTS Guideline 870.6200) for pesticide registration. The toxicity database for dicamba includes acceptable acute and subchronic neurotoxicity studies; therefore, the requirements for the neurotoxicity screening battery have been met. Additionally, an immunotoxicity study was recently submitted and is currently under review. A screening level review of this study indicates that no effects, including immunotoxic effects, were observed at the highest dose tested of approximately 307 milligrams/kilograms(mg/kg/day). This value is higher than the doses currently used for risk assessment; therefore, risk assessment endpoints will not change and the toxicity database is considered complete.

Based upon the 2008 rulemaking and the other information discussed in this unit, EPA concludes that there is a

reasonable certainty that no harm will result to the general population, and to infants and children, from aggregate exposure to dicamba residues. Refer to the April 2, 2008 (73 FR 17914) (FRL-8356-6) **Federal Register** document, available at <http://www.regulations.gov>, for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

Adequate enforcement methodologies, Methods I and II—gas chromatography with electron capture detection (GC/ECD), are available to enforce the tolerance expression. The methods are published in the Pesticide Analytical Manual (PAM) Volume II. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

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

The Codex has not established MRLs for dicamba in or on commodities associated with this action.

##### C. Revisions to Petitioned-For Tolerances

The EPA has revised the tolerance expression to clarify:

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

#### V. Conclusion

Therefore, tolerances are established for residues of dicamba, 3,6-dichloro-o-anisic acid, including its metabolites and degradates, in or on teff, forage at 90.0 ppm; teff, grain at 6.0 ppm; teff, straw at 30.0 ppm; and teff, hay at 40.0 ppm.

#### VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled

*Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4).

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

#### VII. Congressional Review Act

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

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

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

Dated: August 31, 2011.

**Lois Rossi,**

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

Therefore, 40 CFR chapter I is amended as follows:

#### PART 180—[AMENDED]

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

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

- 2. Section 180.227 is amended by revising the introductory text in paragraphs (a)(1), (2), and (3); and alphabetically adding the following commodities to the table in paragraph (a)(1) to read as follows:

#### § 180.227 Dicamba; tolerances for residues.

(a) *General.* (1) Tolerances are established for the residues of the herbicide dicamba (3,6-dichloro-o-anisic

acid), including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels is to be determined by measuring only the sum of the residues of dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite, 3,6-dichloro-5-hydroxy-*o*-anisic acid, calculated as the stoichiometric equivalent of dicamba, in or on the following commodities:

Commodity	Parts per million
* * * *	*
Teff, forage .....	90.0
Teff, grain .....	6.0
Teff, hay .....	40.0
Teff, straw .....	30.0
* * * *	*

(2) Tolerances are established for residues of the herbicide dicamba, 3,6-dichloro-*o*-anisic acid, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels is to be determined by measuring only the residues of dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite, 3,6-dichloro-2-hydroxybenzoic acid, calculated as the stoichiometric equivalent of dicamba, in or on the following commodities:

\* \* \* \*

(3) Tolerances are established for residues of the herbicide dicamba, 3,6-dichloro-*o*-anisic acid, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels is to be determined by measuring only the residues of dicamba, 3,6-dichloro-*o*-anisic acid, and its metabolites, 3,6-dichloro-5-hydroxy-*o*-anisic acid, and 3,6-dichloro-2-hydroxybenzoic acid, calculated as the stoichiometric equivalent of dicamba, in or on the following commodities:

\* \* \* \*

[FR Doc. 2011-23159 Filed 9-8-11; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2010-0466; FRL-8882-1]

**Novaluron; Pesticide Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances under the Federal Food,

Drug, and Cosmetic Act (FFDCA) for residues of novaluron in or on multiple commodities which are identified and discussed later in this document. Additionally, the Agency is amending existing tolerances for meat byproducts and revising commodity terms for hog and poultry byproducts. Interregional Research Project Number 4 (IR-4) requested the sweet corn tolerances; Makhteshim-Agan of North America, Inc. requested the food and feed handling establishment tolerances.

**DATES:** This regulation is effective September 9, 2011. Objections and requests for hearings must be received on or before November 8, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION** ).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2010-0466. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Gaines, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; *telephone number:* (703) 305-5967; *e-mail address:* [gaines.jennifer@epa.gov](mailto:gaines.jennifer@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

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

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl). To access the harmonized test guidelines referenced in this document electronically, please go <http://www.epa.gov/ocspp> and select "Test Methods and Guidelines."

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2010-0466 in the subject line on the first page of your. All requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 8, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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

EPA-HQ-OPP-2010-0466, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

## II. Summary of Petitioned-for Tolerance

In the **Federal Register** of June 23, 2010 (75 FR 35801) (FRL-8831-3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7708) by Makhteshim-Agan of North America, Inc., 4515 Falls of Neuse Road, Raleigh, NC 27609 as well as the filing of a pesticide petition (PP 0E7723) by IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The IR-4 petition (PP 0E7723) requested that 40 CFR 180.598 be amended by establishing tolerances for residues of the insecticide novaluron, (N -[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy)ethoxy]phenyl]amino] carbonyl]-2,6-difluorobenzamide), in or on corn, sweet, kernels plus cob with husks removed at 0.05 parts per million (ppm); corn, sweet, forage at 20 ppm; and corn, sweet, stover at 50 ppm and to increase the established livestock tolerances for residues of novaluron in or on milk from 1.0 to 1.5 ppm, and milk fat from 20 to 35 ppm, respectively. The Makhteshim-Agan petition (PP 0F7708) requested novaluron tolerances for all food commodities (other than those already covered by a higher tolerance as a result of use on growing crops) in food handling establishments where food products are held, processed or prepared at 0.01 ppm. That notice referenced a summary of the petitions prepared by Makhteshim-Agan of North America, Inc, the registrant, which is available in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing for PP 0F7708. Comments were received on the notice of filing for PP 0E7723. EPA's response

to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the tolerances for sweet corn forage and determined it is not appropriate to raise the existing tolerances for milk and milk fat. The EPA also determined it is appropriate to revise several existing livestock commodities based on the proposed sweet corn use. The reasons for these changes are explained in Unit IV.D.

## III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for novaluron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with novaluron follows.

### A. Toxicological Profile

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

Novaluron has low acute toxicity via the oral, dermal, and inhalation routes. No ocular or dermal irritation was

noted. Novaluron is not a dermal sensitizer. In subchronic and chronic toxicity studies, novaluron primarily produced hematotoxic effects (toxicity to blood) such as methemoglobinemia, decreased hemoglobin, decreased hematocrit, and decreased red blood corpuscles (RBCs or erythrocytes) that were associated with compensatory erythropoiesis. Increased spleen weights and/or hemosiderosis in the spleen were considered to be due to enhanced removal of damaged erythrocytes and not to an immunotoxic effect.

There was no maternal or developmental toxicity seen in the rat and rabbit developmental toxicity studies up to the limit doses. In the two-generation reproductive toxicity study in rats, both parental and offspring toxicity (increased spleen weights) were observed at the same dose. Reproductive toxicity (decreases in epididymal sperm counts and increase age at preputial separation in the F1 generation) was observed at a higher dose only in males.

Signs of neurotoxicity were seen in the rat acute neurotoxicity study at the limit dose, including clinical signs (piloerection, fast/irregular breathing), functional observation battery (FOB) parameters (head swaying, abnormal gait) and neuropathology (sciatic and tibial nerve degeneration). However, no signs of neurotoxicity or neuropathology were observed in the subchronic neurotoxicity study in rats or in any other subchronic or chronic toxicity study in rats, mice or dogs. Therefore, there is no concern for neurotoxicity resulting from exposure to novaluron.

There was no evidence of carcinogenic potential in either the rat or mouse carcinogenicity studies and no evidence of mutagenic activity in the submitted mutagenicity studies, including a bacterial (*Salmonella*, *E. coli*) reverse mutation assay, an *in vitro* mammalian chromosomal aberration assay, an *in vivo* mouse bone-marrow micronucleus assay and a bacterial DNA damage or repair assay. Based on the results of these studies, EPA has classified novaluron as "not likely to be carcinogenic to humans."

Specific information on the studies received and the nature of the adverse effects caused by novaluron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in document "Novaluron: Human-Health Risk Assessment for Proposed Section 3 Uses on Sweet Corn and in Food—or Feed-Handling Establishments" at pages 53–56 in docket ID number EPA-HQ-OPP-2010-0466.

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

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful

analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some

degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>. A summary of the toxicological endpoints for novaluron used for human risk assessment is shown in Table 1 of this unit.

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

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations).	Not applicable .....	None .....	An endpoint of concern attributable to a single dose was not identified. An acute RfD was not established.
Chronic dietary (All populations).	NOAEL = 1.1 mg/kg/day UF = 100. FQPA SF = 1x	Chronic RfD = cPAD = 0.011 mg/kg/day.	Combined chronic toxicity/carcinogenicity feeding in rat. LOAEL = 30.6 mg/kg/day based on erythrocyte damage and turnover resulting in a regenerative anemia.
Dermal short-term (1 to 30 days).	Not applicable .....	None .....	No toxicity was observed at the limit dose in the dermal study and there were no developmental toxicity concerns at the limit-dose; therefore, quantification of short-term dermal risk is not necessary.
Dermal intermediate-term (1 to 6 months).	Oral study NOAEL = 4.38 mg/kg/day (dermal absorption rate = 100%).	Residential LOC for MOE < 100 ..	90-day feeding study in rat. LOAEL = 8.64 mg/kg/day based on clinical chemistry (decreased hemoglobin, hematocrit, and RBC counts) and histopathology (increased hematopoieses and hemosiderosis in spleen and liver).
Inhalation short-term (1 to 30 days).	Oral study NOAEL = 4.38 mg/kg/day (inhalation absorption rate = 100%).	Residential/Occupational LOC for MOE < 100.	90-day feeding study in rat. LOAEL = 8.64 mg/kg/day based on clinical chemistry (decreased hemoglobin, hematocrit, and RBC counts) and histopathology (increased hematopoieses and hemosiderosis in spleen and liver).
Inhalation Intermediate-term (1 to 6 months).	Oral study NOAEL = 1.1 mg/kg/day (inhalation absorption rate = 100%).	Residential/Occupational LOC for MOE < 100.	Combined chronic toxicity/carcinogenicity feeding in rat. LOAEL = 30.6 mg/kg/day based on erythrocyte damage and turnover resulting in a regenerative anemia.
Cancer .....	Not likely to be carcinogenic to humans.		

UF = Uncertainty factor, FQPA SF = FQPA safety factor, NOAEL = no-observed-adverse-effect-level, LOAEL = lowest-observed-adverse-effect-level, PAD = population-adjusted dose (a = acute, c = chronic), RfD = reference dose, MOE = margin of exposure, LOC = level of concern.

**C. Exposure Assessment**

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to novaluron, EPA considered exposure under the petitioned-for tolerances as well as all existing novaluron tolerances in 40 CFR 180.598. EPA assessed dietary exposures from novaluron in food as follows:

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

No such effects were identified in the toxicological studies for novaluron;

therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA from 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA conducted a partially refined dietary (food and drinking water) exposure and risk assessment for the proposed new uses on sweet corn and in food—and feed—handling establishments, all established uses, and drinking water using the DEEM–FCID (Dietary Exposure Evaluation Model-Food Commodity Ingredient Database), Version 2.03,

which uses food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA incorporated average percent crop treated (PCT) data for apples, cabbage, cotton, pears, and potatoes, and utilized percent crop treated for new use PCT estimates for grain sorghum and sweet corn. 100 PCT was assumed for the remaining food commodities. Anticipated residues (ARs) for meat, milk, hog, and poultry commodities were calculated using average field trial residues, PCT estimates for sweet corn and grain sorghum, average PCT for apple and cotton, and assumed 100 PCT for sugarcane and cowpea seed.

The chronic analysis also incorporated average greenhouse trial residues for tomatoes; empirical processing factors for apple juice (translated to pear and stone fruit juice), cottonseed oil, dried plums, and tomato paste and puree; and DEEM default processing factors for the remaining processed commodities; and average field trial residues for all crops unless residues were less than LOQ (If residues were less than LOQ, the chronic analysis assumed 1/2 LOQ values)

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

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

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

Apples at 15%; cabbage at 10%; cotton at 2.5%; pears at 10%; and potatoes at 2.5%.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency estimated the PCT for new uses as follows:

Sweet corn at 59% and sorghum at 5%.

EPA utilized estimated PCT data in the chronic dietary risk assessment for the new use on sweet corn and sorghum, based on the market leader approach. Sorghum, though not new, was only registered 1 year ago. Since sorghum has been registered for such a relatively short period, EPA has sorghum to be a “new use” when estimating the PCT. The market leader approach is the comparison of the PCT with all chemicals of a specific type (*i.e.*, herbicide, insecticide, etc.) on a specific crop and choosing the highest PCT (market leader) as the PCT for the new use. This method of estimating a PCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial 5 years of actual use. The predominant factors that bear on whether the estimated PCT could be exceeded are: The extent of the pest pressure on the crops in question; the pest spectrum of the new pesticide in comparison with the market leaders as well as whether the market leaders are well-established for this use; and resistance concerns with the market leaders.

Novaluron has a relatively narrow spectrum of activity compared to the market leaders. Additionally, there are no resistance or pest pressure issues identified for the use of novaluron on

sweet corn. All information currently available has been considered for use on sweet corn, and EPA concludes that it is unlikely that the actual sweet corn PCT with novaluron will exceed the estimated PCT for new uses during the next 5 years.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA’s computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA’s risk assessment process ensures that EPA’s exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which novaluron may be applied in a particular area.

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

Estimated drinking water concentrations (EDWCs) were not generated for the food-and-feed handling establishment uses because the use pattern is not expected to result in the contamination of drinking water. Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) for parent novaluron in surface water; and the Screening Concentration in Ground Water (SCI-GROW) models for novaluron, chlorophenyl urea and

chloroaniline in ground water, the EDWCs of novaluron, chlorophenyl urea, and chloroaniline for chronic exposures for non-cancer assessments are estimated to be 0.76 parts per billion (ppb), 0.89 ppb and 2.6 ppb, respectively, for surface water and 0.0056 ppb, 0.0045 ppb and 0.0090 ppb, respectively, for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. The highest drinking water concentrations were estimated for surface water. Of the three EDWC values for surface water, the chronic EDWC for the terminal metabolite chloroaniline, is the highest (assuming 100% molar conversion from parent to aniline). This is consistent with the expected degradation pattern for novaluron. Therefore, for chronic dietary risk assessment, the water concentration value for chloroaniline of 2.6 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Novaluron is not currently registered for any specific use patterns that would result in residential exposure. However, the following uses that could result in residential exposures are pending registration and have been assessed: Indoor and outdoor uses for the control of roaches and crickets (crack and crevice and spot treatments) in residential areas such as homes and apartment buildings, and their immediate surroundings, and on modes of transportation.

There is a potential for exposure in residential settings during the application process for homeowners who use products containing novaluron. There is also a potential for exposure from entering novaluron-treated areas that could lead to exposures to adults and children. Both residential handler and post-application scenarios were assessed for the indoor use since this is believed to cover the outdoor perimeter treatment. Residential handler dermal and inhalation exposures were assessed for application via low-pressure handwands and trigger-pump sprayers.

Additionally exposure routes were assessed for post-application exposures for adults and children via inhalation and dermal routes and post-application incidental oral (hand-to-mouth) exposure for children (3 to < 6 years old). Additionally, a combined residential assessment that consisted of adult dermal and inhalation post-

application exposures as well as children (3 to < 6 years old) dermal, inhalation, and oral (hand-to-mouth) post-application exposure was included which details of the residential risk exposure and risk assessment are contained in the EPA public docket EPA-HQ-OPP-2010-0466 at <http://www.regulations.gov> in document “Novaluron: Human-Health Risk Assessment for Proposed Section 3 Uses on Sweet Corn and in Food- or Feed-Handling Establishments” on pp. 28–37.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at <http://www.epa.gov/pesticides/trac/science/trac6a05.pdf>.

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

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

#### D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicology

database for novaluron includes rat and rabbit prenatal developmental toxicity studies and a 2-generation reproduction toxicity study in rats. There was no evidence of increased quantitative or qualitative susceptibility following *in utero* exposure to rats or rabbits in the developmental toxicity studies and no evidence of increased quantitative or qualitative susceptibility of offspring in the reproduction study. Neither maternal nor developmental toxicity was seen in the developmental studies up to the limit doses. In the reproduction study, offspring and parental toxicity (increased absolute and relative spleen weights) were similar and occurred at the same dose; additionally, reproductive effects (decreases in epididymal sperm counts and increased age at preputial separation in the F1 generation) occurred at a higher dose than that which resulted in parental toxicity.

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

i. The toxicity database for novaluron is complete except for immunotoxicity testing and a 90-day inhalation toxicity study. Recent changes to 40 CFR part 158 make immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA.

Although effects were seen in the spleen in two studies, as explained in Unit III.A., EPA has concluded that novaluron does not directly target the immune system and the Agency does not believe that conducting a functional immunotoxicity study will result in a NOAEL lower than the regulatory dose for risk assessment; therefore, an additional database uncertainty factor is not needed to account for potential immunotoxicity. A 90-day inhalation toxicity study is requested for further characterization of inhalation risk. Due to the potential for repeated inhalation exposure anticipated from the proposed residential use pattern, there is concern for toxicity by the inhalation route. An inhalation study would provide a dose and endpoint via the route of exposure of concern (*i.e.* route-specific study) and thus would avoid using an oral study and route-to-route extrapolation. Although a point of departure from an oral study was used to assess residential post-application inhalation risks for novaluron, the Agency does not believe this assessment is under-protective. The

post-application inhalation MOEs calculated were all greater than 3,000, thus providing an ample margin of safety to account for any uncertainties in route-to-route extrapolation. Further, the MOE was calculated for post-application inhalation exposure and risk using the saturation concentration which is a very conservative approach. The saturation concentration represents what would occur if a large amount of chemical were spilled in a non-ventilated room and allowed to evaporate until equilibrium is reached.

ii. There were signs of neurotoxicity in the acute neurotoxicity study in rats, including clinical signs (piloerection, irregular breathing), functional observation battery (FOB) parameters (increased head swaying, abnormal gait), and neuropathology (sciatic and tibial nerve degeneration). However, the signs observed were not severe, were seen only at the limit dose (2000 mg/kg/day) and were not reproducible. No signs of neurotoxicity or neuropathology were observed in the subchronic neurotoxicity study in rats at similar doses, and no evidence of neuropathology was observed in subchronic and chronic toxicity studies in rats, mice, or dogs. In addition, no clinical signs were observed in the acute oral toxicity study ( $LD_{50} \leq 5,000$  mg/kg). Therefore, novaluron does not appear to be a neurotoxicant, and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that novaluron results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed using anticipated residues derived from reliable residue field trials and PCT assumptions for some commodities. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to novaluron in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers resulting from the proposed residential uses of novaluron. These assessments will not underestimate the exposure and risks posed by novaluron.

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

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, novaluron is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to novaluron from food and water will utilize 72% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. The residential exposure assessment was conducted using high-end estimates of use and potential exposure providing a conservative, health protective estimate of risk.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

There are potential short-term exposures from the pending residential uses for novaluron. The Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to novaluron.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1,600 for the U.S. population and 290 for children 1–2 years old. Because EPA's level of concern for novaluron is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

There are potential intermediate-term exposures from the pending residential uses for novaluron. The Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to novaluron.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 320 for U.S. population and 140 for children 1–2 years old. Because EPA's level of concern for novaluron is a MOE of 100 or below, these MOEs are not of concern.

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

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

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

The following adequate enforcement methodologies (gas chromatography/electron-capture detection (GC/ECD) method and a high-performance liquid chromatography/ultraviolet (HPLC/UV) method) are available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

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

There are no Codex, Canadian, or Mexican maximum residue limits (MRLs) established for residues of novaluron in or on sweet corn, stover,

forage and kernel plus cob with husks removed or for all food commodities based on the use of novaluron in food and feed handling establishments. Canada is currently in the process of reviewing the use of novaluron on sweet corn. The EPA and the Pest Management Regulatory Agency (PMRA) reviewed the sweet corn petition as a Joint Review Project and tolerance recommendations are in agreement at 0.05 ppm for sweet corn and kernel plus cob with husks removed. Additionally, PMRA proposed to increase its MRL for milk to 1.0 ppm from 0.5 ppm, and as a result the EPA and PMRA milk tolerances/MRLs will be in agreement. The PMRA does not recommend MRLs for livestock feed commodities and therefore will not establish MRLs for sweet corn stover and sweet corn forage.

### C. Response to Comments

EPA received one comment to the Notice of Filing that made a general objection to the presence of any novaluron residues on vegetable crops. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned on agricultural crops. However, the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework. The commenter also expressed concern that EPA's risk assessment for novaluron did not "combined testing" with other chemicals. EPA, however, does not require "combined testing" of a pesticide with other pesticides or other chemicals due to impracticality. With regard to the potential for cumulative effects from exposure to the pesticide and other substances with a common mechanism of toxicity, see the discussion of this issue in Unit III.C.4., *Cumulative effects from substances with a common mechanism of toxicity*.

### D. Revisions to Petitioned-for Tolerances

Based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data*, EPA revised the proposed tolerance on

corn, sweet, forage from 20 ppm to 16 ppm and determined no change to the existing milk and milk fat tolerances is needed.

Based on the proposed use on sweet corn, the revised reasonably balanced dietary burdens (RBDBs) for novaluron are 9.6 ppm for beef cattle, 18.3 ppm for dairy cattle, 2.4 ppm for poultry, and 2.5 ppm for swine. Accordingly, the Agency has determined it is appropriate to raise the existing tolerances for meat byproducts. However, no changes are necessary for the tolerances for secondary residues in/on cattle, goat, horse, sheep, poultry, and swine commodities. Additionally, commodity terms for hog, meat byproducts and poultry, meat byproducts are being revised.

Therefore, the tolerances for meat byproducts are being revised as follows: Cattle, meat byproducts, except kidney and liver from 0.60 ppm to 11 ppm; goat, meat byproducts, except kidney and liver from 0.60 ppm to 11 ppm; horse, meat byproducts, except kidney and liver from 0.60 ppm to 11 ppm; sheep, meat byproducts, except kidney and liver from 0.60 ppm to 11 ppm; hog, meat byproducts from 0.10 ppm to hog, meat byproducts, except kidney and liver to 1.5 ppm; and poultry, meat byproducts from 0.80 ppm to poultry, meat byproducts, except kidney and liver to 7.0 ppm.

### V. Conclusion

Therefore, tolerances are established for residues of novaluron, (N-[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy)ethoxy]phenyl]amino]carbonyl]-2,6-difluorobenzamide), in or on corn, sweet, kernels plus cob with husks removed at 0.05 ppm; corn, sweet, forage at 16 ppm; corn, sweet, stover at 50 ppm; cattle, meat byproducts, except kidney and liver at 11 ppm; goat, meat byproducts, except kidney and liver at 11 ppm; horse, meat byproducts, except kidney and liver at 11 ppm; sheep, meat byproducts, except kidney and liver at 11 ppm; hog, meat byproducts, except kidney and liver at 1.5 ppm; poultry, meat byproducts, except kidney and liver at 7.0 ppm; and Food/feed commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food/feed handling establishments at 0.01 ppm.

### VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types

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

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

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

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995

(NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

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

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

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

Dated: August 26, 2011.

**Lois Rossi,**

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

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

■ 2. Section 180.598, paragraph (a), is amended as follows:

■ a. Revise the commodity entries for “cattle, meat byproducts, except kidney and liver”; “goat, meat byproducts, except kidney and liver”; “hog, meat byproducts”; “horse, meat byproducts, except kidney and liver”; “poultry, meat byproducts”; “sheep, meat byproducts, except kidney and liver”; and

■ b. Add, alphabetically, the commodities for “corn, sweet, forage”; “corn, sweet, kernel plus cob with husks removed”; “corn, sweet, stover”; and “food and feed commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food and feed handling establishments.”

The revised and added text reads as follows:

**§ 180.598 Novaluron; tolerances for residues.**

(a) \* \* \*

Commodity	Parts per million
Cattle, meat byproducts, except kidney and liver .....	11

Commodity	Parts per million
* * * * *	*
Corn, sweet, forage .....	16
Corn, sweet, kernel plus cob with husks removed .....	0.05
Corn, sweet, stover .....	50
* * * * *	*
Food commodities and feed commodities (other than those covered by a higher tolerance as a result of use on growing crops) in food and feed handling establishments .....	0.01
* * * * *	*
Goat, meat byproducts, except kidney and liver .....	11
* * * * *	*
Hog, meat byproducts, except kidney and liver .....	1.5
* * * * *	*
Horse, meat byproducts, except kidney and liver .....	11
* * * * *	*
Poultry, meat byproducts, except kidney and liver .....	7.0
* * * * *	*
Sheep, meat byproducts, except kidney and liver .....	11

[FR Doc. 2011-22981 Filed 9-8-11; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2010-0905; FRL-8881-7]

**2,4-D; Pesticide Tolerances**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of 2,4-D in or on teff, bran; teff, forage; teff, grain; and teff, straw. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective September 9, 2011. Objections and requests for hearings must be received on or before November 8, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket

identification (ID) number EPA-HQ-OPP-2010-0905. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; *telephone number:* (703) 305-7390; *e-mail address:* [nollen.laura@epa.gov](mailto:nollen.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

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

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl). To access the harmonized test guidelines referenced in this document electronically, please go <http://www.epa.gov/ocspp> and select "Test Methods and Guidelines."

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2010-0905 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before November 8, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA-HQ-OPP-2010-0905, by one of the following methods:

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

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

**II. Summary of Petitioned-For Tolerance**

In the **Federal Register** of February 4, 2011 (76 FR 6465) (FRL-8858-7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7796) by IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540. PP 0F7796 was incorrectly reported and should have read PP 0E7796, the correct petition number. The petition requested that 40 CFR 180.142 be amended by establishing a tolerance for residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid, in or on teff, bran at 4.0 parts per million (ppm); teff, forage at 25.0 ppm; teff, grain at 2.0 ppm; and teff, straw at 50.0 ppm. That notice referenced a summary of the petition prepared on behalf of IR-4 by Helena Chemical Company, the registrant, which is available in the docket, <http://www.regulations.gov>. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the tolerance expression for all established commodities to be consistent with current Agency policy. The reason for these changes is explained in Unit IV.D.

**III. Aggregate Risk Assessment and Determination of Safety**

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has

reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for 2,4-D including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with 2,4-D follows.

In the **Federal Register** of July 27, 2005 (70 FR 43298) (FRL-7726-8), EPA published a final reestablishing tolerances for combined residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid), in or on hops, wild rice, and soybeans, based on upon EPA's conclusion that aggregate exposure to 2,4-D is safe for the general population, including infants and children. Since 2005, there have been no additional tolerance actions for 2,4-D.

As noted in this unit, the current action concerns a tolerance for 2,4-D on teff. Teff is an intermediate grass that is morphologically and taxonomically similar to other cereal grains, including wheat. It is used to make flour in a manner similar to wheat and other cereal grains. EPA recently assessed the proposed use of 2,4-D on teff. In that assessment, EPA determined that aggregate 2,4-D exposures and risks will not increase as a result of the addition of the proposed teff uses to the uses assessed as part of the 2005 rulemaking. Teff is not included in the Continuing Survey of Food Intakes by Individuals (CSFII). However, because it is used to make flour in a manner similar to wheat and other cereal grains, it will likely substitute in the diet for cereal grain foods which will contain similar residues of 2,4-D; therefore, a significant increase in dietary exposure to residues of 2,4-D from consumption of teff-containing foods will not occur. Furthermore, residues of 2,4-D in teff livestock feeds will be similar to those in other forages, hays, and silages for which tolerances of 2,4-D are currently established. As such, there would be no increase in the livestock dietary burden should teff be substituted in the livestock diet for other hays and silages; residues in meat, milk, poultry and eggs will remain the same.

Further information about EPA's risk assessment and determination of safety for this action can be found at <http://www.regulations.gov> in document "2,4-D and Dicamba: Petition for the Establishment of Tolerances on Teff; Request for Registration of Latigo (EPA Reg. No. 5905-564) on Teff." in docket ID number EPA-HQ-OPP-2010-0905. Except as supplemented by the information described in this unit, EPA

is relying on the safety finding in the 2005 rulemaking and the risk assessment underlying that action in establishing tolerances for 2,4-D on teff, bran; teff, forage; teff, grain; and teff, straw. Further information regarding the safety finding for the last rulemaking can be found in the **Federal Register** of July 27, 2005 (70 FR 43307) (FRL-7726-8), at <http://www.epa.gov/fedrgstr/EPA-PEST/2005/July/Day-27/p14886.htm>.

For the 2005 rulemaking, the 2,4-D toxicity database was considered complete except for the submission of a developmental neurotoxicity study (DNT) and a repeat 2-generation reproduction study. The absence of these studies led EPA to retain an additional safety factor for the protection of infants and children as provided by FFDCA section 408(b)(2)(C). Additionally, recent changes to 40 CFR part 158 imposed new data requirements for immunotoxicity testing (OPPTS Guideline 870.7800) and acute and subchronic neurotoxicity testing (OPPTS Guideline 870.6200) for pesticide registration. All of these data requirements have now been met. The toxicity database for 2,4-D includes acceptable acute and subchronic neurotoxicity studies; therefore, the requirements for the neurotoxicity screening battery have been met. To address the other deficiencies, the registrant submitted an F1-extended 1-generation toxicity study in rats. This study has been reviewed and found acceptable, and fulfills the outstanding requirements for a DNT study, a repeat 2-generation reproduction study, and immunotoxicity testing. After review of these studies, EPA has concluded that they do not affect EPA's derivation of 2,4-D's acute reference dose (aRfD) or chronic reference dose (cRfD). It is likely, however, that in the future EPA will remove the additional safety factor for the protection of infants and children now that the 2,4-D database is complete. Thus, once a full reassessment of 2,4-D is completed, estimated risks are likely to decline substantially. However, because a full reassessment of 2,4-D risk taking into account the new studies has not been formally conducted, EPA is relying primarily on the 2005 rulemaking to support this action. Therefore, the safety finding for this action relies on the additional margin of safety provided by retaining the additional safety factor for protection of infants and children. For further information on EPA's review of these studies, information is available at <http://www.regulations.gov>, in docket ID number EPA-HQ-OPP-2010-0905.

In the 2005 rulemaking, EPA relied upon data showing the percent of crops treated with 2,4-D in assessing chronic risk. In evaluating the proposed teff tolerances, EPA considered updated data on percent crop treated and has concluded that the updated data would increase the chronic risk estimates from the 2005 assessment for the general population and children 1-6 years old (the most sensitive subpopulation) by 2.2% and 3.1% of the cPAD, respectively. Because the chronic risk estimates for the 2005 assessment were well below the level of concern, these differences are considered insignificant.

Therefore, based upon the 2005 rulemaking and the other information discussed in this unit, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to 2,4-D residues. Refer to the July 27, 2005 (70 FR 43298) (FRL-7726-8) **Federal Register** document, available at <http://www.regulations.gov>, for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies upon those risk assessments and the findings made in the **Federal Register** document in support of this action.

#### IV. Other Considerations

##### A. Analytical Enforcement Methodology

Adequate enforcement methodology, a gas chromatography with electron capture detection (GC/ECD) method, designated as EN-CAS Method No. ENC-2/93, is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### B. International Residue Limits

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

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

The Codex has not established MRLs for 2,4-D in or on any commodities associated with this action.

##### C. Response to Comments

EPA received one comment to the Notice of Filing that made a general objection to proposed new tolerances and new tolerance exemptions for several chemicals, including 2,4-D. The commenter additionally noted that, "prior to approval of these or other chemicals in the food system the EPA must be confident that these will not cause harm" and "only long term studies can provide data on the health impact of exposure to these chemicals." The commenter stated that none of the mentioned chemicals, including 2,4-D, should be permitted in food.

The Agency understands the commenter's concerns and recognizes that some individuals believe that certain pesticide chemicals should not be permitted in our food. However, the existing legal framework provided by section 408 of the FFDCA states that tolerances may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. When new or amended tolerances are requested for residues of a pesticide in food or feed, the Agency, as is required by section 408 of the FFDCA, estimates the risk of the potential exposure to these residues. The Agency has concluded after this assessment, which includes the consideration of long-term animal studies with 2,4-D, that there is a reasonable certainty that no harm will result from aggregate human exposure to 2,4-D and that, accordingly, the 2,4-D tolerances on teff are "safe."

##### D. Revisions to Petitioned-For Tolerances

The EPA has revised the tolerance expression to clarify:

1. Titled in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of 2,4-D not specifically mentioned; and
2. Tolerance compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

#### V. Conclusion

Therefore, tolerances are established for residues of 2,4-D (2,4-dichlorophenoxyacetic acid), including its metabolites and degradates, in or on teff, bran at 4.0 ppm; teff, forage at 25.0

ppm; teff, grain at 2.0 ppm; and teff, straw at 50.0 ppm.

**VI. Statutory and Executive Order Reviews**

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

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

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

duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4).

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

**VII. Congressional Review Act**

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

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

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

Dated: August 31, 2011.

**Lois Rossi,**

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

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

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

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

■ 2. Section 180.142 is amended by revising the introductory text in paragraphs (a), (c), and (d); and alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

**§ 180.142 2,4-D; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the herbicide, plant regulator, and fungicide 2,4-D, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels is to be determined by measuring residues of 2,4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid, in or on the following commodities:

Commodity	Parts per million
* * * * *	*
Teff, bran .....	4.0
Teff, forage .....	25.0
Teff, grain .....	2.0
Teff, straw .....	50.0
* * * * *	*

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(l), are established for residues of the herbicide, plant regulator, and fungicide 2,4-D, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels is to be determined by measuring residues of 2,4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid, in or on the follow commodities:

\* \* \* \* \*

(d) *Indirect or inadvertent residues.* Tolerances are established for indirect or inadvertent residues of the herbicide, plant regulator, and fungicide 2,4-D, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels is to be determined by measuring residues of 2,4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid, in or on the following commodities:

\* \* \* \* \*

[FR Doc. 2011-22984 Filed 9-8-11; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 1, 73 and 76**

[DA 11-1432]

**Broadcast Applications and Proceedings; Fairness Doctrine and Digital Broadcast Television Redistribution Control; Fairness Doctrine, Personal Attacks, Political Editorials and Complaints Regarding Cable Programming Service Rates**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission makes several nonsubstantive, editorial revisions to parts 1, 73 and 76 of the Commission’s rules. The Commission removes rules that are without current legal effect and are obsolete. The deleted rules include

the fairness doctrine, broadcast flag rules and cable programming services complaint rules.

**DATES:** Effective September 9, 2011.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. For additional information, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Katie Costello, [Katie.Costello@fcc.gov](mailto:Katie.Costello@fcc.gov) of the Media Bureau, Policy Division, (202) 418-2233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Order*, DA 11-1432, adopted on August 24, 2011, and released on August 24, 2011 under delegated authority, with erratum released August 25, 2011. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC 20554. This document will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

### Regulatory Information

This final rule is being issued without prior notice and opportunity to comment pursuant to authority under the Administrative Procedures Act, 5 U.S.C. 553(b)(3)(B). The rule amendments adopted in this *Order* are nonsubstantive, editorial revisions of the Commission's rules pursuant to § 0.231 (b) of the Commission's rules, and merely delete obsolete rule provisions. The Commission finds good cause to conclude that notice and comment procedures are unnecessary and would not serve any useful purpose.

### Paperwork Reduction Act Analysis

This document contains no new or modified information collection requirements. The rules contained herein have been analyzed with respect

to the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. 3501, *et seq.*, and found to contain no new or modified form, information collection, and/or recordkeeping, labeling, disclosure, or record retention requirements, and will not increase or decrease burden hours imposed on the public. In addition, therefore, this *Order* does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4). The Commission will send a copy of the *Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

### Regulatory Flexibility Act

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

### Summary of the Order

1. In this *Order*, we make several nonsubstantive, editorial revisions to parts 1, 73 and 76 of the Commission's rules. We make these revisions to delete certain rule provisions that are without current legal effect and obsolete.

2. Specifically, this *Order* removes Broadcast Applications and Proceedings rules part 1, subpart D of the Commission's rules, §§ 1.502 through 1.615 of the Commission's rules. This *Order* removes broadcast and cable rules, §§ 73.1910 and 76.209 of the Commission's rules, which reference the Commission's so-called "Fairness Doctrine." This *Order* removes cable personal attack and political editorial rules, §§ 76.1612 and 76.1613 of the Commission's rules.

3. This *Order* removes the Commission's "Broadcast Flag" rules, part 73, subparts L and M, of the Commission's rules, §§ 73.8000 and 73.9000 through 73.9009 of the Commission's rules. This *Order* deletes the Commission's cable programming services (CPST) complaint process rules, §§ 76.950, 76.951, 76.953, 76.954, 76.955, 76.956, 76.957, 76.960, 76.961, 76.1402, 76.1605 and 76.1606 of the Commission's rules.

### List of Subjects

#### 47 CFR Part 1

Administrative practice and procedure, Radio.

#### 47 CFR Part 73

Political candidates, Radio, Television.

#### 47 CFR Part 76

Administrative practice and procedure, Cable television, Political candidates.

Federal Communications Commission.

#### Thomas Horan

Chief of Staff, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 73 and 76 as follows:

### PART 1—PRACTICE AND PROCEDURE

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

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

#### Subpart D—[Removed and Reserved]

- 2. Remove and reserve Subpart D.

### PART 73—RADIO BROADCAST SERVICES

- 3. The authority citation for part 73 continues to read as follows:

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

#### § 73.1910 [Removed]

- 4. Remove § 73.1910.

#### Subparts L and M—[Removed]

- 5. Remove Subparts L and M.

### PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

- 6. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

#### § 76.209 [Removed]

- 7. Remove § 76.209.

#### §§ 76.950 and 76.951 [Removed]

- 8. Remove §§ 76.950 and 76.951.

#### §§ 76.953 through 76.957 [Removed]

- 9. Remove §§ 76.953 through 76.957.

#### §§ 76.960 and 76.961 [Removed]

- 10. Remove §§ 76.960 and 76.961.

#### § 76.985 [Amended]

- 11. In § 76.985, remove forms entitled "INSTRUCTIONS FOR FCC 329," "FCC329".

#### § 76.1402 [Removed]

- 12. Remove § 76.1402.

**§§ 76.1605 and 76.1606 [Removed]**

- 13. Remove §§ 76.1605 and 76.1606.

**§§ 76.1612 and 76.1613 [Removed]**

- 14. Remove §§ 76.1612 and 76.1613.

[FR Doc. 2011-23010 Filed 9-8-11; 8:45 am]

BILLING CODE 6712-01-P

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****49 CFR Part 213**

[Docket No. FRA-2009-0007, Notice No. 4]

RIN 2130-AC35

**Track Safety Standards; Concrete Crossties**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule; response to petitions for reconsideration.

**SUMMARY:** This document responds to petitions for reconsideration of FRA's final rule published on April 1, 2011, mandating specific requirements for effective concrete crossties, for rail fastening systems connected to concrete crossties, and for automated inspections of track constructed with concrete crossties. This document amends and clarifies the final rule.

**DATES:** The final rule is effective November 8, 2011.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Rusk, Staff Director, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* (202) 493-6236); or Veronica Chittim, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20950 (*telephone:* (202) 493-0273).

**SUPPLEMENTARY INFORMATION:****Background**

On August 26, 2010, FRA issued a Notice of Proposed Rulemaking (NPRM) as a first step to the agency's promulgation of concrete crosstie regulations per the Congressional mandate contained in Section 403(d), of the Rail Safety Improvement Act of 2008 (Pub. L. 110-432, Division A) (RSIA). See 75 FR 52,490. On April 1, 2011, following consideration of written comments received in response to the NPRM, FRA published a final rule mandating specific requirements for effective concrete crossties, for rail fastening systems connected to concrete crossties, and for automated inspections of track constructed with concrete

crossties. See 76 FR 18,073. FRA received two petitions for reconsideration in response to the final rule.

On May 5, 2011, the International Brotherhood of Teamsters, Brotherhood of Maintenance of Way Employees Division (BMWED) filed a petition for reconsideration (BMWED Petition) of the final rule and on May 27, 2011, the Association of American Railroads (AAR) filed a petition for reconsideration (AAR Petition) of the final rule. In order to provide sufficient time to fully consider both Petitions, FRA delayed the effective date of the final rule until October 1, 2011. See 76 FR 34,890 (June 15, 2011).

The specific issues raised by these petitioners and FRA's responses to their petitions, are discussed in detail below in the "Section-by-Section Analysis" portion of the preamble. The Section-by-Section analysis also contains a detailed discussion of each provision of the final rule which FRA has amended or clarified. The amendments contained in this document generally clarify requirements currently contained in the final rule or allow for greater flexibility in complying with the rule, and are within the scope of the issues and options discussed, considered, or raised in the NPRM.

**Section-by-Section Analysis***Amendments to 49 CFR Part 213*

## Section 213.109 Crossties

## AAR Petition: Visibility of Prestressing Material

The final rule provides that concrete crossties shall not be "broken through or deteriorated to the extent that prestressing material is visible." 49 CFR 213.109(d)(1). AAR requests that FRA amend 49 CFR 213.109(d)(1) to state, "broken through or deteriorated to the extent outer prestressing strands are no longer in tension." AAR Petition at 3-4. In proposing such language, AAR asserts that FRA is inconsistent with the specifications in 49 CFR 213.335(d)(1) for Class 6 track. See AAR Petition at 3. AAR argues that "FRA's concern is whether the prestressing material is in tension," as demonstrated by the discussion in the final rule. AAR Petition at 3.

FRA declines to adopt AAR's recommendation to modify the language of 49 CFR 213.109(d)(1). The intent of 49 CFR 213.109(d)(1) is to ensure that concrete crossties with reinforcing strands that have lost their bond to the concrete are considered defective. This intent is clearly described in the preamble to the final rule. See 76 FR

18,077-18,079 (Apr. 1, 2011). While a concrete crosstie that is "broken through or deteriorated to the extent outer prestressing strands are no longer in tension" would be defective, the standard that AAR proposes is difficult to quantify in the field, as an inspector would have difficulty knowing if the prestressing strands are no longer in tension. AAR's proposal would add a qualifier to the standard, making the regulation more subjective and more difficult to enforce.

AAR suggests using the same standard for § 213.109(d)(1) as specified in § 213.335(d), for Class 6 track. Section 213.335(d) provides that the crosstie cannot be "so deteriorated that the prestress strands are ineffective or withdrawn into the tie at one end and the tie exhibits structural cracks in the rail seat or in the gage of track." FRA believes that the standard adopted for lower speeds of track in § 213.109(d)(1) improves upon § 213.335(d) for lower classes of track by more clearly defining what it means to be "ineffective" and explaining how to find "structural cracks." FRA notes that while further study would be needed to determine whether this clarifying language would also be appropriate in higher classes of track, any potential amendment to § 213.335(d) would be outside the scope of this proceeding, as modifications to the language in § 213.335(d) was neither raised in the NPRM, nor discussed in the final rule. However, FRA would be willing to address the language in § 213.335(d) in future updates to part 213.

AAR further states that FRA's position to reject the proposed phrase "completely broken through" for § 213.109 is unconvincing. See AAR Petition at 3. Contrary to this concern, FRA's intent was to simply provide consistency in the language used for wooden crossties and does not find it necessary to introduce ambiguity by adopting differing language without sufficient justification.

Although AAR is concerned with the situations where prestressing material is visible and yet not defective, FRA clearly explained in the preamble to the final rule in response to AAR's comment that FRA is not concerned with prestressing material being visible due to a wheel impact or due to the manufacturing process. See 76 FR 18,077-18,079 (Apr. 1, 2011). FRA thoroughly explained its intent in the preamble that by saying the material is "visible" it does not mean "a concrete tie being simply chipped due to wheel impact as opposed to actual deterioration." 76 FR 18,077 (Apr. 1, 2011). FRA also clarified that it is "not

concerned with reinforcing material that may be left visible on the end of a tie during the manufacturing process.” 76 FR 18,077 (Apr. 1, 2011). While this explanatory language is not in the rule text itself, it is clear that FRA intended to clarify in the preamble those prestress concrete crosstie conditions that are of concern to the agency. See Nov. 18, 2008, Concrete Crossties Task Force (CCTF) meeting document (TSCCTF08–1118–06 CONSENSUS WG & TF CLEAN Document For Concrete Crossties, “NOTE: FRA wants to describe prestress tie conditions, to be covered in the compliance manual or preamble”). As FRA adequately addressed AAR’s comment to the NPRM in the preamble to the final rule, FRA declines to adopt AAR’s proposed change to § 213.109(d)(1).

#### AAR Petition: The Use of Crossties With One Fastener on a Rail

AAR argues that § 213.109(d)(6) should be amended to state: “[c]onfigured with less than two fasteners on the same rail except (i) as provided in § 213.127(c) and (ii) where the fastenings on two adjacent ties on class 1 and class 2 track provide the equivalent of the fastenings on one tie, in which case the two adjacent ties shall be counted as one tie.” AAR Petition at 5.

This issue was raised by AAR in previous comments and addressed by FRA in the final rule. AAR has provided nothing new to sway the agency’s views on the issue. Thus, FRA is again declining to adopt the proposal. See 76 FR 18,077 (Apr. 1, 2011). In response to the issue, FRA has already stated the following:

FRA responds that, as with nonconcrete ties, one of the safety requirements of an effective concrete tie is that it be able to hold fasteners. Consequently, FRA is declining to accept AAR’s recommended change to the regulatory text due to this safety concern.

76 FR 18,077 (Apr. 1, 2011). In the Section-by-Section analysis of the final rule, FRA further stated the following with respect to AAR’s proposal:

FRA contends that, as with non-concrete ties, one of the safety requirements of an effective concrete tie is that it be able to hold fasteners. Thus, FRA is declining to accept this suggested change to the regulatory text due to this safety concern.

76 FR 18,079 (Apr. 1, 2011).

As noted above, FRA believes that it responded to this issue adequately in the preamble to the final rule and that this issue is duplicative and need not be addressed. See 49 CFR 211.29(c). However, FRA would like to take this opportunity to further explain its

reasoning. Although AAR argues that the rule text that disqualifies concrete crossties under the conditions described will impose a significant cost on the industry, FRA notes that it has not changed its enforcement policy in the final rule and those concrete crossties that are unable to hold fasteners would have been defective even prior to the issuance of the final rule. The final rule did not modify the existing requirement that any type of crosstie with a missing fastener is considered defective in part 213. The Track Safety Standards require that to be an effective crosstie, it must be able to hold fasteners that can restrain the rail. The crosstie, rail, and fasteners work together as a system to provide effective restraint.<sup>1</sup> FRA concedes that the BNSF Railway (BNSF), the only railroad known to FRA that utilizes defective crossties in this manner, will need to spend substantial funds to remediate any trackage that consists of these defective crossties. However, this cost is not a new cost as a result of the final rule, but merely the cost of compliance with part 213 as it existed prior to the final rule. Finally, amending the rule text is not an appropriate avenue to address one railroad’s isolated and limited practice on approximately fifty miles of non-mainline track.<sup>2</sup> A more appropriate avenue would be for BNSF to seek a waiver from the FRA Railroad Safety

<sup>1</sup> See 76 FR 18,073, 18,079 (Apr. 1, 2011):

The rail and fastener assembly work as a system, capable of providing electrical insulation, and adequate resistance to lateral displacement, undesired gage widening, rail canting, rail rollover, and abrasive or excessive compressive stresses. \* \* \* Part of the complexity of crosstie assessment is the fastener component. Both crossties and fasteners act as a system to deliver the expected performance effect. A non-compliant crosstie and defective fastener assembly improperly maintains the rail position and support on the crosstie and contributes to excessive lateral gage widening (rail cant-rail rollover), and longitudinal rail movement because of loss of toeload.

<sup>2</sup> AAR’s Petition included BNSF’s submission of its May 2011 findings, based on reports from a geometry car that had operated over BNSF’s Seadrift subdivision on December 14, 2010. According to AAR, BNSF’s practice of using crossties in this manner will not hinder, but may actually improve safety. FRA notes that BNSF’s findings were based on the operation of trains at ten miles per hour, over an eight mile segment of track designed for twenty-five miles per hour. This data alone is insufficient to demonstrate that this practice would prevent rollover at higher speeds and varying conditions or apply more broadly than as shown on this particular trackage. FRA also notes that AAR states that “there are eight miles of track with approximately 80 percent of the ties consisting of ties with one defective fastener (approximately 20 percent of the ties are new).” AAR Petition at 5. If this description is correct, this track generally meets the Class 1 criteria of 5 non-defective ties per 39 feet of track.

Board, pursuant to the procedures contained in 49 CFR part 211.<sup>3</sup>

#### AAR Petition: Spacing of Concrete Crossties at Rail Joints

AAR requests amending § 213.109(e)(1) to add “(50 inches in the case of concrete ties)” after “48 inches” and § 213.109(e)(3) to add “(25 inches in the case of concrete ties)” after “24 inches.” AAR Petition at 6.

The spacing requirements for crossties at rail joints contained at § 213.109(e), were not modified by the final rule. The specifications for crossties’ spacing are based on providing sufficient support to a rail joint and are not dependent on the type of crosstie material used, whether the crossties are made of wood or concrete. For Class 1 and Class 2 track, the regulation provides that each rail joint shall be supported by at least one crosstie whose centerline is within 24 inches of each rail joint location. 49 CFR 213.109(e)(1). For Classes 3, 4, and 5, each rail joint shall be supported by either at least one non-defective crosstie within 18 inches of the joint, or have two crossties, one on each side of the rail joint, whose centerlines are within 24 inches of the rail joint. 49 CFR 213.109(e)(2), (3). The Track Safety Standards already allow for flexibility in the spacing of crossties.<sup>4</sup> Although it may be true that the industry spaces concrete crossties further apart than wooden crossties, all crossties, wood or concrete, must provide effective support for the rail joint.

AAR’s suggestion does not appear to have been previously raised in the

<sup>3</sup> FRA may waive its regulatory requirements when a waiver is in the public interest and consistent with railroad safety. In doing so, FRA often imposes conditions designed to ensure safety. If a railroad believes that there are some FRA requirements applicable to it that should be waived, it may petition for a waiver under the procedures set forth in 49 CFR part 211. Any such petition should specify why the railroad believes it cannot comply with the regulation and what alternative measures it will take to ensure safety. See 49 CFR 211.9. If FRA’s Railroad Safety Board determines that a railroad can provide, through alternative procedures, the same level of safety that the FRA regulations provide, then the Safety Board may grant the waiver. FRA’s Railroad Safety Board’s decision to restrict the exercise of FRA’s regulatory authority in no way constrains the exercise of its statutory emergency order authority under 49 U.S.C. 20104. That authority was designed to address imminent hazards not dealt with by existing regulations and/or so dangerous as to require immediate, *ex parte* action on the government’s part.

<sup>4</sup> For example, the railroads have a range of crosstie spacing options, between 19.5 inches and 30 inches, depending on the size of the crosstie, the size of the rail, and the class of track. The industry-recommended practice is to avoid placing a concrete crosstie directly underneath the adjoining ends of two rails, making a rail joint, as the compressive forces downward on the concrete crosstie would deteriorate the concrete crosstie quickly.

RSAC process or in any of the comments to the NPRM. Nor has AAR provided FRA with any data to support its contention that concrete crossties should be treated differently from wood crossties in this manner. Moreover, AAR has not provided any basis for why FRA must consider these additional facts, or explained why these facts were not presented to the Administrator within the allotted time. *See* 49 CFR 211.29(b). Thus, FRA is denying AAR's request. Furthermore, for the reasons noted above, FRA believes that the issue being raised by AAR is outside the scope of this proceeding and that it is inappropriate for FRA to address the issue at this late stage of the rulemaking proceeding.

#### Section 213.234 Automated Inspection of Track Constructed With Concrete Crossties

##### AAR Petition: Whether Automated Inspection Equipment Cannot Measure Rail Seat Deterioration as Required

AAR argues that "today's automated inspection equipment cannot measure rail seat deterioration at all, let alone within  $\frac{1}{8}$  of an inch." AAR Petition at 5. Further, AAR states that "automated equipment is not capable of meeting the standard set forth in subsection 213.234(d)." AAR suggests deleting § 213.234(d), (e), and (h). *See* AAR Petition at 5.

Throughout the RSAC process, the parties agreed that automated inspections were a good approach to locating areas of rail seat deterioration. Indeed, the NPRM states that "[o]ther than automated inspection, there are currently no other tools capable of aiding in the detection of rail seat deterioration." 75 FR 52,497 (Aug. 26, 2010). FRA is surprised that AAR asserts at this stage in the rulemaking process that the technology to perform these types of automated inspections does not exist.

Although AAR is technically correct that automated equipment cannot currently *measure* rail seat deterioration directly, today's automated equipment can *indicate* locations of rail seat deterioration. Rail seat deterioration is indicated as a result of interpolations and calculations from rail cant measurements. The rail cant measurements provide an indication to the designated § 213.7 person that the location should be field-verified. The railroad industry did not want to be limited to a requirement to locate rail seat deterioration through automated inspection using the rail cant method alone. In response to this concern, FRA removed the provision initially

proposed in the NPRM requiring automated inspections of rail cant. Instead, FRA chose to use "a performance-based standard" for automated inspections that would indicate rail seat deterioration to the accuracy specified by § 213.234, or  $\frac{1}{8}$  of an inch, without mandating which technology should be used. *See* 76 FR 18,076–18,077, 18,080–18,081 (Apr. 1, 2011).

The design and practicality of all automated and autonomous geometry measurement systems is a supplement to visual inspection efforts toward identifying locations of greatest derailment risk. It has been FRA's objective and policy that on-the-ground visual verification must be done by inspectors to validate not only rail seat deterioration, but all track structure and geometry conditions discovered by automated means. A credible gage measurement restraint system (GRMS) is the preferred choice, however, only FRA's DOTX 218 is properly equipped to vertically and laterally load the rails into the crosstie seat area. FRA's other cars load vertically, but not necessarily completely load the rails laterally to "seat" the rail on the crosstie pad in all instances. FRA's rail profiling system (rail cant method) provides a highly accurate indication (advisory) of possible rail seat deterioration. FRA's safety strategy is to promptly identify rail seat deterioration locations with DOTX 217, 219, and 220 cars' onboard rail profiling systems, then re-inspect those areas indicating rail seat deterioration conditions. FRA's automated inspection vehicle uses rail cant to indicate areas of rail seat deterioration, to an accuracy level of within at least one degree of rail cant, which is equivalent to  $\frac{1}{8}$  of an inch of rail seat deterioration.

Additionally, there were presentations made at the CCTF meetings as part of the RSAC process, describing technologies that can detect or indicate rail seat abrasion. These included systems used by Georgetown Rail Equipment Company, Holland Company LP, and ENSCO, Inc.<sup>5</sup> Georgetown Rail Equipment Company represents that their "scanning" system

<sup>5</sup> *See, e.g.*, "Rail Seat Abrasion Detection, November 2008 Update, RSAC Meeting Nov. 19–20, 2008, by Richard Reiff, TTCL, AAR & BNSF Cooperative Project (comparing detection systems for rail seat abrasion, utilizing rail cant data or its equivalent). For example, the presentation compares the BNSF TGC85 car, the Holland TrackStar, the FRA T-20 car, the FRA T-18, and Georgetown Rail/Aurora systems. Also note the availability of rail profile systems offered by companies such as Plasser American, KLD Labs Inc., MERMEC Inc., ENSCO, Inc., Holland Company LP, and Georgetown Rail Equipment Company.

utilizes laser imagery to "see" height differences of ties, scanning both the inside and outside of the crosstie.<sup>6</sup> FRA believes that BNSF may use this "scanning" system currently on parts of its concrete crossties trackage. AAR's Petition included geometry car reports for a track geometry car that operated over BNSF's Seadrift subdivision on December 14, 2010, measuring rail cant. *See* AAR Petition at 5, 25, 32. While FRA's system of calculating rail cant cannot technically "measure" rail seat deterioration, it does provide indications of rail seat deterioration. FRA realizes that the rule text is technically incorrect to require that an automated inspection measurement system "measure" rail seat deterioration to within  $\frac{1}{8}$  of an inch. FRA wishes to clarify that it is requiring the automated measurement system to "locate" rail seat deterioration. It is up to the railroad whether it will use rail cant to indicate locations of rail seat deterioration, to utilize the scanning capability that has been proven effective at detecting dangerous areas of rail seat deterioration, or to use any other demonstrated effective and accurate technology.

FRA also recognizes that detecting rail cant alone will not necessarily demonstrate *all* possible locations of rail seat deterioration. For example, FRA's geometry car will not find areas of rail seat deterioration that are due to compression forces from loads onto the crosstie. However, FRA's geometry car will locate rail seat deterioration due to rail cant in curved track, which are the hardest areas to detect manually. The automated inspection provision contained in § 213.234 was never intended to require railroads to detect all areas of rail seat deterioration, but rather to supplement manual visual inspections.

Automated inspection technology is able to detect rail seat deterioration to an accuracy of  $\frac{1}{8}$  of an inch, as demonstrated above. Furthermore, the Final Regulatory Impact Analysis explained in detail how FRA estimated the costs of possible upgrades to railroads' existing technology or equipment to detect rail seat deterioration. *See* document number 6 in the public docket of this proceeding, at 38. FRA believes that all Class 1 railroads, Class 2 railroads, intercity passenger railroads, and commuter railroads servicing a community greater than 50,000 people currently conduct automated geometry inspections of their

<sup>6</sup> The scanning system measures the crosstie voids against the nominal height of the crosstie design, usually within a tolerance of  $\frac{1}{16}$  of an inch.

track at frequencies roughly twice as great as those required in the final rule. Moreover, most major railroads with concrete crossties already perform automatic inspections to detect rail seat deterioration (either through the rail cant method or through the “scanning” method), and most of these railroads already have equipment that can measure within  $\frac{1}{8}$  of an inch of accuracy.<sup>7</sup> Thus, FRA denies AAR’s request to delete the automated inspection requirements contained in § 213.234, but FRA clarifies that by requiring measurement of rail seat deterioration, FRA actually meant that the technology had to “indicate” rail seat deterioration. Consequently, FRA amends § 213.234(d) and (g) accordingly.

**BMWED Petition: Whether FRA Should Explicitly Require All Persons Fully Qualified Under § 213.7, and Whose Territories Are Subject to § 213.234 Automated Inspections, Be Provided With a Copy of the Exception Report, or That a Copy of Such Report Be Made Readily Available to Such Persons**

BMWED urges that FRA amend the final rule to require “exception report data to be provided to, or made readily available to, persons fully qualified under § 213.7, including track inspectors responsible for performing § 213.233 visual track inspection in between automated inspection cycles.” BMWED Petition at 5. To support its argument, BMWED cites to other provisions in the CFR that mandate focused dissemination and availability of reports. See BMWED Petition at 5–6.

FRA accepts BMWED’s proposed amendment to the final rule. The final rule states that “[t]he automated inspection measurement system shall produce an exception report containing a systematic listing of all exceptions to § 213.109(d)(4), identified so that an appropriate person(s) designated as fully qualified under § 213.7 can field-verify each exception.” 49 CFR 213.234(e). The final rule requires that “[e]ach exception must be located and field-verified no later than 48 hours after the automated inspection” and

“[a]ll field-verified exceptions are subject to all the requirements [of part 213].” 49 CFR 213.234(e). FRA notes that § 213.234(e) implicitly requires that persons fully qualified under § 213.7 and whose territories are subject to automated inspection under § 213.234 be provided with, or have ready access to a copy of the exception report, because without such information being disseminated, § 213.234(e) cannot be satisfied. In short, qualified persons under § 213.7 cannot logically field-verify exceptions found in the exception report without access to the exception report. Furthermore, it is in the best interest of the railroad to provide all track inspectors in the relevant territory with access to the exception report so that problem areas can be monitored and corrected.<sup>8</sup>

It was FRA’s intent in the final rule that the railroad would voluntarily provide all persons fully qualified under § 213.7 with a copy of the exception report, so that both a supervisor under § 213.7(a) and a track inspector under § 213.7(b) would have access to the report. It is expected that the designated § 213.7 person(s) would then act responsibly upon the information subject to the requirements in part 213, once verified, so that appropriate remedial action would be taken in a timely manner.

This issue was raised in the joint comments to the NPRM of the American Train Dispatchers Association (ATDA), Brotherhood of Locomotive Engineers and Trainmen (BLET), Brotherhood of Maintenance of Way Employees Division (BMWED), Brotherhood of Railroad Signalmen (BRS), and the United Transportation Union (UTU) (Labor) and addressed by FRA in the final rule. Labor representatives recommended that FRA mandate that a physical copy of the exception report be given to the person that the track owner has designated as being responsible for frequency inspections pursuant to § 213.233. In response, FRA declined to adopt Labor’s recommendation, stating that it “refuses to interfere with a track owner’s assignment process.” 76 FR 18,081 (Apr. 1, 2011). FRA clarified that it “agrees that it would be a best practice for the track owner to ensure that the person responsible for performing the frequency inspections required by § 213.233 be provided a copy of the exception report, as all field-verified exceptions are subject to all of

FRA’s Track Safety Standards.” 76 FR 18,081 (Apr. 1, 2011).

FRA intended to convey with its response to Labor’s comment that it would not direct the manner in which a track owner communicates and assigns corrective action to a noncompliant condition among their personnel. The final rule requires that an exception report be created, but does not explicitly require that the report be given to a particular person, as long as a fully-qualified person under § 213.7 properly field-verifies any exceptions pursuant to the rule. Persons designated under § 213.7 must receive or have access to the exception report in order to comply with the provisions of the final rule. In other words, a designated qualified inspector is required by the final rule to receive any noncompliant rail seat deterioration reports, whether the reports are made accessible to or are physically handed to the person designated under § 213.7, for field-verification and repairs purposes.

While FRA addressed Labor’s comments in the preamble to the final rule, BMWED’s Petition modified Labor’s recommendation by asking that FRA require that individuals performing frequency inspections be provided with a copy of the automated inspection report or that a copy of the automated inspection report be made readily available. With this alteration, FRA believes that BMWED’s request becomes less burdensome on the railroads. Railroads have an incentive to make such automated inspection reports available to track inspectors performing frequency-based inspections because this practice could ensure compliance with the regulations and could prevent worsening track conditions with costlier repairs or potential accidents. If inspectors have been provided with all of the relevant information, inspectors can better monitor problematic areas. Further, as this is a good business practice, most Class 1 railroads already make these reports available to the relevant inspectors. Given that the benefits of making reports available to all inspectors in the territory outweigh the slight cost of requiring a railroad to make the report available, which many do already, FRA is amending the final rule to explicitly require that railroads make such reports available to all relevant § 213.7 persons. The marginal increase in cost of making the report available compared with the added benefit of allowing inspectors to note defects earlier justify adding this requirement.

To clarify FRA’s original intent and to promote good industry practice, FRA amends § 213.234(e) to require that

<sup>7</sup> For example, CSX contracts Holland Company LP’s GRMS system to automatically inspect their concrete crossties, which can measure rail cant up to  $\frac{1}{2}$  of a degree (equivalent to  $\frac{1}{16}$  of an inch). Additionally, some regional railroads contact FRA to perform and receive the benefit of an automated inspection, which can calculate up to  $\frac{1}{2}$  of a degree. The rail profile systems offered by companies such as Plasser American, KLD Labs Inc., MERMEC Inc., ENSCO, Inc., Holland Company LP, Georgetown Rail Equipment Company report a rail cant accuracy of approximately  $\frac{1}{16}$  of an inch at the rail base/crosstie interface. FRA believes that all Class 1 railroads equip their geometry cars with these systems to measure undesirable rail cant.

<sup>8</sup> It is FRA’s understanding that most Class 1 railroads (e.g., Union Pacific Railroad Company, Burlington Northern Santa Fe Railway) already provide access to automated inspection reports to 49 CFR 213.7 inspectors in a given territory.

exception reports be provided to or are made available to all persons qualified under § 213.7 and whose territories are subject to the requirements of § 213.234.

**BMWED Petition: Whether FRA Should Adjust the Exception Testing Threshold From 1/2 of an Inch to 3/8 of an Inch To Compensate for the 1/8 of an Inch Calibration Variance Allowed in § 213.234(d)(1)**

BMWED asserts that “§ 213.234(d)(1) has the affect [sic] of adding up to an additional 1/8 of an inch to the proposed maximum depth of 1/2 inch rail seat deterioration prescribed under § 213.109(d)(4).” BMWED Petition at 2. Thus, BMWED requests that FRA “compensate for the 1/8 inch calibration variance” by requiring “the automated exception report [to] record all ‘exceptions’ of 3/8 of an inch or greater, and that all such exceptions be subject to field verification under the provisions of § 213.234(e).” BMWED Petition at 2–3. BMWED contends that because of the 1/8 of an inch variance allowed by § 213.234(d)(1), exceptions may reach up to 5/8 of an inch before automated means would detect them. See BMWED Petition at 5.

FRA accepts BMWED’s recommendation that railroads must flag locations identified as 3/8 of an inch or greater on the automated exception report, but FRA declines to require field-verification of those areas noted on the report that are less than 1/2 of an inch. This additional notation will serve as an alert to the inspectors of potential problem areas to observe. Generally, railroads already note locations on automated reports in advance of the 1/2 of an inch violation level. For example, BNSF already flags locations at 3/8 of an inch with an alert. Adding an “alert” to an automated exception report would be a simple and low-cost modification. For example, Rail Profile Measurement System (RPMS) instrumentation on FRA geometry cars are set to flag an advisory exception when the angle exceeds four degrees of negative or outward rail cant. See 76 FR 18,081 (Apr. 1, 2011). However, requiring field-verification of locations flagged below 1/2 of an inch would be inappropriate, as it would impose too high of a cost without a corresponding benefit to safety.

FRA estimates that there would be approximately eight times as many locations found at 3/8 of an inch than those found at 1/2 of an inch. This increase would result in eight times as many field-verifications, and would consequently represent a significant increase in the economic burden. Measurement errors are usually equally distributed as positive and negative,

meaning that having a target of 3/8 of an inch would trigger exceptions that actually measure 1/4 of an inch as often as 1/2 of an inch. FRA notes that this would cause unneeded inspections for such false-positives at a high cost. However, there are potential cost savings, as the additional field-verification may result in the repair of an issue that would have been more costly to repair later or could have contributed to an accident. BMWED’s Petition recommends that FRA adopt something higher than a minimum safety standard. If FRA takes violations before the railroad is noncompliant, it would be contrary to FRA’s enforcement policy and would be interfering with the railroad’s managerial discretion.

While railroads astutely demand higher than minimum standards, FRA only requires the minimum for safety purposes. A location indicating rail seat deterioration of 3/8 of an inch would likely fall within a railroad’s maintenance standard to watch or to field-verify, but such field-verification will not be mandated by FRA. FRA agrees with BMWED that it would be a good practice and thus mandates that automated inspection equipment must note all locations indicating rail seat deterioration of 3/8 of an inch and greater on the report, yellow-flagging, or identifying “alerts” for, those areas identified between 3/8 and 1/2 of an inch, and red-flagging, or identifying “alarms” for, those areas identified at 1/2 of an inch and above. However, subjecting all areas 3/8 of an inch and above to field-verification would add significant cost burdens without a demonstrated safety benefit.

In light of the preceding discussion, a new paragraph is added to § 213.234(e) to require exception reports to note an “alert” for locations identified between 3/8 of an inch and 1/2 of an inch.

**AAR Petition: Effective Date of the Rule To Accommodate Railroad Training Cycles**

AAR asserts that “[r]ailroads traditionally concentrate training classes for their existing employees in the first half of the year, with training materials prepared during the second half of the previous year.” AAR Petition at 7. By postponing the applicability date of the formal training provision in § 213.234(h) to July 1, 2012, these requirements would comport with the railroads’ standard training schedule.

In consideration of these typical railroad training cycles, FRA will extend the applicability date of § 213.234 to July 1, 2012. Accordingly, FRA amends 49 CFR 213.234(a).

## Regulatory Impact and Notices

### A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

Prior to issuing the April 1, 2011 final rule, FRA prepared and placed in the docket a regulatory analysis addressing the economic impact of the final rule. The rule was evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Orders 12866 and 13563 and DOT policies and procedures. See 44 FR 11,034; February 26, 1979. For a more detailed discussion, see 76 FR 18,082. This response to the petitions for reconsideration of the final rule is likewise considered to be non-significant under both Executive Orders 12866 and 13563 and DOT policies and procedures. This regulatory action generally clarifies or makes technical amendments to the requirements contained in the final rule or allows for greater flexibility in complying with the rule.

### B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (the Act) (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. Prior to issuing the April 1, 2011 final rule, FRA prepared and placed in the docket a regulatory flexibility analysis which assessed the small entity impact by the rule. FRA certified in the final rule that it expects there will be no significant economic impact on a substantial number of small entities. For a more detailed discussion, see 76 FR 18,082. This response to the petitions for reconsideration of the final rule generally clarifies the requirements contained in the rule or allows for greater flexibility in complying with the rule. Consequently, FRA certifies that this regulatory action is not expected to have a significant economic impact on a substantial number of small entities.

### C. Paperwork Reduction Act

The information collection requirements in this final rule and FRA’s response to petitions for reconsideration are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The section that contains the one new and current information collection requirements is noted below, and the estimated burden time to fulfill each requirement is as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
213.234—Automated Inspection of Track Constructed with Concrete Crossties:				
—Exception Reports .....	18 Railroads .....	150 reports .....	8 hours .....	1,200
—Field Verified Exception Reports .....	18 Railroads .....	150 field verifications ...	2 hours .....	300
—Provision/Availability of Exception Reports to Designated Persons (New).	18 Railroads .....	150 electronic reports ..	12 minutes .....	30
—Records of Inspection Data and Exception Records.	18 Railroads .....	150 records .....	30 minutes .....	75
—Procedures for Maintaining Data Integrity Collected by Measurement System.	18 Railroads .....	18 procedures .....	4 hours .....	72
—Training of Employees in Handling Seat Deterioration.	18 Railroads .....	2,000 trained employees.	8 hours .....	16,000

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the information collection submission sent to OMB, please contact Mr. Robert Brogan at 202-493-6292 or Ms. Kimberly Toone at 202-493-6132 or via e-mail at the following addresses: *Robert.Brogan@dot.gov*; *Kimberly.Toone@dot.gov*.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503, attn: FRA Desk Officer. Comments may also be sent via e-mail to the Office of Management and Budget at the following address: *oira\_submissions@omb.eop.gov*, mail to: *victor.angelo@fra.dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in response to the petitions of reconsideration of this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of this final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

*D. Environmental Impact*

FRA has evaluated this action in accordance with its “Procedures for Considering Environmental Impacts”

(FRA’s Procedures) (64 FR 28,545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA’s Procedures. 64 FR 28,547, May 26, 1999. In accordance with section 4(c) and (e) of FRA’s Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this regulation is not a major Federal action significantly affecting the quality of the human environment.

*E. Federalism Implications*

Executive Order 13132, “Federalism” (64 FR 43,255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government

officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

As stated in the preamble to the final rule, FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under Sec. 20106. *See* 76 FR 18,083. This response to the petitions for reconsideration of the final rule generally clarifies the requirements contained in the rule or allows for greater flexibility in complying with the rule.

*F. Unfunded Mandates Reform Act of 1995*

Pursuant to Sec. 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, 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).” Sec. 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) [currently \$140,800,000] in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and tribal governments and the private sector. This response to the petitions for reconsideration of the

final rule will not result in the expenditure, in the aggregate, of \$140,800,000 or more in any one year, and thus preparation of such a statement is not required.

#### G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." See 66 FR 28,355 (May 22, 2001). Under the Executive Order a "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this response to petitions for reconsideration of the final rule in accordance with Executive Order 13211, and has determined that this regulatory action is not a "significant energy action" within the meaning of the Executive Order.

#### H. Administrative Procedure Act

Under the Administrative Procedure Act, an independent Notice of Proposed Rulemaking (NPRM) is not required when an agency, for good cause, finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B). FRA believes that it is making only technical changes, clarifications, and minor amendments in response to petitions for reconsideration of FRA's final rule. For this reason, and because FRA believes that it has provided sufficient opportunities for notice and comment through the NPRM, the final rule, and the petitions for reconsideration which were all contained in the public docket, publishing an independent NPRM is unnecessary.

#### I. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (Volume 65,

Number 70, Pages 19477–78), or you may visit <http://DocketsInfo.dot.gov>.

#### List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

#### The Final Rule

In consideration of the foregoing, FRA amends part 213 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

#### PART 213—[AMENDED]

■ 1. The authority citation for Part 213 continues to read as follows:

**Authority:** 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Public Law 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Section 213.234 is amended by revising the first sentence of paragraph (a), and revising paragraphs (d), (e), and (g), to read as follows:

#### § 213.234 Automated inspection of track constructed with concrete crossties.

(a) *General.* Except for track described in paragraph (c) of this section, the provisions in this section are applicable on and after July 1, 2012. \* \* \*

(d) *Performance standard for automated inspection measurement system.* The automated inspection measurement system must be capable of indicating and processing rail seat deterioration requirements that specify the following:

(1) An accuracy, to within 1/8 of an inch;

(2) A distance-based sampling interval, which shall not exceed five feet; and

(3) Calibration procedures and parameters assigned to the system, which assure that indicated and recorded values accurately represent rail seat deterioration.

(e) *Exception reports to be produced by system; duty to field-verify exceptions.* The automated inspection measurement system shall produce an exception report containing a systematic listing of all exceptions to § 213.109(d)(4), identified so that an appropriate person(s) designated as fully qualified under § 213.7 can field-verify each exception.

(1) Exception reports must be provided to or be made available to all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of § 213.234.

(2) Each exception must be located and field-verified no later than 48 hours after the automated inspection.

(3) All field-verified exceptions are subject to all the requirements of this part.

(4) Exception reports must note areas identified between 3/8 of an inch and 1/2 of an inch as an "alert."

\* \* \* \* \*

(g) *Procedures for integrity of data.* The track owner shall institute the necessary procedures for maintaining the integrity of the data collected by the measurement system. At a minimum, the track owner shall do the following:

(1) Maintain and make available to FRA documented calibration procedures of the measurement system that, at a minimum, specify an instrument verification procedure that ensures correlation between measurements made on the ground and those recorded by the instrumentation; and

(2) Maintain each instrument used for determining compliance with this section such that it accurately provides an indication of the depth of rail seat deterioration in accordance with paragraph (d)(1) of this section.

\* \* \* \* \*

Issued in Washington, DC, on September 6, 2011.

**Joseph C. Szabo,**  
Administrator.

[FR Doc. 2011–23133 Filed 9–8–11; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA–2011–0139]

RIN 2127–AJ44

### Federal Motor Vehicle Safety Standards, Child Restraint Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule, the first of two under the designation RIN 2127–AJ44, amends a provision in Federal Motor Vehicle Safety Standard No. 213, "Child restraint systems," that permits NHTSA to allow manufacturers of child restraint systems (CRSs) manufactured before August 1, 2010, to choose to have NHTSA test the CRSs with either the Hybrid II 6-year old child (H2–6C) dummy or the Hybrid III 6-year-old child (HIII–6C) dummy. This final rule amends the provision to permit manufacturers of currently-manufactured CRSs the choice of

NHTSA testing their child restraints with either the H2-6C dummy or the HIII-6C dummy until further notice. While the HIII-6C is an advanced test dummy with state-of-the-art capabilities, NHTSA believes the agency should complete ongoing research programs to improve the usability of the HIII-6C dummy in FMVSS No. 213 before testing child restraints solely with this crash test dummy.

**DATES:** This final rule is effective September 9, 2011. If you wish to petition for reconsideration of this rule, your petition must be received by October 24, 2011.

**ADDRESSES:** If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

**FOR FURTHER INFORMATION CONTACT:** For technical issues, you may call Cristina Echemendia, Office of Rulemaking (*Telephone:* 202-366-6345) (*Fax:* 202-493-2990). For legal issues, you may call Deirdre Fujita, Office of Chief Counsel (*Telephone:* 202-366-2992) (*Fax:* 202-366-3820). You may send mail to these officials at the National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** S7.1.3 of FMVSS No. 213 permits NHTSA to allow manufacturers of CRSs manufactured before August 1, 2010, to choose to have NHTSA test the CRSs with either the H2-6C dummy or the HIII-6C dummy when the CRS is subject to testing with a test dummy representative of a 6-year-old child.<sup>1</sup> NHTSA is amending S7.1.3 to permit manufacturers of currently-manufactured CRSs the choice of

<sup>1</sup> These are CRSs that are recommended by the manufacturer for use by children in a specified mass range that includes any children having a mass greater than 18 kilograms (40 pounds) or by children in a height range greater than 1100 millimeters. See S7.1.2(d) of FMVSS No. 213.

NHTSA testing their child restraints with either the H2-6C dummy or the HIII-6C dummy until further notice.

A supplemental notice of proposed rulemaking (SNPRM) preceding this final rule was published on November 24, 2010 (75 FR 71648, Docket No. NHTSA-2010-0158). This final rule is the first of two under the designation RIN 2127-AJ44. The second decisional document will be published later this year.<sup>2</sup>

### Background

The agency adopted the HIII-6C into FMVSS No. 213 in a final rule<sup>3</sup> published in response to a mandate in the Transportation Recall Enhancement, Accountability and Documentation Act (the TREAD Act) (November 1, 2000, Public Law 106-414, 114 Stat. 1800) that required NHTSA undertake rulemaking on child restraint systems. Section 14 of the TREAD Act directed NHTSA to initiate a rulemaking for the purpose of improving the safety of child restraints by November 1, 2001, and to complete it by issuing a final rule or taking other action by November 1, 2002. Section 14 specified nine elements for consideration by NHTSA in improving child restraint safety, including considering whether to require the use of the HIII-6C and other Hybrid III ATDs in FMVSS No. 213 compliance tests.

Consistent with the TREAD Act, NHTSA decided in its rulemaking to adopt the HIII-6C into FMVSS No. 213. NHTSA considered the dummy to be "considerably more biofidelic" than its predecessor, the H2-6C dummy, and with enhanced potential to measure an array of impact responses never before measured by a child ATD, such as neck moments and chest deflections.

However, the agency acknowledged there was mixed acceptance by the commenters of the HIII-6C dummy. Some commenters believed that the HIII-6C exhibited large neck elongation in the FMVSS No. 213 test environment that resulted in chin-to-chest and head-to-knee contact and correspondingly high head injury criterion (HIC) values. In evaluating those comments, NHTSA carefully analyzed its test data of sled testing conducted with the HIII-6C, but found no data indicating that head-to-chest or head-to-knee impacts were an issue or were typical. 68 FR at 37644. Accordingly, the HIII-6C was adopted into the standard, with what was then considered to be sufficient lead time to

<sup>2</sup> Pending proposals made by the agency in NPRMs published August 31, 2005, January 23, 2008, and November 24, 2010 will be addressed.

<sup>3</sup> June 24, 2003, 68 FR 37620, Docket No. NHTSA-2003-15351.

enable manufacturers to become familiar with the dummy. The compliance date for the mandatory use of the HIII-6C dummy was set as August 1, 2005.

Eventually, after examining the performance of the HIII-6C in the FMVSS No. 213 environment, NHTSA extended the compliance date to August 1, 2010.<sup>4</sup> We reiterated our belief that the HIII-6C dummy is more biofidelic in its components than its predecessor the H2-6C, and that the HIII-6C also has more extensive instrumentation to measure impact responses such as forces, accelerations, moments and deflections, which are crucial in evaluating vehicle occupant protection systems.<sup>5</sup> Some CRS manufacturers have found the HIII-6C to be a satisfactory test instrument and are using the dummy to certify the compliance of their CRSs to FMVSS No. 213. These manufacturers are positioning the test dummy and measuring the head injury criterion (HIC) as currently required by FMVSS No. 213.

However, while the HIII-6C is an advanced test dummy with state-of-the-art capabilities and is being used to an extent today, NHTSA proposed<sup>6</sup> that the agency should complete ongoing efforts to improve the HIII-6C dummy to make it more useful as an FMVSS No. 213 test device before testing child restraints solely with this device. The HIII-6C dummy has a softer neck than the H2-6C, which results in slightly greater head excursion results and larger HIC values (chin-to-chest contact) than the H2-6C. This, coupled with the stiff thorax of the HIII-6C dummy, accentuates the HIC values recorded by the dummy.

Several measures are underway to improve the Hybrid III dummy (see discussion in 75 FR at 71660). Until such time the HIII-6C is improved, we proposed on November 24, 2010 that FMVSS No. 213 should be amended to permit NHTSA to allow manufacturers the option of specifying that NHTSA use either the H2-6C or the HIII-6C dummy to test the manufacturer's child restraints until further notice.

<sup>4</sup> August 5, 2008, 73 FR 45355, Docket No. NHTSA-2008-0137.

<sup>5</sup> FMVSS No. 208, "Occupant crash protection," uses Hybrid III dummies, including the HIII-6C dummy, in its compliance tests. The HIII-6C has been suitable for FMVSS No. 208 testing because the test environment for that standard is different than the FMVSS No. 213 environment, due to the presence of the air bag.

<sup>6</sup> 75 FR 71648, November 24, 2010, Docket No. NHTSA-2010-0158.

## Summary of Comments

The agency received three comments on the November 24, 2010 proposal, from: the Juvenile Products Manufacturers Association (JPMA), Evenflo Company Inc. (Evenflo), and the Advocates for Highway Safety (Advocates).

JPMA and Evenflo expressed support for the proposal to reinstate the optional use of the H2-6C and HIII-6C dummies in compliance testing until such time that design issues with the HIII-6C dummy are addressed. JPMA noted that both the HIII-6C and H2-6C dummies are being used to test and certify CRS models to FMVSS No. 213 by various CRS manufacturers. Evenflo noted that the H2-6C has been used for many years to permit qualification of CRSs which have provided good crash protection for children in real world crashes. Both JPMA and Evenflo expressed support of NHTSA's effort to fully implement the HIII-6C dummy into FMVSS No. 213, but noted that it must not be done until the issues with this dummy are addressed.

Advocates stated that it generally opposes allowing alternative compliance options because it allows manufacturers to select the option that affords the widest degree of manufacturing latitude, not necessarily safety protection, and may lead to confusion and ambiguous results. However, it stated that in this particular case, in light of concerns expressed about the biofidelity of the HIII-6C dummy, it understands the necessity to extend the optional use of the H2-6C dummy. Nonetheless, Advocates requested that the period of the extension be limited, and better defined, than simply left open-ended to "until such time FMVSS [No.] 213 is further amended to specify otherwise," as stated in the preamble of the SNPRM. Advocates suggested that a date certain be established for termination of the optional use of the H2-6C dummy in compliance testing.

## Response and Decision

For the reasons stated in the November 2010 SNPRM and after consideration of the comments on the proposed optional use of the H2-6C dummy, NHTSA has decided to adopt the proposed amendment to FMVSS No. 213 that allows, at the manufacturer's option, the use of either the H2-6C or the HIII-6C dummy in the agency compliance tests of child restraints.

We understand and generally concur with Advocates' concerns about the potential for compliance options to engender opportunities for confusion

and ambiguity about compliance test results. For reasons such as those described by Advocates, NHTSA seeks to avoid incorporating compliance options into the FMVSSs whenever possible. However, in the case at hand, we have decided against establishing a termination date on the optional use of the H2-6C dummy.

As noted in the November 2010 SNPRM and earlier in this document, the agency has research projects underway to improve the capability of child dummies to assess CRS performance.<sup>7</sup> After the agency fully evaluates the new dummy, the improved HIII-6C dummy will be considered for incorporation into FMVSS No. 213 and 49 CFR Part 572. At that time, the agency will consider the mandatory use of the improved dummy in FMVSS No. 213 and the termination of the optional use of the H2-6C dummy in the agency's compliance tests. If a termination date were included in S7.1.3, as the termination date approached, CRS manufacturers using the H2-6C to certify their CRSs may question whether their continued use of the dummy is well-advised. If the HIII-6C dummy were not sufficiently improved by the termination date, as the termination date approached, all CRS manufacturers would again be faced with uncertainty about how NHTSA would test their child restraints. To avoid these uncertainties, we have decided against including a termination date for the optional use of the H2-6C dummy.

## Compliance Date

This final rule is effective on publication in the **Federal Register**. There is good cause for this effective date, as this final rule clarifies FMVSS No. 213 requirements as to how NHTSA will test child restraints and provides relief to manufacturers by allowing flexibility in the test dummy used in agency compliance tests of child restraints.

<sup>7</sup> The near-term Phase I upgrades to the HIII-6C dummy that are expected to be completed in the 2013 timeframe include improvements in the biofidelity of the dummy kinematics. The Phase II research is directed toward developing biomechanical response data for developing future improved child dummies. The Phase III of this research includes design, development, and evaluation of a new prototype 6-year old child dummy which is expected to be completed in the 2015 timeframe. 75 FR at 71660.

## Regulatory Analyses and Notices

*Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures*

The agency has considered the impact of this rulemaking action under E.O. 12866, E.O. 13563, and the Department of Transportation's regulatory policies and procedures. This action was not reviewed by the Office of Management and Budget under E.O. 12866. This action is not "significant" under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979). The final rule does not impose any new requirements on manufacturers that produce child restraint systems, but only reinstates a provision that allowed NHTSA to provide flexibility to manufacturers in directing NHTSA which test dummy (the H2-6C or the HIII-6C) to use in testing their restraints. The agency believes that the impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

## *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rulemaking action will have on small entities (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). This final rule affects child restraint manufacturers. According to the size standards of the Small Business Association (at 13 CFR part 121.601), the small business size standard for manufacturers of "Motor Vehicle Seating and Interior Trim Manufacturing" (NAICS Code 336360) is 500 employees or fewer. Many child restraint manufacturers would be classified as small businesses under this standard. However, the final rule does not impose any new requirements on manufacturers that produce child restraint systems, but only reinstates a provision that allowed manufacturers flexibility in telling NHTSA which test dummy to use in testing their restraints. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.

## *Executive Order 13132 (Federalism)*

NHTSA has examined today's rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional

consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking would not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule would 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.”

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1). It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.” 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved. However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA’s rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer’s compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when

such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier v. American Honda Motor Co.*, 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency’s ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the agency has examined the nature (*e.g.*, the language and structure of the regulatory text) and objectives of today’s rule and finds that this rule, like many NHTSA rules, would prescribe only a minimum safety standard. As such, NHTSA does not intend that this rule would preempt state tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today’s rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard adopted here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

#### *Executive Order 12988 (Civil Justice Reform)*

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, “Civil Justice Reform” (61 FR 4729; Feb. 7, 1996), requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

#### *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This action will not result in additional expenditures by state, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

#### *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not impose any new collection of information requirements for which a 5 CFR part 1320 clearance must be obtained.

#### *Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

#### *Environmental Impacts*

We have considered the impacts of this final rule under the National Environmental Policy Act. This rulemaking action only reinstates a provision that allowed NHTSA to provide flexibility to manufacturers in directing NHTSA which test dummy (the H2–6C or the HIII–6C) to use in testing their restraints. This rulemaking does not require any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

#### *Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this

document to find this action in the Unified Agenda.

#### Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please send them to NHTSA.

#### List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, and Tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as set forth below.

#### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.213 is amended by revising S7.1.3 to read as follows:

#### § 571.213 Standard No. 213; Child restraint systems.

\* \* \* \* \*

S7.1.3 *Voluntary use of alternative dummies.* At the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the restraint), when this section specifies use of the 49 CFR part 572, subpart N (Hybrid III 6-year-old dummy) test dummy, the test dummy specified in 49 CFR part 572, subpart I (Hybrid II 6-year-old dummy) may be used in place of the subpart N test dummy.

\* \* \* \* \*

Issued: September 1, 2011.

**David L. Strickland,**  
Administrator.

[FR Doc. 2011-23047 Filed 9-8-11; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. NHTSA-2011-0140]

RIN 2127-AL02

#### Federal Motor Vehicle Safety Standards; Electronic Stability Control Systems

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Final rule; response to petition for reconsideration.

**SUMMARY:** This document responds to a petition for reconsideration of a September 2008 final rule that made changes to a new Federal motor vehicle safety standard requiring light vehicles to be equipped with electronic stability control systems. In that final rule, the agency stated that it had previously fulfilled the obligations of the United States with respect to initiating rulemaking with respect to the global technical regulation for electronic stability control and had adopted the regulation to the extent appropriate. The petition for reconsideration identified three areas of the present text of the electronic stability control standard that are not, in the petitioner's view, harmonized with the global technical regulation. After considering the petition, the agency is granting the petition in part and amending slightly the test procedures of the standard and is otherwise denying the petition.

**DATES:** This final rule is effective October 11, 2011.

Petitions for reconsideration must be received not later than October 24, 2011.

**ADDRESSES:** Petitions for reconsideration should refer to the docket number and must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For technical issues, you may contact John Lee, Office of Crash Avoidance Standards, by telephone at (202) 366-4924, and by fax at (202) 366-7002.

For legal issues, you may contact David Jasinski, Office of the Chief Counsel, by telephone at (202) 366-2992, and by fax at (202) 366-3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

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#### I. Background of the ESC Regulation

##### A. Benefits of ESC

Electronic stability control (ESC) systems use automatic computer-controlled braking of individual wheels to assist the driver in maintaining control in critical driving situations in which the vehicle is beginning to lose directional stability at the rear wheels (spin out) or directional control at the front wheels (plow out). NHTSA's crash data study of existing vehicles equipped with ESC demonstrated that these systems reduce fatal single-vehicle crashes of passenger cars by 55 percent and fatal single-vehicle crashes of light trucks and vans (LTVs) by 50 percent.<sup>1</sup> NHTSA estimates that ESC has the potential to prevent 56 percent of the fatal passenger car rollovers and 74 percent of the fatal LTV first-event rollovers that would otherwise occur in single-vehicle crashes.<sup>2</sup>

##### B. ESC Final Rule

On April 6, 2007, NHTSA published a final rule establishing Federal Motor Vehicle Safety Standard (FMVSS) No. 126, *Electronic Stability Control Systems*, which sets forth requirements for ESC systems on new light vehicles.<sup>3</sup> FMVSS No. 126 contains performance requirements that include both definitional and dynamic testing elements. These elements together ensure that ESC systems intervene properly to limit oversteer and understeer in order to provide the level of yaw (directional) stability associated with the high level of safety benefits observed in crash data studies of ESC-equipped vehicles. NHTSA adopted a phase-in schedule to implement this requirement such that all light vehicles manufactured on or after September 1,

<sup>1</sup> Sivinski, R., Crash Prevention Effectiveness of Light-Vehicle Electronic Stability Control: An Update of the 2007 NHTSA Evaluation; DOT HS 811 486 (June 2011).

<sup>2</sup> *Id.*

<sup>3</sup> 72 FR 17236. Docket No. NHTSA-2007-27662, item 1.

2011 must be equipped with a complying ESC system.

FMVSS No. 126 also requires a standardized set of ESC telltales and controls. However, compliance with the telltale and control requirements was deferred until the end of the phase-in period. NHTSA concluded that it was not practicable to implement the telltale and control requirements under the phase-in schedule and was unwilling to delay the phase-in and the expected safety benefits for this reason alone. Accordingly, the provisions in FMVSS No. 126 dealing with telltales and controls are prefaced by the phrase “as of September 1, 2011.”

### C. September 2008 Amendment

We received four petitions for reconsideration of the April 2007 final rule. Among the issues raised in the petitions were ones involving details of the requirements for controls and telltales. On September 22, 2008, we published a final rule (September 2008 reconsideration rule) that granted in part and denied in part the petitions.<sup>4</sup> Three of the issues we addressed are pertinent to the issues discussed in this petition for reconsideration of that rule.

First, we granted a petition by Porsche Cars North America, Inc. (Porsche) to allow two-part “ESC Off” telltales. The April 2007 final rule required both an ESC malfunction telltale identified by the ISO symbol for ESC or the abbreviation “ESC” and a second telltale to identify when an ESC system has been turned off by the driver. The second telltale was required to be identified by the ISO symbol for ESC with the word “Off” below it or by the words “ESC Off.” We considered allowing a two-part telltale in the April 2007 final rule, but decided against doing so because we thought that allowing a partial telltale would have

created a conflict with the requirement that the ESC Off status be indicated by the ESC Off telltale whenever the driver has manually disabled the ESC system and that an ESC malfunction be indicated separately by the ESC malfunction telltale when an ESC malfunction occurs at the same time.

Porsche petitioned for reconsideration of the April 2007 final rule, stating that its ESC system is designed in a manner such that, in the rare case in which an ESC malfunction occurs after the system has been manually disabled, the system automatically disables the manual control functionality and extinguishes the word “Off” while continuing to illuminate the ESC symbol or abbreviation, thereby indicating the malfunction. Upon reconsideration, NHTSA decided to allow for a two-part telltale rather than requiring manufacturers to maintain separate telltales for ESC malfunction and “ESC Off.” In the September 2008 final rule, we explained that, if an ESC malfunction occurs after a driver has disabled ESC, requiring that both telltales illuminate at the same time, both telltales would communicate the same message to the driver: That the ESC functionality has been reduced or eliminated. Also, we noted our belief that it would be rare for an ESC system to malfunction after it has been manually disabled. Because of that, we believe that requiring both messages to display simultaneously is not necessary for safety. Accordingly, we amended S5.3.3 of FMVSS No. 126 to allow for a two-part “ESC Off” telltale.

Second, we received a petition from the Alliance of Automobile Manufacturers (Alliance) and the Association of International Automobile Manufacturers<sup>5</sup> seeking clarification that an ESC Off control could be

included in a multi-function control that could be used to turn ESC off or on and could also be used to turn traction control off and to select an ESC “performance mode” would not be prohibited by FMVSS No. 126. We consider a multi-function control to be a switch or button that combines several functions. As provided by S5.4.3 (formerly S5.4.2),<sup>6</sup> an ESC control whose only purpose is to disable the ESC system or place it in a mode or modes in which it no longer satisfies the performance requirements must be labeled either with the ESC symbol plus the word “Off” or the phrase “ESC Off.” Paragraph S5.4.4 (formerly S5.4.3) creates an exception for a control used primarily for another function, such as a four-wheel drive low-range transfer case, that does not control the ESC system directly but has the ancillary effect of placing the ESC system in a mode that no longer satisfies the performance requirement. We agreed that a multi-function control was permissible, and we clarified S5.4.4 accordingly.

Third, the petition also raised the issue of the identification of multi-function controls and provided an example of a rotary multi-mode control, which is shown in Figure 1 below. We stated that an ESC Off control, regardless of whether it is contained in a multifunction control, must be labeled “ESC Off.” In the case of the example provided in Figure 1, we stated that such a control would not be permissible. In explaining that conclusion, we noted that the “ESC Off” label was not adjacent to the control because a lamp was located between the two, and that the control could be made to comply with FMVSS No. 101 by moving the lamp to the right side of the label.

**Figure 1. Rotary Multi-mode Control Example**



- ESC on
- TC off
- ESC Performance mode
- ESC off

<sup>4</sup> 73 FR 54526, Docket No. NHTSA-2008-0068, item 1.

<sup>5</sup> The Association of International Automobile Manufacturers is now known as Global Automakers.

<sup>6</sup> The September 2008 final rule redesignated S5.4.2 and S5.4.3 as S5.4.3 and S5.4.4 respectively. See 73 FR 54542. For the sake of simplicity, we will refer to the paragraph designations as they exist now throughout this document.

## II. GTR and Petition for Reconsideration

### A. Global Technical Regulation

The April 2007 final rule described NHTSA's intent to begin formal work to develop a global technical regulation (GTR) on ESC in that year. Over the course of several meetings of the United Nations' Economic Commission for Europe (UNECE) World Forum for the Harmonization of Vehicle Regulations (WP.29) during 2007 and 2008, the agency participated in successful efforts that culminated in the establishment of the ESC GTR (GTR No. 8) under the 1998 Global Agreement.<sup>7</sup> The U.S., as a Contracting Party of the 1998 Agreement that voted in favor of establishing this GTR, is obligated under the Agreement to initiate the process for adopting the provisions of the GTR.<sup>8</sup> We stated that the September 2008 reconsideration rule fulfilled the obligation of the U.S. to initiate that process because the regulatory text of the April 2007 final rule, as amended by the September 2008 reconsideration rule, is consistent with that of GTR No. 8.

### B. Alliance's Petition for Reconsideration

We received one petition for reconsideration of the September 2008 reconsideration rule from the Alliance. The petition identified three areas in which the Alliance believes there are inconsistencies between FMVSS No. 126 and GTR No. 8.<sup>9</sup> The Alliance also provided a follow-up letter recommending specific regulatory language to address one of the issues raised in its petition.<sup>10</sup>

First, the Alliance stated that the provisions of FMVSS No. 126 and the corresponding part of the table of controls, telltales, and indicators in FMVSS No. 101 related to the labeling of multi-function controls is not consistent with GTR No. 8. Second, the Alliance stated that NHTSA did not amend all of the necessary provisions to allow for a two-part telltale. Third, the Alliance stated that, unlike GTR No. 8, FMVSS No. 126 does not allow for the use of light weight outriggers for testing vehicles weighing less than 1,588 kg

(3,500 lbs.). The Alliance's discussion of these issues and our response is described in detail in the next section.

## III. Discussion and Analysis of Petition

### A. ESC Control Identification

As amended by the September 2008 reconsideration rule, S5.4 of FMVSS No. 126 allows for the use of multi-function controls to place the ESC system in a noncompliant mode and for the use of controls for other systems that have the ancillary effect of placing the ESC system in a noncompliant mode. Pursuant to S5.4.4, a control for a system that has the ancillary effect of placing the ESC system in a noncompliant mode need not be labeled with an "ESC Off" identifier. No such exclusion exists for a multi-function control. Thus, a multi-function control that can be used to place the ESC system in a noncompliant mode must be labeled with the "ESC Off" identifier.

GTR No. 8 also excludes controls for a system that has the ancillary effect of placing the ESC system in a noncompliant mode from the requirement that the control be labeled with the "ESC Off" identifier. However, GTR No. 8 has two additional provisions that are not found in FMVSS No. 126 related to two types of multi-function controls. First, GTR No. 8 requires that a control for a multi-mode ESC system, with at least one noncompliant mode, be identified with the "ESC" symbol with the text "OFF" adjacent to the control position for a noncompliant mode. Second, where an ESC system is controlled by a multi-functional control associated with a multi-task display, the control itself is not required to be identified with the "ESC Off" identifier, but the driver display is required to identify clearly to the driver the control position for a noncompliant mode with the "ESC Off" identifier. The Alliance petitioned the agency to incorporate these two provisions into FMVSS No. 126 to achieve harmonization.

We are denying the portion of the Alliance's petition seeking amendment to ESC control identification. We believe that the ESC control identification provisions of FMVSS No. 126 fully implement the provisions of GTR No. 8, and that no further amendment is necessary to achieve harmonization. We address our reasons with respect to each of the two types of multi-function controls below.

First, regarding multi-function ESC controls, such as the example in Figure 1, that include at least one function designed to place the ESC system in a mode or modes that would no longer

satisfy the performance requirements of S5.2.1, S5.2.2, and S5.2.3 of FMVSS No. 126, we addressed such a control in the September 2008 reconsideration rule. We stated that the example set forth in Figure 1 would not satisfy the requirement that the "ESC Off" label (the "identifier") be adjacent to the control that it identifies because the telltale lamp is located between the two. The definition of "adjacent", as set forth in S4 of FMVSS No. 101, requires that the identifier of a control be both in close proximity to the control and that no other control, telltale, indicator, identifier, or source of illumination appear between the identifier and the control. We suggested that this problem could be solved by moving the lamp to the other side of the label. If the lamp was moved to the other side of the label, the identifier "ESC Off" would be adjacent to the "ESC Off" control.

The Alliance contends that adopting the language of the GTR would accommodate the specific control set forth in Figure 1. However, even if we made the amendment suggested by the Alliance, the example set forth in Figure 1 would not meet the requirements of FMVSS No. 101 because a source of illumination would be located between the control and the identifiers of the various control positions. That is, the Alliance's concern with respect to the example control in Figure 1 is not with harmonization, but with the requirements of FMVSS No. 101. FMVSS No. 101 generally requires that the identifiers of the various control positions be adjacent to the control. Otherwise, there would be nothing to prohibit the identifiers of the various control positions from being located in a remote location.

Although the Alliance contends that the language of GTR No. 8 would also accommodate a push-button control that must be pressed repeatedly in order to cycle through multiple functions, we find nothing in the text of GTR No. 8 or the amendments suggested by the Alliance that would allow any control other than one similar to that set forth in Figure 1. However, if the control depicted in Figure 1 were operated by pushing the control rather than turning it, we again note that such a control would be permissible if the lamp was moved to the other side of the label.

The Alliance has offered no compelling justification for changing our position set forth in the September 2008 reconsideration rule that controls similar to the one depicted in Figure 1 would be allowed simply by moving the lamp to the other side of the label to comply with FMVSS No. 101. Therefore, we do not believe the

<sup>7</sup> Although commonly referred to as the 1998 Global Agreement, this provision is more formally titled the "1998 Agreement Concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles."

<sup>8</sup> While the 1998 Agreement obligates such Contracting Parties to initiate rulemaking within one year of the establishment of the GTR, it leaves the ultimate decision of whether to adopt the GTR into their domestic law to the parties themselves.

<sup>9</sup> Docket No. NHTSA-2008-0068, item 2.

<sup>10</sup> Docket No. NHTSA-2008-0068, item 3.

Alliance's suggested amendment to accommodate multi-function controls is necessary to harmonize FMVSS No. 126 with GTR No. 8.

Second, regarding ESC controls incorporated into multi-function controls with associated multi-task display, we do not believe any regulatory amendment is necessary to accommodate such controls. There is a general requirement, set forth in S5.1.3 of FMVSS No. 101, that the identification of controls must be placed on or adjacent to controls, and this general requirement is applicable to "ESC Off" controls. However, S5.1.4 of FMVSS No. 101 sets forth an exception to this general requirement for multi-function controls associated with a multi-task display. Such controls must meet the following five requirements set forth in that section:

- The control must be visible to the driver under defined conditions.
- The display must identify the control with which it is associated graphically or using words.
- If the control has layers, the top-most layer must identify which control is possible from the associated multi-function control.
- The controls identified in Table 1 and Table 2 of FMVSS No. 101 (which includes "ESC Off") must use the identification specified in the table whenever those functions are the active function of the control.
- Associated displays may not display telltales listed in Table 1 or Table 2 (which includes "ESC Off").

An "ESC Off" control may be included in a multi-function control with an associated multi-task display, provided it meets the requirements of S5.1.4 of FMVSS No. 101. We acknowledge that preamble language in the September 2008 reconsideration rule suggested that controls used to navigate through multiple functions (including ESC Off) displayed in an information center must be labeled with "ESC Off." We did not intend that statement to apply to multi-function controls with an associated multi-task display allowed by FMVSS No. 101. We find nothing in the text of FMVSS No. 126 that would exclude "ESC Off" controls from being included in such a multi-function control with an associated multi-task display permitted by FMVSS No. 101. Accordingly, no amendment is necessary to accommodate such controls.

#### B. Two-Part Telltales

The Alliance acknowledged NHTSA's allowance of a two-part telltale in the September 2008 final rule. However, the Alliance stated that, although NHTSA

amended S5.3.3 of FMVSS No. 126 to allow for a two-part telltale, S5.5.2 was not modified and could be read to prohibit the use of a two-part telltale.

As set forth in the April 2007 final rule, S5.5.2 requires that the "ESC Off" telltale be identified by the symbol for "ESC Off" or the text "ESC OFF." The Alliance noted that GTR No. 8 requires the telltale to be identified with the symbol for "ESC Off," the text "ESC OFF," or the word "OFF" on or adjacent to either the ESC Off control or the ESC malfunction telltale. The Alliance requested that NHTSA amend S5.5.2 to incorporate all of the provisions related to two-part telltales as provided in GTR No. 8.

We are denying the Alliance's petition to amend S5.5.2 because we do not agree that S5.5.2 could be read to prohibit the use of two-part telltales. A two-part telltale is, by definition, the addition of the word "OFF" adjacent to the ESC malfunction telltale. The acceptable "ESC Off" telltales listed in S5.5.2 include the "ESC Off" symbol or the text "ESC OFF." Both the "ESC Off" symbol and the text "ESC OFF" place the word "OFF" adjacent to what would be considered an appropriate ESC malfunction telltale. Accordingly, S5.5.2 does not prohibit the use of two-part telltales.

Furthermore, the Alliance's requested language, which provides that the word "OFF" on or adjacent to the control referred to in S5.4 of FMVSS No. 126 (the "ESC Off" control) would be an allowed "ESC Off" telltale, is problematic. We cannot discern how the word "OFF" on or adjacent to a control would, by itself, constitute a two-part telltale. As noted above, a two-part telltale places the word "OFF" adjacent to the illuminated ESC malfunction telltale. The word "OFF" adjacent to the control would only constitute a two-part telltale if the control itself included the illuminating ESC malfunction telltale. Thus, by being adjacent to the control, the word "OFF" would also be adjacent to the telltale. But such a control would not be a two-part telltale because the word "OFF" was next to the control; rather, it would be a two-part telltale because the word "OFF" was adjacent to the illuminated ESC malfunction telltale. The agency is unaware of any such design. Accordingly, it is not necessary to accommodate two-part telltales or achieve harmonization to include language stating that the word "OFF" on or adjacent to the control referred to the "ESC Off" control would be an allowed "ESC Off" telltale.

#### C. Lightweight Outriggers

The Alliance's petition for reconsideration also noted an inconsistency between FMVSS No. 126 and GTR No. 8 regarding the use of outriggers for testing light weight vehicles weighing less than 1,588 kg (3,500 lb). Specifically, GTR No. 8 specifies three sizes of outriggers depending on the weight of the vehicle, while FMVSS No. 126 only specifies two sizes of outriggers. The Alliance noted that European and Asian markets have a larger proportion of light weight vehicles than the United States market. However, the Alliance also cited recent increases in fuel prices and demand by consumers for smaller vehicles. The Alliance noted in its petition that there is at least one sport-utility vehicle that weighs less than 1,588 kg (3,500 lb). The Alliance predicted that, with increasing fuel costs, it is likely that the United States vehicle fleet, including light trucks, will shift to lighter weight vehicles, and that it would be necessary to evaluate these smaller vehicles with the light weight outrigger.

The testing procedures for FMVSS No. 126 specify that trucks, multipurpose passenger vehicles, and buses are equipped with outriggers when tested. Passenger cars need not be tested with outriggers. Therefore, the Alliance's suggested change to FMVSS No. 126 would only apply to lightweight trucks, multipurpose passenger vehicles, and buses under 1,588 kg (3,500 lb) baseline weight.

The Alliance correctly noted in its petition that GTR No. 8 and FMVSS No. 126 differ in their specifications for outriggers on vehicles weighing less than 1,588 kg (3,500 lb). While FMVSS No. 126 specifies the use of a standard outrigger for all vehicles with a baseline weight under 2,722 kg (6,000 lb), GTR No. 8 specifies the use of a standard outrigger for vehicles weighing between 1,588 kg (3,500 lb) and 2,722 kg (6,000 lb) and a light outrigger for vehicles weighing less than 1,588 kg (3,500 lb). FMVSS No. 126 does not specify the use of lightweight outriggers for testing trucks, multipurpose passenger vehicles, or buses.

NHTSA grants the Alliance's petition with regard to the use of light outriggers on lightweight trucks, multipurpose passenger vehicles, and buses. Although there are presently only a few trucks with baseline weights of 1,588 kg (3,500 lb) or below, there is a possibility that production of lightweight trucks may increase in the future. To achieve accuracy of testing of these lightweight vehicles and to promote driver safety, NHTSA is amending S6.3.4 to include

the use of lightweight outriggers for vehicles with a baseline weight of less than 1,588 kg (3,500 lb). This amendment has the effect of harmonizing the provisions of FMVSS No. 126 related to the use of outriggers in testing with those of GTR No. 8.

#### D. Effective Date

Section 30111(d) of title 49, United States Code, provides that a Federal motor vehicle safety standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed except when a different effective date is, for good cause shown, in the public interest. This rule makes amendments to regulatory provisions that are subject to phase-in and delayed effective dates that were set forth in the April 2007 final rule. These amendments do not impose new requirements on manufacturers, but instead change the outriggers the agency uses during compliance testing of a very small number of vehicles to increase the testing accuracy. Therefore, good cause exists for these amendments to be made effective before the 180th day after issuance of this final rule.

#### IV. Rulemaking Analyses and Notices

We have considered the impact of this rulemaking action under Executive Order 12866, "Regulatory Planning and Review," Executive Order 13563, "Improving Regulation and Regulatory Review," and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under those two Executive Orders. This rule makes several minor changes to the regulatory text of FMVSS No. 126, and does not increase the regulatory burden of manufacturers. It has been determined

to be not "significant" under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures.

The agency has discussed the relevant requirements of the Vehicle Safety Act, the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks), the Paperwork Reduction Act, the National Technology Transfer and Advancement Act, the Unfunded Mandates Reform Act, and the National Environmental Policy Act in the April 2007 final rule cited above. Those discussions are not affected by these changes.

#### Privacy Act

Please note that any one is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit <http://www.dot.gov/privacy.html>.

#### V. Regulatory Text

##### List of Subjects in 49 CFR Parts 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

#### PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. In section 571.126, revise S6.3.4 to read as follows:

##### § 571.126 Standard No. 126; Electronic stability control systems.

\* \* \* \* \*

S6.3.4 *Outriggers.* Outriggers are used for testing trucks, multipurpose passenger vehicles, and buses. Vehicles with a baseline weight less than 1,588 kg (3,500 lbs) are equipped with "light" outriggers. Vehicles with a baseline weight equal to or greater than 1,588 kg (3,500 lbs) and less than 2,722 kg (6,000 lbs) are equipped with "standard" outriggers. Vehicles with a baseline weight equal to or greater than 2,722 kg (6,000 lbs) are equipped with "heavy" outriggers. A vehicle's baseline weight is the weight of the vehicle delivered from the dealer, fully fueled, with a 73 kg (160 lb) driver. Light outriggers are designed with a maximum weight of 27 kg (59.5 lb) and a maximum roll moment of inertia of 27 kg-m<sup>2</sup> (19.9 ft-lb-sec<sup>2</sup>). Standard outriggers are designed with a maximum weight of 32 kg (70 lb) and a maximum roll moment of inertia of 35.9 kg-m<sup>2</sup> (26.5 ft-lb-sec<sup>2</sup>). Heavy outriggers are designed with a maximum weight of 39 kg (86 lb) and a maximum roll moment of inertia of 40.7 kg-m<sup>2</sup> (30.0 ft-lb-sec<sup>2</sup>).

\* \* \* \* \*

Issued on: August 31, 2011.

**David L. Strickland,**  
Administrator.

[FR Doc. 2011–23092 Filed 9–8–11; 8:45 am]

**BILLING CODE 4910–59–P**

# Proposed Rules

Federal Register

Vol. 76, No. 175

Friday, September 9, 2011

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

## DEPARTMENT OF ENERGY

### 10 CFR Part 431

#### RIN 1904-AC04

#### Efficiency and Renewables Advisory Committee, Appliance Standards Subcommittee, Negotiated Rulemaking Subcommittee/Working Group for Liquid-Immersed and Medium-Voltage Dry Type Transformers

**AGENCY:** Department of Energy, Office of Energy Efficiency and Renewable Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This document announces an open meeting of the Negotiated Rulemaking Working Group for Liquid-Immersed and Medium-Voltage Dry Type Transformers (hereafter "MV Group"). The MV Group is a working group within the Appliance Standards Subcommittee of the Efficiency and Renewables Advisory Committee (ERAC). The purpose of the MV Group is to discuss and, if possible, reach consensus on a proposed rule for regulating the energy efficiency of distribution transformers, as authorized by the Energy Policy Conservation Act (EPCA) of 1975, as amended, 42 U.S.C. 6313(a)(6)(C) and 6317(a). A separate Working Group on Low-Voltage Dry Type Transformers is being convened to discuss and, if possible, reach consensus on a proposed rule for regulating the energy efficiency of low-voltage transformers, as authorized by the Energy Policy Conservation Act (EPCA) of 1975, as amended, 42 U.S.C. 6313(a)(6)(C) and 6317(a) [76 FR 50148].

**DATES:** Thursday, September 15, 2011—9 a.m.–5 p.m.

Friday, September 16, 2011—9 a.m.–3 p.m.

**ADDRESSES:** Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Rooms 1E-245 and 8E-089, Washington, DC 20585. Please arrive at least 30 minutes early for building entry requirements, see the

Public Participation section for more information.

**FOR FURTHER INFORMATION CONTACT:** John Cymbalsky, U.S. Department of Energy, Office of Building Technologies (EE-2J), 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 287-1692. E-mail: John.Cymbalsky@ee.doe.gov.

#### SUPPLEMENTARY INFORMATION:

**Background:** DOE has decided to use the negotiated rulemaking process to develop proposed energy efficiency standards for distribution transformers. The primary reasons for using the negotiated rulemaking process for developing a proposed Federal standard is that stakeholders strongly support a consensual rulemaking effort and DOE believes such a regulatory negotiation process will be less adversarial and better suited to resolving the complex technical issues raised by this rulemaking. An important virtue of negotiated rulemaking is that it allows expert dialog that is much better than traditional techniques at getting the facts and issues right and will result in a proposed rule that will effectively reflect Congressional intent.

A regulatory negotiation will enable DOE to engage in direct and sustained dialog with informed, interested, and affected parties when drafting the proposed regulation that is then presented to the public for comment. Gaining this early understanding of all parties' perspectives allows DOE to address key issues at an earlier stage of the process, thereby allowing more time for an iterative process to resolve issues. A rule drafted by negotiation with informed and affected parties is more likely to maximize benefits while minimizing unnecessary costs than one conceived or drafted without the opportunity for sustained dialog among interested and expert parties. DOE anticipates that there will be a need for fewer substantive changes to a proposed rule developed under a regulatory negotiation process prior to the publication of a final rule.

To the maximum extent possible, consistent with the legal obligations of the Department, DOE will use the consensus of the advisory committee or subcommittee as the basis for the rule the Department proposes for public notice and comment.

**Membership:** The Members of the MV Group were chosen from nominations

submitted in response to the Department of Energy's call for nominations published in the **Federal Register** on Friday, July 29, 2011 [76 FR 45471]. The selections are designed to ensure a broad and balanced array of stakeholder interests and expertise on the negotiating working group for the purpose of developing a rule that is legally and economically justified, technically sound, fair to all parties, and in the public interest. All meetings are open to all stakeholders and the public, and participation by all is welcome within boundaries as required by the orderly conduct of business. The Members of the MV Group are as follows:

- Richard Anderson (Fayetteville PWC)
- Tim Ballo (Earthjustice)
- Scott Beck (Lakeview Metals)
- John Caskey (NEMA)
- Jerry Corkran (Cooper Power Systems)
- John Cymbalsky (DOE)
- Andrew DeLaski (ASAP)
- Tom Eckman (NWPower and Conservation Council)
- Gary Fernstrom (PG&E)
- Carlos Gaytan (GE Prolec)
- Robert Greeson (Federal Pacific)
- Bruce Hirsch (Baltimore Gas and Electric)
- Gerald Hodge (Howard Industries)
- Phil Hopkinson (HVOLT)
- Michael Hyland (APPA)
- David Millure (Metglas)
- Steve Nadel (ACEEE)
- Wes Patterson (ABB)
- Eric Petersen (AK Steel)
- Ray Polinski (Allegheny Ludlum)
- Steve Rosenstock (Edison Electric Institute)
- Robin Roy (NRDC)
- Robert Saint (NRECA)
- Chuck Simmons (Progress Energy)
- Mark Stoering (Xcel Energy; member of ERAC)

**Purpose of the Meeting:** To launch the process of seeking consensus on a proposed rule for the energy efficiency of liquid-immersed and medium-voltage dry type distribution transformers, as authorized by the Energy Policy Conservation Act (EPCA) of 1975, as amended, 42 U.S.C. 6313(a)(6)(C) and 6317(a).

**Tentative Agenda:** The meeting will start at 9 a.m. and will conclude at 5 p.m. on Thursday, September 15, 2011, in room 1E-245 and reconvene on

Friday, September 16, 2011, from 9 a.m. until 3 p.m. in room 8E-089. The tentative meeting agenda includes introductions, agreement on facilitator and rules of procedure, presentations from DOE consultants on the results of their revised analysis of alternative candidate standard levels, and identification of the issues to be addressed by the negotiations, and any outstanding data needs.

**Public Participation:** Members of the public are welcome to observe the business of the meetings and to make comments related to the issues being discussed at appropriate points, when called on by the moderator. The facilitator will make every effort to hear the views of all interested parties within limits required for the orderly conduct of business. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail [erac@ee.doe.gov](mailto:erac@ee.doe.gov) no later than 5 p.m., Thursday, September 8, 2011. Please include "MV Work Group 091511" in the subject line of the message. An early confirmation of attendance will help facilitate access to the building more quickly. In the e-mail, please provide your name, organization, citizenship and contact information. Space is limited.

Anyone attending the meeting will be required to present government-issued identification. Foreign nationals will be required, per DOE security protocol, to complete a questionnaire no later than one week prior to the meeting, Thursday, September 8, 2011.

Participation in the meeting is not a prerequisite for submission of written comments. ERAC invites written comments from all interested parties. If you would like to file a written statement with the committee, you may do so either by submitting a hard or electronic copy before or after the meeting. Electronic copy of written statements should be e-mailed to [erac@ee.doe.gov](mailto:erac@ee.doe.gov).

**Minutes:** The minutes of the meeting will be available for public review at <http://www.erac.energy.gov>.

Issued in Washington, DC, on August 29, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011-22457 Filed 9-8-11; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 1140

[Docket No. FDA-2011-N-0467]

RIN 0910-AG43

#### Non-Face-to-Face Sale and Distribution of Tobacco Products and Advertising, Promotion, and Marketing of Tobacco Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing this advance notice of proposed rulemaking (ANPRM) to obtain information related to the regulation of non-face-to-face sale and distribution of tobacco products and the advertising, promotion, and marketing of tobacco products. FDA is taking this action as part of its implementation of the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act). FDA is requesting comments, data, research, or other information related to non-face-to-face sale and distribution of tobacco products; the advertising, promotion, and marketing of such products; and the advertising of tobacco products via the Internet, e-mail, direct mail, telephone, smart phones, and other communication technologies that can be directed to specific recipients.

**DATES:** Submit either electronic or written comments by December 8, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. FDA-2011-N-0467 and/or RIN number 0910-AG43, by any of the following methods:

#### Electronic Submissions

Submit electronic comments in the following way:

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

#### Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301-827-6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions):* Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**Instructions:** All submissions received must include the Agency name and Docket No. FDA-2011-N-0467 and

Regulatory Information Number (RIN 0910-AG43) for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, insert the docket number found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Beth Buckler, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850-3229, 877-287-1373, [beth.buckler@fda.hhs.gov](mailto:beth.buckler@fda.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Tobacco Control Act, enacted on June 22, 2009, amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) and provides FDA with the authority to regulate tobacco products (Pub. L. 111-31, 123 Stat. 1776). Among other things, the Tobacco Control Act requires FDA to issue regulations, by October 1, 2011, regarding the sale and distribution of tobacco products that occur through means other than a direct, face-to-face exchange between a retailer and a consumer (*i.e.*, a non-face-to-face or remote sale) in order to prevent the sale and distribution of tobacco products to individuals who have not attained the minimum age established by applicable law for the purchase of such products, including requirements for age verification (section 906(d)(4)(A)(i) of the FD&C Act (21 U.S.C. 387f(d)(4)(A)(i))). The Tobacco Control Act also requires FDA to issue regulations, by April 1, 2012, to address the promotion and marketing of tobacco products that are sold or distributed through a non-face-to-face exchange in order to protect individuals who have not attained the minimum age established by applicable law for the purchase of such products (section 906(d)(4)(A)(ii)). Furthermore, section 906(d)(1) of the FD&C Act provides that the Secretary of Health and Human Services (the Secretary) may by regulation require restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and

promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health.

On March 31, 2010, following the enactment of the Tobacco Control Act, and before FDA could issue the regulations required by section 906(d)(4)(A) of the FD&C Act, the Prevent All Cigarette Trafficking (PACT) Act of 2009 (Pub. L. 111–154; 124 Stat. 1087) became law. Among other things, the PACT Act makes cigarettes and smokeless tobacco<sup>1</sup> nonmailable matter, with certain exceptions, and requires Internet and other remote sellers to comply with all State, local, Tribal, and other laws that apply generally to sales of cigarettes or smokeless tobacco that occur entirely within the State in which the cigarettes or smokeless tobacco products are delivered, including laws imposing restrictions on sales to minors (18 U.S.C. 1716E, 15 U.S.C. 376a(a)(3)). In addition, the PACT Act requires Internet and other remote sellers to: (1) Verify the age of their customers prior to the sale through the use of commercially-available databases to ensure, among other things, that the purchaser is at least the minimum age required by law at the place of delivery, and (2) use a method of delivery that requires verification of the age and identification of the person accepting delivery of the product to ensure that the person is at least the minimum age required by law at the place of delivery (15 U.S.C. 376a(b)(4)). The PACT Act also directs the Attorney General of the United States to create and distribute a list of delivery sellers of cigarettes or smokeless tobacco that are not in compliance with the PACT Act. This list will be provided to the attorney general and tax administrator of every State, common carriers and other persons that deliver small packages to consumers in interstate commerce, including the U.S. Postal Service, and any other person that can promote the effective enforcement of the PACT Act (15 U.S.C. 376a(e)(1)(A)). The U.S. Postal Service and the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives are responsible for implementing the provisions of the PACT Act.

FDA has determined that additional information is needed about the non-face-to-face sale and distribution of tobacco products prior to issuing the regulations required by section 906(d)(4)(A)(i) of the FD&C Act.

<sup>1</sup> The PACT Act defines the terms "cigarettes" and "smokeless tobacco" differently than the FD&C Act (see 15 U.S.C. 375(a)(2) and (a)(12) of the PACT Act and section 900(3) and (18) of the FD&C Act).

Furthermore, because the enactment of the PACT Act affects the non-face-to-face sale and distribution of cigarettes and smokeless tobacco, FDA is seeking information about how non-face-to-face sale and distribution practices for cigarettes and smokeless tobacco have changed or will change in light of the PACT Act and its implementing regulations (75 FR 29662, May 27, 2010; 75 FR 35302, June 22, 2010). FDA also has determined that additional information is needed about the advertising, promotion, and marketing of tobacco products prior to issuing regulations under sections 906(d)(4)(A)(ii) and 906(d)(1) of the FD&C Act. Specifically, FDA is seeking information about the advertising, promotion, and marketing of tobacco products sold or distributed through a non-face-to-face exchange. In addition, given the rapid expansion of the Internet and mobile technologies, FDA is seeking information about the advertising of tobacco products via the Internet, e-mail, direct mail, telephone, smart phones, and other communication technologies that can be directed to specific recipients.

FDA believes that issuing an ANPRM is the best approach for ensuring that the Agency has the information it needs to issue effective regulations under that section. FDA intends to use the information submitted in response to this document to inform its regulation of the sale and distribution of tobacco products through a non-face-to-face exchange and the advertising, promotion, and marketing of tobacco products.

## II. Request for Comments and Information

FDA is seeking data, research, information, and comments related to the following:

### A. Non-Face-to-Face Sale and Distribution of Tobacco Products

1. Other than direct mail, catalog, and Internet sales, what types of non-face-to-face sales and distribution methods are used to sell or distribute tobacco products to consumers?

2. Do the non-face-to-face sales and distribution methods differ depending on the type of tobacco product being sold (*e.g.*, cigarettes, smokeless tobacco, or other products "made or derived from tobacco" subject to the Tobacco Control Act)? If so, how?

3. What are the methods used by minors to acquire tobacco products through a non-face-to-face exchange?

a. Which of these methods are minors most successful in using to obtain tobacco products?

b. What are the best data sources (other than Federal Government surveys) for information about the extent and character of such purchases by minors?

4. Since the enactment of the PACT Act, have minors found alternative methods to purchase and/or acquire cigarettes or smokeless tobacco products by a means other than a face-to-face exchange? If so, what are they?

5. What are the current technologies, procedures, or other methods used to ensure that the purchaser of a tobacco product through a non-face-to-face exchange is an adult, including age and ID verification?

a. How effective are these methods at preventing minors' access to tobacco products through a non-face-to-face exchange?

b. If these methods are not effective, which other technologies, procedures, or methods would work more effectively to prevent minors' access to tobacco products through a non-face-to-face exchange?

c. Do these methods differ depending on the type of non-face-to-face exchange (*e.g.*, Internet, direct mail, catalog, telephone, *etc.*)? If so, how?

d. Is requiring an adult (whether or not the person who placed an order) to sign for the delivery of tobacco products adequate to ensure that tobacco products purchased through a non-face-to-face exchange are not delivered to minors? Or, is it necessary to require that the products be delivered only to the person who ordered them? Are there other requirements that could be placed on the delivery of tobacco products to prevent their delivery to minors?

6. What payment methods are used for the sale of tobacco products through non-face-to-face exchanges? Do these payment methods differ depending on the type of tobacco product purchased? If so, how?

7. To what extent are tobacco products sold through a non-face-to-face exchange sold at substantially lower prices than the same types of tobacco products sold through a face-to-face exchange? Do the price differences vary depending on the type of tobacco product purchased? If so, how?

8. What means are used to deliver tobacco products sold to consumers through non-face-to-face exchanges?

a. Do these means of delivery differ depending on the type of non-face-to-face exchange (*e.g.*, Internet, direct mail, catalog, *etc.*)? If so, how?

b. Do these means of delivery differ depending on the type of tobacco product sold? If so, how?

c. Do these means of delivery differ depending on the location of the seller and/or purchaser? If so, how?

9. What strategies, if any, are used by tobacco product manufacturers to ensure that their tobacco products are not sold or distributed to minors through non-face-to-face exchanges by partner other than the manufacturer?

a. Do tobacco product manufacturers verify the effectiveness of these strategies? If so, how?

b. Are there any data available to verify the effectiveness of these strategies? If so, what are they?

10. How can FDA most effectively partner with other Federal agencies and State, local, territorial, and Tribal governments to prevent the sale and distribution of tobacco products to minors through non-face-to-face exchanges?

#### *B. Advertising, Promotion, and Marketing of Tobacco Products*

11. What forms of advertising, promotion, and marketing are used to promote the sale of tobacco products through non-face-to-face exchanges?

a. What are the current trends in these forms of advertising, promotion, and marketing?

b. Which of these forms of advertising, promotion, and marketing are appealing to minors?

c. Are there themes or techniques used in these forms of advertising, promotion, and marketing that are appealing to minors?

12. How are the Internet, e-mail, direct mail, telephone, smartphones, and other communication technologies used to direct tobacco product advertising, marketing, and promotion messages to specific recipients?

a. What are the current trends in these forms of advertising, promotion, and marketing?

b. Which of these forms of advertising, promotion, and marketing are appealing to minors?

c. Are there themes or techniques used in these forms of advertising, promotion, and marketing that are appealing to minors?

d. To what extent are databases with individual tobacco user information used to direct tobacco product advertising, marketing, and promotion messages to specific recipients?

13. What technologies, procedures or other methods are currently used by the tobacco industry (including, but not limited to, manufacturers, importers, distributors, and retailers) to restrict or minimize a minor's exposure to the forms of advertising, promotion, and marketing of tobacco products described

in questions 11 and 12 of section II.B of this document?

a. How effective are these methods at restricting or minimizing such exposure?

b. If these methods are not effective, what other technologies, procedures, or methods would work more effectively to restrict or minimize the exposure of minors to such advertising, promotion, and marketing?

c. Would the technologies, procedures, or other methods described in question 13b prevent such tobacco product advertising, promotion, and marketing from reaching adult consumers? If so, what alternatives are available to minimize minors' exposure while still enabling tobacco product information to be communicated to adults?

d. To the extent that minors' exposure to tobacco product advertising, promotion, and marketing cannot be eliminated, what restrictions or requirements could be placed on such advertising, promotion, and marketing to minimize its appeal to or influence on minors who are exposed to it?

e. Would the technologies, procedures, or other methods described in question 13d of section II.B of this document prevent the communication of tobacco product information to adult consumers? If so, what alternatives are available to minimize minors' exposure while still enabling tobacco product information to be communicated to adults?

14. Given the rapid growth of social media (*e.g.*, Facebook, Twitter, YouTube, *etc.*), how can minors' exposure to tobacco product advertising, promotion, and marketing through these types of media be restricted or minimized?

### **III. Submission of Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be viewed electronically at <http://www.regulations.gov> or by visiting the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

**Authority:** The ANPRM is issued under section 906 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387f) and under the authority of the Commissioner of Food and

Dated: September 2, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011-23096 Filed 9-8-11; 8:45 am]

**BILLING CODE 4160-01-P**

## **DEPARTMENT OF THE INTERIOR**

### **Office of Natural Resources Revenue**

#### **30 CFR Parts 1202 and 1206**

[Docket No. ONRR-2011-0004]

RIN 1012-AA00

#### **Workshops To Discuss Revisions to Federal and Indian Coal Valuation Regulations: Advance Notice of Proposed Rulemaking**

**AGENCY:** Office of Natural Resources Revenue, Interior.

**ACTION:** Notice of Public Workshops.

**SUMMARY:** The Office of Natural Resources Revenue (ONRR) announces three public workshops to discuss specific issues regarding the existing royalty valuation regulations at 30 CFR parts 1202 and 1206 for coal produced from Federal and Indian leases.

**DATES:** The public workshop dates and cities are:

Workshop 1—October 12, 2011 (8:30 a.m.–12 p.m. mountain time) in Denver, Colorado.

Workshop 2—October 18, 2011 (8:30 a.m.–12 p.m., central time) in St. Louis, Missouri.

Workshop 3—October 20, 2011 (8:30 a.m.–12 p.m. mountain time) in Albuquerque, New Mexico.

**ADDRESSES:** The public workshop locations are:

Workshop 1—Office of Natural Resources Revenue, Denver Federal Center, 6th Avenue and Kipling Street, Building 85, Auditoriums A–D, Denver, Colorado 80226, telephone number (303) 231-3585.

Workshop 2—Marriott St. Louis Airport, 10700 Pear Tree Lane, St. Louis, Missouri 63134, telephone number (314) 423-9700.

Workshop 3—Bureau of Land Management, Albuquerque District Office, 435 Montano Road, NW., Albuquerque, New Mexico 87102, telephone number (505) 761-8700.

**FOR FURTHER INFORMATION CONTACT:** Hyla Hurst, Regulatory Specialist, Office of Natural Resources Revenue, P.O. Box 25165, MS 61013C, Denver, Colorado 80225, telephone (303) 231-3495, fax number (303) 233-2225, e-mail [hyla.hurst@onrr.gov](mailto:hyla.hurst@onrr.gov).

**SUPPLEMENTARY INFORMATION:** The comment period for the Advance Notice

of Proposed Rulemaking (ANPR) for Federal and Indian coal valuation closed on July 26, 2011. The ONRR received responses from 11 commenters representing industry, a tribe, a state, a community group (representing several member groups), 2 coal publications, and 3 trade groups. We appreciate the feedback and hope to obtain additional input at the public workshops. You may find it helpful to review the comments prior to your attendance at one of the workshops. You may access the comments at [http://www.onrr.gov/Laws\\_R\\_D/PubComm/AA00rmprc.htm](http://www.onrr.gov/Laws_R_D/PubComm/AA00rmprc.htm).

As indicated in the ANPR, the intention of this rulemaking process is to provide regulations that would (1) Offer greater simplicity, certainty, clarity, and consistency in production valuation for mineral lessees and mineral revenue recipients; (2) be easy to understand; (3) decrease industry's compliance costs; and (4) provide early certainty to industry and ONRR that companies have paid every dollar due.

The ONRR is seeking further public comment on the following issues:

(1) Using index prices to value coal. Commenters were mixed on the subject of using index prices to value coal. Some commenters noted the perceived lack of available indices or pricing mechanisms for some regions and for Indian coal. If ONRR does move forward in using index prices to value coal for royalty purposes on a limited basis, for what regions does this approach make sense?

(2) Examining possible alternatives for the use of gross proceeds to value coal sold at arm's-length. Commenters generally provided that no changes to arm's-length valuation were necessary. Is there any support to develop alternatives for the use of gross proceeds in valuing coal sold at arm's length?

(3) Examining possible alternatives to improve non-arm's-length valuation. Comments on this issue were mixed. The ONRR invites more specific comments on the reasons that current rules should be maintained or revised and other suggestions to improve non-arm's-length coal valuation regulations.

(4) Examining the possible use of separate valuation methods for lessees that are coal cooperatives or for lessees that consume their coal. Comments on this issue were divided. The ONRR invites comments on whether separate valuation methods are needed for coal cooperatives and lessees that consume lease coal and suggestions regarding methodologies that would be appropriate.

(5) Simplifying the methods for determining coal transportation and washing allowances. Comments on this

issue were generally in favor of maintaining the status quo and basing allowances on reasonable, actual costs. However, ONRR invites suggestions regarding other methodologies that would simplify the determination of transportation and washing allowances.

The ONRR is also interested in receiving comments on any other alternative valuation methodologies that would provide additional levels of clarity, efficiency, and early certainty to the industry and Federal Government. In addition to the specific issues identified above, we invite participants to comment on any other significant issues impacting the value of Federal and Indian coal for royalty purposes.

Executive Order 13175 requires the Federal Government to consult and collaborate with the Indian community (tribes and individual Indian mineral owners) in the development of Federal policies that impact the Indian community. The locations of the workshops were chosen to allow for increased participation by the Indian community.

We encourage stakeholders and members of the public to participate. The workshops will be open to the public without advance registration; however, attendance may be limited to the space available at each venue. For building security measures, each person may be required to present a picture identification to gain entry to the meetings.

Dated: September 2, 2011.

**Gregory J. Gould,**

*Director for Office of Natural Resources Revenue.*

[FR Doc. 2011-23140 Filed 9-8-11; 8:45 am]

**BILLING CODE 4310-MR-P**

## DEPARTMENT OF THE INTERIOR

### Office of Natural Resources Revenue

#### 30 CFR Parts 1202 and 1206

[Docket No. ONRR-2011-0005]

RIN 1012-AA01

#### Workshops To Discuss Revisions to Federal Oil and Gas Royalty Valuation Regulations: Advance Notice of Proposed Rulemaking

**AGENCY:** Office of Natural Resources Revenue, Interior.

**ACTION:** Notice of public workshops.

**SUMMARY:** The Office of Natural Resources Revenue (ONRR) announces three public workshops to discuss specific issues regarding the existing Federal oil and gas royalty valuation

regulations at 30 CFR parts 1202 and 1206 for oil and gas produced from Federal onshore and offshore oil and gas leases.

**DATES:** The public workshop dates and cities are:

Workshop 1—September 27, 2011 (8:30 a.m. to 12 p.m. central time) in Houston, Texas.

Workshop 2—September 29, 2011 (8:30 a.m. to 12 p.m. eastern time) in Washington DC.

Workshop 3—October 4, 2011 (8:30 a.m. to 12 p.m. mountain time) in Denver, Colorado.

**ADDRESSES:** The public workshop locations are:

Workshop 1—JW Marriott Houston, 5150 Westheimer Road, Houston, Texas 77056-5506, telephone number (713) 961-1500.

Workshop 2—Main Interior Building, 1849 C Street, NW, Washington, DC 20240 (Yates Auditorium), telephone number (202) 254-5573.

Workshop 3—Office of Natural Resources Revenue, Denver Federal Center, 6th Avenue and Kipling Street, Building 85, Auditoriums A-D, Denver, Colorado 80226, telephone number (303) 231-3585.

**FOR FURTHER INFORMATION CONTACT:** Hyla Hurst, Regulatory Specialist, Office of Natural Resources Revenue, P.O. Box 25165, MS 61013C, Denver, Colorado 80225, telephone (303) 231-3495, fax number (303) 233-2225, e-mail [hyla.hurst@onrr.gov](mailto:hyla.hurst@onrr.gov).

**SUPPLEMENTARY INFORMATION:** The comment period for the Advance Notice of Proposed Rulemaking (ANPR) for Federal oil and gas valuation closed on July 26, 2011. The ONRR received responses from 19 commenters representing states, industry, industry trade associations, and the general public. We appreciate the feedback and hope to obtain additional input at the public workshops. You may find it helpful to review the comments prior to your attendance at one of the workshops. You may access the comments at [http://www.onrr.gov/Laws\\_R\\_D/PubComm/AA01rmprc.htm](http://www.onrr.gov/Laws_R_D/PubComm/AA01rmprc.htm).

As indicated in the ANPR, the intention of this rulemaking process is to provide regulations that would (1) Offer greater simplicity, certainty, clarity, and consistency in production valuation for mineral lessees and mineral revenue recipients; (2) be easy to understand; (3) decrease industry's compliance costs; and (4) provide early certainty to industry and ONRR that companies have paid every dollar due.

The ONRR is seeking further public comment on the following issues:

(1) Using index prices to value oil and gas. Commenters generally agreed that the use of index pricing to determine the value of Federal oil production for royalty purposes under the existing rules is working well. The ONRR invites other suggestions to improve the oil valuation regulations. Comments on the use of index pricing in valuing Federal gas for royalty purposes were sharply divided. The ONRR invites more specific comments as to whether index pricing could possibly replace gross proceeds in valuing Federal gas production.

(2) Examining possible alternatives to the requirement to track costs for determining gas transportation. Comments on this issue were divided. The ONRR invites specific comments on alternative methods for calculating actual transportation costs that would adjust for location differences between the lease or unit and the index pricing point.

(3) Considering accounting for the value of liquid hydrocarbons contained in the gas stream by applying an adjustment or “bump” to the index price. Generally, commenters provided that they would support an alternative method for calculating the actual costs to process gas if it were truly revenue neutral. However, ONRR invites suggestions regarding other methodologies that would simplify the valuation and reporting of processed gas.

(4) The ONRR also is interested in receiving comments on any other alternative valuation methodologies that would provide additional levels of clarity, efficiency, and early certainty to the industry and Federal Government. In addition to the specific issues identified above, we invite participants to comment on any other significant issues impacting the value of Federal oil and natural gas for royalty purposes.

We encourage stakeholders and members of the public to participate. The workshops will be open to the public without advance registration; however, attendance may be limited to the space available at each venue. For building security measures, each person may be required to present a picture identification to gain entry to the meetings.

Dated: September 2, 2011.

**Gregory J. Gould,**

*Director for Office of Natural Resources Revenue.*

[FR Doc. 2011-23104 Filed 9-8-11; 8:45 am]

**BILLING CODE 4310-MR-P**

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

#### 31 CFR Part 1

RIN 1505-AC31

#### Privacy Act of 1974; Proposed Implementation

**AGENCY:** Departmental Offices, Treasury.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In accordance with the requirements of the Privacy Act of 1974, the Department of the Treasury gives notice of a proposed amendment to this part to exempt a system of records from certain provisions of the Privacy Act.

**DATES:** Comments must be received no later than October 11, 2011.

**ADDRESSES:** Written comments should be sent to the Department of the Treasury, Office of Civil Rights and Diversity, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department will make such comments available for public inspection and copying in the Department's Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, 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) 622-0990 (not a toll-free line). You may also submit comments through the Federal rulemaking portal at <http://www.regulations.gov> (follow the instructions for submitting comments). All comments, including attachments and other supporting materials, received are 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:** Marian G. Harvey, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622-0316, (202) 622-0367 (fax), or via electronic mail at [ocrd.comments@do.treas.gov](mailto:ocrd.comments@do.treas.gov).

**SUPPLEMENTARY INFORMATION:** Under 5 U.S.C. 552a(k)(2), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is “investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2).” To the extent that this system of records contain investigative material within the provision of 5 U.S.C. 552a(k)(2), the Department of the Treasury proposes to exempt the Treasury .013—Department of the

Treasury Civil Rights Complaints and Compliance Review Files, from various provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

The proposed rule will create a new table in paragraph 31 CFR 1.36(g)(1) under the heading designated as “(i) Treasury.” The system of records entitled “Treasury .013—Department of the Treasury Civil Rights Complaints and Compliance Review Files” will be added to the table under (i). The current heading “Departmental Offices:” and the associated table will be designated as “(ii).” Paragraphs (ii) through (xiii) are re-designated (iii) through (xiv) respectively.

The Department of the Treasury (Treasury) is publishing the notice of the new system of records separately in the **Federal Register**.

The proposed exemption under 5 U.S.C. 552a(k)(2) for the above system of records is from provisions 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f). Exemptions from these particular subsections are justified on a case-by-case basis to be determined at the time a request is made for the following reasons:

1. 5 U.S.C. 552a(c)(3) requires an agency to make accountings of disclosures of a record available to the individual named in the record upon his or her request. The accountings must state the date, nature, and purpose of disclosures of the record and the names and addresses of recipients. Making accountings of disclosures available to the subjects of investigations would alert them to the fact that an investigation is being conducted into their activities as well as identify the nature, scope, and purpose of that investigation. The subjects of investigations, if provided an accounting of disclosures, would be able to take measures to avoid detection or apprehension by destroying or concealing evidence that would form the basis for detection or apprehension.

2. 5 U.S.C. 552a(d)(1), (e)(4)(H), and (f)(2), (3), and (5) grant individual access, or concern procedures by which an individual may gain access, to records pertaining to themselves. Disclosure of this information to the subjects of investigations would provide individuals with information concerning the nature and scope of any current investigation, may enable them to avoid detection or apprehension, may enable them to destroy or alter evidence of criminal conduct that would form the basis for their arrest, and could impede the investigator's ability to investigate the matter. In addition, permitting access to investigative files and records

could disclose the identity of confidential sources and the nature of the information supplied by informants as well as endanger the physical safety of those sources by exposing them to possible reprisals for having provided the information. Confidential sources and informers might refuse to provide valuable information unless they believe that their identities would not be revealed through disclosure of their names or the nature of the information they supplied. Loss of access to such sources would seriously impair the investigator's ability to perform its law enforcement responsibilities. Furthermore, providing access to records contained in the system of records could reveal the identities of undercover law enforcement officers who compiled information regarding the individual's criminal activities, thereby endangering the physical safety of those undercover officers by exposing them to possible reprisals. Permitting access in keeping these provisions would also discourage other law enforcement and regulatory agencies, foreign or domestic, from freely sharing information and thus would restrict access to information necessary to accomplish its mission most effectively.

3. 5 U.S.C. 552a(d)(2), (3), and (4), (e)(4)(H), and (f)(4) permit an individual to request amendment of a record pertaining to the individual or concern related to procedures, and require the agency either to amend the record or to note the disputed portion of the record, and to provide a copy of the individual's statement of disagreement with the agency's refusal to amend a record to persons or other agencies to whom the record is thereafter disclosed. Since these provisions depend upon the individual having access to his or her records, and since an exemption from the provisions of 5 U.S.C. 552a relating to access to records is proposed for the reasons set out in the preceding paragraph of this section, these provisions should not apply to the above-listed system or records.

4. 5 U.S.C. 552a(e)(1) requires an agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or Executive Order. The term "maintain," as defined in 5 U.S.C. 552a(a)(3), includes "collect" and "disseminate." The application of this provision could impair the investigator's ability to collect and disseminate valuable law enforcement information. In the early stages of an investigation, it may be impossible to determine whether information collected is relevant and

necessary, and information that initially appears irrelevant and information developed subsequently, prove particularly relevant and necessary to the investigation. Compliance with the above records maintenance requirements would require the periodic up-dating of information Treasury collects and maintains to ensure that the records in this system remain timely, accurate, and complete. Further, the investigator may uncover evidence of violations of law that fall within the investigative jurisdiction of other law enforcement agencies. To promote effective law enforcement, the investigator will refer this evidence to the appropriate authority for further investigation.

5. 5 U.S.C. 552a(e)(4)(G) and (f)(1) enable individuals to inquire whether a system of records contains records pertaining to them. Application of these provisions to the above-referenced systems of records could allow individuals to learn whether they have been identified as subjects of investigation. Access to such knowledge would impair the investigator's ability to carry out the mission, since individuals could take steps to avoid detection and destroy or hide evidence needed to prove the violation.

6. 5 U.S.C. 552a(e)(4)(I) requires an agency to publish a general notice listing the categories of sources for information contained in a system of records. Revealing sources for information could disclose investigative techniques and procedures; result in threats or reprisals against confidential informants by the subjects of investigations; and cause confidential informants to refuse to give full information to investigators for fear of having their identities as sources disclosed.

As required by Executive Order 12866, it has been determined that this rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. The term "small entity" is defined to have the same meaning as the terms "small business", "small organization" and "small governmental jurisdiction" as defined in the RFA.

The proposed regulation, issued under section 552a(k) of the Privacy Act, is to exempt certain information maintained by Treasury in the above system of records from notification, access and amendment of a record by

individuals who are citizens of the United States or an alien lawfully admitted for permanent residence. Inasmuch as the Privacy Act rights are personal and apply only to U.S. citizens or an alien lawfully admitted for permanent residence, small entities, as defined in the RFA, are not provided rights under the Privacy Act and are outside the scope of this regulation.

**List of Subjects in 31 CFR Part 1**

Privacy.

Part 1, subpart C, of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 1—[AMENDED]**

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

**Authority:** 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. In § 1.36, redesignate paragraphs (g)(1)(i) through (xiii) as (g)(1)(ii) through (xiv), respectively, and add new paragraph (g)(1)(i) to read as follows:

**§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 522a and this part.**

- \* \* \* \* \*
- (g) \* \* \*
- (1) \* \* \*
- (i) Treasury:

Number	System name
Treasury .013	Department of the Treasury Civil Rights Complaints and Compliance Review Files,

\* \* \* \* \*

Dated: August 17, 2011.

**Veronica Marco,**  
*Acting Deputy Assistant Secretary for Privacy, Transparency, and Records.*

[FR Doc. 2011-22979 Filed 9-8-11; 8:45 am]

**BILLING CODE 4810-25-P**

**DEPARTMENT OF THE INTERIOR**

**National Park Service**

**36 CFR Part 7**

**RIN 1024-AD85**

**Cape Hatteras National Seashore Proposed Rule: Off-Road Vehicle Management—Reopening of Public Comment Period**

**AGENCY:** National Park Service, Interior.

**ACTION:** Reopening of public comment period.

**SUMMARY:** We, the National Park Service, are reopening the public comment period for the proposed rule to manage off-road vehicle use at Cape Hatteras National Seashore in North Carolina. The additional comment period allows more time for those who may have been affected by Hurricane Irene to submit comments.

**DATES:** Comments must be received before midnight (Eastern Daylight Time) on September 19, 2011.

**ADDRESSES:** You may submit comments, identified by the Regulation Identifier Number 1024-AD85, by either of the following methods:

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

- *Mail or hand deliver to:* Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954.

**FOR FURTHER INFORMATION CONTACT:**

Mike Murray, Superintendent, Cape Hatteras National Seashore, 1401 National Park Drive, Manteo, North Carolina 27954. *Phone:* (252) 473-2111 (ext 148).

**SUPPLEMENTARY INFORMATION:** On July 6, 2011, we published in the **Federal Register** a proposed rule to manage off-road vehicle use at Cape Hatteras National Seashore, North Carolina. (76 FR 39350) The 60-day public comment period for this proposal closed on September 6, 2011. Hurricane Irene made landfall in the area of the Seashore on Saturday August 27, 2001, resulting in wide-spread damage there, and north along the east coast into New England. Because hurricane damage may have prevented some affected persons from commenting on the rule, we are reopening the public comment period from September 9, 2011 through September 19, 2011. We do not anticipate extending the public comment period beyond this date due to a court-imposed deadline for completing the final rule. If you already commented on the rule you do not have to resubmit your comments. Also, if you submitted comments on this rule between September 6, 2011 and September 9, 2011 you do not need to resubmit them, we will consider any comments received during this period.

Comments submitted through Federal eRulemaking Portal: <http://www.regulations.gov> or submitted by mail must be entered or postmarked before midnight (Eastern Daylight Time) September 19, 2011. Comments submitted by hand delivery must be received by the close of business hours (5 p.m. Eastern Daylight Time) on September 19, 2011. Comments will not

be accepted by fax, e-mail, or in any way other than those specified above, and bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted.

All submissions must include the words "National Park Service" or "NPS" and must include the identifying number 1024-AD85. Comments received through the Federal eRulemaking portal at <http://www.regulations.gov> will be available on the *regulations.gov* Web site, usually without change. Before including your address, phone number, e-mail 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, we cannot guarantee that we will be able to do so. To view comments received through the Federal eRulemaking portal, go to <http://www.regulations.gov> and enter 1024-AD85 in the Keyword or ID search box.

Dated: September 6, 2011.

**Eileen Sobeck,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2011-23127 Filed 9-8-11; 8:45 am]

**BILLING CODE 4310-X6-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Parts 2 and 7

[Docket No. PTO-T-2010-0073]

RIN 0651-AC49

#### **Extension of Comment Period for Notice of Proposed Rulemaking on Changes in Requirements for Specimens and for Affidavits or Declarations of Continued Use or Excusable Nonuse in Trademark Cases**

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice of extension of public comment period.

**SUMMARY:** The United States Patent and Trademark Office ("USPTO") is extending until September 23, 2011, the period for public comment on the proposal to revise the Trademark Rules of Practice and the Rules of Practice for Filings Pursuant to the Madrid Protocol to permit the USPTO to require: any information, exhibits, and affidavits or declarations deemed reasonably necessary to examine an affidavit or

declaration of continued use or excusable nonuse in trademark cases, or for the USPTO to assess the accuracy and integrity of the register; and upon request, more than one specimen in connection with a use-based trademark application, an allegation of use, an amendment to a registered mark, or an affidavit or declaration of continued use in trademark cases.

**DATES:** Comments must be received by September 23, 2011, to ensure full consideration.

**ADDRESSES:** The USPTO prefers that comments be submitted via electronic mail message to [TMFRNotices@uspto.gov](mailto:TMFRNotices@uspto.gov). Written comments may also be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, attention Cynthia C. Lynch; by hand-delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia C. Lynch; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (<http://www.regulations.gov>) for additional instructions on providing comments via the Federal eRulemaking Portal. The comments will be available for public inspection on the USPTO's Web site at <http://www.uspto.gov>, and will also be available at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Because comments will be available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

**SUPPLEMENTARY INFORMATION:** On July 12, 2011, the USPTO published a notice of proposed rulemaking to revise the Trademark Rules of Practice (37 CFR part 2) and the Rules of Practice for Filings Pursuant to the Madrid Protocol ("Madrid Rules") (37 CFR part 7) to provide for the USPTO to require: (1) Any information, exhibits, and affidavits or declarations deemed reasonably necessary to examine a post registration affidavit or declaration of continued use in trademark cases, or for the USPTO to assess the accuracy and integrity of the register; and (2) upon request, more than one specimen in connection with a use-based trademark application, an allegation of use, an amendment to a registered mark, or an affidavit or declaration of continued use in trademark cases (76 FR 40839 (July 12, 2011)). The notice invited the public to submit written comments on the proposed rules on or before September

12, 2011. The USPTO is now extending the period for submission of public comments until September 23, 2011.

Dated: September 6, 2011.

**David J. Kappos,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2011-23129 Filed 9-8-11; 8:45 am]

**BILLING CODE 3510-16-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R09-OAR-2011-0723; FRL-9462-3]

**Partial Approval and Partial Disapproval of Air Quality Implementation Plans; California; San Joaquin Valley; Reasonably Available Control Technology for Ozone**

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to partially approve and partially disapprove a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or SJV) portion of the California State Implementation Plan (SIP). Specifically, we propose to partially approve and partially disapprove SJVUAPCD’s “Reasonably Available Control Technology (RACT) Demonstration for Ozone State Implementation Plan (SIP)” (RACT SIP) for the 8-hour ozone National Ambient Air Quality Standard (NAAQS) under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking

comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by October 11, 2011.

**ADDRESSES:** Submit comments, identified by docket number EPA-R09-OAR-2011-0723, by one of the following methods:

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

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

*Docket:* Generally, documents in the docket for this action are available

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

**FOR FURTHER INFORMATION CONTACT:** Stanley Tong, EPA Region IX, (415) 947-4122, [tong.stanley@epa.gov](mailto:tong.stanley@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us,” and “our” refer to EPA.

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**I. The State’s Submittal**

*A. What document did the State submit?*

Table 1 lists the document proposed for partial approval and partial disapproval with the date that it was adopted and submitted by the SJV.

**TABLE 1—SUBMITTED DOCUMENT**

Local agency	Document	Adopted	Submitted
SJVUAPCD .....	Reasonably Available Control Technology (RACT) Demonstration for Ozone State Implementation Plan (SIP).	04/16/2009	06/18/2009

On December 11, 2009, EPA determined that the submittal for SJV’s RACT SIP met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

*B. Are there other versions of this document?*

On October 8, 2004, SJV adopted its “Extreme Ozone Attainment Demonstration Plan” for the 1-hour ozone standard (2004 SIP). The plan was amended on October 20, 2005 and included 1-hour ozone RACT provisions. On September 5, 2008, the

State withdrew the RACT provisions from the 2004 SIP and indicated SJV would satisfy its RACT obligation for the 1-hour ozone standard with a revised 8-hour ozone RACT SIP. Subsequent to the State’s withdrawal of the RACT element, EPA published a Finding of Failure to Submit a required SIP revision for the 1-hour ozone standard (74 FR 3442, January 21, 2009). In this action, we indicated that first, offset sanctions as identified in CAA section 179(b) would apply, and next, highway funding sanctions would apply if the State failed to submit a SIP

revision which included all required RACT rules and the supporting RACT demonstrations to meet CAA sections 172(c)(1), 182(b)(2), and 182(f) within the time frames specified in the CAA. See 74 FR at 3443. On June 18, 2009, the California Air Resources Board (CARB) submitted a revised RACT SIP demonstration for the 8-hour ozone standard. EPA’s December 11, 2009 completeness determination turned off the sanctions clocks.

There is no previous version of this document in the SJV portion of the California SIP, although the SJV adopted

a prior version of the RACT SIP on August 17, 2006, and submitted it to us on January 31, 2007.<sup>1</sup> We are proposing to act on only the most recently submitted version, but we have also reviewed materials provided with the 2007 submittal.

### C. What is the purpose of the submitted RACT SIP?

Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO<sub>x</sub>) help produce ground-level ozone, or smog, which harms human health and the environment. Section 110(a) of the CAA requires States to submit enforceable regulations that control VOC and NO<sub>x</sub> emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as moderate or above include implementation of RACT for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOC or NO<sub>x</sub>. The SJV is subject to these requirements because it is designated and classified as an extreme ozone nonattainment area for the 8-hour ozone NAAQS (40 CFR 81.305). Therefore, SJVUAPCD must adopt RACT level controls for all sources covered by a CTG document and for all major non-CTG sources of VOC or NO<sub>x</sub>.

Section IV.G. of the preamble to EPA's final rule to implement the 8-hour ozone NAAQS (70 FR 71612, November 29, 2005) discusses RACT SIP requirements. It states in part that where a RACT SIP is required, States implementing the 8-hour ozone standard must assure that RACT is met, either through a certification that previously required RACT controls represent RACT for 8-hour implementation purposes or through a new RACT determination. Since RACT may change over time as new technology becomes available or the cost of existing technology decreases, States must use the latest information available to demonstrate that their ozone SIPs continue to require RACT based on the current availability of technically and economically feasible controls. 70 FR at 71655. The submitted RACT SIP provides SJV's analyses of the District's compliance with the section 182 RACT requirements for both the 1-hour and 8-hour ozone NAAQS. EPA's technical support document (TSD) has more information about SJV's analyses.

<sup>1</sup> The SJV also revised the RACT SIP on December 28, 2007 to lower the major source threshold to 10 tons per year (tpy) and to address four new Control Techniques Guidelines (CTG) documents. This revision was not submitted to EPA. See SJV 2009 RACT SIP dated April 16, 2009 pg. 1–3.

## II. EPA's Evaluation and Action

### A. How is EPA evaluating the RACT SIP?

The rules and guidance documents that we used to evaluate SJV's RACT SIP include the following:

1. "Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2" (70 FR 71612; November 29, 2005).
2. "State Implementation Plans, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498; April 16, 1992).
3. Enforceability—Section 110(a) of the CAA requires enforceable emission limitations and other control measures. Several EPA guidance documents are used to evaluate rule enforceability, including *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations: Clarification to Appendix D of November 24, 1987 Federal Register*, May 25, 1988 ("The Blue Book"), and EPA Region IX's *Guidance Document for Correcting Common VOC and Other Rule Deficiencies*, August 21, 2001 (the "Little Bluebook").
4. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 55620, November 25, 1992) ("the NO<sub>x</sub> Supplement").
5. Memorandum from William T. Harnett to Regional Air Division Directors (May 18, 2006), "RACT Qs & As—Reasonably Available Control Technology (RACT) Questions and Answers".
6. RACT SIPs, Letter dated March 9, 2006 from EPA Region IX (Andrew Steckel) to CARB (Kurt Karperos) describing Region IX's understanding of what constitutes a minimally acceptable RACT SIP.
7. RACT SIPs, Letter dated April 4, 2006 from EPA Region IX (Andrew Steckel) to CARB (Kurt Karperos) listing EPA's current CTGs, ACTs, and other documents which may help to establish RACT.
8. Comment letter dated May 18, 2006 from EPA Region IX (Andrew Steckel) to SJV (George Heinen) on the 8-hour Ozone Reasonably Available Control Technology—State Implementation Plan (RACT SIP) Analysis, draft staff report dated April 18, 2006.
9. Comment letter dated June 29, 2006 from EPA Region IX (Andrew Steckel) to SJV (George Heinen) on the 8-hour Ozone Reasonably Available Control Technology—State Implementation Plan (RACT SIP) Analysis, final draft staff report dated June 15, 2006.

10. Comment letter dated February 7, 2008 from EPA Region IX (Andrew Steckel) to SJV (George Heinen) on the 8-hour Ozone Reasonably Available Control Technology—State Implementation Plan (RACT SIP) Analysis, draft staff report dated December 17, 2007.

11. Comment letter dated April 1, 2009 from EPA Region IX (Andrew Steckel) to SJV (Errol Villegas) on the 8-hour Ozone Reasonably Available Control Technology—State Implementation Plan (RACT SIP) Analysis, for the April 16, 2009 Hearing.

### B. Does the RACT SIP meet the evaluation criteria?

SJV's staff report includes a table (Table 2–1) which lists all the CTG source categories and matches those CTG categories with the corresponding District rule that implements RACT. Given its designation and classification as an extreme ozone nonattainment area, SJV is also required to implement RACT for all "major stationary sources" of VOC or NO<sub>x</sub>—*i.e.*, sources that emit or have the potential to emit at least 10 tpy (CAA 182(e)). SJV staff searched for all source categories covered by a CTG and for sources that emit or have the potential to emit at least 10 tpy of VOC or NO<sub>x</sub>.

EPA's review of CARB's emissions inventory Web site indicated the District had identified all major sources except for potentially four sources. Further discussion with CARB and the District indicates that three of these facilities are subject to permit conditions limiting their emissions to below 10 tpy, and the fourth does not have VOC emission sources. See TSD at 8.

SJV identified two CTG categories (Shipbuilding and Ship Repair Operations—surface coating; and Manufacture of Synthesized Pharmaceutical Products), for which no sources covered by the CTGs currently operate in SJV. Further discussion with the District revealed a third CTG category (Manufacture of Pneumatic Rubber Tires), for which no covered sources operate in SJV. SJV has adopted and submitted, through CARB, negative declarations for all three of these CTG source categories.

SJV's RACT SIP analysis is extensive. For the most part, the District compared its rules against Federal and state regulations and to similar rules in the South Coast Air Quality Management District, Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and Ventura County Air Pollution Control District. In a few cases, the District concluded that a

recently approved SIP rule fulfills RACT because EPA evaluated it for RACT. We note that EPA's approval of a rule into the SIP does not necessarily mean that we have approved it as satisfying RACT—for example, EPA sometimes approves a rule only as a SIP strengthening action (e.g., to update definitions, add test methods, or remove exemptions) or only to incorporate non-substantive changes.

We have independently evaluated each of the SJV rules and associated analysis to determine whether the RACT SIP meets CAA Section 182 RACT requirements.

Specifically, we divided SJV's rules into the following categories and evaluated each rule for compliance with RACT requirements.

Group 1: Rules that EPA recently approved or proposed to approve as implementing RACT.

Group 2: Rules for which we are not aware of more stringent controls that are reasonably available.

Group 3: Rules that EPA has disapproved or proposed to disapprove, in full or in part, because SJV has failed to demonstrate they fully satisfy current RACT requirements.

We identify below the rules in Group 3. Our TSD contains more detailed analysis.

### C. What are the deficiencies?

The District has not demonstrated that the following rules fully satisfy current RACT requirements. SJV is working to address our comments and has held or is scheduled to hold public workshops to amend the rules or provide additional analysis. Several of these rules were recently amended and submitted to EPA.

1. Rule 4352—Solid Fuel Fired Boilers, Steam Generators, and Process Heaters—final limited approval/disapproval October 1, 2010 (75 FR 60623). District workshop tentatively planned for October 2011.

2. Rule 4401—Steam Enhanced Crude Oil Production Wells—final limited approval/disapproval January 26, 2010 (75 FR 3996). Amendments submitted to EPA on July 28, 2011.

3. Rule 4402—Crude Oil Production Sumps—final limited approval/disapproval July 7, 2011 (76 FR 39777). District workshop tentatively planned for October 2011.

4. Rule 4605—Aerospace Assembly and Component Coating Operations—final limited approval/disapproval January 26, 2010 (75 FR 3996). Amendments submitted to EPA on July 28, 2011.

5. Rule 4625—Wastewater Separators—final limited approval/

disapproval July 7, 2011 (76 FR 39777). District workshop tentatively planned for October 2011.

6. Rule 4682—Polystyrene, Polyethylene, And Polypropylene Products Manufacturing—proposed disapproval July 15, 2011 (76 FR 41745). District workshop tentatively planned for October 2011.

7. Rule 4684—Polyester Resin Operations—final limited approval/disapproval January 26, 2010 (75 FR 3996). Amendments adopted August 18, 2011, not yet submitted to EPA.

In addition, EPA is currently evaluating three rules not included in Groups 1, 2, or 3. These rules are listed below and identified under Group 4 in our TSD as rules for which we have not yet made a RACT determination. EPA will determine whether these rules satisfy RACT through separate rulemaking actions, subject to public notice and comment.

1. Rule 4566—Compost—adopted August 18, 2011, not yet submitted to EPA.

2. Rule 4694—Wine Fermentation and Storage Tanks—amendments adopted August 18, 2011, not yet submitted to EPA.

3. Fumigant Volatile Organic Compound Regulations—California Department of Pesticide Regulation—submitted August 2, 2011.

### D. EPA's Proposed Actions and Potential Consequences

#### 1. EPA's Proposed Approvals and Disapprovals

For the reasons discussed above and explained more fully in the TSD, EPA proposes to partially approve and partially disapprove SJVUAPCD's RACT SIP submitted June 18, 2009.

Specifically, under CAA section 110(k)(3), we propose to approve those elements of the RACT SIP that pertain to the SJV rules identified in Groups 1 or 2, which EPA has either fully approved or proposed to fully approve as satisfying the RACT requirements of CAA sections 182(b)(2) and (f).

Also under CAA section 110(k)(3), we propose to disapprove those elements of the RACT SIP that pertain to the SJV rules identified in Group 3, which EPA has either disapproved or proposed to disapprove in whole or in part, for failure to satisfy RACT requirements, and those elements of the RACT SIP that pertain to the rules in Group 4, for which EPA has not yet made a RACT determination. We will not finalize this partial disapproval, however, with respect to any rule that we fully approve as satisfying RACT before finalizing action on this RACT SIP.

We will accept comments from the public on this proposed partial approval and partial disapproval for the next 30 days.

#### 2. CAA Consequences of a Final Disapproval

EPA is committed to working with CARB and the District to resolve the remaining RACT deficiencies identified in this proposed action. However, should we finalize the proposed partial disapproval of the RACT SIP, the offset sanction in CAA section 179(b)(2) would apply in the SJV ozone nonattainment area 18 months after the effective date of such final disapproval. The highway funding sanctions in CAA section 179(b)(1) would apply in the area six months after the offset sanction is imposed. Neither sanction will be imposed if California submits and we approve prior to implementation of sanctions, SIP revisions that correct the deficiencies identified in our proposed action.

In addition, CAA section 110(c)(1) provides that EPA must promulgate a Federal Implementation Plan (FIP) within two years after finding that a State has failed to make a required submission or disapproving a State implementation plan submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. EPA previously found that the State had failed to submit a plan revision for SJV addressing the CAA section 182 RACT requirements for the 1-hour ozone standard, starting a FIP clock that expired on January 21, 2011. See 74 FR 3442 (January 21, 2009). EPA is currently in litigation with environmental groups concerning this previous FIP deadline.

### III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submittal that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submittals, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to partially approve and partially disapprove State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

#### A. Executive Order 12866, Regulatory Planning and Review

This proposed action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866

(58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

#### B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed partial approval and partial disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new information collection burdens but simply proposes to disapprove certain State requirements submitted for inclusion in the SIP. Burden is defined at 5 CFR 1320.3(b).

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this proposed action will not have a significant impact on a substantial number of small entities. This proposed rule does not impose any requirements or create impacts on small entities. This proposed partial approval and partial disapproval of the SIP under CAA section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves certain State requirements submitted for inclusion in the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from a final disapproval does

not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this proposed action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

#### D. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. EPA has determined that the proposed disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This action proposes to partially approve and partially disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

#### E. Executive Order 13132, Federalism

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

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to partially approve and partially disapprove certain State requirements submitted for inclusion in the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

#### F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP EPA is proposing to partially approve and partially disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed action is not subject to EO 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed partial approval and partial disapproval of the SIP under section 110 and subchapter I, part D of the Clean Air Act will not in and of itself create any new regulations but simply disapproves certain State requirements submitted for inclusion in the SIP.

#### H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

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

#### I. National Technology Transfer and Advancement Act

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

The EPA believes that this proposed action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

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

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 lacks the discretionary authority to address environmental justice in this proposed rule. In reviewing SIP submittals, EPA's role is to approve or disapprove State choices, based on the criteria of the CAA. This action merely proposes to approve certain State requirements submitted for inclusion in the SIP under CAA section 110 and subchapter I, part D and to disapprove others, and will not in and of itself create any new requirements. Accordingly, it 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.

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

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 31, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011-23151 Filed 9-8-11; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 260 and 261

[EPA-HQ-RCRA-2010-0695; FRL-9461-8]

RIN 2050-AG60

### Hazardous Waste Management System: Identification and Listing of Hazardous Waste: Carbon Dioxide (CO<sub>2</sub>) Streams in Geologic Sequestration Activities

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

**ACTION:** Technical correction.

**SUMMARY:** On August 8, 2011, the U.S. Environmental Protection Agency (EPA or the Agency) published a proposed rule in the **Federal Register** to revise the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) to conditionally exclude carbon dioxide (CO<sub>2</sub>) streams that are hazardous from the definition of hazardous waste, provided these hazardous CO<sub>2</sub> streams meet certain conditions. This correction is necessary because EPA published incorrect burden estimates in the Section VII.B. of the preamble to the proposed rule. However, EPA notes that the correct burden estimates were in the Information Collection Request (ICR) document prepared by EPA, submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, and placed into the docket for the August 8, 2011 proposed rule.

**DATES:** Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before October 11, 2011.

**ADDRESSES:** Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for EPA. In addition, send comments to EPA, identified by Docket ID No. EPA-HQ-RCRA-2010-0695, by one of the following methods:

- <http://www.regulations.gov>: Follow the online instructions for submitting comments.

- *E-mail:* [rcra-docket@epa.gov](mailto:rcra-docket@epa.gov).

- *Fax:* 202-566-9744.

- *Mail:* RCRA Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the

Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

- *Hand Delivery:* Deliver two copies of your comments to EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-RCRA-2010-0695. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov>

[www.regulations.gov](http://www.regulations.gov) or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-0270.

**FOR FURTHER INFORMATION CONTACT:** Lyn Luben, Office of Resource Conservation and Recovery (5305P), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 703-308-0508; fax number: 703-308-7903; e-mail address: [luben.lyn@epa.gov](mailto:luben.lyn@epa.gov).

**SUPPLEMENTARY INFORMATION:**

On August 8, 2011, the U.S. Environmental Protection Agency (EPA or the Agency) published a proposed rule to revise the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) to conditionally exclude carbon dioxide (CO<sub>2</sub>) streams that are hazardous from the definition of hazardous waste, provided these hazardous CO<sub>2</sub> streams meet certain conditions. 76 FR 48073. Today's correction notice is necessary because EPA published incorrect burden estimates in the preamble to the proposed rule. See Section VII.B. of the preamble (Paperwork Reduction Act). 76 FR at 48090-91. EPA notes, however, that the correct burden estimates were in the Information Collection Request (ICR) document prepared by EPA, submitted for approval to the Office of Management and Budget under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, and placed into the docket for the August 8, 2011 proposed rule (EPA-HQ-RCRA-2010-0695). The ICR was assigned EPA ICR number 2421.01. The statement in the preamble referenced above, which begins with "EPA estimates \* \* \*" in the first full paragraph of the first column on page 48091, should read as follows:

"EPA estimates the total annual burden to respondents under the new paperwork requirements to be 27 hours and \$2,287. However, EPA also estimates an annual burden savings under the existing RCRA subtitle C paperwork requirements of 103 hours and \$8,497. Thus, this would result in a net annual savings of 76 hours and \$6,210. The bottom-line burden savings over three years is estimated to be 228 hours and \$18,630." The remainder of this paragraph is unchanged.

The public is invited to comment on this technical correction notice and/or

the supporting ICR document (EPA ICR number 2421.01). The public docket for this rule (EPA-HQ-RCRA-2010-0695) includes the full ICR document. Please submit any comments related to this technical correction notice and/or the full ICR document to both EPA and OMB. EPA is allowing for comments on this technical correction notice and/or the supporting ICR document to be submitted up to 30 days after the publication of this technical correction notice in the **Federal Register** (see **DATES** section above), but is not changing the October 7, 2011 deadline for any non-ICR related comments on the August 8, 2011 proposed rule. The final rule will respond to any comments on the information collection requirements contained in this technical correction notice.

**List of Subjects**

*40 CFR Part 260*

Environmental protection, Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements.

*40 CFR Part 261*

Environmental protection, Hazardous waste, Solid waste, Recycling.

Dated: September 2, 2011.

**Mathy Stanislaus,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 2011-23156 Filed 9-8-11; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**46 CFR Parts 2, 15, 136, 137, 138, 139, 140, 141, 142, 143, and 144**

**[Docket No. USCG-2006-24412]**

**RIN 1625-AB06**

**Inspection of Towing Vessels**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of public meetings; request for comments.

**SUMMARY:** The Coast Guard announces a series of public meetings to receive comments on a notice of proposed rulemaking (NPRM) entitled "Inspection of Towing Vessels" that was published in the **Federal Register** on August 11, 2011. As stated in that document, the regulations proposed in the NPRM would establish safety regulations governing the inspection, standards, and safety management systems of towing

vessels. The proposal includes provisions covering: Specific electrical and machinery requirements for new and existing towing vessels, the use and approval of third-party auditors and surveyors, and procedures for obtaining Certificates of Inspection. Without making a specific proposal in the NPRM regarding potential requirements for hours of service or crew endurance management for mariners aboard towing vessels, the Coast Guard also welcomes comments on these two important issues, which are discussed in the NPRM.

**DATES:** Public meetings will be held on the following dates to provide an opportunity for oral comments:

- Tuesday, October 18, 2011, in Newport News, VA, from 9 a.m. until 5 p.m.;
- Monday, October 24, 2011, in St. Louis, MO, from 9 a.m. until 5 p.m.;
- Wednesday, October 26, 2011, in New Orleans, LA, from 9 a.m. until 5 p.m.;
- Wednesday, November 16, 2011, in Seattle, WA, from 9 a.m. until 5 p.m.

Written comments and related material may also be submitted to Coast Guard personnel specified at those meetings for inclusion in the official docket for this rulemaking. The comment period for the NPRM closes on December 9, 2011. All comments and related material submitted after the meeting must either be submitted to our online docket via <http://www.regulations.gov> on or before December 9, 2011, or reach the Docket Management Facility by that date.

**ADDRESSES:** The public meetings will be held at the following locations:

- Tuesday, October 18, 2011—Point Plaza Suites at City Center, 950 J. Clyde Morris Blvd., Newport News, VA 23601.
- Monday, October 24, 2011—Crowne Plaza (Downtown), 200 N. Fourth Street, St. Louis, MO 63102.
- Wednesday, October 26, 2011—Crowne Plaza (New Orleans-Airport), 2829 Williams Blvd., Kenner, LA 70062.
- Wednesday, November 16, 2011—Hotel 1000, 1000 First Avenue, Seattle, WA 98104.

Live Webcasts (audio and video) of the four public meetings will also be broadcast online. The Web site for viewing those Webcasts can be found at <http://www.Towingvesselregs.us>. The Webcasts will only enable those using this feature to view the proceedings—it will not allow them to make remarks to those participating in the meetings in person.

As long as they are received by December 9, 2011, you may submit written comments identified by docket

number USCG–2006–24412 before or after the meetings using any one of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments (this is the preferred method to avoid delays in processing).

- *Fax*: 202–493–2251.

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

- *Hand delivery*: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329. To avoid duplication, please use only one of these four methods. Our online docket for this rulemaking is available on the Internet at <http://www.regulations.gov> under docket number USCG–2006–2441.

**FOR FURTHER INFORMATION CONTACT:** If you have questions concerning the meeting or the proposed rule, please call or e-mail Michael Harmon, Project Manager, CGHQ–1210, Coast Guard, telephone 202–372–1427, e-mail: [Michael.J.Harmon@uscg.mil](mailto:Michael.J.Harmon@uscg.mil). If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### Background and Purpose

The Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** on August 11, 2011 (69 FR 49976; <http://www.gpo.gov/fdsys/pkg/FR-2011-08-11/pdf/2011-18989.pdf>), entitled “Inspection of Towing Vessels.” In it we stated our intention to hold public meetings, and to publish a notice announcing the locations and dates. This document is the notice of those meetings.

The Coast Guard and Maritime Transportation Act of 2004 (CGMTA 2004), Public Law 108–293, 118 Stat. 1028, (Aug. 9, 2004), established new authorities for towing vessels, including Section 415, which added towing vessels, as defined in section 2101 of title 46, United States Code (U.S.C.), as a class of vessels that are subject to safety inspections under chapter 33 of that title (*Id.* at 1047).

In the NPRM published on August 11, 2011, the Coast Guard proposes to establish safety regulations governing the inspection of, and standards and safety management systems for, towing vessels. The proposal includes

provisions covering: Specific electrical and machinery requirements for new and existing towing vessels, the use and approval of third-party auditors and surveyors, and procedures for obtaining Certificates of Inspection. The intent of the proposed rulemaking is to promote safer work practices and reduce casualties on towing vessels by requiring that towing vessels adhere to prescribed safety standards and safety management systems or to an alternative, annual Coast Guard inspection regime.

Without making a specific proposal in the NPRM, the Coast Guard also seeks additional data, information and public comment on potential requirements for hours of service or crew endurance management for mariners aboard towing vessels. The Coast Guard would later request public comment on specific hours of service or crew endurance management regulatory text if it seeks to implement such requirements.

You may view the NPRM in our online docket (document number USCG–2006–24412–0001), in addition to supporting documents prepared by the Coast Guard (including the Preliminary Regulatory Analysis and Initial Regulatory Flexibility Analysis, document number USCG–2006–24412–0002), other supplemental material, and comments submitted thus far by going to <http://www.regulations.gov>. Once there, insert USCG–2006–24412 or the document number in the Keyword ID box, press Enter, and then click on the item you are interested in viewing. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate in this rulemaking by submitting comments either orally at the meeting or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

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).

#### Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meetings, contact Michael Harmon at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

#### Public Meetings

As stated in the **ADDRESSES** section, the Coast Guard will hold public meetings regarding its Inspection of Towing Vessels proposed rule on the following dates at the stated locations:

- Tuesday, October 18, 2011—Point Plaza Suites at City Center, 950 J. Clyde Morris Blvd., Newport News, VA 23601.
- Monday, October 24, 2011—Crowne Plaza (Downtown), 200 N. Fourth Street, St. Louis, MO 63102.
- Wednesday, October 26, 2011—Crowne Plaza (New Orleans-Airport), 2829 Williams Blvd., Kenner, LA 70062.
- Wednesday, November 16, 2011—Hotel 1000, 1000 First Avenue, Seattle, WA 98104.

Each meeting will be conducted from 9 a.m. until 5 p.m., with a planned lunch break for approximately 60 to 90 minutes at a convenient point during the commenting period. The Coast Guard may conclude a meeting early if at any time after 1 p.m. all persons present at a meeting who wish to submit oral comments have done so.

Live Webcasts (audio and video) of the four public meetings will also be broadcast online. The Web site for viewing those Webcasts can be found at <http://www.Towingvesselregs.us>. The Webcasts will only enable those using this feature to view the proceedings—it will not allow Webcast viewers to make remarks to those participating in the meetings in person.

We plan to make an audio recording of the meetings available through a link in our online docket. We also plan to provide a written summary of oral comments presented at the meetings and will place those summaries in the docket.

Dated: September 2, 2011.

**R.C. Proctor,**

*Acting Director of Commercial Regulations and Standards.*

[FR Doc. 2011-23053 Filed 9-8-11; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Parts 1, 2, 4, 12, 14, 15, 19, 22, 26, 52, and 53**

[FAR Case 2009-016; Docket 2011-0090; Sequence 1]

RIN 9000-AM05

#### **Federal Acquisition Regulation; Constitutionality of Federal Contracting Programs for Minority-Owned and Other Small Businesses**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to address the impact of the decision in *Rothe Development Corporation vs. the DoD and the U.S. Department of the Air Force (USAF)* on small disadvantaged business concerns and certain institutions of higher education.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before November 8, 2011 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2009-016 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2009-016" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2009-016." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2009-016" on your attached document.

- *Fax:* (202) 501-4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), Attn: Hada Flowers, 1275 First

Street, NE., 7th Floor, Washington, DC 20417.

**Instructions:** Please submit comments only and cite FAR Case 2009-016, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. 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 FAR Case 2009-016.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In November 1998, Rothe Development Corporation (RDC) filed suit against DoD and the USAF (Rothe), in the U.S. District Court for the Western District of Texas. In its complaint, RDC challenged the constitutionality of section 1207 of the National Defense Authorization Act of 1987, Public Law 99-661 (10 U.S.C. 2323), alleging that it violated the right to equal protection under the Due Process Clause of the Fifth Amendment to the United States Constitution. RDC's initial complaint against the DoD/USAF focused on the reauthorization of section 1207 in 1992. On September 25, 2007, the U.S. District Court for the Western District of Texas entered a judgment in favor of DoD. However, RDC appealed the court's ruling and on November 4, 2008, the U.S. Court of Appeals for the Federal Circuit decided in its favor (*Rothe Dev. Corp. v. DoD*, 545 F.3d 1023 (Fed. Cir. November 4, 2008)). The U.S. Court of Appeals for the Federal Circuit found 10 U.S.C. 2323 unconstitutional. A District court decision mandated by the U.S. Court of Appeals was issued on February 27, 2009, enjoining all application of 10 U.S.C. 2323 (*Rothe Dev. Corp. v. DoD*, 606 F. Supp. 2d 648 (W.D. Tex. 2009)).

Section 1207 of the National Defense Authorization Act of 1987, Public Law 99-661, codified at 10 U.S.C. 2323, established the DoD, NASA, and the U.S. Coast Guard (USCG), Small Disadvantaged Business (SDB) Participation Program. The purpose of the program was to ensure that SDBs could fully participate in the Federal contracting process. Section 1207 provided the authority for DoD, NASA, and USCG contracting officers to apply a price adjustment of up to 10 percent to afford SDBs a competitive price advantage when competing in a full and open competition and assist in

achieving a 5 percent SDB goal. Section 1207 serves as the statutory underpinning for FAR subpart 19.11, Price Evaluation Adjustment for Small Disadvantaged Business Concerns, as well as some of FAR subpart 19.12, Small Disadvantaged Business Participation Program, and certain associated FAR clauses.

##### *A. FAR Revisions*

DoD, GSA, and NASA are proposing to amend the FAR to remove coverage at FAR subpart 19.11, FAR subpart 19.12, corresponding clauses at FAR 52.219-22, Small Disadvantaged Business Status, FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, FAR 52.219-24, Small Disadvantaged Business Participation Program—Targets, FAR 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and FAR 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting, and to remove references to FAR subpart 19.11, 19.12, and corresponding clauses in FAR parts 1, 2, 4, 12, 14, 15, 19, 22, 26, 52, and 53.

Certain authorities in FAR subpart 19.12 and supporting clauses addressing the award of subcontracts to SDBs that are rooted in the Small Business Act, rather than in section 1207, were not at issue in the Rothe decision, and therefore retain their legal status. These include the authority to (1) provide monetary incentives to prime contractors to encourage subcontracting opportunities to SDBs and (2) use an evaluation factor or subfactor to evaluate the participation of small businesses as subcontractors. Because these authorities are not affected by the Rothe decision, the coverage in FAR subpart 19.12 addressing subcontracting (with the exception of the coverage at FAR 19.1202 on the use of factors or subfactors to evaluate SDB subcontract participation) has been retained but moved to FAR subpart 19.7, which already addresses subcontracting issues generally, including the use of monetary incentives to encourage subcontracting opportunities. As a result, this realignment consolidates coverage on subcontracting with small business programs in one place.

With respect to FAR 19.1202, Evaluation factor or subfactor, FAR subpart 19.7 is currently silent on its use. Nothing in this rulemaking precludes an agency from using evaluation factors and subfactors for subcontracting during source selections. The Small Business Administration's

(SBA) regulations (13 CFR 125.3(g)) allow the application of evaluation factors and subfactors to subcontracting with any of the small business programs, including, but not limited to, SDBs. The Federal Acquisition Regulatory Council will confer with SBA to evaluate the need for guidance in the FAR on the use of evaluation factors and subfactors for subcontracting.

*B. Standard Form (SF) 294, Subcontracting Report for Individual Contracts*

DOD, GSA, and NASA are proposing to revise the SF 294, Subcontracting Report for Individual Contracts to remove references to DOD and the USCG collecting subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs). In addition, conforming changes are made to reflect that the threshold for contractors to submit small business subcontracting plans was increased from \$550,000 to \$650,000 (from \$1.0 million to \$1.5 million for construction).

## II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). 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 Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## III. Regulatory Flexibility Act

This change may 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 DOD, GSA, and NASA are proposing to implement changes in the FAR necessitated by the impact of the decision in *Rothe*. The court in *Rothe* found 10 U.S.C. 2323 unconstitutional, thus impacting some SDBs. This rule proposes to delete FAR subpart 19.11, Price Evaluation Adjustment for Small Disadvantaged Business Concerns, FAR subpart 19.12, Small Disadvantaged Business Participation Program, and

associated clauses and references, and reincorporate certain provisions of FAR subpart 19.12 addressing SDB subcontracting in FAR subpart 19.7. This proposed rule may impact small entities because the removal of FAR subpart 19.11, Price Evaluation Adjustment for Small Disadvantaged Business Concerns and FAR subpart 19.12, Small Disadvantaged Business Participation Program may have an effect on SDBs seeking awards as prime contractors.

Under this proposed revision to the FAR, Federal agencies will no longer be authorized to apply certain procurement mechanisms (FAR subparts 19.11 and 19.12) that had offered a benefit for SDB prime awards. As a practical matter, however, because the price evaluation adjustment at issue in *Rothe* had not been used for approximately a decade before that decision, this change will not alter the status quo for SDBs. In addition, the Small Business Act (15 U.S.C. 644(g)(1)) establishes a 5 percent SDB governmentwide contracting goal at the prime and subcontract levels. Further, prime contractors may continue to receive a benefit in solicitations that utilize factors or subfactors during source selection for small businesses and small disadvantaged businesses, as well as monetary incentives as part of the incentive subcontracting program (FAR 52.219–10).

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The analysis is summarized as follows:

1. Description of the reasons why action by the agency is being considered.

This proposed rule implements changes in the FAR necessitated by the impact of the decision in *Rothe Development Corporation vs. the U.S. Department of Defense and the U.S. Department of the Air Force* (545 F. 3rd 1023 (Fed. Cir. November 4, 2008)).

2. Succinct statement of the objectives of, and legal basis for, the proposed rule.

The Court found 10 U.S.C. 2323 unconstitutional, thus impacting SDBs and certain institutions of higher education (i.e., HBCUs/MIs). As a result of the *Rothe* decision, DOD, GSA, and NASA propose to revise the FAR to delete FAR subpart 19.11, Price Evaluation Adjustment for Small Disadvantaged Business Concerns, for DoD, NASA, and USCG. FAR subpart 19.12, Small Disadvantaged Business Participation Program, is revised to remove considerations associated with the evaluation factors and subfactors of SDB concerns with the expiration of section 7102 of the Federal Acquisition Streamlining Act (FASA) and the *Rothe* decision. Clauses associated with FAR subparts 19.11 and 19.12 are either deleted or revised.

3. Description of, and where feasible, estimated of the number of small entities to which the rule will apply.

There are approximately 24,702 SDBs currently listed in the Central Contractor Registration.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The rule will impose no new reporting or record keeping requirements on small entities. This proposed rule may impact small entities because the removal of FAR subpart 19.11, Price Evaluation Adjustment for Small Disadvantaged Business Concerns and FAR subpart 19.12, Small Disadvantaged Business Participation Program may have an effect on SDBs seeking awards as prime contractors.

Under this proposed revision to the FAR, Federal agencies will no longer be authorized to apply certain procurement mechanisms (FAR subparts 19.11 and 19.12) that had offered a benefit for SDB prime awards. As a practical matter, however, because the price evaluation adjustment at issue in *Rothe* had not been used for approximately a decade before that decision, this change will not alter the status quo for SDBs. In addition, the Small Business Act (15 U.S.C. 644(g)(1)) establishes a 5 percent SDB government-wide contracting goal at the prime and subcontract levels. Further, prime contractors may continue to receive a benefit in solicitations that utilize factors or subfactors during source selection for small businesses and small disadvantaged businesses, as well as monetary incentives as part of the incentive subcontracting program (FAR 52.219–10).

5. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

6. Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

DOD, GSA, and NASA did not identify any significant alternatives that would accomplish the objectives of the statute of publishing this proposed rule.

The Regulatory Secretariat will be submitting a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610

(FAR Case 2009–016) in correspondence.

#### IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35).

DOD, GSA, and NASA are proposing to remove FAR coverage at FAR subpart 19.11, FAR subpart 19.12, and corresponding clauses at FAR 52.219–22, Small Disadvantaged Business Status, FAR 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, FAR 52.219–24, Small Disadvantaged Business Participation Program—Targets, FAR 52.219–25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and FAR 52.219–26, Small Disadvantaged Business Participation Program—Incentive Subcontracting. With these changes, the information collection associated with FAR subpart 19.12, FAR 52.219–22, FAR 52.219–23, and FAR 52.219–25 for OMB Control number 9000–0150 will be removed, reducing the information collection burden imposed by the Federal Government on the public by 15,000 burden hours.

#### List of Subjects in 48 CFR Parts 1, 2, 4, 12, 14, 15, 19, 22, 26, 52, and 53

Government procurement.

Dated: September 1, 2011.

Laura Auletta,

*Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 2, 4, 12, 14, 15, 19, 22, 26, 52, and 53 as set forth below:

1. The authority citation for 48 CFR parts 1, 2, 4, 12, 14, 15, 19, 22, 26, 52, and 53 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

#### PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

##### 1.106 [Amended]

2. Amend section 1.106, in the table following the introductory text, by removing FAR segments “19.12,” “52.219–22,” “52.219–23,” and “52.219–25,” and their corresponding OMB Control Numbers “9000–0150.”

#### PART 2—DEFINITIONS OF WORDS AND TERMS

3. Amend section 2.101 in paragraph (b)(2) in the definition “Small

disadvantaged business concern” to read as follows:

##### 2.101 Definitions.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

##### *Small disadvantaged business*

*concern* consistent with 13 CFR 124.1002, means an offeror, that is a small business under the size standard applicable to the acquisition; and—

(1) Not less than 51 percent of which is unconditionally and directly owned by one or more socially and economically disadvantaged individuals who are citizens of the United States, the management and daily business operations of which are controlled by one or more socially and economically disadvantaged individuals;

(2) Where the concern is owned by one or more disadvantaged individuals, each individual represents that their net worth does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(3) If it represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

\* \* \* \* \*

#### PART 4—ADMINISTRATIVE MATTERS

##### 4.1202 [Amended]

4. Amend section 4.1202 by removing paragraph (k); and redesignating paragraphs (l) through (bb) as paragraphs (k) through (aa), respectively.

#### PART 12—ACQUISITION OF COMMERCIAL ITEMS

5. Amend section 12.301 by revising paragraph (b)(2) to read as follows:

##### 12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

\* \* \* \* \*

(b) \* \* \*

(2) The provision at 52.212–3, Offeror Representations and Certifications—Commercial Items. This provision provides a single, consolidated list of representations and certifications for the acquisition of commercial items and is attached to the solicitation for offerors to complete. This provision may not be tailored except in accordance with subpart 1.4. Use the provision with its

Alternate I in solicitations issued by DoD, NASA, or the Coast Guard.

\* \* \* \* \*

6. Amend section 12.303 by revising paragraph (b)(1) to read as follows:

##### 12.303 Contract format.

\* \* \* \* \*

(b) \* \* \*

(1) Block 10 if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage);

\* \* \* \* \*

#### PART 14—SEALED BIDDING

##### 14.502 [Amended]

7. Amend section 14.502 by removing paragraph (b)(4); and redesignating paragraphs (b)(5) through (b)(8) as paragraphs (b)(4) through (b)(7), respectively.

#### PART 15—CONTRACTING BY NEGOTIATION

##### 15.304 [Amended]

8. Amend section 15.304 by removing paragraph (c)(4); and redesignating paragraphs (c)(5) and (c)(6) as paragraphs (c)(4) and (c)(5), respectively.

9. Amend section 15.305 by revising paragraph (a)(2)(v); and removing from paragraph (a)(5) “15.304(c)(3)(ii) and (c)(5)” and adding “15.304(c)(3)(ii) and (c)(4)” in its place.

The revision reads as follows:

##### 15.305 Proposal evaluation.

(a) \* \* \*

(2) \* \* \*

(v) The evaluation should include the past performance of offerors in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns (see subpart 19.7).

\* \* \* \* \*

10. Amend section 15.503 by—

a. Revising the introductory text of paragraph (a)(2)(i);

b. Removing paragraph (a)(2)(i)(B); and

c. Redesignating paragraphs (a)(2)(i)(C) through (a)(2)(i)(E) as paragraphs (a)(2)(i)(B) through (a)(2)(i)(D).

The revision reads as follows:

##### 15.503 Notifications to unsuccessful offerors.

(a) \* \* \*

(2) \* \* \*

(i) In addition to the notice in paragraph (a)(1) of this section, the contracting officer shall notify each offeror in writing prior to award and

upon completion of negotiations and determinations of responsibility—

\* \* \* \* \*

**PART 19—SMALL BUSINESS PROGRAMS**

- 11. Amend section 19.000 by—
  - a. Revising the introductory text of paragraph (a);
  - b. Removing paragraphs (a)(8) through (a)(10); and
  - c. Redesignating paragraphs (a)(11) and (a)(12) as paragraphs (a)(9) and (a)(10), respectively.
 The revision reads as follows:

**19.000 Scope of part.**

(a) This part implements the acquisition-related sections of the Small Business Act (15 U.S.C. 631, *et seq.*), applicable sections of the Armed Services Procurement Act (10 U.S.C. 2302, *et seq.*), the Federal Property and Administrative Services Act (41 U.S.C. 252), and Executive Order 12138, May 18, 1979. It covers—

\* \* \* \* \*

**19.201 [Amended]**

- 12. Amend section 19.201 by—
  - a. Removing paragraph (b);
  - b. Redesignating paragraphs (c) through (e) as paragraphs (b) through (d), respectively; and
  - c. Removing paragraph (f).

**19.202–6 [Amended]**

13. Amend section 19.202–6 by removing paragraph (a)(3); and redesignating paragraphs (a)(4) through (a)(6) as paragraphs (a)(3) through (a)(5), respectively.

14. Revise section 19.304 to read as follows:

**19.304 Disadvantaged business status.**

The contracting officer may accept an offeror’s representation that it is an SDB concern. The provision at 52.219–1, Small Business Program Representations, or 52.212–3(c)(4), Offeror Representations and Certifications—Commercial Items, is used to collect SDB data.

15. Revise section 19.305 to read as follows:

**19.305 Protests and reviews of disadvantaged business status.**

(a) This section applies to protests and reviews of a small business concern’s disadvantaged status as a prime contractor or subcontractor. An SBA review of a firm’s small disadvantaged business (SDB) status differs from a formal protest at 19.703.

(1) A representation of SDB status on a Federal prime contract will be deemed a misrepresentation of SDB status if the

firm does not meet the requirements of 13 CFR 124.1001(b).

(2) Any person or entity that misrepresents a firm’s status as a “small business concern owned and controlled by socially and economically disadvantaged individuals” (“SDB status”) in order to obtain an 8(d) (15 U.S.C. 637(d)) contracting opportunity will be subject to the penalties imposed by section 16(d) of the Small Business Act, 15 U.S.C. 645(d), as well as any other penalty authorized by law.

(3) SBA may initiate the review of SDB status on any firm that has represented itself to be an SDB on a subcontract to a Federal prime contract whenever it receives credible information calling into question the SDB status of the firm.

(b) Requests for an SBA review of SDB status may be forwarded to the Small Business Administration, Assistant Administrator for SDBCE, 409 Third Street, SW, Washington, DC 20416.

(c) Protests of a small business concern’s disadvantaged status as a subcontractor are processed under 19.703(a)(2). Protests of a concern’s size as a prime contractor are processed under 19.302. Protests of a concern’s size as a subcontractor are processed under 19.703(b).

**19.309 [Amended]**

16. Amend section 19.309 by removing paragraph (b); and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

17. Amend section 19.703 by revising paragraph (a)(2) to read as follows:

**19.703 Eligibility requirements for participating in the program.**

(a) \* \* \*

(2) In connection with a subcontract, the contracting officer or the SBA may protest the disadvantaged status of a proposed subcontractor. Such protests will be processed in accordance with 13 CFR 124.1007 through 124.1014. Other interested parties may submit information to the contracting officer or the SBA in an effort to persuade the contracting officer or the SBA to initiate a protest. Such protests, in order to be considered timely, must be submitted to the SBA prior to completion of performance by the intended subcontractor.

\* \* \* \* \*

**19.705–1 [Amended]**

18. Amend section 19.705–1 by removing the second sentence.

**19.708 [Amended]**

19. Amend section 19.708 in paragraphs (c)(1), (c)(2), and (c)(3) by

removing “business, HUBZone small business, and” and adding “business, HUBZone small business, small disadvantaged business, and” in its place.

**Subpart 19.11—[Removed and Reserved]**

20a. Remove and reserve subpart 19.11, consisting of sections 19.1101 through 19.1104.

**Subpart 19.12—[Removed and Reserved]**

20b. Remove and reserve subpart 19.12, consisting of sections 19.1201 through 19.1204.

21. Amend section 19.1307 by revising paragraph (d) to read as follows:

**19.1307 Price evaluation preference for HUBZone small business concerns.**

\* \* \* \* \*

(d) A concern that is a HUBZone small business concern shall receive the benefit of the HUBZone small business price evaluation preference. The applicable price evaluation preference shall be calculated independently against an offeror’s base offer. The individual preference shall be added to the base offer to arrive at the total evaluated price for that offer.

\* \* \* \* \*

**PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

**22.1006 [Amended]**

22. Amend section 22.1006 by—  
a. Removing from paragraph (a)(2)(i)(C) “52.204–8(c)(2)(iii) or (iv)” and adding “52.204–8(c)(2)(ii) or (iii)” in its place;

b. Removing from paragraph (e)(2)(i) “52.204–8(c)(2)(iii)” and adding “52.204–8(c)(2)(ii)” in its place; and

c. Removing from paragraph (e)(4)(i) “52.204–8(c)(2)(iv)” and adding “52.204–8(c)(2)(iii)” in its place.

**PART 26—OTHER SOCIOECONOMIC PROGRAMS**

**26.304 [Amended]**

23. Amend section 26.304 by removing the last sentence.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

24. Amend section 52.204–8 by—  
a. Revising the date of the provision;  
b. Revising paragraph (c)(1)(xxi);  
c. Removing paragraph (c)(2)(i); and  
d. Redesignating paragraphs (c)(2)(ii) through (c)(2)(vii) as (c)(2)(i) through (c)(2)(vi), respectively.

The revised text reads as follows:

**52.204-8 Annual Representations and Certifications.**

\* \* \* \* \*

**Annual Representations and Certifications (Date)**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(xxi) 52.226-2, Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

\* \* \* \* \*

25. Amend section 52.212-3 by—

a. Revising the date of the provision;

b. Removing paragraph (c)(10);

c. Redesignating paragraph (c)(11) as paragraph (c)(10);

d. Removing from the newly redesignated paragraph (c)(10)(ii) “representation in paragraph (c)(11)(i)” and adding “representation in paragraph (c)(10)(i)” in its place;

e. Revising Alternate I; and

f. Removing Alternate II.

The revised text reads as follows:

**52.212-3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

**Offeror Representations and Certifications—Commercial Items (Date)**

\* \* \* \* \*

Alternate I (Date). As prescribed in 12.301(b)(2), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.)

\* \* \* \* \*

26. Amend section 52.212-5 by—

a. Revising the date of the clause;

b. Removing paragraphs (b)(17), (b)(18), and (b)(19); and

c. Redesignating paragraphs (b)(20) through (b)(49) as paragraphs (b)(17) through (b)(46), respectively.

**52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**

\* \* \* \* \*

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Date)**

\* \* \* \* \*

27. Amend section 52.219-1 by revising the date of the provision; and adding in paragraph (c), in alphabetical order, the definition “Small disadvantaged business concern.”

**52.219-1 Small Business Program Representations.**

\* \* \* \* \*

**Small Business Program Representations (Date)**

\* \* \* \* \*

*Small disadvantaged business concern* means a small business concern—

Not less than 51 percent of which is unconditionally and directly owned by one or more socially and economically disadvantaged individuals who are citizens of the United States, the management and daily business operations of which are controlled by one or more socially and economically disadvantaged individuals (as defined at 13 CFR subpart B, 124.1002).

\* \* \* \* \*

28. Amend section 52.219-2 by revising the introductory paragraph to read as follows:

**52.219-2 Equal Low Bids.**

As prescribed in 19.309(b), insert the following provision:

\* \* \* \* \*

29. Amend section 52.219-4 by revising the date of the clause, and paragraph (b)(3) to read as follows:

**52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.**

\* \* \* \* \*

**Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Date)**

\* \* \* \* \*

(b) \* \* \*

(3) A concern that is a HUBZone small business concern will receive the benefit of the HUBZone small business price evaluation preference. The applicable price evaluation preference shall be calculated independently against an offeror’s base offer. The individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

\* \* \* \* \*

30. Amend section 52.219-8 by revising the date of the clause, and in paragraph (c), revising the definition “Small disadvantaged business concern” to read as follows:

**52.219-8 Utilization of Small Business Concerns.**

\* \* \* \* \*

**Utilization of Small Business Concerns (Date)**

\* \* \* \* \*

(c) \* \* \*

*Small disadvantaged business concern* means a small business concern that represents, as part of its offer that it meets the criteria—

(1) Consistent with 13 CFR subpart B, 124.1002, and means a small business concern—

(i) Not less than 51 percent of which is unconditionally and directly owned by one or more socially and economically disadvantaged individuals who are citizens of the United States, the management and daily business operations of which are controlled by one or more socially and economically disadvantaged individuals; and

(ii) Where the concern is owned by one or more disadvantaged individuals, each individual represents that their net worth does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

\* \* \* \* \*

31. Amend section 52.219-10 by revising the date of the clause; and removing from paragraph (b) “business, HUBZone small business, and” and adding “business, HUBZone small business, small disadvantaged business, and” in its place. The revised text reads as follows:

**52.219-10 Incentive Subcontracting Program.**

\* \* \* \* \*

**Incentive Subcontracting Program (Date)**

\* \* \* \* \*

**52.219-22, 52.219-23, 52.219-24, 52.219-25, and 52.219-26 [Removed and Reserved]**

32. Remove and reserve sections 52.219-22, 52.219-23, 52.219-24, 52.219-25, and 52.219-26.

33. Amend section 52.219-28 by revising the introductory paragraph to read as follows:

**52.219-28 Post-Award Small Business Program Rerepresentation.**

As prescribed in 19.309(c), insert the following clause:

\* \* \* \* \*

34. Amend section 52.226-2 by revising the date of the provision, and in paragraph (a) by revising the definition “Historically black college or university” to read as follows:

**52.226-2 Historically Black College or University and Minority Institution Representation.**

\* \* \* \* \*

**Historically Black College or University and Minority Institution Representation (Date)**

(a) \* \* \*

*Historically black college or university* means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and includes any nonprofit research institution that was an

integral part of such a college or university before November 14, 1986.

\* \* \* \* \*

#### **PART 53—FORMS**

35. Revise section 53.219 to read as follows:

##### **53.219 Small business programs.**

The following standard form is prescribed for use in reporting small business (including Alaska Native Corporations and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including Alaska Native Corporations and Indian tribes), and women-owned small

business subcontracting data, as specified in part 19: SF 294, (Rev. (Date)) Subcontracting Report for Individual Contracts. SF 294 is authorized for local reproduction.

36. Amend section 53.301–294 by revising the form to read as follows:

##### **53.301–294 Subcontracting Report for Individual Contracts.**

**BILLING CODE 6820–EP–P**

**SUBCONTRACTING REPORT FOR INDIVIDUAL CONTRACTS**  
(See instructions on reverse)

OMB No: 9000-0006  
Expires: 3/31/2013

Public reporting burden for this collection of information is estimated to average 55.34 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Acquisition Policy Division, Regulatory Secretariat, GSA, Washington, DC 20405.

1. CORPORATION, COMPANY, OR SUBDIVISION COVERED			3. DATE SUBMITTED	
a. COMPANY NAME			4. REPORTING PERIOD FROM INCEPTION OF CONTRACT THRU: YEAR <input type="checkbox"/> MAR 31 <input type="checkbox"/> SEPT 30	
b. STREET ADDRESS				
c. CITY	d. STATE	e. ZIP CODE		
2. CONTRACTOR IDENTIFICATION NUMBER			5. TYPE OF REPORT <input type="checkbox"/> REGULAR <input type="checkbox"/> FINAL <input type="checkbox"/> REVISED	
6. ADMINISTERING ACTIVITY (Please check applicable box)				
<input type="checkbox"/> ARMY	<input type="checkbox"/> GSA	<input type="checkbox"/> NASA		
<input type="checkbox"/> NAVY	<input type="checkbox"/> DOE	<input type="checkbox"/> OTHER FEDERAL AGENCY (Specify)		
<input type="checkbox"/> AIR FORCE	<input type="checkbox"/> DEFENSE CONTRACT MANAGEMENT AGENCY			
7. REPORT SUBMITTED AS (Check one and provide appropriate number)			8. AGENCY OR CONTRACTOR AWARDING CONTRACT	
<input type="checkbox"/> PRIME CONTRACTOR	PRIME CONTRACT NUMBER		a. AGENCY'S OR CONTRACTOR'S NAME	
<input type="checkbox"/> SUBCONTRACTOR	SUBCONTRACT NUMBER		b. STREET ADDRESS	
9. DOLLARS AND PERCENTAGES IN THE FOLLOWING BLOCKS: <input type="checkbox"/> DO INCLUDE INDIRECT COSTS <input type="checkbox"/> DO NOT INCLUDE INDIRECT COSTS.			c. CITY	d. STATE
			e. ZIP CODE	

**SUBCONTRACT AWARDS**

TYPE	CURRENT GOAL		ACTUAL CUMULATIVE	
	WHOLE DOLLARS	PERCENT	WHOLE DOLLARS	PERCENT
10a. SMALL BUSINESS CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
10b. LARGE BUSINESS CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
10c. TOTAL (Sum of 10a and 10b.)		100.0%		100.0%
11. SMALL DISADVANTAGED BUSINESS (SDB) CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
12. WOMEN-OWNED SMALL BUSINESS (WOSB) CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
13. HUBZone SMALL BUSINESS (HUBZone SB) CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
14. VETERAN-OWNED SMALL BUSINESS CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
15. SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CONCERNS (Dollar Amount and Percent of 10c.) (SEE SPECIFIC INSTRUCTIONS)				
16. HISTORICALLY BLACK COLLEGES AND UNIVERSITIES (HBCU) AND MINORITY INSTITUTIONS (MI) (Dollar Amount) (SEE SPECIFIC INSTRUCTIONS)				
17. ALASKA NATIVE CORPORATIONS (ANCs) AND INDIAN TRIBES THAT HAVE NOT BEEN CERTIFIED BY THE SMALL BUSINESS ADMINISTRATION AS SMALL DISADVANTAGED BUSINESSES (Dollar Amount) (SEE SPECIFIC INSTRUCTIONS)				
18. ALASKA NATIVE CORPORATIONS (ANCs) AND INDIAN TRIBES THAT ARE NOT SMALL BUSINESSES (Dollar Amount) (SEE SPECIFIC INSTRUCTIONS)				

Previous Edition is Not Usable

**STANDARD FORM 294 (REV. )**

Prescribed by GSA-FAR (48 CFR 53.219(a))

19. REMARKS

20a. NAME OF INDIVIDUAL ADMINISTERING SUBCONTRACTING PLAN

20b. TELEPHONE NUMBER

AREA CODE

NUMBER

**GENERAL INSTRUCTIONS**

1. This report is not required for small businesses.
2. This report is not required for commercial items for which a commercial plan has been approved, nor from large businesses in the Department of Defense (DOD) Test Program for Negotiation of Comprehensive Subcontracting plans. The Summary Subcontract Report (SSR) is required for contractors operating under one of these two conditions and should be submitted to the Government in accordance with the instructions on that form.
3. This form collects subcontract award data from prime contractors/ subcontractors that : (a) hold one or more contracts over \$650,000 (over \$1,500,000 for construction of a public facility); and (b) are required to report subcontracts awarded to Small Business (SB), Small Disadvantaged Business (SDB), Women-Owned Small Business (WOSB), HUBZone Small Business (HUBZone SB), Veteran-Owned Small Business (VOSB) and Service-Disabled Veteran-Owned Small Business concerns under a subcontracting plan. For the National Aeronautics and Space Administration (NASA), this form also collects subcontract award data for Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs).
4. This report is required for each contract containing a subcontracting plan and must be submitted to the administrative contracting officer (ACO) or contracting officer if no ACO is assigned, semi-annually, during contract performance for the periods ended March 31st and September 30th. A separate report is required for each contract at contract completion. Reports are due 30 days after the close of each reporting period unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or since the previous report.
5. Only subcontracts involving performance in the United States or its outlying areas should be included in this report with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.
6. Purchases from a corporation, company, or subdivision that is an affiliate of the prime/subcontractor are not included in this report.
7. Subcontract award data reported on this form by prime contractors/ subcontractors shall be limited to awards made to their immediate subcontractors. Credit cannot be taken for awards made to lower tier subcontractors unless you have been designated to receive an SB and SDB credit from an Alaska Native Corporation (ANC) or Indian tribe.
8. FAR 19.703 sets forth the eligibility requirements for participating in the subcontracting program.
9. Actual achievements must be reported on the same basis as the goals set forth in the contract. For example, if goals in the plan do not include indirect and overhead items, the achievements shown on this report should not include them either.

**SPECIFIC INSTRUCTIONS**

**BLOCK 2:** For the Contractor Identification Number, enter the nine-digit Data Universal Numbering System (DUNS) number that identifies the specific contractor establishment. If there is no DUNS number available that identifies the exact name and address entered in Block 1, contact Dun and Bradstreet Information Services at 1-866-705-5711 or via the Internet at <http://www.dnb.com>. The contractor should be prepared to provide the following information: (i) Company legal business name. (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized. (iii) Company physical street address, city, state and ZIP Code. (iv) Company mailing address, city, state and ZIP Code (if separate from physical). (v) Company telephone number. (vi) Date the company was started. (vii) Number of employees at your location. (viii) Chief executive officer/key manager. (ix) Line of business (industry). (x) Company Headquarters name and address (reporting relationship within your entity).

**BLOCK 4:** Check only one. Note that all subcontract award data reported on this form represents activity since the inception of the contract through the date indicated on this block.

**BLOCK 5:** Check whether this report is a "Regular," "Final," and/or "Revised" report. A "Final" report should be checked only if the contractor has completed the contract or subcontract reported in Block 7. A "Revised" report is a change to a report previously submitted for the same period.

**BLOCK 6:** Identify the department or agency administering the majority of subcontracting plans.

**BLOCK 7:** Indicate whether the reporting contractor is submitting this report as a prime contractor or subcontractor and the prime contract or subcontract number.

**BLOCK 8:** Enter the name and address of the Federal department or agency awarding the contract or the prime contractor awarding the subcontract.

**BLOCK 9:** Check the appropriate block to indicate whether indirect costs are included in the dollar amounts in blocks 10a through 16. To ensure comparability between the goal and actual columns, the contractor may include indirect costs in the actual column only if the subcontracting plan included indirect costs in the goal.

**BLOCKS 10a through 18:** Under "Current Goal," enter the dollar and percent goals in each category (SB, SDB, WOSB, VOSB, service-disabled VOSB, and HUBZone SB) from the subcontracting plan approved for this contract. (If the original goals agreed upon at contract award have been revised as a result of contract modifications, enter the original goals in Block 19. The amounts entered in Blocks 10a through 16 should reflect the revised goals.) There are no goals for Blocks 17 and 18. Under "Actual Cumulative," enter actual subcontract achievements (dollars and percent) from the inception of the contract through the date of the report shown in Block 4. In cases where indirect costs are included, the amounts should include both direct awards and an appropriate prorated portion of indirect awards. However, the dollar amounts reported under "Actual Cumulative" must be for the same period of time as the dollar amounts shown under "Current Goal." For a contract with options, the current goal should represent the aggregate goal since the inception of the contract. For example, if the contractor is submitting the report during Option 2 of a multiple year contract, the current goal would be the cumulative goal for the base period plus the goal for Option 1 and the goal for Option 2.

**BLOCK 10a:** Report all subcontracts awarded to SBs including subcontracts to SDBs, WOSB, VOSB, service-disabled VOSB, and HUBZone SBs. For NASA contracts, include subcontracting awards to HBCUs and MIs. Include subcontracts awarded to ANCs and Indian tribes that are not small businesses and that are not certified by the SBA as SDBs where you have been designated to receive their SB and SDB credit. Where your company and other companies have been designated by an ANC or Indian tribe to receive SB and SDB credit for a subcontract awarded to the ANC or Indian tribe, report only the portion of the total amount of the subcontract that has been designated to your company.

**BLOCK 10b:** Report all subcontracts awarded to large businesses (LBs) and any other-than-small businesses. Do not include subcontracts awarded to ANCs and Indian tribes that have been reported in 10a above.

**BLOCK 10c:** Report on this line the total of all subcontracts awarded under this contract (the sum of lines 10a and 10b).

**BLOCKS 11 - 16:** Each of these items is a subcategory of Block 10a. Note that in some cases the same dollars may be reported in more than one block (e.g., SDBs owned by women or veterans).

**BLOCK 11:** Report all subcontracts awarded to SDBs (including WOSB, VOSB, service-disabled VOSBs, and HUBZone SB SDBs). Include subcontracts awarded to ANCs and Indian tribes that have not been certified by SBA as SDBs where you have been designated to receive their SDB credit. Where your company and other companies have been designated by an ANC or Indian tribe to receive their SDB credit for a subcontract awarded to the ANC or Indian tribe, report only the portion of the total amount of the subcontract that has been designated to your company. For NASA contracts, include subcontracting awards to HBCUs and MIs.

**BLOCK 12:** Report all subcontracts awarded to WOSBs (including SDBs, VOSBs (including service-disabled VOSBs), and HUBZone SBs that are also WOSBs).

**BLOCK 13:** Report all subcontracts awarded to HUBZone SBs (including WOSBs, VOSBs (including service-disabled VOSBs), and SDBs that are also HUBZone SBs).

**BLOCK 14:** Report all subcontracts awarded to VOSBs including service-disabled VOSBs (and including SDBs, WOSBs, and HUBZone SBs that are also VOSBs).

**BLOCK 15:** Report all subcontracts awarded to service-disabled VOSBs (including SDBs, WOSBs, and HUBZone SBs that are also service-disabled VOSBs).

**BLOCK 16:** (For contracts with NASA): Report all subcontracts with HBCUs/MIs. Complete the column under "Current Goal" only when the subcontracting plan establishes a goal.

**BLOCK 17:** Report all subcontracts awarded to ANCs and Indian tribes that are reported in Block 11, but have not been certified by SBA as SDBs.

**BLOCK 18:** Report all subcontracts awarded to ANCs and Indian tribes that are reported in Block 10a, but are not small businesses.

**BLOCK 19:** Enter a short narrative explanation if (a) SB, SDB, WOSB, VOSB, service-disabled VOSB, or HUBZone SB accomplishments fall below that which would be expected using a straight-line projection of goals through the period of contract performance; or (b) if this is a final report, any one of the six goals were not met.

#### DEFINITIONS

1. Direct Subcontract Awards are those that are identified with the performance of one or more specific Government contract(s).

2. Indirect costs are those which, because of incurrence for common or joint purposes, are not identified with specific Government contracts; these awards are related to Government contract performance but remain for allocation after direct awards have been determined and identified to specific Government contracts.

#### DISTRIBUTION OF THIS REPORT

##### For the Awarding Agency or Contractor:

The original copy of this report should be provided to the contracting officer at the agency or contractor identified in Block 8. For contracts with DOD, a copy should also be provided to the Defense Contract Management Agency (DCMA) at the cognizant Defense Contract Management Area Operations (DCMAO) office.

##### For the Small Business Administration (SBA):

A copy of this report must be provided to the cognizant Commercial Market Representative (CMR) at the time of a compliance review. It is NOT necessary to mail the SF 294 to SBA unless specifically requested by the CMR.

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 571****Federal Motor Vehicle Safety Standards No. 121; Air Brake Systems**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Denial of Petition for Rulemaking.

**SUMMARY:** This Notice denies the petition for rulemaking from William B. Trescott, in which the petitioner requested that the National Highway Traffic Safety Administration (NHTSA) vacate Federal Motor Vehicle Safety Standard (FMVSS) No. 121, Air Brake Systems by removing requirements for antilock brake systems (ABS) for newly-manufactured vehicles equipped with air-brake systems; or that the agency require a driver-controllable switch that would allow the driver to deactivate the ABS on air-braked vehicles; or that the agency require the automatic deactivation of ABS on air braked vehicles when the vehicles are traveling at speeds greater than 55 mph. The petitioner claims that an agency report shows that ABS on tractor-trailers increases fatal crash involvements, and also that ABS allows incompetent truck drivers to drive trucks. The agency reviewed these claims and found them to be without merit, and concludes that the agency report cited by the petitioner does not support the conclusion that safety would be improved by allowing ABS to be deactivated. Rather, the data supports the conclusion that removing ABS from trucks would result in an increase in crashes.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Mr. Jeffrey Woods, Office of Crash Avoidance Standards, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202-366-6206) (FAX: 202-366-7002). For legal issues, you may contact Mr. David Jasinski, Office of the Chief Counsel, NHTSA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (Telephone: 202-366-2992) (Fax: 202-366-3820).

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Trescott Petition
- II. Summary of the ABS Effectiveness Study Results
- III. ABS Requirements
- IV. Agency Analysis of the Petition
- V. Agency Decision

**I. Trescott Petition**

On October 27, 2010, the agency received a petition for rulemaking from William B. Trescott of Bay City, Texas, requesting that FMVSS No. 121, Air Brake Systems, either be vacated entirely or amended to require one of two options regarding antilock brake systems that are required for air-braked vehicles. The first option would be to require automatic deactivation of the antilock brake system (ABS) when vehicles are travelling at speeds faster than 55 mph, and the second option would be to require an ABS deactivation switch to allow the driver to disable the ABS. The petition cited data from a recent NHTSA report, "The Effectiveness of ABS in Heavy Truck Tractors and Trailers,"<sup>1</sup> and stated that it showed no statistically significant benefits of ABS in reducing fatal truck crashes. The petition stated that the best estimate of a reduction in all crash types by having ABS on the tractor was only three percent, and that ABS increased overall fatalities by one percent. The petition cited several tables in the report describing both reductions and increases in certain types of crashes. For example, the petition cited Table 2, *Reduction in response group crashes based on tractor and trailer ABS equipment, Florida state data*, of the report which summarized state data from Florida showing a 30 percent decrease in single vehicle rollover crashes for tractors and trailers equipped with ABS, and a 21 percent increase in two vehicle front-to-rear crashes with the truck as the striking vehicle for tractors and trailers equipped with ABS. From Table 4, *Reduction in response group crashes on wet roads based on tractor and trailer ABS equipment, Florida state data*, the petition cited the 67 percent reduction in jackknife crashes on wet roads for tractors and trailers equipped with ABS. The petition stated that there is no doubt that ABS prevents jackknife crashes.

The petition cited specific roadway type, speed, and locality data that are contained in the report as follows. Table 17, *Number of crashes and reduction for ABS-equipped tractors according to type of locality and speed of road, FARS data*, indicates an 11 percent increase in fatal crashes on rural, high-speed roads for ABS-equipped tractors, while the data in Table 18, *Number of crashes and reduction for ABS-equipped tractors on roads that are not high-speed, FARS data*, show fatal crash reductions of 23

percent on all roads that are not high speed for tractors with ABS. Table 19, *Number of crashes and reduction for ABS-equipped tractors on roads that are rural and high-speed according to whether the road is an interstate or not, FARS data*, shows an eight percent increase in fatal crashes on rural interstate roads for ABS-equipped tractors, and a three percent decrease in fatal crashes on other non-interstate rural high speed roads for ABS-equipped tractors. Table 20, *Crash reductions for all crash mechanisms by locality and road type, FARS*, shows a 30 percent increase in fatal, two-vehicle rear impact crashes with the truck as the striking vehicle, for tractors equipped with ABS on rural interstate highways. On the basis of these data, the petition stated that long-haul truckers who operate primarily in rural areas should disable their ABS and the agency should issue a recall order to that effect. However, the recall order should not apply to drivers who operate primarily in urban areas, and further, it may be safest for truckers to turn off their ABS when exceeding 55 mph and to leave it on the rest of the time.

The petition stated that an unintended consequence of preventing jackknife crashes through the use of ABS is that incompetent drivers, who prior to the introduction of ABS would have been fired for the occurrence of a jackknife, were instead being retained and subsequently their continued driving resulted in increases in other types of crashes. The petition cited a 29 percent increase in two-vehicle rear end crashes on wet or icy roads with the truck as the striking vehicle, from Table 4, *Reduction in response group crashes on wet roads based on tractor and trailer ABS equipment, Florida state data*, for tractors and trailers equipped with ABS, as an example of incompetent truck driver retention. The petition also cited a 21 percent increase in single vehicle crash truck occupant fatalities in 1997, the same year that ABS was mandated on newly-manufactured tractors, and concluded that this increase in fatalities was an unintended side effect of less qualified drivers being hired that was made possible by ABS. The petition reasoned that trucking fleets realized cost savings because ABS reduced truck tire damage during panic stops, which thereby allowed the fleets to hire less qualified drivers who were subsequently involved in more crashes.

<sup>1</sup> Report No. DOT HS 811 339, July 2010, available at <http://www-nrd.nhtsa.dot.gov/Pubs/811339.pdf>.

## II. Summary of the ABS Effectiveness Study Results

The agency's study on the effectiveness of ABS on tractors and trailers included a statistical analysis of crash data from seven states for fatal and non-fatal crashes that occurred between 1998 and 2007 (data for all of these years were not used or were not available for every state), and from the Fatality Analysis Reporting System (FARS) for fatal crashes that occurred between 1998 and 2008 from all fifty states. All states provided the vehicle identification number (VIN) or the model year data for the tractors so that the model year of the tractor could be determined, while only two states for which trailer ABS was evaluated (Florida and North Carolina) included the VIN or the model year for the trailers. For all of the crashes, the data were limited to a tractor towing one trailer; thus tractors not towing a trailer (bobtail tractors) or tractors towing multiple trailers were not included in the analysis. Tractors of model year 1998 or newer were assumed to have ABS while those of model year 1996 or older were assumed not to have ABS. Model year 1997 was excluded since the ABS requirements in FMVSS No. 121 became effective on March 1, 1997, and therefore a model year 1997 tractor may or may not have been equipped with ABS. Similarly, trailers of model year 1999 or newer were assumed to have ABS, while those of model year 1997 or older were assumed not to have ABS, and model year 1998 trailers were excluded from the analysis, since the trailer ABS requirements became effective on March 1, 1998.

Limitations of the study included the overall small vehicle population for tractor-trailers (compared to light vehicles for which there are many more vehicles on the road) and the limited amount of crash data from the seven-state sample (27,777 total crashes). Additionally, all model years of vehicles prior to the ABS effective date were assumed not to have ABS, which did not account for an unknown number of vehicles that were voluntarily equipped with ABS prior to the effective date. Also, there was no way to discern whether the vehicles equipped with ABS had been properly maintained so that the ABS was functional at the time of the crash; both of these factors would result in underestimation of the ABS effectiveness. As described above, only two states had information on trailer model year, so the main focus of the analysis was on the effectiveness of tractor ABS.

The crashes, in which tractor-trailers were involved in either single vehicle crashes or multiple vehicle crashes, were divided into control and response groups that both contained tractors and trailers with and without ABS. The crash types for the control group were those in which ABS should not have been influential in the crash outcome, including crash involved tractor-trailers that were moving slowly, parking or unparking, backing up, impacted in the rear, etc. The crash types for the response group were those in which ABS should have been influential either by helping the driver to maintain control of the vehicle or by contributing to improved stopping distance. Response group single vehicle crash types included run-off-road collisions with fixed objects; collisions with animals, pedestrians, or bicycles; jackknife crashes, etc. Response group multi-vehicle crashes included those in which the truck was the striking vehicle in rear-end crashes or the truck was the at-fault vehicle in any other type of crash involving other vehicles. Differences in control group and response group crashes were used to determine ABS effectiveness as evidenced by reductions or increases in crashes among the response group, and statistical measures were provided to determine the statistical significance of the results.

The primary findings of the analysis are summarized as follows:

- The best estimate of a reduction by ABS on the tractor unit in all levels of police-reported crashes for air-braked tractor-trailers is three percent, based on crash data from seven states and controlling for the age of the tractor at the time of the crash. This represents a statistically significant six percent reduction in crashes in which ABS is assumed to be potentially influential, relative to a control group, of about the same number of crashes, in which ABS was likely to be irrelevant.
- In fatal crashes, there was a non-significant two percent reduction in crash involvement, resulting from a four percent reduction in crashes in which ABS should have been potentially influential. External factors of roadway urbanization and speed, and ambient lighting, were accounted for in the final estimates.
- Among the types of crashes that ABS influences, there is a large reduction in jackknife crashes, off-road truck rollovers, and at-fault involvements in crashes with other vehicles, except in rear-end crashes. Counteracting was an increase in the number of involvements in crashes with animals, pedestrians, or bicyclists and,

only in fatal crashes, two-vehicle rear-end crashes with the truck as the striking vehicle.

The first stage of the analysis considered ABS on both the tractors and the trailers. For the Florida data, the reduction in response group crashes was a statistically significant 14 percent for ABS-equipped tractors when towing either ABS-equipped trailers or non-ABS-equipped trailers.<sup>2</sup> The largest crash reductions associated with ABS on the tractor or trailer were among single-vehicle tractor-trailer crashes and particularly jackknife crashes (statistically significant reductions of 76 percent for ABS tractors with non-ABS trailers, and 65 percent for ABS tractors with ABS trailers). Crashes with pedestrians, bicycles, and animals increased, although this result was not statistically significant. For multi-vehicle crashes, increases were seen for rear-end crashes with the tractor as the striking vehicle when tractors with ABS were compared to those without, while decreases in other tractor-at-fault crashes were seen for the ABS tractors. These sub-group results were statistically significant while the overall results for all multi-vehicle crashes (a five percent reduction for ABS tractors with non-ABS trailers, and a one percent increase for ABS tractors with ABS trailers) were not statistically significant.

When the Florida data were limited to wet roadways (with the road surface coded as wet, slippery, or icy), the reductions in crashes for ABS tractors were even higher: 26 percent when operated with non-ABS-equipped trailers, and 23 percent when operated with ABS-equipped trailers, both statistically significant.<sup>3</sup> These results suggested that ABS is more effective on wet roads than on dry roads, noting that comparison data were not always statistically significant but nevertheless showed an overall trend. When the North Carolina data (the other State providing trailer model year) were also considered, the tractor ABS was still seen to be the most influential in overall crash reductions, although the crash data sample was small. The amount of available data from both Florida and North Carolina was found to be insufficient to draw further conclusions about the effects of ABS on the trailers.

An initial analysis of the state data for all levels of crash severity (property damage only, or resulting in an injury or

<sup>2</sup> See Table 2: Reduction in response group crashes based on tractor and trailer ABS equipment, Florida state data.

<sup>3</sup> See Table 4: Reduction in response group crashes on wet roads based on tractor and trailer ABS equipment, Florida state data.

a fatality) for the seven states showed reductions in response group crashes for ABS-equipped tractors ranging between 10 percent and 17 percent for each state.<sup>4</sup> Results by crash type were typically similar in magnitude and in the same direction (reductions or increases in crashes) for each state. The largest percentage reductions for ABS tractors were for jackknife crashes, followed by single-vehicle run-off-road rollovers and other types of single-vehicle crashes (both on-road and off-road). Reductions in multi-vehicle crashes were also seen across the states, with only Florida data showing an increase in rear-end crashes with the truck as the striking vehicle. Substantial increases were seen for single vehicle crashes with animals, pedestrians, and bicyclists, although these results were not statistically significant and the number of crashes was small.

However, the age differences between the ABS and non-ABS tractors were found to have biased the results because the non-ABS tractors were at least two years older than the ABS-equipped tractors. Additional analyses of the state data were conducted on an age-restricted subset of the crash data for overlapping tractor ages at the time of the crash for both ABS tractors and non-ABS tractors. Since varying years of state data were used, the tractor age varied between three and ten years at the time of the crash depending on the state (e.g., between three to ten years for Florida, and eight to nine years for North Carolina).

The results of the age-restricted state data still showed crash reductions for the ABS tractors in each of the seven states, but the reductions were smaller than those seen from the unrestricted data set and there were few results that were statistically significant.<sup>5</sup> The ABS tractors in the response group of crashes showed crash reductions ranging between three percent and 10 percent for each state in comparison with the control group, and similar to the results in the unrestricted data set, single vehicle jackknife crashes had the largest reductions of all the crash types, followed by single-vehicle rollovers. Increases were seen in five states for crashes with animals, pedestrians, and bicyclists, and in three states for two-vehicle rear end crashes with ABS tractors as the striking vehicle. Considering the total crash population for the combined response and control

groups, ABS tractors were associated with overall crash reductions of between two percent and six percent for each state.

A similar analysis was conducted using 50-state FARS data from 1998 to 2008 with a data set of 30,275 crashes. The analysis considered tractors towing one trailer, but only the effectiveness of tractor ABS was considered since trailer model year information was not available. Comparisons were conducted similarly to those in the state data analysis, with a control group consisting of crash types in which ABS would not be considered to have an influence, and a response group in which ABS could be considered to have an influence in the crash. The response and control groups included both ABS tractors and non-ABS tractors.

The initial FARS results found that the ABS tractors in the response group had an overall two percent increase in crashes compared to non-ABS tractors, although these results were not statistically significant.<sup>6</sup> In single-vehicle crashes, there was a reduction in run-off-road crashes with rollover and single-vehicle jackknife crashes for the ABS tractors. However, there was an increase in run-off-road crashes without rollover and crashes with pedestrians, animals, and bicyclists. A few of the subgroup results were statistically significant, but the overall results were not.

In two-vehicle rear end crashes with the truck as the striking vehicle, a 44 percent increase was seen for the ABS tractors. However, there was an eight percent reduction in other multi-vehicle crashes in which the truck was the at-fault vehicle. Since there were many more multi-vehicle crashes that are in the "other," non-rear-end crash category, the net result was a non-significant one percent increase in overall multi-vehicle crashes for the ABS tractors. In addition, the ABS tractors were found to have a slightly higher percentage of crashes occurring on wet roadways (18 percent of crashes occurring on wet roadways) compared to the non-ABS tractors (16 percent of crashes occurring on wet roadways), which was contrary to what was seen in the analysis of the state data.

The FARS data were then segregated by roadway locality and speed, and the results showed that reductions in crashes for the ABS tractors occurred on non-high-speed roadways (both rural and non-rural), while the increases occurred on high speed roadways (mainly rural, with only a slight

increase on non-rural roads).<sup>7</sup> Further segregation showed that the increases occurring on high speed roads were on interstate highways, although these results were not statistically significant.<sup>8</sup> When overall results were compared among four categories of road locality and type, the only statistically significant result was a 24 percent decrease among ABS tractors for all road types that were not high speed (including both single-vehicle and multi-vehicle crashes).<sup>9</sup> Furthermore, when individual crash types were reviewed within these data, a 43 percent overall increase in rear-end crashes with an ABS tractor as the striking vehicle, considering all roadways, was considered questionable because it was more negative than seen for any individual road locality and speed type. Therefore, adjustments were made in the final estimates for tractor ABS effectiveness in fatal crashes.

The analysis found that the type of road locality, travel speed, and ambient lighting condition (daylight or non-daylight) were influential in the fatal crash data. The data were then weighted to account for these influences and the final estimates for tractor ABS effectiveness and confidence intervals were derived.<sup>10</sup> The result was a four percent reduction among all ABS tractor response group crashes, although this result was not statistically significant. Single vehicle crashes among ABS tractors were reduced by five percent (not statistically significant) with the largest reductions in the run-off-road with subsequent rollover (statistically significant) and jackknife crash types (not statistically significant). The results also showed an increase in crashes with pedestrians, animals, and bicycles. ABS tractors had an overall five percent reduction in fatal multi-vehicle crashes (not statistically significant) with a nine percent reduction (statistically significant) in multi-vehicle crashes with the tractor at fault, and a ten percent increase (not statistically significant) in rear end crashes with the tractor as the striking vehicle. Tractor age was not found to be influential in the FARS data. Therefore, there was no need to conduct an age-restricted analysis of these data.

<sup>7</sup> See Table 17: Number of crashes and reduction for ABS-equipped tractors according to type of locality and speed of road, FARS data.

<sup>8</sup> See Table 19: Number of crashes and reduction for ABS-equipped tractors on roads that are rural and high-speed according to whether the road is an interstate or not, FARS data.

<sup>9</sup> See Table 20: Crash reductions for all crash mechanisms by locality and road type, FARS.

<sup>10</sup> See Table 23: Final weighted estimate of tractor ABS effectiveness from FARS.

<sup>4</sup> See Table 11: Reduction in response group crashes for various crash mechanisms, summary of seven States.

<sup>5</sup> See Table 27: Reductions in all crash mechanisms, age-restricted State data.

<sup>6</sup> See Table 15: Reduction in response group crashes for various crash mechanisms, FARS data.

### III. ABS Requirements

During the rulemaking in the 1990's to require ABS on air-braked heavy vehicles (and, concurrently, to require ABS on medium and heavy trucks and buses equipped with hydraulic brakes), the agency solicited public comments and input on how the ABS requirements would be implemented, including a definition of ABS, ABS equipment requirements for different vehicle types, and ABS road tests to set pass-fail performance criteria for tractors, trucks, and buses. An advanced notice of proposed rulemaking (ANPRM) was published on June 8, 1992<sup>11</sup> outlining the agency's general approach to include heavy vehicle ABS requirements, followed by a notice of proposed rulemaking (NPRM) on September 28, 1993<sup>12</sup> that included more detailed information along with an agency proposal for the regulatory text to include the ABS requirements in FMVSS No. 121. The agency was not aware of any reason to consider including an ABS on-off switch to allow the drivers to deactivate ABS during the rulemaking, and the heavy vehicles that were available with ABS at that time did not include any ABS on-off switches. None of the public comments or petitions for rulemaking submitted during the rulemaking requested that ABS disabling switches be provided.

On May 1, 1998, the agency issued an interpretation letter in response to an inquiry from Navistar International (Navistar) regarding air-braked vehicles that are equipped with an all-wheel drive (AWD) system that is selectable by the driver. Under this scenario, the vehicles are normally operated in two-wheel drive mode, and the AWD mode is selectable by the driver for severe service, off-road operation. Navistar asked if the ABS on such vehicles needed to be fully operational when the vehicle is in the AWD mode. The agency's letter stated that there is no exception in FMVSS No. 121 to permit the ABS to be disabled when AWD has been selected, although the ABS operation could be modified to better suit off-road conditions, as can be found in construction, logging, or mining operations for example. The requirements in S6, *Test conditions*, in FMVSS No. 121 specify that during road tests for the braking system, a vehicle equipped with an interlocking axle system or a front wheel drive system which is engaged and disengaged by the driver is tested with such system disengaged.

The practical effect of this agency interpretation letter is that during a stopping distance test, the vehicle must comply with the stopping distance requirements and meet the wheel lockup provisions specified in the standard, and during a stability and control test the vehicle must remain in the 12-foot-wide lane during a full brake application in at least three out of four test runs, with the ABS fully functional and, if so equipped, a front drive axle or an interaxle locking system disengaged via the driver controls. However, when either a front drive axle or interaxle locking system is engaged by the driver, additional wheel lockup could be provided to meet operational needs. An example of this is a logging truck descending a steep grade on a muddy road at very low speeds, where some wheel lockup is needed to restrict the forward motion of the vehicle by allowing a wedge of mud to build up in front of the tires. Thus, a vehicle manufacturer can activate a modified ABS algorithm based upon the driver engaging the controls for an interaxle locking system or front wheel drive system as such needs are identified by the vehicle manufacturer. To date, the provisions already contained in FMVSS No. 121 permit modified ABS operation, without the need for an ABS on-off switch.

### IV. Agency Analysis of the Petition

The purpose of requiring ABS on medium and heavy vehicles, including tractors and trailers, is to improve vehicle control and stability during panic braking. During normal driving, drivers brake lightly and no wheel lockup occurs. However, when faced with an imminent crash situation, drivers may apply the brakes by making a full brake pedal application, which can result in wheel lockup at one or more wheels on a vehicle. Since locked wheels cannot provide the lateral force needed to maintain directional control or to permit the driver to steer the vehicle around an obstacle, a loss-of-control situation occurs. A jackknife can occur if the tractor's drive axle wheels are locked and the tractor rotates about its center of gravity (often until it makes contact with a trailer being towed), or if the locked wheels on the trailer cause it to swing out of its travel lane. Both a jackknifed tractor and a trailer that has swung out of its lane can crash into other vehicles, skid off the road and strike roadside objects, or rollover. ABS keeps the wheels from locking up; thus lateral control of the vehicle is retained so the vehicle stays in its lane and the driver can also execute a steering maneuver to try and avoid a crash.

The March 10, 1995 final rule on heavy vehicle ABS included an appendix that provided details on heavy vehicle braking systems, tire characteristics related to lateral force and longitudinal force generation relative to wheel lockup, and explained why braking-related wheel lockup causes loss-of-control crashes on heavy vehicles.<sup>13</sup> Also, it describes why heavy vehicles are more prone to braking-related wheel lockup compared to light vehicles. Since heavy vehicle brakes are sized to stop the vehicle in the fully-loaded condition, they are over-braked (a brake imbalance condition) on the drive axles or trailer axles when operated in a lightly-loaded condition. The ratio of the weight of a loaded truck to the weight of an unloaded truck is considerably greater than the comparable loaded-to-unloaded weight ratio of a light vehicle. All of the physical conditions discussed in the appendix are still true today and thus removing ABS would result in the described loss of control conditions and a subsequent increase in crashes related to loss of control.

However, since the ABS final rule was published, the agency published a final rule on July 27, 2009, which requires shorter stopping distances for truck tractors.<sup>14</sup> The availability of improved foundation brakes for tractors, including more powerful S-cam drum brakes and air disc brakes, enabled the agency to reduce both the loaded and unloaded stopping distance requirements for newly manufactured tractors by 30 percent (starting with most tractors manufactured on or after August 1, 2011), compared to the existing FMVSS No. 121 tractor stopping distance requirements. The agency estimated that once all tractors are equipped with improved foundation brakes (which will take a considerable number of years as new tractors are phased into the national fleet), the safety benefits will be 227 fewer fatalities, 300 fewer serious injuries, and \$205M in reduced property damage each year. The new stopping distance requirements in the unloaded condition are particularly relevant to ABS. The old requirement of stopping within 335 feet for an unloaded (bobtail) tractor from 60 mph was a considerably long distance because, during compliance tests, the test driver needed to carefully modulate (apply and release) the brake pedal or only make a very light brake pedal application to keep the drive axle wheels from locking up during the stop. However, now that tractors are required to be equipped

<sup>11</sup> 57 FR 24212.

<sup>12</sup> 58 FR 50738.

<sup>13</sup> 60 FR 13259.

<sup>14</sup> 74 FR 37122.

with ABS, the test driver can simply make a hard brake application and the ABS prevents wheel lockup on the drive axle wheels. Thus, the new stopping distance of 235 feet can be readily achieved without the danger of losing control of the tractor due drive wheel lockup. The ABS plays an important role in achieving shorter stopping distances on tractors, because it allows higher brake torques to improve a loaded tractor's stopping distance, yet also provides for shorter stopping distances in the unloaded condition without wheel lockup. Removing ABS from tractors, or permitting it to be disabled, would not allow reductions in stopping distance to be safely achieved without compromising the ability of the driver to maintain full directional control of the tractor under all loading and road conditions.

In terms of on-the-road stopping distance performance of tractor-trailers, ABS may also improve the stopping distance compared to a driver's best effort on a non-ABS brake system, particularly if the vehicle is not loaded optimally or if the roadway is slippery. For example, a tractor-trailer that is half-loaded with the load placed only in the forward half of the trailer would first experience trailer wheel lockup during hard braking if there was no ABS on the tractor or trailer. In order to prevent the trailer from swinging out of the lane, the driver would need to modulate the brake pedal to alternate between a momentary trailer wheel lockup condition, and an unlocked trailer wheel condition. However, if the tractor and trailer both were equipped with ABS, then the driver could apply the brakes with a higher pressure to take advantage of the greater tire traction available on the heavier-loaded tractor drive axles, and the ABS would prevent the trailer wheels from locking up. Thus, ABS allows the driver to use the peak amount of friction available at each wheel position even though the load at each wheel may vary greatly.

Under ideal loading conditions, such as a fully loaded tractor-trailer on dry pavement, a highly skilled test driver may be able to achieve the shortest possible stopping distance without activating the ABS system by braking the vehicle so that the brake pressure is just below the threshold of wheel lockup. However, on the highways when faced with an imminent crash threat, drivers often make a full brake application, thus engaging the ABS if any wheels are prone to lockup or going into a jackknife or trailer swing on vehicles without ABS. In summary, we believe that trucks equipped with ABS have improved stopping distance

compared to non-ABS trucks when lightly-loaded, and particularly on wet or slippery roads. ABS also provides the driver with an increased level of confidence that he/she can make a hard brake application in crash-threatening situations and still be able to maintain directional control of the vehicle.

The agency reviewed the crash data that were cited in the petition as the basis for requesting to either vacate FMVSS No. 121, or requiring an on-off switch or automatic disabling of the ABS on heavy vehicles at speeds greater than 55 mph. The petition stated that the agency's report on the ABS effectiveness on tractors and trailers showed no statistically significant benefits in reducing fatal truck crashes and that the best estimate of a reduction in all types of crashes by having ABS on the tractor was only three percent. The petition stated that ABS increased overall fatalities by one percent. The agency finds that the overall three percent crash reduction for the data from the seven states correctly reflects the findings in the report, with overall crash reductions ranging between two percent and six percent for each state. Considering the response group of crashes in which ABS was possibly influential in the crash, the reductions in all crash types for ABS tractors ranged between three and ten percent for the seven states, with a median value of six percent, when compared to a control group of vehicles involved in crashes in which ABS would not be likely to be influential.

However, the one percent increase in fatal crashes for ABS tractors cited in the petition is from Table 15, *Reduction in response group crashes for various crash mechanisms, FARS data*. However, as described in the report, those initial FARS results were found to have influences of road locality and speed category, and ambient lighting condition. Thus, the results in Table 23, *Final weighted estimate of tractor ABS effectiveness from FARS*, have been adjusted for control group exposure for roadway type and lighting condition, and indicated an overall four percent reduction in fatal crashes. The confidence intervals of  $-0.7$  percent to 9.0 percent fell short of statistical significance, and therefore it is not an unequivocal confirmation of fatality reduction for tractor ABS. But, the results for the state data and the FARS data both showed reductions in crashes for tractor ABS and this result leads the agency to conclude that ABS is an effective safety system. We therefore disagree with the statement in the petition that ABS on heavy trucks increases fatal crashes; overall, the

analysis shows crash reductions for both fatal and non-fatal crashes.

The petition addresses the effectiveness study's findings on the effect of ABS in selected subgroups of crashes. The agency notes that examination of subgroups is typically an important component of the agency's evaluations. Nevertheless, when the data are limited, as in this case, the results for the various subgroups typically comprise a wide range of positive and negative results, and some of the outlying results may even achieve statistical significance. However, without additional confirmation from other sources, it is not clear if such results are meaningful. They should be considered secondary to the overall effectiveness rating.

The petition cited the subgroup of two-vehicle rear end crashes with the truck as the striking vehicle in Table 20, *Crash reductions for all crash mechanisms by locality and road type, FARS*, where a 30 percent increase in rear end crashes among ABS tractors is shown for roads that are interstate (high speed) and rural. Here again, the petition cites the unweighted FARS results, and the agency considers the values for the weighted FARS data in Table 23 to be more representative of the highway usage for tractors with ABS. The Table 23 results indicated a non-statistically significant 10 percent increase in two-vehicle rear end crashes with the truck as the striking vehicle.

However, this single data result does not convince the agency that there would be any potential safety benefit to disabling the ABS at speeds greater than 55 mph, allowing drivers to disable the ABS, or removing ABS altogether on heavy vehicles. The aggregate of all fatal crash data shows a trend of tractor ABS reducing fatal crashes. Six of the crash subgroups also reflect reductions in crashes among ABS tractors, and two subgroups show increases among ABS tractors. The petition did not address specifically how ABS could be contributing to increases in fatal rear end crashes with the tractor as the striking vehicle, other than the unsubstantiated indirect effect of motor carriers retaining less qualified drivers to drive ABS-equipped tractors.

Furthermore, the state data results in Table 27, *Reductions in all crash mechanisms, age-restricted State data*, indicated that four states showed a reduction in two-vehicle rear end crashes with the truck as the striking vehicle among the ABS tractors, and three states showed increases in these crashes among the ABS tractors. The median value was a one percent reduction in rear end crashes for the

ABS tractors. The agency concludes that the evaluation does not present clear evidence of an overall increase in rear-end crashes among the ABS tractors, but in fact presents some evidence to the contrary.

In summary, since ABS improves vehicle control and stability and may have improved stopping distance performance during panic braking and under other circumstances, the agency is not able to explain why the crash data show an increase in fatal rear end crashes among the ABS tractors with the truck as the striking vehicle. The state data for all types of crashes involving tractor-trailers show decreases in rear end crashes among the ABS tractors in four states while three states show an increase in rear end crashes among the ABS tractors. The answer may not be related to ABS at all. However, the crash data provided no insight into possible relationships between the data and ABS performance in rear end crashes.

The petition stated that "antilock brakes reduce rollovers by preventing truckers from steering to avoid hitting cars" and alluded that this prevention of steering control caused an increase in rear end crashes with the ABS tractors as the striking vehicle. However, the agency finds that ABS prevents wheel lockup during braking so that steering control is maintained. Therefore, because trucks without ABS would not have steering control when the wheels are locked in a panic braking situation, the agency believes that they would be more likely candidates to strike leading vehicles than tractors equipped with ABS. The agency concludes that the petition incorrectly stated that tractor-trailers equipped with ABS do not have steering control; in fact they have improved steering control compared to tractor-trailers without ABS. We note, however, that if the ABS is not maintained in proper working order, it would not provide the improved steering control as designed. That is one reason that a crash data analysis on the basis of year of vehicle manufacture contains some uncertainty regarding the effectiveness of ABS, as was noted in the report.

The petition stated that drivers operating in rural areas should disable their ABS, while drivers operating in urban areas should not. The agency does not believe that it is valid to apply the subgroup results from the data analysis in reaching conclusions about whether ABS should be disabled on roads because of their locality. ABS operates identically on either type of road. There is no technical justification included in the petition explaining how disabling the ABS would reduce crashes, other

than the concept that more highly skilled drivers would be required to be hired to drive trucks. The agency believes that disabling the ABS on heavy vehicles would result in an increase in crashes, based upon the overall results of the ABS effectiveness study. The only technical justification that the agency is aware of for disabling ABS to increase braking performance is to increase wheel lockup on loose surface roads under severe, off-road conditions. We note that this has already been addressed by vehicle manufacturers without the need to completely disable the ABS.

The petition stated that the agency's study was unable to explain the 21 percent increase in single vehicle trucker fatalities observed in 1997 when ABS was mandated, and speculated that this was not directly caused by ABS itself, but due to an unintended side effect of hiring less qualified drivers since ABS reduces the cost of tire damage from lockup of the truck's wheels during panic stops. The agency has not previously analyzed this yearly increase in truck occupant fatalities, and this issue was not investigated in the agency's ABS effectiveness study. However, we have reviewed the data and reached the following conclusions. Table 10, *Vehicle Occupants Killed in Large Truck Crashes by Vehicle Type, 1975-2008*, of the Federal Motor Carrier Safety Administration report *Large Truck and Bus Crash Facts 2008*,<sup>15</sup> does indicate that total truck occupant fatalities in single-vehicle truck crashes increased from 412 in 1996 to 499 in 1997. The agency attributes this mainly due to year-to-year variability in the data (and to a lesser extent, a five percent increase in truck miles travelled from 1996 to 1997<sup>16</sup>), and does not believe it has any direct or indirect relationship to ABS. The overall trend for truck occupant fatalities (considering truck occupant fatalities in both single-vehicle and multi-vehicle fatal crashes) is a reduction from a range of 950 to 1400 truck occupant fatalities each year in the late 1970's, to a range of 600 to 750 truck occupant fatalities each year in the late 1990's. Considering that total vehicle miles travelled by trucks and the number of registered trucks both increased greatly over that time frame, the rate of truck occupant fatalities per 100 million miles of vehicles travelled

by trucks decreased greatly (see, for example, Table 13, *Combination Truck Fatal Crash Statistics, 1975-2008*, in the *Large Truck and Bus Crash Facts 2008* report).

Furthermore, the effective date of March 1, 1997 for truck tractors to be equipped with ABS only applied to newly-manufactured tractors, which would have only made up a small percentage of the total number of tractors on the road by the end of 1997. We do not have production figures for 1997 tractors but assuming that ABS-equipped tractor production was on the order of 100,000 units manufactured between March 1, 1997 and December 31, 1997, they would have constituted less than six percent of the 1,790,000 registered combination trucks on the road in 1997 (plus an additional small unknown percentage of tractors also on the road that were already voluntarily equipped with ABS prior to March 1, 1997). There were few ABS-equipped tractors on the road in 1997 so any positive (or potentially negative) safety effects of ABS would have been minimal during the first year of the ABS mandate for tractors. Thus the agency cannot attribute any ABS effects to the unusual increase in truck occupant fatalities that occurred in 1997.

As to the premise in the petition that the presence of ABS on heavy vehicles causes less-qualified truck drivers to be retained by motor carriers, when those drivers would otherwise have had their employment terminated due to a tractor jackknife crash that could occur with a non-ABS equipped tractor, the agency has no data, nor did the petitioner provide any, to support this claim. However, we believe that it is unlikely that the presence of ABS on a tractor by itself causes less-qualified truck drivers to be hired or retained. Truck driving has many professional aspects including driver physical qualifications; commercial driver's license requirements, including an air brake endorsement to operate air-braked trucks; and the Federal regulations that govern the loading and securing of cargo, vehicle inspections and maintenance.

The petition stated that the petitioner's own calculations showed that ABS probably saved the lives of 12 percent of truckers in 1998, 16 percent in 1999, and 5 percent in 2000. Here again, the agency believes that while tractors on the road were increasingly equipped with ABS as new vehicles entered service after March 1, 1997, there were still many trucks on the road that were not ABS equipped during those years. The details of the petitioner's analysis were not included

<sup>15</sup> Report No. FMCSRA-RRA-10-043, March 2010, available at: <http://www.fmcsa.dot.gov/facts-research/LTBCF2008/Index-2008LargeTruckandBusCrashFacts.aspx>.

<sup>16</sup> See Table 13: Combination Truck Fatal Crash Statistics, 1975-2008, and Table 14: Single-Unit Truck Crash Statistics, 1975-2008, of the FMCSA 2008 Large Truck and Bus Crash Facts report.

in the petition for review so it was not possible for the agency to determine what assumptions were made as to how many trucks on the road were equipped with ABS. In summary, the petition claims that ABS contributed to reductions in truck occupant fatalities during three years (1998 through 2000) but also contributed to increases in truck occupant fatalities in the first year (1997). The agency study of ABS effectiveness did not specifically address how ABS contributed to truck occupant safety (due to the limited amount of available crash data it only reviewed overall increases and reductions in crashes), but since ABS prevents tractor-trailers from losing control under a variety of circumstances the agency believes it is likely that it has reduced injuries and fatalities among truck occupants.

### V. Agency Decision

The agency has reviewed the petition and is denying it. The agency does not plan to initiate rulemaking or other actions to consider removing ABS from heavy vehicles, to consider requiring an on-off switch for the driver to disable the ABS, or to consider requiring the automatic disabling of ABS at speeds greater than 55 mph. The petitioner has not demonstrated that a safety need exists, which would justify removing or disabling ABS on heavy vehicles, or to vacate FMVSS No. 121 or the ABS requirements contained in it. The safety-need basis of the petition included citations of the agency's study on the effectiveness of ABS on tractor-trailers, and a claim that ABS has allowed less-skilled truck drivers to operate trucks. However, citing a subgroup of FARS data where there was an increase in fatal rear-end crashes among ABS tractors on a particular type of roadway (*i.e.*, high-speed rural highways) does not prove by itself, or provide sufficient evidence, that a safety problem with ABS exists. We note that state data indicated reductions in rear-end crashes for ABS tractors in four states and increases in rear-end crashes for ABS tractors in three states. The crash data were not sufficiently detailed, or consistently conclusive, to present clear evidence that ABS causes an increase in rear-end crashes when it is installed on tractors.

The petition cited a slight increase in overall fatal crashes among ABS tractors, but when those data were weighted to account for the effects of road type and lighting condition, the results indicated an overall reduction in fatal crashes. Although this result was not statistically significant, possibly due to the limited amount of available crash data, the results of the study indicated

that ABS is effective in reducing all crashes, with quite possibly a similar effect on fatal crashes. Beyond these data that were cited in the petition, there was the claim that ABS allows incompetent truck drivers to operate trucks. The agency concludes that while there are variations in levels of experience of truck drivers, they all must meet the same qualifications to drive trucks. We do not believe that ABS somehow allows incompetent drivers to drive trucks. The agency notes that, since the ABS final rule was published in 1995, only one ABS functionality problem has been identified related to some trucks operating in severe, off-road conditions. This problem has been resolved by using a modified ABS algorithm to provide an additional amount of wheel lockup at very low vehicle speeds. The vehicle manufacturers can incorporate this feature as needed by switching to a modified ABS wheel slip algorithm when a front drive axle or interaxle locking system is engaged by the driver. The agency is not aware of any other functionality problems with heavy vehicle ABS that would justify disabling it. We conclude that the petition has not demonstrated that there is a safety need or other technical reason that would justify disabling the ABS at highway speeds under any circumstances.

Issued: September 2, 2011.

**Christopher J. Bonanti,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

**RIN 0648-BB27**

#### **Fisheries Off West Coast States; Notice of Availability for Secretarial Amendment 1 to the Pacific Coast Groundfish Fishery Management Plan**

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

**ACTION:** Availability of Secretarial amendment to a fishery management plan; request for comments.

**SUMMARY:** NMFS has prepared Secretarial Amendment 1 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Secretarial Amendment 1 would modify the FMP to add an

overfished species rebuilding plan for petrale sole and revise existing overfished species rebuilding plans. In addition, Secretarial Amendment 1 would modify the default proxy values for  $F_{MSY}$  and  $B_{MSY}$  as they apply to the flatfish species, including petrale sole; and the harvest control rule policies. Finally the amendment makes non-substantive changes and updates factual information.

**DATES:** Comments on Secretarial Amendment 1 must be received on or before November 8, 2011.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS 2011-0207, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS 2011-0207 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- **Mail:** William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070, *Attn:* Sarah Williams.

- **Fax:** 206-526-6736, *Attn:* Sarah Williams.

**Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Sarah Williams (Northwest Region, NMFS), *phone:* 206-526-4646; *fax:* 206-526-6736; and *e-mail:* [sarah.williams@noaa.gov](mailto:sarah.williams@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

This **Federal Register** document is also accessible via the internet at the Web site of the Office of the Federal Register: <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

### Background

On December 27, 2010, NMFS disapproved Amendment 16–5 to the Pacific Groundfish Fishery Management Plan (FMP) because there was not an adequate National Environmental Policy Act (NEPA) document to base a decision on; consequently, the provisions of 16–5 were implemented pursuant to emergency authority under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and can only be effective 365 days and therefore further action is necessary to extend the provisions of the Amendment through 2012. A Secretarial Amendment is necessary before the expiration of the emergency provisions, because the Council at its June 2011 meeting chose not to resubmit Amendment 16–5 and instead deferred to NMFS to take action to develop and adopt the amendment. Therefore NMFS has prepared Secretarial Amendment 1 which is a modified version of Amendment 16–5.

### Provisions of Secretarial Amendment 1

Secretarial Amendment 1 proposes to establish one new rebuilding plan, modify seven existing plans, modify the default proxy values for  $F_{MSY}$  and  $B_{MSY}$  as they apply to the flatfish species, and the harvest control rule policies.

The new rebuilding plan is needed because petrale sole was declared overfished on February 9, 2010. The following groundfish species currently being managed under rebuilding plans which are proposed to be modified by Secretarial Amendment 1 are: Bocaccio in the Monterey and Conception areas; canary rockfish; cowcod south of Point

Conception to the U.S. Mexico boundary; darkblotched rockfish, Pacific Ocean Perch (POP), widow rockfish, and yelloweye rockfish. The proposed revisions to these existing rebuilding plans are based on new stock assessments or assessment updates and include revisions to the rebuilding parameters such as rebuilding years,  $B_{MSY}$ , and other parameters.

The new flatfish harvest control rule is necessary because sufficient information became available to develop more appropriate values of  $F_{MSY}$  and  $B_{MSY}$ , for all flatfish species. Therefore Secretarial Amendment 1 would revise the proxy  $F_{MSY}$  value for all flatfish species from  $F_{40\%}$  to  $F_{30\%}$  and revises the proxy  $B_{MSY}$  value for all flatfish species from  $B_{40\%}$  to  $B_{25\%}$ . A rebuilding analysis is used to project the status of the overfished resource into the future under a variety of alternative harvest strategies to determine the probability of recovering to  $B_{MSY}$  within a specified time-frame. The overfished threshold would also be revised. The overfished threshold or minimum stock size threshold (MSST) is the estimated biomass level of the stock relative to its unfished biomass (*i.e.*, depletion level), below which the stock is considered overfished. Secretarial Amendment 1 would revise the default proxy MSST for the assessed flatfish species from  $B_{25\%}$  to  $B_{12.5\%}$ , which is 50 percent of the  $B_{MSY}$  target of  $B_{25\%}$ .

Secretarial Amendment 1 would add to the FMP a new harvest control rule referred to as the 25–5 harvest control rule for stocks with a  $B_{MSY}$  proxy of 25 percent ( $B_{25\%}$ ). When the estimated biomass has fallen below  $B_{25\%}$  and when the stock is not managed under an overfished species rebuilding plan, the 25–5 harvest control rule would be applied. Under the 25–5 harvest control rule, a precautionary adjustment is made to the ACL when the stock's depletion drops below  $B_{25\%}$  and at  $B_{5\%}$ ,

the ACL is set to zero. The 25–5 harvest control rule is designed to prevent stocks from becoming overfished.

Finally, Secretarial Amendment 1 would also move the elements of the rebuilding plans into an appendix and update factual information. This revision is being proposed to provide the public and fishery managers easy access to the current rebuilding plans. Consistent with the existing provisions of the FMP, any changes to rebuilding plans will be available for public comment, be thoroughly reviewed in the Council process and by NMFS and be evaluated through analytical documents prepared by the Council and NMFS.

NMFS welcomes comments on the proposed FMP amendment through the end of the comment period. A proposed rule to implement Secretarial Amendment 1 has been submitted for Secretarial review and approval. NMFS expects to publish and request public review and comment on proposed regulations to implement Secretarial Amendment 1, along with the groundfish specifications and management measures for 2012, in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period for the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision.

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

Dated: September 6, 2011.

**James P. Burgess,**

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

[FR Doc. 2011–23125 Filed 9–8–11; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register

Vol. 76, No. 175

Friday, September 9, 2011

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

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

[Docket No. FSIS-2011-0019]

#### National Advisory Committee on Meat and Poultry Inspection

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is announcing, pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on September 22 and 23, 2011, to review and discuss pre-harvest and validation.

All issues will be presented to the full Committee. The Committee will then divide into two subcommittees to discuss the issues. Each subcommittee will provide a report of their comments and recommendations to the full Committee before the meeting concludes on September 23, 2011.

**DATES:** The Committee will hold a public meeting on Thursday, September 22, 2011, from 9 a.m. to 5 p.m. and Friday, September 23, 2011, from 9 a.m. to 3:30 p.m. The subcommittees will hold open meetings during their deliberations and report preparation.

**ADDRESSES:** The meeting site will be posted on the FSIS Web site as soon as the information is available at: <http://www.fsis.usda.gov> under News & Events.

The meeting agenda is available on the Internet at the NACMPI Web site, [http://www.fsis.usda.gov/about\\_fsis/nacmpi/index.asp](http://www.fsis.usda.gov/about_fsis/nacmpi/index.asp).

FSIS welcomes comments through November 1, 2011, on the topics discussed at the NACMPI public meeting. Comments may be submitted by any of the following methods:

*Electronic mail:*  
NACMPI@fsis.usda.gov.

*Mail, including floppy disks or CD-ROMs:* Send to National Advisory Committee on Meat and Poultry Inspection, USDA, FSIS, 14th & Independence Avenue, SW., Room 1180, South Building, Washington, DC 20250.

*Hand- or courier-delivered items:* Deliver to Sally Fernandez at 14th & Independence Avenue, SW., Room 1180-S, Washington, DC. To deliver these items, the building security guard must first call (202) 720-9113.

*Facsimile:* Send to Sally Fernandez, (202) 690-6519. All submissions received must include the Agency name and docket number FSIS-2011-0019.

**FOR FURTHER INFORMATION:** Contact Keith Payne for technical information at (202) 690-6522, or e-mail

[keith.payne@fsis.usda.gov](mailto:keith.payne@fsis.usda.gov), and Sally Fernandez for meeting information at (202) 690-6524, Fax (202) 690-6519, or e-mail [sally.fernandez@fsis.usda.gov](mailto:sally.fernandez@fsis.usda.gov). Persons requiring a sign language interpreter or other special accommodations should notify Sally Fernandez at the numbers above or by e-mail.

#### SUPPLEMENTARY INFORMATION:

##### Background

The NACMPI provides advice and recommendations to the Secretary of Agriculture pertaining to the Federal and State meat and poultry inspection programs, pursuant to sections 7(c), 24, 205, 301(a)(3), 301(a)(4), and 301(c) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3), 661(a)(4), and 661(c)) and sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), 454(a)(4), 454(c), 457(b), and 460(e)).

The Administrator of FSIS is the chairperson of the Committee. Membership of the Committee is drawn from representatives of consumer groups; producers, processors, and marketers from the meat, poultry and egg product industries; State and local government officials; and academia. The current members of the NACMPI are: Patricia K. Buck, Center for Foodborne Illness Research and Prevention; Dr. Fur-Chi Chen, Tennessee State University; Brian R. Covington, Keystone Foods LLC; Dr. Catherine N. Cutter, Pennsylvania State University; Nancy J. Donley, STOP Foodborne Illness; Veneranda Gapud, Fieldale

Farms Corporation; Dr. Craig Henry, Deloitte & Touche LLP; Dr. Cheryl D. Jones, Morehouse School of Medicine; Dr. Heidi Kassenborg, Minnesota Department of Agriculture; Sarah A. Klein, Center for Science in the Public Interest; Dr. Shelton E. Murinda, California State Polytechnic University; Dr. Edna Negrón, University of Puerto Rico; Robert G. Reinhard, Sara Lee Corporation; Dr. Craig E. Shultz, Pennsylvania Department of Agriculture; Stanley A. Stromberg, Oklahoma Department of Agriculture, Food, and Forestry; Dr. John D. Tilden, Michigan Department of Agriculture and Rural Development; Carol L. Tucker-Foreman, Consumer Federation of America; Steve E. Warshawer, Mesa Top Farm; Dr. J. Byron Williams, Mississippi State University; and Leonard W. Winchester, Public Health—Seattle & King County.

The Committee will discuss pre-harvest and validation:

- As was initially discussed at the 2010 NACMPI meeting, exploring and implementing pre-harvest hazard controls is of continuing interest to FSIS. The Agency tracks illnesses caused by the three pathogens, *Salmonella*, *Listeria monocytogenes* (*Lm*), and *E. coli* O157:H7, as part of its corporate “All-Illness” performance measure. Significant progress has been made towards reducing illnesses caused by *Lm* and *E. coli* O157:H7. The same cannot be said about *Salmonella*. *Salmonella* spp., especially multi-drug resistant strains, are being increasingly identified as the cause of human illness from the consumption of ground poultry and beef products. Since 2009, over 37 million pounds of raw ground beef and ground turkey products have been recalled over five separate recalls because they were implicated in salmonellosis outbreaks. FSIS’ goal is to reduce and eliminate pathogens before products reach consumers. This meeting will expand on the pre-harvest discussions begun at the 2010 NACMPI meeting and more thoroughly explore options of preventing hazards from entering establishments on source animals or products.

- FSIS intends to make available updated guidelines concerning validation for the meat and poultry industry. At this meeting, FSIS will make available for comment by the Committee a draft of the updated

guidance. FSIS seeks comment on whether validation, when properly implemented, effectively helps prevent or control relevant hazards.

All interested parties are welcome to attend the meeting and to submit written comments and suggestions concerning issues the Committee will review and discuss.

The comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room, 1400 Independence Avenue, SW., Patriots Plaza 3, Mailstop 3782, Room 163A, Washington, DC 20250-3700, and posted on the Agency's NACMPI Web site, [http://www.fsis.usda.gov/about\\_fsis/nacmpi/index.asp](http://www.fsis.usda.gov/about_fsis/nacmpi/index.asp).

Members of the public will be required to register before entering the meetings. Registration will begin at 8:30 a.m. at the meeting site and the meetings will begin at 9 a.m.

#### USDA Nondiscrimination Statement

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status (Not all prohibited bases apply to all programs).

Persons with disabilities who require alternative means for communication of program information (Braille, large print, and audiotape) should contact USDA's Target Center at (202) 720-2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410 or call (202) 720-5964 (voice and TTY). USDA is an equal opportunity provider and employer.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it online through the FSIS Web page located at [http://www.fsis.usda.gov/regulations\\_&\\_policies/Federal\\_Register\\_Notices/index.asp](http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp).

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is

communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page.

Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. In addition, FSIS offers an electronic mail subscription service, which provides automatic and customized access to selected food safety news and information. This service is available at [http://www.fsis.usda.gov/News\\_&\\_Events/Email\\_Subscription/](http://www.fsis.usda.gov/News_&_Events/Email_Subscription/). Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: September 6, 2011.

**Alfred V. Almanza,**  
*Administrator.*

[FR Doc. 2011-23168 Filed 9-7-11; 4:15 pm]

**BILLING CODE 3410-DM-P**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Notice of Funding Availability: Inviting Applications for the Food for Progress Program; Correction

**ACTION:** Notice; correction.

**SUMMARY:** The Foreign Agricultural Service (FAS) published a notice in the **Federal Register** on July 28, 2011, inviting proposals for the Food for Progress (FFPr) program. The notice stated that eligible applicants could submit proposals through October 26, 2011. This date was incorrect and, by this notice, FAS is correcting the due date to September 30, 2011. Also, this notice serves to inform all applicants of the eligibility requirements, makes minor changes to the application and review process, and provides updates to web links for helpful documents.

**DATES:** Effective: September 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, 1400 Independence Avenue, SW., Stop 1034, Washington, DC 20250; or by phone: (202) 720-4221; or by fax: (202) 690-0251; or by e-mail at: [ppded@fas.usda.gov](mailto:ppded@fas.usda.gov).

**SUPPLEMENTARY INFORMATION:**

### Correction

In the **Federal Register** of July 28, 2011, in FR Doc. 2011-19141, on page 45221, in the first column, correct the **DATES** section to read:

**DATES:** All applications must be received by 5 p.m. Eastern Standard Time on September 30, 2011. Applications received after this date will not be considered. More information can be found at <http://www.fas.usda.gov/food-aid.asp>.

#### I. Funding Opportunity Description

In the **Federal Register** of July 28, 2011, in FR Doc. 2011-19141, on page 45222 in the first column, correct the Web site in "D. Priorities" section to read:

#### D. Priorities

<http://w2.fas.usda.gov/excredits/FoodAid/2012Solicitation/FFPrPriorities.pdf>

In the **Federal Register** of July 28, 2011, in FR Doc. 2011-19141, on page 45222, in the first column, correct the "III. Eligibility Information" section to read:

#### III. Eligibility Information

*Compliance With 2 CFR 25.200*

For eligibility requirements, see the Food for Progress regulations (7 CFR 1499.3) and regulations for compliance to 2 CFR 25.200 and 25.110. All applicants submitting applications for the Food for Progress Program under this notice must comply with 2 CFR 25.200 which requires that all entities that apply for the program and do not have an exemption under 2 CFR 25.110 to:

- (1) Be registered in the Central Contractor Registration (CCR) prior to submitting an application or;
- (2) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency; and
- (3) Provide its Data Universal Numbering System (DUNS) number in each application or plan it submits to the agency.

*Compliance With 2 CFR 25.110*

Any applicant seeking an exemption to 2 CFR 25.200 may request one in accordance with 2 CFR 25.110(2) by sending a written request to: Director, Food Assistance Division, FAS, USDA, 1400 Independence Ave., SW., Stop 1034, Washington, DC 20250; or by e-mail at: [ppded@fas.usda.gov](mailto:ppded@fas.usda.gov).

#### IV. Application and Submission Information

In the **Federal Register** of July 28, 2011, in FR Doc. 2011–19141, on page 45222, in the first column, correct Web site in the second paragraph in “A. Application Content” and “C. Deadline for Submission” section to read:

##### A. Application Content

<http://w2.fas.usda.gov/excredits/FoodAid/2012Solicitation/EvalPolicy.pdf>

##### C. Deadline for Submission

All applications must be received by 5 p.m. Eastern Standard Time, September 30, 2011. Applications received after this date will not be considered.

#### V. Selecting Project Objectives and Results

In the **Federal Register** of July 28, 2011, in FR Doc. 2011–19141, on page 45222, in the second column, correct the “A. Results Framework” and “B. Incorporating Results Into Proposals” sections and correct the Web site in “C. Additional Information” section to read:

##### A. Results Frameworks

In an effort to use scarce resources more strategically, FAS has developed two results frameworks for the FFPr Program. These frameworks correspond to the highest-level objectives that the FFPr Program strives to achieve: (1) Increase agricultural productivity and (2) expand trade of agricultural products (domestically, regionally, and internationally). Applications that do not contribute to one of these highest-level objectives will not be funded in FY 2012. The results frameworks are available on the FAS Web site at: <http://w2.fas.usda.gov/excredits/FoodAid/2012Solicitation/FFPrRFs.pdf>

##### B. Incorporating Results Into Proposals

Applicants must submit a framework that shows the intended results for the proposed project. The project framework submitted by the applicant must be consistent with one of the program-level frameworks that FAS has developed. Applicants may add results to or subtract results from the framework as appropriate but may not modify any of the remaining results. As an attachment to the Introductory Statement, applicants must provide a strategic analysis of how the proposed project will contribute to one of the highest-level results of the FFPr Program frameworks. The strategic analysis should focus on the country-specific context for the project and

discuss key problems or barriers that might affect the applicant’s ability to achieve the highest-level result. The strategic analysis should explain why the application includes results for specific portions of the frameworks and excludes results from others. Applicants should include a discussion of existing strengths in the host country or investments by other donors that justify excluding certain results. The strategic analysis should allow FAS to understand what results are addressed by the applicant with FFPr Program funds and which are addressed by other means. Also, the strategic analysis should allow FAS to make sure the application addresses key problems, barriers, or weaknesses in the country.

##### C. Additional Information

<http://w2.fas.usda.gov/excredits/FoodAid/2012Solicitation/ROMPolicyGuidance.pdf>

#### VI. Application Review Criteria

In the **Federal Register** of July 28, 2011, in FR Doc. 2011–19141, on page 45222, in the third column, add new element (k) under “2. Indicators for Proposed Activities and FFPr Results (23 percent)” section to read:

(k) Does the applicant have a qualified monitoring team?

In the **Federal Register** of July 28, 2011, in FR Doc. 2011–19141, on page 45222, in the third column, correct element (a) of “3. Overall Application Quality (9 percent)” to read:

(a) Does the application contain all of the components and information required by 7 CFR part 1499 and this notice?

In the **Federal Register** of July 28, 2011, in FR Doc. 2011–19141, on page 45223, in the second column, correct the “8. The following factors will reduce a proposal’s score because they reflect negatively on an organization’s ability to successfully implement and complete a grant agreement with USDA.” section to read:

8. The following factors may negatively reflect on an applicant’s ability to successfully implement and complete a grant agreement with FAS. When one or more of these factors applies to an applicant, FAS will consider such factor(s) and may deduct points when evaluating the applicant’s proposal against certain of the criteria outlined above. The presence of one or more of these factors will not automatically preclude the applicant from receiving a grant.

(a) FAS has terminated an agreement with the organization within the past 3

years as a result of a violation of the agreement by the organization.

(b) The organization has failed to pay a single substantial debt, or a number of outstanding debts (not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the organization or, if contested, provided that the organization’s legal and administrative remedies have been exhausted.

(c) The organization has failed to submit to FAS, or has submitted more than 5 business days after the due date, at least two required reports within the past 3 years (unless, prior to the due date for a report, the organization obtained written permission from FAS to submit the report after such date).

(d) The organization has, on at least two occasions within the past 3 years, failed to respond, or responded more than 5 business days late, to an FAS deadline for documents required to close out an agreement.

Dated: August 30, 2011.

**Bruce Quick,**

*Acting Administrator, Foreign Agricultural Service.*

[FR Doc. 2011–23040 Filed 9–8–11; 8:45 am]

**BILLING CODE 3410–10–P**

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

#### Notice of Funding Availability: Inviting Applications for the McGovern-Dole International Food for Education and Child Nutrition Program; Correction

**ACTION:** Notice; correction.

**SUMMARY:** The Foreign Agricultural Service (FAS) published a notice in the **Federal Register** on July 28, 2011, inviting proposals for the McGovern-Dole International Food for Education and Child Nutrition (McGovern-Dole) program. The notice stated that eligible applicants could submit proposals through October 26, 2011. This date was incorrect and, by this notice, FAS is correcting the due date to September 30, 2011. Also, this notice serves to inform all applicants of the eligibility requirements, makes minor changes to the application and review process, and provides updates to web links for helpful documents.

**DATES:** *Effective:* September 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Food Assistance Division, Office of Capacity Building and Development, Foreign Agricultural Service, 1400 Independence Avenue, SW., Stop 1034,

Washington, DC 20250; or by phone: (202) 720-4221; or by fax: (202) 690-0251; or by e-mail at: [ppded@fas.usda.gov](mailto:ppded@fas.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Correction

In the **Federal Register** of July 28, 2011, in FR Doc. 2011-19135, on page 45223, in the first column, correct the **DATES** section to read:

**DATES:** All applications must be received by 5 p.m. Eastern Standard Time on September 30, 2011. Applications received after this date will not be considered. More information can be found at <http://www.fas.usda.gov/food-aid.asp>.

#### I. Funding Opportunity Description

In the **Federal Register** of July 28, 2011, in FR Doc. 2011-19135, on page 45224, in the second column, correct the paragraph "C. Deadline for Submission" and correct the Web site in "D. Priorities" section to read:

*C. Deadline for Submission:* All applications must be received by 5 p.m. Eastern Standard Time, September 30, 2011. Applications received after this date will not be considered.

*D. Priorities:* <http://w2.fas.usda.gov/excredits/FoodAid/2012Solicitation/MGDPriorities.pdf>.

#### III. Eligibility Information

In the **Federal Register** of July 28, 2011, in FR Doc. 2011-19135, on page 45224, in the first column, correct the "III. Eligibility Information" section to read:

##### Compliance With 2 CFR 25.200

For eligibility requirements, see the McGovern-Dole Program regulations (7 CFR 1599.3) and regulations for compliance to 2 CFR 25.200 and 25.110. All applicants submitting applications for the McGovern-Dole Program under this notice must comply with 2 CFR 25.200 which requires that all entities that apply for the program and do not have an exemption under 2 CFR 25.110 to:

- (1) Be registered in the Central Contractor Registration (CCR) prior to submitting an application or;
- (2) Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application or plan under consideration by an agency; and
- (3) Provide its Data Universal Numbering System (DUNS) number in each application or plan it submits to the agency.

##### Compliance with 2 CFR 25.110

Any applicant seeking an exemption to 2 CFR 25.200 may request one in accordance with 2 CFR 25.110(2) by sending a written request to: Director, Food Assistance Division, FAS, USDA, 1400 Independence Ave., SW., Stop 1034, Washington, DC 20250; or by, e-mail at: [ppded@fas.usda.gov](mailto:ppded@fas.usda.gov).

#### IV. Application and Submission Information

In the **Federal Register** of July 28, 2011, in FR Doc. 2011-19135, on page 45224, in the first column, correct Web site in the second paragraph in "A. Application Content" and "C. Deadline for Submission" section to read:

*A. Application Content:* <http://www.fas.usda.gov/excredits/FoodAid/FFE/EvalPolicy.pdf>

*C. Deadline for Submission:* All applications must be received by 5 p.m. Eastern Standard Time, September 30, 2011. Applications received after this date will not be considered.

#### V. Selecting Project Objectives and Results

In the **Federal Register** of July 28, 2011, in FR Doc. 2011-19135, on page 45224, in the second column, correct the "A. Results Framework" and "B. Incorporating Results Into Proposals" sections and correct the Web site in "C. Additional Information" section to read:

*A. Results Frameworks:* In an effort to use scarce resources more strategically, FAS has developed two results frameworks for the McGovern-Dole Program. Applicants must tailor their proposals and prepare a framework based on the Literacy Results Framework. The highest-level result of this framework is "Improved Literacy of School-aged Children." Proposals that do not contribute to this highest-level objective will not be funded in FY 2012. The Good Health and Dietary Practices Results Framework shows "Increased Use of Good Health and Dietary Practices" as its highest result. This result contributes to one of the lower-level results in the Literacy Results Framework. Applicants may also, but are not required to, tailor their proposals and prepare a framework based on the Good Health and Dietary Practices Results Framework. FAS considers that it is not sufficient for a proposal to improve literacy; it is equally important to sustain the improvements made to literacy, attendance, and enrollment. Therefore, applications must also include a plan to graduate project activities to the host country that consists of specific activities linked to specific results in the framework(s) and

timelines for achieving them. A matrix of possible activities that support sustainability as well as the results frameworks are available on the FAS Web site at: <http://w2.fas.usda.gov/excredits/FoodAid/2012Solicitation/MGDRFs.pdf>.

*B. Incorporating Results Into Proposals:* Applicants must submit a framework(s) that shows the intended results for the proposed project. The primary project framework submitted by the applicant must be consistent with the program-level Literacy Results framework that FAS has developed. Applicants may add results to or subtract results from this framework as appropriate but may not modify any of the remaining results. As an attachment to the Introductory Statement, applicants must provide a strategic analysis of how the proposed project will contribute to the highest-level result of the McGovern-Dole Program Literacy Results framework; *i.e.*, improved literacy of school-aged children, as well as how graduation will be achieved. The strategic analysis should focus on the country-specific context for the project and discuss key problems or barriers that might affect the applicant's ability to achieve the highest-level result. The strategic analysis should explain why the application includes results for specific portions of the Literacy Results framework and excludes results from others. Applicants should include a discussion of existing strengths in the host country or investments by other donors that justify excluding certain results. The strategic analysis should allow FAS to understand which results the applicant expects to achieve with McGovern-Dole Program funds and which it expects to be achieved by other means. In addition, the strategic analysis should enable FAS to make sure that the application addresses key problems, barriers, or weaknesses in the country.

*C. Additional Information:* <http://w2.fas.usda.gov/excredits/FoodAid/2012Solicitation/ROMPolicyGuidance.pdf>

#### VI. Application Review Criteria

In the **Federal Register** of July 28, 2011, in FR Doc. 2011-19135, on page 45225, in the first column, add new element (e) under "3. Commodity and Funds Appropriateness and Management" section to read:

(e) Does the applicant provide a clear explanation of how the requested commodities will meet the nutritional needs and deficiencies of the intended beneficiaries?

In the **Federal Register** of July 28, 2011, in FR Doc. 2011-19135, on page 45225, in the first column, correct the "6. Literacy (20 percent) including:" caption to read:

6. Framework Alignment (20 percent) including:

In the **Federal Register** of July 28, 2011, in FR Doc. 2011-19135, on page 45225, in the first column, correct the "9. The following factors will reduce FAS's evaluation of the application because they negatively reflect on an organization's ability to successfully implement and complete a grant agreement with USDA:" section to read:

9. The following factors may negatively reflect on an applicant's ability to successfully implement and complete a grant agreement with FAS. When one or more of these factors applies to an applicant, FAS will consider such factor(s) and may deduct points when evaluating the applicant's proposal against certain of the criteria outlined above. The presence of one or more of these factors will not automatically preclude the applicant from receiving a grant.

(a) FAS has terminated an agreement with the organization within the past 3 years as a result of a violation of the agreement by the organization.

(b) The organization has failed to pay a single substantial debt, or a number of outstanding debts (not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the organization or, if contested, provided that the organization's legal and administrative remedies have been exhausted.

(c) The organization has failed to submit to FAS, or has submitted more than 5 business days after the due date, at least two required reports within the past 3 years (unless, prior to the due date for a report, the organization obtained written permission from FAS to submit the report after such date).

(d) The organization has, on at least two occasions within the past 3 years, failed to respond, or responded more than 5 business days late, to an FAS deadline for documents required to close out an agreement.

Dated: August 30, 2011.

**Bruce Quick,**

*Acting Administrator, Foreign Agricultural Service.*

[FR Doc. 2011-23052 Filed 9-8-11; 8:45 am]

**BILLING CODE 3410-10-P**

## **BROADCASTING BOARD OF GOVERNORS**

### **Sunshine Act Meeting**

**DATE AND TIME:** Thursday, September 15, 2011. 9:45 a.m.

**PLACE:** Broadcasting Board of Governors, Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

**SUBJECT:** Notice of Closed Meeting of the Broadcasting Board of Governors.

**SUMMARY:** At the time and location listed above, the Broadcasting Board of Governors (BBG) will conduct a meeting closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) because, according to Office of Management and Budget Circular A-11, Section 36, public knowledge of a draft Presidential budget could lead to frustration of a proposed agency action. The BBG will receive and consider staff recommendations regarding the Fiscal Year 2013 budget.

#### **MEMBERS VOTE TO CLOSE THE MEETING:**

Walter Isaacson—Yes  
Victor Ashe—No  
Susan McCue—Yes  
Michael Lynton—Yes  
Michael Meehan—Yes  
Dennis Mulhaupt—Yes  
Dana Perino—Did not vote  
S. Enders Wimbush—Yes  
Ann Stock, Acting Under Secretary for Public Diplomacy and Public Affairs—Yes

#### **TO BE IN ATTENDANCE:**

Walter Isaacson, BBG Chairman  
Victor Ashe, BBG Member  
Susan McCue, BBG Member (via telephone)  
Michael Meehan, BBG Member  
Dennis Mulhaupt, BBG Member  
Dana Perino, BBG Member  
Richard Lobo, Director of the International Broadcasting Bureau  
Jeffrey Trimble, BBG Executive Director  
Maryjean Buhler, BBG Chief Financial Officer  
Paul Kollmer-Dorsey, BBG Deputy General Counsel and Board Secretary  
Lynne Weil, Senior Advisor to the Under Secretary for Public Diplomacy and Public Affairs  
Oanh Tran, BBG Special Projects Officer

#### **FOR FURTHER INFORMATION CONTACT:**

Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203-4545.

**Paul Kollmer-Dorsey,**

*Deputy General Counsel and Board Secretary.*

[FR Doc. 2011-23212 Filed 9-7-11; 4:15 pm]

**BILLING CODE 8610-01-P**

## **BROADCASTING BOARD OF GOVERNORS**

### **Sunshine Act Meeting**

**DATE AND TIME:** Thursday, September 15, 2011, 2 p.m.

**PLACE:** Broadcasting Board of Governors, VOA Briefing Room (Room 1528-A), 330 Independence Ave., SW., Washington, DC 20237.

**SUBJECT:** Notice of Meeting of the Broadcasting Board of Governors.

**SUMMARY:** The Broadcasting Board of Governors (BBG) will be meeting at the time and location listed above. The BBG will receive and consider recommendations regarding a proposed new strategic plan and the revision of Agency grant agreements. The BBG will receive reports from: The BBG's Strategy and Budget Committee and Governance Committee; the International Broadcasting Bureau Director; and the Voice of America, the Office of Cuba Broadcasting, Radio Free Europe/Radio Liberty, Radio Free Asia, and the Middle East Broadcasting Networks regarding programming coverage updates. The BBG will also receive an update on digital innovations. The meeting is open to public observation via streamed Webcast, both live and on-demand, on the BBG's public Web site at <http://www.bbg.gov>.

#### **CONTACT PERSON FOR MORE INFORMATION:**

Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203-4545.

**Paul Kollmer-Dorsey,**

*Deputy General Counsel and Board Secretary.*

[FR Doc. 2011-23222 Filed 9-7-11; 4:15 pm]

**BILLING CODE 8610-01-P**

## **COMMISSION ON CIVIL RIGHTS**

### **Agenda and Notice of Public Meeting of the Louisiana Advisory Committee**

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Louisiana Advisory Committee to the Commission will convene by conference call at 1 p.m. and adjourn at approximately 3 p.m. on Friday, September 30, 2011. The purpose of this meeting is to continue planning the Committee's civil rights project. Review and discuss information collected at the SAC's public briefing meeting on May 10, 2011.

This meeting is available to the public through the following toll-free call-in

number: (866) 393-8073, conference call access code number \*3046445\*. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4:00 p.m. on September 22, 2011.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by October 30, 2011. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to [frobinson@usccr.gov](mailto:frobinson@usccr.gov). Records generated by this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the Central Regional Office at the above e-mail or street address.

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

Dated in Washington, DC, September 6, 2011.

**Peter Minarik,**

*Acting Chief, Regional Programs  
Coordination Unit.*

[FR Doc. 2011-23063 Filed 9-8-11; 8:45 am]

BILLING CODE 6335-01-P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New Mexico Advisory Committee to the Commission will be held at the

Albuquerque Hispano Chamber of Commerce, Lockheed Martin Board Room, 1309 Fourth Street, SW., Albuquerque, NM 87102 and will convene at 2 p.m. on Thursday, September 29, 2011. The purpose of the meeting is to discuss civil rights issues in the state and select a project topic.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by October 31, 2011. The address is Rocky Mountain Regional Office, 999-18th Street, Suite 1380S, Denver, CO 80202. Comments may be e-mailed to [ebohor@usccr.gov](mailto:ebohor@usccr.gov). Records generated by this meeting may be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, <http://www.usccr.gov>, or to contact the Rocky Mountain Regional Office at the above e-mail or street address.

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

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

Dated in Washington, DC, September 6, 2011.

**Peter Minarik,**

*Acting Chief, Regional Programs  
Coordination Unit.*

[FR Doc. 2011-23064 Filed 9-8-11; 8:45 am]

BILLING CODE 6335-01-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-552-801]

#### Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Preliminary Results and Partial Rescission of the Seventh Antidumping Duty Administrative Review

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

**SUMMARY:** The Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on certain frozen fish fillets from the Socialist

Republic of Vietnam ("Vietnam").<sup>1</sup> The Department has preliminarily determined that QVD Food Company, Ltd. ("QVD") sold subject merchandise at less than normal value ("NV") and that Vinh Hoan Corporation ("Vinh Hoan")<sup>2</sup> did not sell merchandise below NV during the period of review ("POR"), August 1, 2009, through July 31, 2010.

**DATES:** *Effective Date:* September 9, 2011.

#### FOR FURTHER INFORMATION CONTACT:

Alexis Polovina or Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3927 or (202) 482-2243, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Case History

On August 2, 2010, the Department published a notice of an opportunity to request an administrative review of the *Order*.<sup>3</sup> The Department received review requests for 26 companies from Petitioners<sup>4</sup> and certain individual companies.

On September 22, 2010, the Department initiated the August 1, 2009, through July 31, 2010, antidumping duty administrative review on certain frozen fish fillets from Vietnam.<sup>5</sup> The Department initiated this review with respect to 26 companies.<sup>6</sup>

<sup>1</sup> See *Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) ("Order").

<sup>2</sup> The Department is treating Vinh Hoan, Van Duc Food Export Joint Company ("Van Duc") and Van Duc Tien Giang ("VD TG") as a single entity. Section 19 CFR 351.401(f) of the Department's regulations define single entities as those affiliated producers who have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production. For further analysis, see *Affiliations and Collapsing section below*.

<sup>3</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 75 FR 45094 (August 2, 2010).

<sup>4</sup> This includes: Catfish Farmers of America and individual U.S. catfish processors, America's Catch, Consolidated Catfish Companies, LLC dba Country Select Catfish, Delta Pride Catfish, Inc., Harvest Select Catfish, Inc., Heartland Catfish Company, Pride of the Pond, and Simmons Farm Raised Catfish, Inc. ("Petitioners").

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation*, 75 FR 60076 (September 29, 2010) ("Initiation").

<sup>6</sup> This includes: (1) An Giang Fisheries Import and Export Joint Stock Company (aka Agifish or AnGiang Fisheries Import and Export) ("Agifish"); (2) Anvifish Co., Ltd.; (3) Anvifish Joint Stock

On January 7, 2011, the Department issued a letter to all interested parties informing them of its decision to select the two largest exporters of subject merchandise during the POR, based on U.S. Customs and Borders Protection ("CBP") import data, Vinh Hoan and QVD, ("Respondents"), as mandatory respondents.<sup>7</sup>

On January 7, 2011, the Department issued the antidumping questionnaire. Between January 28, 2011, and July 13, 2011, Vinh Hoan and QVD submitted responses to the original and supplemental sections A, C, and D questionnaires.

On March 29, 2011, and May 19, 2011, the Department extended the deadlines for parties to file surrogate country comments and surrogate value data.<sup>8</sup> Between May 10, 2011, and July 29, 2011, the Department received surrogate country and value comments

and rebuttal comments from interested parties.

On April 13, 2011, the Department published in the **Federal Register** a notice fully extending the time period for issuing the preliminary results in these reviews to August 31, 2011.<sup>9</sup>

On August 4, 2011, the Department partially rescinded the administrative review with respect to five companies.<sup>10</sup> Therefore, 19 companies remain in this administrative review: (1) Anvifish Co., Ltd.; (2) Anvifish JSC; (3) Acomfish; (4) Bien Dong Seafood; (5) Binh An; (6) CASEAMEX; (7) CL Fish; (8) ESS LLC; <sup>11</sup> (9) East Sea Seafoods Joint Venture Co., Ltd.; (10) Hiep Thanh; (11) IDI; (12) NTSF; (13) QVD; (14) QVD DT; (15) South Vina; (16) THIMACO; (17) Thuan Hung; (18) Vinh Hoan; <sup>12</sup> and (19) Vinh Quang.

#### Request for Revocation

On April 20, 2011, Vinh Hoan and QVD requested revocation on the basis that they did not sell subject merchandise for less than NV consecutively for three years. However, pursuant to 19 CFR 351.222(e), the request for revocation must be made during the anniversary month. The anniversary month for this review was August 2010, making these requests 232 days late. On May 4, 2011, Petitioners submitted comments urging the Department to reject these requests as untimely. On May 19, 2011, Vinh Hoan and QVD responded to Petitioners' comments. As these requests were made 232 days after the anniversary month, the Department is not considering Vinh Hoan and QVD's revocation requests.

#### Vietnam-Wide Entity

As discussed above, in this administrative review we limited the selection of respondents to be individually examined using CBP import data.<sup>13</sup> In this case, we made available to the companies who were not selected the separate rates

application and certification, which were put on the Department's Web site.<sup>14</sup> Because some parties for which a review was requested did not apply for separate rate status, the Vietnam-Wide entity is considered to be under review in this segment of the proceeding.

#### Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), the Department has preliminarily determined that four companies made no shipments of subject merchandise during the POR of this administrative review, (1) IDI; (2) CL-Fish; (3) THIMACO; and (4) NTSF. On October 5, 2010, the Department received no-shipment certifications from IDI, CL-Fish, THIMACO, and NTSF. However, according to entry statistics obtained from CBP, and placed on the record, IDI and THIMACO had an entry of subject merchandise during the POR.

The Department issued no-shipment inquiries to CBP requesting any information for merchandise manufactured and shipped by either IDI or THIMACO during the POR. The Department did receive a response from CBP regarding THIMACO, however, both of IDI and THIMACO's entries have already been reviewed in the recently completed new shipper reviews.<sup>15</sup> We confirmed the entries CBP identified were the same as those reviewed in the 09-10 NSR. Consequently, we are preliminarily rescinding the reviews with respect to IDI, CL-Fish, THIMACO, and NTSF.

#### Separate Rates

A designation as a non-market economy ("NME") remains in effect until it is revoked by the Department. See section 771(18)(C) of the Tariff Act of 1930, as amended ("Act"). Accordingly, there is a rebuttable presumption that all companies within Vietnam are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in an NME country under the test

Company (aka Anvifish JSC); (4) Asia Commerce Fisheries Joint Stock Company ("Acomfish JSC") ("Acomfish"); (5) Bien Dong Seafood Co., Ltd. ("Bien Dong Seafood"); (6) Binh An Seafood Joint Stock Co. ("Binh An"); (7) Cadovimex II Seafood Import-Export and Processing Joint Stock Company; (aka Cadovimex II) ("Cadovimex II"); (8) Cantho Import-Export Seafood Joint Stock Company ("CASEAMEX"); (9) CUU Long Fish Joint Stock Company (aka CL-Fish) ("CL Fish"); (10) East Sea Seafoods Limited Liability Company (formerly known as East Sea Seafoods Joint Venture Co., Ltd.) (ESS LLC); (11) East Sea Seafoods Joint Venture Co., Ltd.; (12) East Sea Seafoods LLC; (13) Hiep Thanh Seafood Joint Stock Co. ("Hiep Thanh"); (14) International Development & Investment Corporation (also known as IDI) ("IDI"); (15) Nam Viet Company Limited (aka NAVICO) ("Nam Viet"); (16) Nam Viet Corporation; (17) NTSF Seafoods Joint Stock Company ("NTSF"); (18) QVD Food Company, Ltd. ("QVD"); (19) QVD Dong Thap Food Co., Ltd. ("QVD DT"); (20) Saigon-Mekong Fishery Co., Ltd. (aka SAMEFICO) ("SAMEFICO"); (21) Southern Fishery Industries Company, Ltd. (aka South Vina) ("South Vina"); (22) Thien Ma Seafood Co., Ltd. ("THIMACO"); (23) Thuan Hung Co., Ltd. (aka THUFI) ("Thuan Hung"); (24) Vinh Hoan Corporation ("Vinh Hoan"); (25) Vinh Hoan Company, Ltd.; and (26) Vinh Quang Fisheries Corporation ("Vinh Quang").

<sup>7</sup> See Memorandum to the File from Javier Barrientos, Senior Analyst, through Alex Villanueva, Program Manager, Antidumping Duty Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam ("Vietnam"): Selection of Respondents for Individual Review ("First Respondent Selection Memo"), dated January 7, 2011.

<sup>8</sup> See Memorandum to the File, from Alexis Polovina, Case Analyst, through Matthew Renkey, Acting Program Manager, Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension Request for Surrogate Country Selection Comments and Surrogate Value Submissions, dated March 29, 2011, and Memorandum to the File, from Alexis Polovina, Case Analyst, through Matthew Renkey, Acting Program Manager, Administrative Review of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Extension Request for Rebuttal Surrogate Country Selection Comments and Surrogate Value Submissions, dated May 19, 2011.

<sup>9</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Extension of Time Limit for Preliminary Results of the Seventh Antidumping Duty Administrative Review*, 76 FR 20626 (April 13, 2011).

<sup>10</sup> These companies include: (1) Agifish; (2) Nam Viet; (3) Nam Viet Corporation; (4) SAMEFICO; and (5) Cadovimex II. See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Notice of Partial Rescission of the Seventh Antidumping Duty Administrative Review*, 76 FR 47149 (August 4, 2011).

<sup>11</sup> We note that the initiation notice contained both ESS LLC and East Sea Seafoods LLC, however, they appear to be iterations of the same name.

<sup>12</sup> We note that the initiation notice contained both Vinh Hoan Company, Ltd. and Vinh Hoan Corporation. However, they are the same company. Prior to August 2007, Vinh Hoan Corporation was known as Vinh Hoan Company, Ltd.

<sup>13</sup> See Respondent Selection Memo.

<sup>14</sup> See *Initiation*.

<sup>15</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty New Shipper Reviews*, 76 FR 35403 (June 17, 2011) ("09-10 NSR").

established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (“*Sparklers*”), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (“*Silicon Carbide*”).

#### A. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments decentralizing control of companies.

Although the Department has previously assigned a separate rate to all of the companies eligible for a separate rate in this review, it is the Department's policy to evaluate separate rates questionnaire responses each time a respondent makes a separate rates claim, regardless of whether the respondent received a separate rate in the past.<sup>16</sup>

In this review, in addition to the two mandatory respondents, Anvifish Co., Ltd., Anvifish JSC, Acomfish, Bien Dong Seafood, Binh An, CASEAMEX, ESS LLC, East Sea Seafoods Joint Venture Co., Ltd., Hiep Thanh, South Vina, and Vinh Quang, submitted complete separate rate certifications and applications. The evidence submitted by these companies includes government laws and regulations on corporate ownership, business licenses, and narrative information regarding the companies' operations and selection of management. The evidence provided by these companies supports a finding of a *de jure* absence of government control over their export activities, based on: (1) An absence of restrictive stipulations associated with the exporter's business license; and (2) the legal authority on the record decentralizing control over the respondents.

#### B. Absence of De Facto Control

The absence of *de facto* government control over exports is based on whether the respondent: (1) Sets its own export prices independent of the government and other exporters; (2) retains the proceeds from its export sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) has the authority to negotiate

and sign contracts and other agreements; and (4) has autonomy from the government regarding the selection of management.<sup>17</sup>

In this review, in addition to the two mandatory respondents, Anvifish Co., Ltd., Anvifish JSC, Acomfish, Bien Dong Seafood, Binh An, CASEAMEX, ESS LLC, East Sea Seafoods Joint Venture Co., Ltd., Hiep Thanh, South Vina, and Vinh Quang, submitted evidence indicating an absence of *de facto* government control over their export activities. Specifically, this evidence indicates that: (1) Each company sets its own export prices independent of the government and without the approval of a government authority; (2) each company retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) each company has a general manager, branch manager or division manager with the authority to negotiate and bind the company in an agreement; (4) the general managers are selected by the board of directors or company employees, and the general managers appoint the deputy managers and the manager of each department; and (5) there is no restriction on any of the companies' use of export revenues. Therefore, the Department preliminarily finds that in this review, Vinh Hoan, QVD, Anvifish Co., Ltd., Anvifish JSC, Acomfish, Bien Dong Seafood, Binh An, CASEAMEX, ESS LLC, East Sea Seafoods Joint Venture Co., Ltd., Hiep Thanh, South Vina, and Vinh Quang, have established that they qualify for separate rates under the criteria established by *Silicon Carbide* and *Sparklers*.

#### Rate for Non-Selected Companies

In this review there are 11 companies that are not presently selected for individual examination.<sup>18</sup> The statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department limited its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally we have looked to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents we

did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using any zero or *de minimis* margins or any margins based entirely on facts available. Accordingly, the Department's usual practice has been to average the rates for the selected companies, excluding zero, *de minimis* and rates based entirely on facts available.<sup>19</sup> Section 735(c)(5)(B) of the Act also provides that, where all margins are zero, *de minimis*, or based entirely on facts available, we may use “any reasonable method” for assigning the rate to non-selected respondents, including “averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.”

For this administrative review, the Department has calculated positive margins for one mandatory respondent, QVD. Accordingly, consistent with our practice for these preliminary results, the Department has preliminarily established a margin for the separate rate respondents based on the rate calculated for one of the mandatory respondents, QVD. The rate established for the separate rate respondents is a per-unit rate of \$0.56 dollars per kilogram. Entities receiving this rate are identified by name in the “Preliminary Results of Review” section of this notice.

#### Scope of the Order

The product covered by the order is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti*, *Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact (“regular” fillets), boneless fillets with the belly flap removed (“shank” fillets), boneless shank fillets cut into strips (“fillet strips/finger”), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-

<sup>16</sup> See *Manganese Metal from the People's Republic of China, Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440 (March 13, 1998).

<sup>17</sup> See *Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995).

<sup>18</sup> These companies include: (1) Anvifish Co., Ltd.; (2) Anvifish JSC; (3) Acomfish; (4) Bien Dong Seafood; (5) Binh An; (6) CASEAMEX; (7) ESS LLC; (8) East Sea Seafoods Joint Venture Co., Ltd.; (9) Hiep Thanh; (10) South Vina; and (11) Vinh Quang.

<sup>19</sup> See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Review in Part*, 73 FR 52823, 52824 (September 11, 2008) and accompanying Issues and Decision Memorandum at Comment 16.

section cuts of dressed fish. Nuggets are the belly-flaps. The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 1604.19.4000, 1604.19.5000, 0305.59.4000, 0304.29.6033 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the Harmonized Tariff Schedule of the United States ("HTSUS").<sup>20</sup> The order covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

### Non-Market Economy Country Status

In every case conducted by the Department involving Vietnam, Vietnam has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.<sup>21</sup> None of the parties to this proceeding have contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

### Surrogate Country and Surrogate Values

On February 1, 2011, the Department sent interested parties a letter setting a deadline to submit comments on surrogate country selection and information pertaining to valuing factors of production ("FOPs"). Between May 10, 2011, and July 29, 2011, Vinh Hoan, QVD, the Vietnam Association of Seafood Exporters and Producers ("VASEP"), and Petitioners submitted surrogate country comments, surrogate value data, and rebuttal comments.

### Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's FOPs, valued in a surrogate

market economy ("ME") country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.

Regarding economic comparability, Respondents argue that the Philippines is not economically comparable to Vietnam. However, as explained in our list of surrogate countries, the Department considers Bangladesh, the Philippines, Indonesia, India, Sri Lanka, and Pakistan all comparable to Vietnam in terms of economic development.<sup>22</sup> Section 773(c)(4)(A) of the Act is silent with respect to how the Department may determine that a country is economically comparable to the NME country. As such, the Department's long standing practice has been to identify those countries which are at a level of economic development similar to Vietnam in terms of gross national income ("GNI") data available in the World Development Report provided by the World Bank.<sup>23</sup> In this case, the GNI available are based on data published in 2010. The GNI levels for the list of potential surrogate countries ranged from \$520 to \$2,010.<sup>24</sup> The Department is satisfied that they are equally comparable in terms of economic development and serve as an adequate group to consider when gathering surrogate value data. Further, providing parties with a range of countries with varying GNIs is reasonable given that any alternative would require a complicated analysis of factors affecting the relative GNI differences between Vietnam and other countries which is not required by the statute. In contrast, by identifying countries that are economically comparable to Vietnam based on GNI, the Department provides parties with a predictable practice which is also reasonable and consistent with the statutory requirements. Identifying potential surrogate countries

based on GNI data has been affirmed by the Court of International Trade ("CIT").<sup>25</sup>

As we have stated in prior administrative review determinations, there is no world production data of *Pangasius* frozen fish fillets available on the record with which the Department can identify producers of identical merchandise. Therefore, absent world production data, the Department's practice is to compare, wherever possible, data for comparable merchandise and establish whether any economically comparable country was a significant producer.<sup>26</sup> In this case, we have determined to use the broader category of frozen fish fillets data as the basis for identifying producers of comparable merchandise. Therefore, consistent with cases that have similar circumstances as are present here, we obtained export data for each country identified in the surrogate country list. Based on 2008 export data from the United Nations Food and Agriculture Organization,<sup>27</sup> Bangladesh, the Philippines, Indonesia, India, Sri Lanka, and Pakistan are exporters of frozen fish fillets and, thus, significant producers.

After applying the first two selection criteria, if more than one country remains, it is the Department's practice to select an appropriate surrogate country based on the availability and reliability of data from those countries.<sup>28</sup> In this case, the whole fish input is the most significant input because it accounts for the largest percentage of NV as fish fillets are produced directly from the whole live fish. As such, we must consider the availability and reliability of the surrogate values for whole fish on the record. This record does not contain any data for whole live fish from Sri Lanka or Pakistan. Therefore, these countries will not be considered for primary surrogate country purposes at this time. However, this record does contain whole fish surrogate value data from Bangladesh, the Philippines, Indonesia, and India.

<sup>20</sup> Until July 1, 2004, these products were classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the HTSUS. Until February 1, 2007, these products were classifiable under tariff article code 0304.20.60.33 (Frozen Fish Fillets of the species *Pangasius* including basa and tra) of the HTSUS.

<sup>21</sup> See Notice of Final Results of Administrative Review: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam, 73 FR 15479 (March 17, 2008) and accompanying Issues and Decision Memorandum ("3rd AR Final Results").

<sup>22</sup> See Memorandum from Carole Showers, Director, Office of Policy, to Alex Villanueva, Program Manager, AD/CVD Enforcement, Office 9: Request for a list of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Frozen Fish Fillets ("Fish Fillets") from the Socialist Republic of Vietnam, dated January 31, 2011 ("Surrogate Country List").

<sup>23</sup> See *Pure Magnesium from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review of the Antidumping Duty Order*, 75 FR 80791 (December 23, 2010) and accompanying Issues and Decision Memorandum at Comment 4.

<sup>24</sup> See Surrogate Country List.

<sup>25</sup> See *Fujian Lianfu Forestry Co., Ltd. v. United States*, 638 F. Supp. 2d 1325 (Ct. Int'l Trade 2009).

<sup>26</sup> See *Certain Magnesia Carbon Bricks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 75 FR 11847 (March 12, 2010), unchanged for the final determination, 75 FR 45468 (August 2, 2010).

<sup>27</sup> See Memorandum to the File through Matthew Renkey, Acting Program Manager, Office 9, from Alexis Polovina, Case Analyst, dated August 31, 2011 ("Surrogate Value Memo") at Attachment I.

<sup>28</sup> See Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004).

### Bangladesh

VASEP placed the Bangladeshi Department of Agriculture Marketing, Ministry of Agriculture, pangas price data (“DAM data”) on the record.<sup>29</sup> The Department issued a letter to the Bangladeshi Department of Agriculture Marketing, requesting among other things, more information regarding the publicly availability of the DAM data.<sup>30</sup> We have yet to receive a response from the Bangladeshi Department of Agriculture Marketing.

### Philippines

Petitioners placed the *Fisheries Statistics of the Philippines, 2007–2009*, published by the Philippines Bureau of Agricultural Statistics, Department of Agriculture (“*Fisheries Statistics*”), on the record.<sup>31</sup> The Department issued a letter to the Philippines Bureau of Agricultural Statistics (“BAS”), requesting among other things, more information regarding the publicly availability of the *Fisheries Statistics*.<sup>32</sup> We received a response from the Philippines BAS, which we placed on the record.<sup>33</sup>

### Indonesia

The Department placed Indonesian price and quantity data from the United Nations Food and Agriculture Organization’s Fisheries Global Information System (“FIGIS data”).<sup>34</sup>

### India

VASEP placed the Present Status of the Pangasius, Pangasianodon-Hypophthalmus Farming in Andhra

Pradesh, India (“Pangasius Study”), on the record.<sup>35</sup>

### Analysis

When evaluating surrogate value data, the Department considers several factors including whether the surrogate value is publicly available, contemporaneous with the POR, represents a broad market average, from an approved surrogate country, tax and duty-exclusive, and specific to the input. There is no hierarchy; it is the Department’s practice to carefully consider the available evidence in light of the particular facts of each industry when undertaking its analysis.

First, we note that the Pangasius Study regarding India is a “first attempt”<sup>36</sup> study undertaken by a professor with estimated production quantities. When compared to the other sources on the record, we find that the Pangasius Study is not an appropriate source because there is uncertainty regarding public availability and broad market average. There is no information on how the study was obtained, or on the data collection methods, making it difficult to determine public availability or if the study represents a broad market average.<sup>37</sup> Furthermore, the study appears to be based on estimates for one Indian state.<sup>38</sup> Therefore, we find that the Pangasius Study is not the most suitable source on the record for purposes of these preliminary results.

We note that both Petitioners and Respondents claim that both Bangladesh and the Philippines’ *Pangasius* industries receive government assistance, in the forms of techno-farms and education, and should therefore, be disregarded as surrogate countries. However, the Department’s practice is to exclude data from consideration only when the record evidence demonstrates that the alleged subsidy programs constituted countervailable subsidies.<sup>39</sup> In this case, as we have found in prior reviews, there is no record evidence that the subsidies alleged by Petitioners and

Respondents constitute countervailing subsidies.

With respect to the DAM data, *Fisheries Statistics*, and the FIGIS data, we note that all are from approved surrogate countries, sufficiently specific to the input in question, tax and duty exclusive, and contemporaneous with the POR.

As noted above, Petitioners have raised concerns regarding the public availability of the DAM data. The Department issued letters to both the Bangladeshi Department of Agriculture Marketing and the Philippines Bureau of Agricultural Statistics, requesting among other things, more information regarding the publicly availability of both the DAM data and the *Fisheries Statistics*.<sup>40</sup> While we received a response from the Philippines Bureau of Agricultural Statistics, we have yet to receive a response from the Bangladeshi Department of Agriculture Marketing, and are therefore, at this time, unable to independently ascertain the public availability of the DAM data. While the DAM data are not published, the record contains a letter from the Deputy Director of DAM stating that the data “\* \* \* can be provided to any member of the public upon request, free of cost.”<sup>41</sup> The record, however, also contains an affidavit from a Barrister at Law in Bangladesh, retained by Petitioners the contents of which raise concerns regarding the public availability of this data. The affiant stated while meeting with the Director and Assistant Director of DAM, the DAM officials explained that “\* \* \* DAM does not, as a matter of course, provide the pangas wholesale price data to members of the public \* \* \*”<sup>42</sup> Regarding the DAM data on the record, according to the affidavit submitted by Petitioners, the DAM officials explained that the Deputy Director “must have been instructed to do so be a superior

<sup>29</sup> See VASEP’s First Surrogate Value Submission, dated May 10, 2011, at Exhibit 13A.

<sup>30</sup> See Letter to Fahmida Akhter, Deputy Director Department of Department of Agricultural Marketing from Matthew Renkey, Acting Program Manager: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated June 23, 2011.

<sup>31</sup> See Petitioners’ Surrogate Country Comments and Submission of Proposed Factor Values, dated May 10, 2011, at Exhibit 9–A.

<sup>32</sup> See Letter to Romeo S. Recide, Director, Bureau of Agriculture Statistics, from Matthew Renkey, Acting Program Manager: Questions for the Philippine Bureau of Agriculture Statistics Regarding Price Data in the Fisheries Statistics of the Philippines, dated June 23, 2011; and Letter to Fahmida Akhter, Deputy Director Department of Department of Agricultural Marketing from Matthew Renkey, Acting Program Manager: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated June 23, 2011.

<sup>33</sup> See Memorandum to the File, from Javier Barrientos, Senior Case Analyst, Regarding Response to Questions for the Philippine Bureau of Agriculture Statistics Regarding Price Data in the Fisheries Statistics of the Philippines, dated July 15, 2011.

<sup>34</sup> See Memorandum to the File, from Alexis Polovina, Case Analyst, dated July 15, 2011.

<sup>35</sup> See VASEP’s First Surrogate Value Submission, dated May 10, 2011, at Exhibit 32A.

<sup>36</sup> See Pangasius Study at 1.

<sup>37</sup> Other than stating the report was compiled over 15 days based on farmer interviews and farm visits, there is no information regarding the data collection methods (*i.e.*, how the farms were selected, the number of farms selected, and who collected the data).

<sup>38</sup> See Pangasius Study at 28.

<sup>39</sup> See *Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews*, 72 FR 19174 (April 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1, and *Silicon Metal* and accompanying Issues and Decision Memorandum at Comment 2.

<sup>40</sup> See Letter to Romeo S. Recide, Director, Bureau of Agriculture Statistics, from Matthew Renkey, Acting Program Manager: Questions for the Philippine Bureau of Agriculture Statistics Regarding Price Data in the Fisheries Statistics of the Philippines, dated June 23, 2011; and Letter to Fahmida Akhter, Deputy Director, Department of Agricultural Marketing from Matthew Renkey, Acting Program Manager: Questions for the Bangladeshi Department of Agricultural Marketing Regarding National Wholesale Price Data, dated June 23, 2011.

<sup>41</sup> See VASEP’s Letter to the Secretary of Commerce, Regarding VASEP’s First Surrogate Value Submission: 7th Administrative Review of Frozen Fish Fillets from the Socialist Republic of Vietnam, at Exhibits 13A and 13B, dated May 10, 2011.

<sup>42</sup> See Petitioner’s Letter to the Secretary of Commerce, Regarding Seventh Administrative Review of Certain Frozen Fish Fillets from Vietnam: Submission of Additional Rebuttal Information on DAM Price Data, at Exhibit 1, dated July 25, 2011.

official as it is not the DAM's practice to issue such letters to any member of the public."<sup>43</sup>

As a result of the uncertainty regarding public availability of the DAM data, we find that Bangladesh does not provide the best available information with respect to valuation of whole live fish for purposes of these preliminary results. Therefore, the FIGIS data and the *Fisheries Statistics* remain. When considering specificity to the input, as we have found in prior reviews, the *Fisheries Statistics* are specific to the species, *pangasius hypophthalmus*.<sup>44</sup> As noted above, the FIGIS data indicate specificity only to the genus level, *Pangasius*; however, the record also contains a 2005 World Wildlife Fund article indicating that Indonesia is the second largest producer of *pangasius* behind Vietnam, and that the majority of farmed *pangasius* is that of *Pangasianodon hypophthalmus*. With respect to broad market average, the FIGIS data indicate that the Indonesian *Pangasius* industry has grown in size every year since 2006, to 109,685 MT, while the survey size of the *Fisheries Statistics* now represents only 34.34 MT for 2009. While we note the FIGIS data only contain one data point for the whole country, this one data point represents a significant volume. Additionally, the observations the Department made in the previous reviews,<sup>45</sup> with respect to the *Fisheries Statistics*, and for that matter the DAM data, still remain, and we note these observations concerning the FIGIS data do not exist.

Based on the analysis above, we find that the FIGIS data represent a more reliable broad market average for purposes of valuing whole live fish. Therefore, for the preliminary results, the Department will select Indonesia as the primary surrogate country. We recognize, with respect to determining surrogate financial ratios, that we have no useable financial statements on the record at this time with respect to Indonesia. As Bangladesh satisfies the remaining criteria for selection of surrogate country and because the record contains numerous sources from Bangladesh, we find it a suitable secondary surrogate country. Thus, we intend to rely on financial statements from Bangladesh, the secondary surrogate country, for purposes of these preliminary results. The record contains three financial statements from Bangladesh, including two of which are from vertically integrated companies,

matching the production experience of the mandatory respondents.

We hereby invite parties to submit additional comments to be considered for the final results.

#### Affiliations and Collapsing

Section 771(33) of the Act provides that:

The following persons shall be considered to be 'affiliated' or 'affiliated persons':

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer or director of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization;

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person;

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: "For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person."

Finally, according to 19 CFR 351.401(f)(1) and (2), two or more companies may be treated as a single entity for antidumping duty purposes if: (1) The producers are affiliated, (2) the producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production.<sup>46</sup>

#### Vinh Hoan

In the final results of the sixth antidumping duty administrative review, the Department determined that Vinh Hoan was affiliated with Vinh Hoan Feed 1 Company ("Vinh Hoan Feed"), Vinh Hoan USA, Van Duc Food Export Joint Company ("Van Duc"), and Van Duc Tien Giang ("VD TG"). The Department also determined that Vinh Hoan, Van Duc, and VD TG should be treated as a single entity. *See 6th AR Final*.<sup>47</sup> The Department did not

collapse Vinh Hoan Feed 1 Company ("Vinh Hoan Feed") with these other companies, however, because Vinh Hoan Feed lacked a critical capital component (freezing machines) in order to produce comparable merchandise. *Id.*

Based on evidence submitted by Vinh Hoan in this administrative review, the Department continues to find that Vinh Hoan is affiliated with Vinh Hoan Feed, Vinh Hoan USA, Van Duc, and VD TG, pursuant to section 771(33) of the Act.<sup>48</sup> The Department also preliminarily finds that Vinh Hoan, Van Duc, and VD TG, should be treated as a single entity for purposes of this administrative review.<sup>49</sup> All three companies have the ability to produce and/or export subject merchandise. Furthermore, the companies are under the common control of Ms. Truong and her family by virtue of ownership, common board members or managers. As such, there is significant potential for manipulation of price or production. The Department still determines, however, that Vinh Hoan Feed lacks the critical capital component (*i.e.*, freezing machines) in order to produce comparable merchandise.<sup>50</sup> Therefore, pursuant to 19 CFR 351.401(f)(1) and (2), the Department preliminarily finds that Vinh Hoan, Van Duc, and VD TG, but not Vinh Hoan Feed, should be treated as a single entity (collectively, the "Vinh Hoan Group") in these preliminary results.

#### QVD

In the final results of the fifth antidumping duty administrative review, the Department determined that QVD and QVD USA are affiliated pursuant to sections 771(33)(A), (B), (E), (F), and (G) of the Act.<sup>51</sup> The Department also determined that QVD, QVD DT, and Thuan Hung should be collapsed and treated as a single entity.<sup>52</sup> The Department preliminarily finds that QVD, QVD DT, and Thuan Hung are all under common control of the principal owner allowing for significant potential for price manipulation or production. Based on evidence submitted by QVD in this administrative review, the Department continues to find that QVD, QVD DT,

and Sixth New Shipper Review, 76 FR 15941 (March 22, 2011).

<sup>48</sup> See Vinh Hoan's Section A Response at 16–18, dated January 28, 2011.

<sup>49</sup> See 19 CFR 351.401(f)(1) and (2).

<sup>50</sup> See Vinh Hoan's Supplemental section A Response at 3, dated March 17, 2011.

<sup>51</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews*, 75 FR 12726 (March 17, 2010) ("5th AR Final").

<sup>52</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See 6th AR and 09–10 NSR.

<sup>45</sup> See 6th AR at 9–14, and 09–10 NSR at 10–15.

<sup>46</sup> See 19 CFR 351.401(f)(1) and (2).

<sup>47</sup> See *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the Sixth Antidumping Duty Administrative Review*

and Thuan Hung should be collapsed and treated as a single entity and that QVD and QVD USA are affiliated pursuant to sections 771(33)(A), (B), (E), (F), and (G) of the Act. See QVD's Section A at 1.

#### Fair Value Comparisons

To determine whether sales of the subject merchandise made by Vinh Hoan and QVD to the United States were at prices below NV, we compared each company's export price ("EP") or constructed export price ("CEP"), where appropriate, to NV, as described below.

#### U.S. Price

##### A. Export Price

For Vinh Hoan's EP sales, we used the EP methodology, pursuant to section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation. To calculate EP, we deducted foreign inland freight, foreign cold storage, foreign brokerage and handling, foreign containerization, and international ocean freight from the starting price (or gross unit price), in accordance with section 772(c) of the Act.

##### B. Constructed Export Price

For Vinh Hoan's and QVD's CEP sales, we used the CEP methodology when the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. To calculate CEP, we made adjustments to the gross unit price, where applicable, for billing adjustments, rebates, foreign inland freight, international freight, foreign cold storage, foreign containerization, foreign brokerage and handling, U.S. marine insurance, U.S. inland freight, U.S. warehousing, U.S. inland insurance, other U.S. transportation expenses, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including commissions, credit expenses, advertising expenses, indirect selling expenses, inventory carrying costs, and U.S. re-packing costs. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Where movement expenses were provided by NME-service providers or paid for in NME currency, we valued these services using surrogate values from Descartes Carrier Rate Retrieval Database ("Descartes") Web site. See Surrogate Value Memo.

#### Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the

Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Because information on the record does not permit the calculation of NV using home-market prices, third-country prices, or constructed value and no party has argued otherwise, we calculated NV based on FOPs reported by Vinh Hoan and QVD pursuant to sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

#### Factor Valuation Methodology

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to value the FOPs, but when a producer sources an input from a ME country and pays for it in an ME currency, the Department may value the factor using the actual price paid for the input. During the POR, Vinh Hoan reported that it purchased certain inputs, and international freight, from an ME suppliers and paid for the inputs in a ME currency.<sup>53</sup> During the POR, QVD reported that it incurred international freight from a ME carrier and paid it a market economy currency. See QVD's Supplemental Section C at Exhibit 4, dated April 17, 2011. The Department has a rebuttable presumption that ME input prices are the best available information for valuing an input when the total volume of the input purchased from all ME sources during the period of investigation or review exceeds 33 percent of the total volume of the input purchased from all sources during the period. See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61717–18 (October 19, 2006) ("*Antidumping Methodologies*").

In this case, unless case-specific facts provide adequate grounds to rebut the Department's presumption, the Department will use the weighted-average ME purchase price to value the input. Alternatively, when the volume of an NME firm's purchases of an input from ME suppliers during the period is below 33 percent of its total volume of purchases of the input during the period, but where these purchases are otherwise valid and there is no reason to disregard the prices, the Department

will weight-average the ME purchase price with an appropriate SV according to their respective shares of the total volume of purchases, unless case-specific facts provide adequate grounds to rebut the presumption.<sup>54</sup> When a firm has made ME input purchases that may have been dumped or subsidized, are not *bona fide*, or are otherwise not acceptable for use in a dumping calculation, the Department will exclude them from the numerator of the ratio to ensure a fair determination of whether valid ME purchases meet the 33 percent threshold.<sup>55</sup>

As the basis for NV, Vinh Hoan and QVD provided FOPs used in each of the stages for producing frozen fish fillets. The Department's general policy, consistent with section 773(c)(1) of the Act, is to value the FOPs that a respondent uses to produce the subject merchandise.

To calculate NV, the Department valued Vinh Hoan's and QVD's reported per-unit factor quantities using publicly available Indonesian, Bangladeshi, and Philippine surrogate values. Indonesia is our primary surrogate country source from which to obtain data to value inputs, and when data were not available from Indonesia, we used Bangladeshi, and Philippine, sources. In selecting surrogate values, we considered the quality, specificity, and contemporaneity of the available values. As appropriate, we adjusted the value of material inputs to account for delivery costs. Specifically, we added surrogate freight costs to surrogate values using the reported distances from the Vietnam port to the Vietnam factory or from the domestic supplier to the factory, where appropriate. This adjustment is in accordance with the decision of the CAFC in *Sigma Corp. v. United States*, 117 F.3d 1401, 1407–1408 (Fed. Cir. 1997). For those values not contemporaneous with the POR, we adjusted for inflation using data published in the International Monetary Fund's International Financial Statistics.

In accordance with the *OTCA 1988* legislative history, the Department continues to apply its long-standing practice of disregarding surrogate values if it has a reason to believe or suspect the source data may be subsidized.<sup>56</sup> In this regard, the Department has previously found that it is appropriate to disregard such prices from India, Indonesia, South Korea and Thailand

<sup>54</sup> See *Antidumping Methodologies*.

<sup>55</sup> See *Antidumping Methodologies*.

<sup>56</sup> See *Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) ("OTCA 1988")* at 590.

<sup>53</sup> See Vinh Hoan's Section D, dated February 23, 2011, and Supplemental Section D, dated May 9, 2011.

because we have determined that these countries maintain broadly available, non-industry specific export subsidies.<sup>57</sup> Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea, and Thailand may have benefitted from these subsidies.

Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an “unspecified” country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. For further detail, see Surrogate Values Memo.

### Labor

Section 733(c) of the Act, provides that the Department will value the FOPs in NME cases using the best available information regarding the value of such factors in a ME country or countries considered to be appropriate by the administering authority. The Act requires that when valuing FOPs, the Department utilize, to the extent possible, the prices or costs of FOPs in one or more ME countries that are (1) At a comparable level of economic development and (2) significant producers of comparable merchandise.<sup>58</sup>

Previously, the Department used regression-based wages that captured the worldwide relationship between per capita GNI and hourly manufacturing wages, pursuant to 19 CFR 351.408(c)(3), to value the respondent’s cost of labor. However, on May 14, 2010, the Court of Appeals for the Federal Circuit (“CAFC”), in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010) (“*Dorbest*”), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC’s ruling in

*Dorbest*, the Department no longer relies on the regression-based wage rate methodology described in its regulations. On February 18, 2011, the Department published in the **Federal Register** a request for public comment on the interim methodology, and the data sources.<sup>59</sup>

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping proceedings.<sup>60</sup> In *Labor Methodologies*, the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (“ILO”) Yearbook of Labor Statistics (“Yearbook”).

In this review, however, the Department has selected Indonesia as the surrogate country. Because Indonesia does not report labor data to the ILO under Chapter 6A, for these preliminary results, we are unable to use ILO’s Chapter 6A data to value the Respondents’ labor wage and instead will use industry-specific wage rate using earnings or wage data reported under ILO’s Chapter 5B. The Department finds the two-digit description under ISIC–Revision 3 (“Manufacture of Food Products and Beverages”) to be the best available information on the record because it is specific to the industry being examined, and is therefore derived from industries that produce comparable merchandise. Accordingly, relying on Chapter 5B of the Yearbook, the Department calculated the labor input using labor data reported by Indonesia to the ILO under Sub-Classification 15 of the ISIC–Revision 3 standard, in accordance with Section 773(c)(4) of the Act. For these preliminary results, the calculated wage rate is 4,298.06 Indonesian Rupiahs per hour. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Value Memo.

### Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of

the U.S. sales, as certified by the Federal Reserve Bank.

### Preliminary Results of the Review

As a result of our review, we preliminarily find that the following margins exist for the period August 1, 2009, through July 31, 2010.

Manufacturer/exporter	Weighted-average margin (dollars per kilogram)
(1) Vinh Hoan <sup>61</sup> .....	0.00
(2) QVD .....	0.56
(3) Anvifish Co., Ltd. ....	0.56
(4) Anvifish JSC .....	0.56
(5) Acomfish .....	0.56
(6) Bien Dong Seafood .....	0.56
(7) Binh An .....	0.56
(8) CASEAMEX .....	0.56
(9) ESS LLC .....	0.56
(10) East Sea Seafoods Joint Venture Co., Ltd. ....	0.56
(11) Hiep Thanh .....	0.56
(12) South Vina .....	0.56
(13) Vinh Quang .....	0.56
Vietnam-Wide Rate .....	2.11

### Public Comment

The Department will disclose to parties of this proceeding the calculations performed in reaching the preliminary results within five days of the date of announcement of the preliminary results.<sup>62</sup> An interested party may request a hearing within 30 days of publication of the preliminary results.<sup>63</sup> Interested parties may submit written comments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, within five days after the time limit for filing case briefs.<sup>64</sup> Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their comments,

<sup>57</sup> See, e.g., *Expedited Sunset Review of the Countervailing Duty Order on Carbazole Violet Pigment 23 from India*, 75 FR 13257 (March 19, 2010) and accompanying Issues and Decision Memorandum at 4–5; *Expedited Sunset Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Quality Steel Plate from Indonesia*, 70 FR 45692 (August 8, 2005) and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 74 FR 2512 (January 15, 2009) and accompanying Issues and Decision Memorandum at 17, 19–20; and *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Countervailing Duty Determination*, 66 FR 50410 (October 3, 2001) and accompanying Issues and Decision Memorandum at 23.

<sup>58</sup> See section 773(c)(4) of the Act.

<sup>59</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor, Request for Comment*, 76 FR 9544 (February 18, 2011).

<sup>60</sup> See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor*, 76 FR 36092 (June 21, 2011) (“*Labor Methodologies*”).

<sup>61</sup> This rate is applicable to the Vinh Hoan Group which includes Vinh Hoan, Van Duc, and VD TG.

<sup>62</sup> See 19 CFR 351.224(b).

<sup>63</sup> See 19 CFR 351.310(c).

<sup>64</sup> See 19 CFR 351.309(c)(1)(ii) and 19 CFR 351.309(d).

within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

#### Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. In accordance with 19 CFR 351.212(b)(1), we are calculating importer- (or customer-) specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculate importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). Where an importer- (or customer-) specific *ad valorem* rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importers'/ customers' entries during the POR, pursuant to 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales to a particular importer/customer, we calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).<sup>65</sup> To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer- (or customer-) specific *ad valorem* ratios based on the estimated entered value. Where an importer- (or customer-) specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.<sup>66</sup>

#### Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section

751(a)(2)(C) of the Act: (1) For the exporters listed above the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis*, the cash deposit will be zero); (2) for previously investigated or reviewed Vietnam and non-Vietnam exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all Vietnam exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the Vietnam-wide rate of \$2.11 per kilogram; and (4) for all non-Vietnam exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Vietnam exporters that supplied that non-Vietnam exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011-23154 Filed 9-8-11; 8:45 am]

**BILLING CODE 3510-DS-P**

#### DEPARTMENT OF COMMERCE

##### National Institute of Standards and Technology

##### National Institute of Standards and Technology; Performance Review Board Membership

The National Institute of Standards and Technology Performance Review Board (NIST PRB) reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and ST-3104 employees. The Board makes recommendations to the

appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

This notice lists the membership of the NIST PRB and supersedes the list published in *Federal Register* Vol. 75, No. 95, page 27708, on May 18, 2010.

Delwin Brockett (C), Chief Information Officer, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires: 12/31/13*.

Robert Dimeo (C), Director, NIST Center for Neutron Research, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires: 12/31/12*.

Stella Fiotes (C) (alternate), Chief Facilities Management Officer, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires: 12/31/12*.

Ellen Herbst (C), Senior Advisor for Policy and Program Integration, Office of the Deputy Secretary, Department of Commerce, Washington, DC 20230, *Appointment Expires: 12/31/2012*.

Nancy Potok (NC), Deputy Under Secretary for Economic Affairs, Economics and Statistics Administration, Department of Commerce, Washington, DC 20230, *Appointment Expires: 12/31/2012*.

Sivaraj Shyam-Sunder (C) (alternate), Director, Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, *Appointment Expires: 12/31/12*.

Dated: September 1, 2011.

**Willie E. May,**

*Associate Director for Laboratory Programs.*

[FR Doc. 2011-23117 Filed 9-8-11; 8:45 am]

**BILLING CODE 3510-13-P**

#### DEPARTMENT OF COMMERCE

##### United States Patent and Trademark Office

##### Recording Assignments

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before November 8, 2011.

<sup>65</sup> See 19 CFR 351.212(b)(1).

<sup>66</sup> See 19 CFR 351.106(c)(2).

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

- *E-mail:*

*InformationCollection@uspto.gov.*

Include "0651-0027 comment" in the subject line of the message.

- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

- *Federal Rulemaking Portal:* <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information should be directed to Joyce R. Johnson, Manager, Assignment Division, Mail Stop 1450, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450; by telephone at 703-756-1265; or by e-mail to [Joyce.Johnson@uspto.gov](mailto:Joyce.Johnson@uspto.gov). Additional information about this collection is also available at <http://www.reginfo.gov> under "Information Collection Review."

**SUPPLEMENTARY INFORMATION**

**I. Abstract**

This collection of information is required by 35 U.S.C. 261 and 262 for patents and 15 U.S.C. 1057 and 1060 for trademarks. These statutes authorize the United States Patent and Trademark Office (USPTO) to record patent and trademark assignment documents, including transfers of properties (*i.e.* patents and trademarks), liens, licenses, assignments of interest, security interests, mergers, and explanations of transactions or other documents that record the transfer of ownership of a particular patent or trademark property from one party to another. Assignments are recorded for applications, patents, and trademark registrations.

The USPTO administers these statutes through 37 CFR 2.146, 2.171, and 37 CFR part 3. These rules permit the public, corporations, other federal

agencies, and Government-owned or Government-controlled corporations to submit patent and trademark assignment documents and other documents related to title transfers to the USPTO to be recorded. In accordance with 37 CFR 3.54, the recording of an assignment document by the USPTO is an administrative action and not a determination of the validity of the document or of the effect that the document has on the title to an application, patent, or trademark.

Once the assignment documents are recorded, they are available for public inspection. The only exceptions are those documents that are sealed under secrecy orders according to 37 CFR 3.58 or related to unpublished patent applications maintained in confidence under 35 U.S.C. 122 and 37 CFR 1.14. The public uses these records to conduct ownership and chain-of-title searches. The public may view these records either at the USPTO Public Search Facilities or at the National Archives and Records Administration, depending on the date they were recorded. The public may also search patent and trademark assignment information online through the USPTO Web site.

In order to file a request to record an assignment, the respondent must submit an appropriate cover sheet along with copies of the assignment documents to be recorded. The USPTO provides two paper forms for this purpose, the Patent Recordation Form Cover Sheet (PTO-1595) and the Trademark Recordation Form Cover Sheet (PTO-1594), which capture all of the necessary data for accurately recording various assignment documents. These forms may be downloaded in PDF format from the USPTO Web site.

Customers may also submit assignments online by using the Electronic Patent Assignment System

(EPAS) and the Electronic Trademark Assignment System (ETAS), which are available through the USPTO Web site. These systems allow customers to fill out the required cover sheet information online using web-based forms and then attach the electronic assignment documents to be submitted for recordation.

**II. Method of Collection**

By mail, facsimile, hand delivery, or electronically to the USPTO.

**III. Data**

*OMB Number:* 0651-0027.

*Form Number(s):* PTO-1594 and PTO-1595.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households; businesses or other for-profits; not-for-profit institutions; the Federal Government; and State, local or tribal governments.

*Estimated Number of Respondents:* 481,826 responses per year.

*Estimated Time per Response:* The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to prepare and submit a patent or trademark assignment recordation request.

*Estimated Total Annual Respondent Burden Hours:* 240,914 hours.

*Estimated Total Annual Respondent Cost Burden:* \$55,651,134 per year. The USPTO expects that the information in this collection will be prepared by both attorneys and paralegals. Using the estimated rates of \$340 per hour for attorneys in private firms and \$122 per hour for paraprofessionals, the USPTO estimates that the average rate for respondents will be approximately \$231 per hour. Therefore, the estimated total respondent cost burden for this collection will be approximately \$55,651,134 per year.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Patent Recordation Form Cover Sheet (PTO-1595) .....	30	100,115	50,058
Trademark Recordation Form Cover Sheet (PTO-1594) .....	30	18,443	9,222
Electronic Patent Assignment System (EPAS) (PTO-1595) .....	30	330,390	165,195
Electronic Trademark Assignment System (ETAS) (PTO-1594) .....	30	32,878	16,439
Totals .....	.....	481,826	240,914

*Estimated Total Annual Non-hour Respondent Cost Burden:* \$37,829,474. This information collection has annual (non-hour) costs in the form of filing fees and postage costs.

This collection has filing fees associated with submitting patent and

trademark assignment documents to be recorded. The filing fees for recording patent and trademark assignments are the same for both paper and electronic submissions. However, the filing cost for recording patent or trademark assignments varies according to the

number of properties involved in each submission.

The filing fee for submitting a patent assignment as indicated by 37 CFR 1.21(h) is \$40 per property for recording each document, while the filing fee for submitting a trademark assignment as

indicated by 37 CFR 2.6(b)(6) is \$40 for recording the first property in a document and \$25 for each additional property in the same document. The

USPTO estimates that the average fee for a patent assignment recordation request is approximately \$80 and that the average fee for a trademark assignment

recordation request is approximately \$65. Therefore, this collection has an estimated total of \$37,776,265 in filing fees per year.

Item	Estimated annual responses	Average fee amount	Estimated annual filing costs
Patent Recordation Form Cover Sheet (PTO-1595) .....	100,115	\$80.00	\$8,009,200
Trademark Recordation Form Cover Sheet (PTO-1594) .....	18,443	65.00	1,198,795
Electronic Patent Assignment System (EPAS) (PTO-1595) .....	330,390	80.00	26,431,200
Electronic Trademark Assignment System (ETAS) (PTO-1594) .....	32,878	65.00	2,137,070
<b>Totals</b> .....	<b>481,826</b>	.....	<b>37,776,265</b>

Customers may incur postage costs when submitting a patent or trademark assignment request to the USPTO by mail. The USPTO expects that some assignment requests will be submitted by fax but that approximately 60,465 (51%) of the 118,558 paper assignment requests per year will be submitted by mail. The USPTO estimates that the average first-class postage cost for a mailed Patent or Trademark Recordation Form Cover Sheet submission is 88 cents, resulting in a total postage cost of \$53,209 per year for this collection.

The total (non-hour) respondent cost burden for this collection in the form of filing fees and postage costs is estimated to be \$37,829,474 per year.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 6, 2011.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2011-23078 Filed 9-8-11; 8:45 am]

**BILLING CODE 3510-16-P**

#### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

##### Procurement List; Addition

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to the Procurement List.

**SUMMARY:** This action adds a product to the Procurement List that will be furnished by the nonprofit agency employing persons who are blind or have other severe disabilities.

**DATES:** *Effective Date:* 10/10/2011.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

**FOR FURTHER INFORMATION CONTACT:** Patricia Briscoe, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

##### SUPPLEMENTARY INFORMATION:

##### Additions

On 6/17/2011 (76 FR 35415-35417), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) operates pursuant to statutory and regulatory requirements. The Committee regulation at 41 CFR 51-2-4 states that for a commodity or service to be suitable for addition to the Procurement List each of the following criteria must be reviewed and determined satisfactory under Committee practice and procedure: Employment potential; nonprofit agency qualifications, capability, and level of impact on the current contractor for the commodity or service. The Javits-Wagner-O'Day (JWOD) Act requires that projects added to the Procurement List

must be provided by qualified nonprofit agencies that employ people who are blind or severely disabled for not less than 75% of the direct hours required for the production or provision of products or services during each fiscal year.

Comments were received from the incumbent contractor that currently provides powder laundry detergent to the Government. The incumbent contractor indicated that it has a long established policy of employing people with disabilities. He indicated that two of the eight individuals employed in fulfillment of this product are people with disabilities. The contractor advises that loss of this project could jeopardize the continued employment of the two employees with disabilities. Comments were also received from two other sources. Both sources voiced support for the contractor's practice of hiring people with disabilities and asserted that the contractor should retain the opportunity to supply the product to the Government.

The Committee applauds and encourages the actions of this contractor to hire people with disabilities who deserve the same opportunity as all Americans to work, earn income and be productive members of society. The AbilityOne Program, which the Committee administers, exists to provide employment for people who are blind or whose significant disabilities make them unable to obtain or maintain employment on their own. In the case of the specific project under consideration, people who are blind will provide the labor associated with filling the detergent containers, as well as packaging the product for sale and delivery. This will maximize employment for individuals with the most barriers to competitive employment. As the product offered under the AbilityOne Program exceeds recent biobased standards, it is also more likely to be purchased by Federal agencies in compliance with the

biobased preference regulations. The Committee has determined that this project meets all of the required criteria for suitability, consistent with its regulations, and will be provided by a qualified nonprofit agency that must employ people who are blind or severely disabled for not less than 75% for its direct labor hours each fiscal year. Therefore, employment opportunities for people who are blind or severely disabled are maximized through the addition of this project to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the product and impact of the addition on the current or most recent contractors, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

#### *Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the product to the Government.

2. The action will result in authorizing the small entity to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

#### *End of Certification*

Accordingly, the following product is added to the Procurement List:

#### *Product*

NSN: 7930–01–490–7301—Detergent, Laundry, Biobased with Bleach, Powdered/7930–01–490–7301

NPA: Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY.

Contracting Activity: General Services Administration, Fort Worth, TX.

Coverage: A—List for the Total Government Requirement as aggregated by the General Services Administration.

#### **Patricia Briscoe,**

*Deputy Director, Business Operations (Pricing and Information Management).*

[FR Doc. 2011–23107 Filed 9–8–11; 8:45 am]

**BILLING CODE 6353–01–P**

### **COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

#### **Procurement List; Proposed Addition**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Addition to the Procurement List.

**SUMMARY:** The Committee is proposing to add a service to the Procurement List that will be provided by the nonprofit agency employing persons who are blind or have other severe disabilities.

**DATES:** *Comments must be received on or before:* 10/10/2011.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

#### **FOR FURTHER INFORMATION OR TO SUBMIT**

**COMMENTS CONTACT:** Patricia Briscoe, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

#### **Addition**

If the Committee approves the proposed addition, the entity of the Federal Government identified in this notice will be required to procure the service listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

#### *Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. If approved, the action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the

statement(s) underlying the certification on which they are providing additional information.

#### *End of Certification*

The following service is proposed for addition to Procurement List for production by the nonprofit agency listed:

#### *Service:*

*Service Type:* Rubbish Removal and Recycling Service.

*Locations:* I.R.S. Offices at the following locations:

Submission Processing Center & Tax Break Café,

3651 S. IH–35, Austin, TX.

Connection Warehouse, 2021 East Woodward, Austin, TX.

Southpark G (CSB), 1821 Directors Blvd., Austin, TX.

Southpark J, 2191 Woodward, Austin, TX. Southpark K, 4175 Freidrich Lane, Austin, TX.

South Tech. Bldg. 4, 2101 East Saint Elmo Road, Austin, TX.

Child Development Center, 3651 South IH–35, Austin, TX.

JJ Pickle Federal Building, 300 E. 8th St., Austin, TX.

Research Park, 2301 Research Blvd., Bldg. 4, Austin, TX.

Rundberg Building, 825 E. Rundberg Lane, Austin, TX.

Southpark Office Center (SPOC), 5015 S. IH–35, Austin, TX.

NPA: Austin Task, Inc., Austin, TX.

Contracting Activity: Dept. of Treasury, Internal Revenue Service, Chicago, IL.

#### **Patricia Briscoe,**

*Deputy Director, Business Operations (Pricing and Information Management).*

[FR Doc. 2011–23108 Filed 9–8–11; 8:45 am]

**BILLING CODE 6353–01–P**

## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **Department of Defense Program for Construction, Renovation, Repair or Expansion of Public Schools Located on Military Installations**

**AGENCY:** Office of Economic Adjustment (OEA), Department of Defense (DoD).

**ACTION:** Notice.

**SUMMARY:** This notice describes a one-time DoD program, administered by OEA, to distribute \$250 million made available by Congress to construct, renovate, repair, or expand elementary and secondary public schools on military installations in order to address capacity or facility condition deficiencies at such schools.

**DATES:** Not applicable. Funds will be distributed as described in this notice until exhausted.

**ADDRESSES:** Not applicable. Appropriate information will be provided directly to invited applicants.

**FOR FURTHER INFORMATION CONTACT:**

David F. Witschi, OEA Associate Director at (703) 604-6020 or [david.witschi@wso.whs.mil](mailto:david.witschi@wso.whs.mil).

**SUPPLEMENTARY INFORMATION:** The Secretary of Defense is authorized by Section 8109 of Public Law 112-10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and is choosing to act through OEA, to provide up to \$250 million "to make grants, conclude cooperative agreements, or supplement other Federal funds to construct, renovate, repair, or expand elementary and secondary public schools on military installations in order to address capacity or facility condition deficiencies at such schools: Provided further, that in making such funds available, OEA shall give priority consideration to those military installations with schools having the most serious capacity or facility condition deficiencies as determined by the Secretary of Defense."

OEA is establishing a one-time non-competitive program, as described in this notice, to administer this appropriation.

**1. Program for Construction, Renovation, Repair, or Expansion of Public Schools Located on Military Installations**

On July 19, 2011, DoD approved a "Public Schools on Military Installations Priority List" (Priority List) that represents the Department's prioritization of those public schools on military installations with the most serious capacity or facility condition deficiencies. Using this list, those Local Educational Agencies (LEA's) representing the schools with the most serious capacity and facility condition deficiencies will be invited to submit a request for funding. DoD will conduct an initial meeting with the invited LEAs to discuss the specific deficiencies noted for the affected school, the purpose of the funding, the application process including a proposal submission timeline, and the minimum required matching share. After an LEA submits its proposal, a multi-disciplined Federal evaluation team will review the request and conduct a site visit to the respective school and community/installation prior to making a recommendation to the decision official, who is the OEA Director. A successful

LEA will be asked to complete a formal grant application. Grant awards will be made to successful applicants until the available funds are exhausted.

(a) *Available Funds*—Section 8109 of Public Law 112-10 provides \$250 million to construct, renovate, repair, or expand elementary and secondary public schools on military installations in order to address capacity or facility condition deficiencies at such schools. Of this amount, OEA may enter into reimbursable agreements with other Federal entities, as OEA deems necessary, to help carry out compliance with the National Environmental Policy Act, construction grant oversight, and other activities on OEA's behalf for the effective implementation and administration of this appropriation. Funds not applied to such reimbursable agreements are available for awards to LEAs.

(b) *Priority Consideration*—Section 8109 of Public Law 112-10, requires that in making such funds available, OEA shall give priority consideration to those military installations with schools having the most serious capacity or facility condition deficiencies as determined by the Secretary of Defense. On July 19, 2011, consistent with this appropriation language, DoD approved a Priority List that represents the Department's identification of those public schools on military installations with the most serious capacity or facility condition deficiencies, and which will be used to select the schools towards which the funds will be applied. A copy of the Department's Priority List may be viewed at <http://www.militaryhomefront.dod.mil//onbaseschools>. All questions concerning the Priority List should be directed to the Office of the Under Secretary of Defense for Personnel and Readiness, attention: Russell Roberts, Chief, Logistics Division, Department of Defense Education Activity at (703) 588-3502 or [psmischools@hq.dodea.edu](mailto:psmischools@hq.dodea.edu).

(c) *Eligible Applicants*—Only LEAs that operate a public school on a military installation, and receive a written invitation from OEA, may request funds under this program. OEA will initially request LEAs with schools having the most serious capacity or facility condition deficiencies as determined by DoD to submit proposals. DoD will conduct an initial meeting with representatives of the invited LEAs, and representatives from their respective installations and States, to discuss the specific deficiencies noted for the affected school, the purpose of the funding, the application process, and the matching share requirement. As

decisions are made, additional LEAs on the Priority List may be notified until all funds are exhausted.

(d) *Eligible Project Activities*—Funds must be used by the LEA within a reasonable period of time to construct, renovate, repair, or expand the public school on a military installation as identified in the OEA invitation letter. The decision concerning whether new construction, renovation, repair, or expansion is the appropriate corrective action, as well as the need for ancillary facilities, such as recreation fields, etc., associated with the school project, will be made by the LEA, subject to review by OEA. Eligible project costs may include project administration, architectural/engineering, design, preparation of environmental documentation, inspection and testing, construction, equipment and furnishings, contingency costs, demolition of the facilities being replaced, renovated or repaired, and costs for swing space, if required, to implement the project. The LEA shall ensure that the project is functional, economical, and not elaborate in design or extravagant in the use of materials, compared with facilities of a similar type in the State or other applicable geographical area.

(e) *Supplement—Not Supplant*—These funds may be used to supplement other Federal or non-Federal funds, but may not be used to supplant funds previously committed to or available for the project. LEA proposals must identify any funding, regardless of source, previously committed to or available for the project. OEA reserves the right to reduce an award by the amount of other funds determined to have been previously committed to the project.

(f) *Matching Share*—A matching share, equal to not less than twenty (20) percent of the total project cost is required to be provided by the LEA. The matching share may be cash, an in-kind contribution, or a combination of both, and LEAs must demonstrate that the match is or will be available to permit timely execution of the project. For the purposes of this funding, LEAs may use other Federal-sourced or non-Federal funds (State, local or private contributions) committed to or available for the project to meet the matching share requirement. LEAs will be encouraged to seek State and other funding, and to structure proposals to take best advantage of other contributions. OEA may waive part or the entire matching share requirement on a case-by-case basis of demonstrated LEA inability to pay. In such cases, the LEA will bear the burden of demonstrating an inability to pay to the

satisfaction of OEA. Requests for waiver of the matching share requirement will be subject to an assessment conducted by OEA, in concert with other Federal agency participation as needed, to ensure that funds are used to supplement and not supplant other available funds, and to determine an appropriate matching contribution. In any case, projects must be completed with the amount of funds provided (together with other Federal or non-Federal funds, if necessary) and result in a complete and usable project.

(g) *Project Proposal and Preliminary Engineering Information*—LEAs that are invited to apply will be asked to submit a project proposal within 90 days, and an OEA staff member will be assigned to work with the LEA as a resource to answer any questions about the proposal process. If a proposal cannot be completed within 90 days, the LEA should submit a status report and alternate timeline for its completion. The following proposal information will assist OEA in determining compliance with legal and programmatic requirements:

- A general description of project components and preliminary engineering report;
- Sketches or schematics showing general layout and location of existing site conditions and the proposed project;
- A feasibility analysis that supports the preferred alternative (replacement, renovation, repair or expansion) to address the school's capacity and/or facility condition deficiencies;
- Any structural or soils reports or other studies used in the analysis of the proposed project design decision;
- A current cost estimate, including the estimated cost for architectural/engineering design and inspection, environmental compliance, construction, demolition, any equipment that is moveable or is not built-in to the project, and swing space requirements, if included in the project. Provide the basis for the determination of construction contingencies;
- A comparison to costs and construction standards used at other LEA-owned schools located off the installation;
- A list of permits required for the proposed project and their current status;
- An estimated time schedule for design, permitting, bidding and award of contracts and construction;
- A statement of support for the proposal from the host installation that confirms that the project is compatible with the installation operations, airfield or land use plans;

- A statement that the project is not located in a FEMA-identified special flood hazard area;

- A letter from the LEA stating that the matching funds are committed and readily available and will not be conditioned or encumbered in any way that would preclude their use for the project;

- Environmental information sufficient to evaluate all reasonable alternatives to the proposed project, the direct and indirect environmental impacts, as well as the cumulative impacts on the environment as defined in the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), set out at 40 CFR 1500–1508;
- Financial information for the last four (4) operating cycles of the LEA demonstrating financial wherewithal to support the proposal, that available funds are not being supplanted and, where necessary, justifying any matching share waiver request.

(h) *Federal Evaluation Team*—The OEA Director will designate a multi-disciplined Federal Evaluation Team to review each LEA request for funding and conduct a site visit to the respective school and community. The scope of the Team's review will be uniform for all proposals evaluated. Composition of the Team may include participation, including financial underwriting expertise, from the Office of the Under Secretary of Defense for Personnel and Readiness, the Military Services, the U.S. Department of Education, and other Federal agencies as needed. The Team will evaluate the appropriateness of the LEA's proposed method of corrective action, i.e., new construction, renovation, repair, or expansion, and the project's responsiveness to the Department's Priority List. In the event the LEA requests a waiver of the matching share requirement, the Team will also assess the waiver request and identify an appropriate matching share for the project. The Team will make its recommendation to the decision official, who is the OEA Director.

(i) *NEPA*—Awards are subject to compliance with NEPA and the Council on Environmental Quality NEPA regulations. Preparation of an appropriate environmental impact analysis for selected projects is the responsibility of the successful applicant in coordination with the respective installation. OEA will notify the Commanding Officer of the military installation on which the school is located that the LEA has been invited to request funding for an on-installation school construction, renovation, repair or expansion project, and request that

the installation cooperate with the LEA in the preparation of an appropriate environmental impact analysis. Based on an independent evaluation of the environmental impact analysis prepared by the applicant, a pre-award NEPA determination (e.g., FONSI) will be made by OEA. The applicant's cost for preparing the NEPA documentation is a reimbursable project expense.

(j) *Sequence of Funding Decisions*—The OEA Director will make funding decisions generally according to the DoD Priority List. That is, the OEA Director will generally make funds available first to the schools with the most serious capacity or facility condition deficiencies before making funds available to schools with less serious capacity or facility condition deficiencies. To expedite this process, OEA will invite an initial group of the schools designated as having the most serious deficiencies to concurrently submit their respective project proposals. Once decisions are reached for this initial group, the next group(s) will be invited to apply, to the extent funds remain available.

(k) *Final Application*—Once a project scope has been finalized and the OEA Director has made a decision on an LEA proposal, the LEA will be invited to complete an eGrant application (Office of Management and Budget Standard Form 424) under Catalog of Federal Domestic Assistance Number: 12.600. Subject to receipt of a complete application and completion of the NEPA process, the LEA will receive a notice of award in the form of a Grant Agreement, signed by the OEA Director (Grantor), on behalf of DoD. The Grant Agreement will be transmitted electronically.

(l) *Site Control and Post Award Responsibilities*—While most public schools on military installations are owned by the LEAs that operate them, some of these public schools, although operated by an LEA, are currently owned by the U.S. Government (U.S. Department of Education or the U.S. Army). OEA will require, as a condition of receiving assistance under this program, that the LEA evidence: Adequate site control to permit necessary construction, renovation, repair, expansion, demolition and/or swing space activities; beneficial ownership of the new, expanded, or renovated facility; and responsibility for operation and maintenance of the new, renovated, or expanded facility for the remainder of its useful life in accordance with Federal, State and local requirements, including at a minimum, maintaining previous levels of operation and maintenance funding. The Grantee may not charge students or school

personnel for the ordinary use of facilities, furnishing, or equipment purchased with grant funds. The Grantee shall administer and supervise implementation of the project, maintaining competent architectural supervision and inspection at the project site to ensure the work conforms to the approved drawings and specifications.

(m) *Administrative and National Policy Requirements*—The Grantee and any consultant/contractor operating under the terms of a grant shall comply with all Federal, State, and local laws applicable to its activities including the following: National Environmental Policy Act; National Historic Preservation Act; 32 CFR part 33, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”; OMB Circulars A–87, “Cost Principles for State and Local Governments” and the revised A–133, “Audits of States, Local Governments and Non-Profit Organizations”; 32 CFR part 25, “Government-wide Debarment and Suspension (Non-procurement)”; 32 CFR part 26, “Drug-free Workplace”; and 32 CFR part 28, “New Restrictions on Lobbying (Grants).”

(n) *Reporting*—OEA requires interim performance reports and one final performance report for each award. The performance reports will contain information on the following:

- A comparison of actual accomplishments to the objectives established for the reporting period;
- Reasons for any slippage and proposed plan to mitigate;
- Additional pertinent information when appropriate;
- A comparison of actual and projected expenditures for the period;
- The amount of awarded funds on hand at the beginning and end of the reporting period.

The final performance report must contain a summary of activities for the entire award period. An SF 425, “Financial Status Report,” must be submitted to OEA within ninety (90) days after the end date of the award. Any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Office of Economic Adjustment.

OEA will provide a schedule for reporting periods and report due dates in the Award Agreement.

## 2. Agency Contacts

For further information, to answer questions regarding this notice, or for help with problems, contact: David F. Witschi, OEA Associate Director, telephone: (703) 604–6020, e-mail:

*david.witschi@wso.whs.mil* or regular mail at 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704. Specific questions concerning the Department’s Public Schools on Military Installations Priority List should be directed to the Office of the Under Secretary of Defense for Personnel and Readiness, attention: Russell Roberts, Chief, Logistics Division, Department of Defense Education Activity at (703) 588–3502 or *psmischools@hq.dodea.edu*.

## 3. Other Information

The OEA Internet address is *http://www.oea.gov*.

Dated: September 6, 2011.

**Aaron Siegel,**

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

[FR Doc. 2011–23065 Filed 9–8–11; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### **Selection Criteria—Transportation Infrastructure Improvements Associated With Medical Facilities Related to Recommendations of the 2005 Defense Base Closure and Realignment Commission**

**AGENCY:** Office of Economic Adjustment (OEA), Department of Defense (DoD).

**ACTION:** Final notice.

**SUMMARY:** This notice responds to comments on the selection criteria to be used to select grant applicants for funding from the Office of Economic Adjustment (OEA) for construction of Transportation Infrastructure Improvements associated with medical facilities related to recommendations of the 2005 Defense Base Closure and Realignment Commission. The July 21, 2011, **Federal Register** notice announced proposal requirements, the deadline for submitting proposals, and the criteria that will be used to select proposals. Because this is a new one-time program, however, the July 21, 2011, notice also requested comments on the proposed selection criteria for these grants, as provided in Section V, paragraph 1, of that notice. This notice responds to the comments that were received and issues the final selection criteria for the program.

#### **FOR FURTHER INFORMATION CONTACT:**

David F. Witschi, Associate Director, OEA, telephone: (703) 604–6020, e-mail: *david.witschi@wso.whs.mil*.

**SUPPLEMENTARY INFORMATION:** *Federal Funding Opportunity Title:* Transportation Infrastructure

Improvements associated with medical facilities related to recommendations of the 2005 Defense Base Closure and Realignment Commission.

*Announcement Type:* Federal Funding Opportunity.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 12.600.

#### **Background—Funding Opportunity Description**

OEA, a DoD Field Activity, is authorized by Section 8110 of Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, to provide up to \$300 million “for transportation infrastructure improvements associated with medical facilities related to recommendations of the Defense Base Closure and Realignment Commission.” On July 21, 2011, OEA issued a Federal Funding Opportunity notice for these funds in the **Federal Register** that announced proposal requirements, the deadline for submitting proposals, and the criteria that will be used to select proposals. Because this is a new one-time program, however, the July 21, 2011, notice also requested comments on the proposed selection criteria for these grants. This notice responds to comments that were received and issues the final selection criteria for the program (Section V, paragraphs 1.(a) through 1.(d) of the July 21, 2011 notice). All other information, including the proposal submission date and application and submission information announced in the July 21, 2011, notice, remains unchanged. The 30-day comment period for the selection criteria ended on August 19, 2011.

*Comments and Responses*—Seven respondents provided a total of four different comments. The public comments were considered by OEA in determining the final selection criteria for the program.

*Comment 1:* One commenter agreed with the selection criteria and proposed no changes.

*Comment 2:* One commenter proposed no changes to the selection criteria, but requested additional information regarding the disbursement process to be used both for direct OEA grants and if the funds are to be passed through another Federal agency for implementation.

*Response:* For direct OEA construction grants, disbursement to the grantee will be by the reimbursement method. In the event OEA chooses to enter into an interagency agreement with another Federal agency to implement a particular project, OEA will transfer those funds directly to the

other Federal agency after execution of an interagency agreement.

*Comment 3:* Four commenters noted that selection criterion (b) does not clearly address the transportation impacts on the community, noting that any expenditure of funds related to BRAC-affected areas should expressly take into consideration the larger effects on the community outside the perimeter of a military facility. They requested that the medical facility and its needs be considered in the broader context of the larger community—business and residential—in which it resides.

*Response:* Although selection criterion (b) was intended to capture the overall magnitude of the transportation problem, to include its effect on the surrounding community, we agree that this criterion lacked sufficient clarity on that point. Therefore, selection criterion (b) has been modified to state more clearly that the effect on the surrounding community is also being considered.

*Comment 4:* One commenter requested the addition of three new criteria addressing: (i) The extent to which the project contributes to on-base parking demand (negative factor) or relieves parking demand (positive factor); (ii) the effect of a project on pedestrian, bicycle, and transit access to the DoD facility; and (iii) the degree of mitigation (positive factor) or contribution to vulnerability to a terrorist attack or major accident (negative factor) of an existing or proposed transportation facility.

*Response:* The commenter raises several valid issues pertaining to specific design considerations/effects that may be relevant to a project depending on the nature of the transportation problem and the proposed solution. Rather than create additional criteria, however, we believe these issues can be adequately addressed with a modification to selection criterion (d) that addresses the degree to which a project resolves a transportation issue. We have, therefore, added these issues as examples in selection criterion (d) of how a project might resolve a transportation issue.

*Final Selection Criteria*—Accordingly, Section V, paragraphs 1.(a) through 1.(d) of the July 21, 2011, notice are revised and re-issued as follows:

1. *Selection Criteria*—Upon validating the eligibility of the interested respondent to apply for assistance, an evaluation panel, designated by OEA, evaluates proposal content conforming to this notice as the basis for inviting a formal grant application. The proposed selection criteria, with relative weights, are:

(a) The extent to which the transportation issue impedes the provision of care, i.e., the military medical mission (e.g., the greater the number of patients, patient visitors and patient care workers impacted, the more serious the consequences to patients, etc., the higher the score), 25%;

(b) The magnitude (e.g. overall number of people affected, degree of failure, etc.) of the transportation issue that affects the military medical facility and its surrounding community, expressed in terms of accepted and appropriate transportation planning and assessment techniques (the greater the magnitude of the issue, the higher the score), 25%;

(c) The applicant's ability to execute the proposed project, including the extent of other funding for the project and the ability to meet project timelines and budgets, acquire site control, permits or concurrences of affected parties, etc. (the greater the demonstration of the applicant's ability, the greater the score), 25%; and

(d) The extent to which the proposed construction project resolves the transportation issue (e.g., improves both vehicular and non-vehicular access to the facility; reduces parking demand; improves public safety and mitigates potential vulnerability to a major accident or incident, etc. The more the project does to resolve the transportation issue, the higher the score), 25%.

All other information announced in the July 21, 2011 notice, including the proposal submission deadline and application and submission information, remains unchanged.

Dated: September 2, 2011.

**Aaron Siegel,**

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

[FR Doc. 2011-23041 Filed 9-8-11; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Draft Environmental Impact Statement for a Proposed Highway Between Bush, LA and I-12 in St. Tammany Parish, LA

**AGENCY:** Department of the Army, U.S. Corps of Engineers, DoD.

**ACTION:** Notice of Availability.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE) is issuing this notice to advise the public that a Draft Environmental Impact Statement (DEIS)

has been completed and is available for review and comment.

**DATES:** Comments on the DEIS must be received no later than 5 p.m. Central Standard Time, Monday, October 24, 2011.

**ADDRESSES:** Send comments to U.S. Corps of Engineers, New Orleans District, 7400 Leake Avenue, New Orleans, LA 70188.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and the DEIS should be addressed to James A. Barlow, Jr., PhD, Regulatory Branch, phone (504) 862-2250 or e-mail at [james.a.barlow@usace.army.mil](mailto:james.a.barlow@usace.army.mil), or Ms. Brenda Archer, Regulatory Branch, phone (504) 862-2046 or e-mail at [brenda.a.archer@usace.army.mil](mailto:brenda.a.archer@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** The DEIS has been prepared to address the NEPA, environmental and cultural resource laws, USACE Regulatory Program Regulations (Title 33 of the *Code of Federal Regulations* [CFR] parts 320-332), including the 33 CFR part 325, Appendix B, and the requirements of the section 404(b)(1) guidelines (40 CFR part 230), to gather information needed for the USACE permit decision-making process regarding a permit application submitted by the Louisiana Department of Transportation and Development (LADOTD). LADOTD proposes construction of a high-speed, four-lane arterial highway from the southern terminus of the current, modern four-lane arterial portion of LA 21 in Bush, Louisiana, to I-12, a distance between 17.4 and 21 miles. The majority of the proposed highway would be designed as a rural arterial road RA-3 with a design speed of 70 miles per hour, which, according to LADOTD, generally equates to a posted speed limit of 65 miles per hour. The typical cross section would have two 12-foot travel lanes, an 8- to 10-foot outside shoulder, and a 4-foot inside shoulder in each direction. The median width would vary depending on highway design class used ranging between 40 and 60 feet, and a maximum ROW requirement of 250 feet. The exception to that design could be as the proposed project transitions into existing roadways (*i.e.* intersections), and where alternative alignments follow the existing LA 21.

The proposed I-12 to Bush highway is an effort planned by LADOTD and funded by the Transportation Infrastructure Model for Economic Development (TIMED) program (Louisiana Revised Statute 48:820.2). The stated mission of the TIMED program is to, "foster economic development throughout the state of

Louisiana and enhance the quality of life for its residents through an investment in transportation projects.” The TIMED program, approved by the 1989 General Session of the Louisiana State Legislature, identified a 15-year construction program funded by a 4-cent fuel tax, which includes the construction of the proposed LA 3241 highway between Bush, LA and I-12 in St. Tammany Parish. Revised Statute 47:820.2.B(1)(e) provides for a project from I-12 to Bush to be constructed as a four-lane or more highway. The proposed highway would provide a four-lane highway connection for Washington and northern St. Tammany Parishes to I-12, with the purported goal of providing for regional transportation needs and stimulating undefined economic growth and activity in the region.

LADOTD has stated that the proposed highway is needed as an alternative north-south connection that could reduce congestion and delays for those traveling from northern St. Tammany Parish and Washington Parish to I-12. As stated by LADOTD, the needs of the proposed action are to: (1) Fulfill the legislative mandate, Louisiana Revised Statute 47:820.2B(e); (2) provide a logical, direct, modern, high-speed, four-lane arterial to I-12 from the southern terminus of the current, modern, four-lane arterial portion of LA 21; (3) divert traffic from Washington and northern St. Tammany Parishes onto a four-lane, modern, high-speed arterial to free capacity for local trips on segments of existing routes in southern suburban areas and reduce congestion during peak and some non-peak periods; and (4) support and enhance the existing and developing economic activities in Washington and northern St. Tammany Parishes that rely on the highway network to reach their markets by providing a travel time savings.

The Corps defines the overall project purpose as to construct a four-lane arterial highway from the southern terminus of LA 21 in Bush, Louisiana, to I-12. The need for the project is to meet a legislative mandate in Louisiana Revised Statute 47:820.2B(e), which requires, “[t]he Louisiana Highway 3241 project from Interstate 12 to Bush\* \* \* shall be constructed as a [four]-lane or more highway.”

The project area is entirely within St. Tammany Parish, Louisiana, and roughly bounded by LA 21, U.S. Highway (US) 190, I-12, US 11, and LA 41. It encompasses approximately 245 square miles in area and includes the incorporated areas of Abita Springs, Pearl River, and portions of the cities of Slidell and Covington. Unincorporated

areas such as Bush, Hickory, Talisheek, and Waldheim are included in the project area.

The DEIS examines the No Build Alternative, Alternative B/O, Alternative J, Alternative P, and Alternative Q as the principal alternatives for detailed analysis. These alternatives are described in the following paragraphs.

*Alternative 1: No Build Alternative.* Under the No Build Alternative, the Corps would not issue any permits for construction of a new modern, high-speed, four-lane highway between Bush and I-12. As a result, the existing roadway network in the region would remain in its current condition and continue to serve as the transportation network to travel between Bush and I-12. The No Build Alternative ensures that there would be no direct or indirect impacts to threatened and endangered species, wetlands, environmentally sensitive areas, aquatic resources, or historic sites. Including the CEQ-required No Build Alternative in the EIS serves as a benchmark against which build alternatives can be evaluated. If the proposed highway is not constructed, project-related impacts would be avoided. Other alternatives would have to be developed to provide anticipated project benefits.

*Alternative 2: Alternative B/O.* Under Alternative B/O, LA 21 would be widened to a four-lane highway from Bush to just north of Waldheim, then continue as a new four-lane roadway approximately 5 miles west of LA 1083, terminating at LA 1088 near I-12. The alternative would be approximately 19.5 miles long, with 7.0 miles on existing alignment and 12.5 miles on new alignment. The majority of the alignment would consist of an RA-3 typical cross section, which would have a typical ROW width requirement of 250 feet. Control of access could be provided except where the highway follows existing LA 21 and highway crossings at LA 435 and LA 36, and the connection to LA 1088.

*Alternative 3: Alternative J.* Under Alternative J, a new four-lane highway following the abandoned railroad corridor would be constructed from Bush to a point due north of the Slidell Municipal Airport. From that point, the proposed route would connect to Airport Road, which ties into I-12 at an existing interchange (Exit 80). This proposed route would be approximately 21.1 miles long, with 14.2 miles using the abandoned railroad embankment, 5.4 miles on new alignment, and 1.5 miles of existing roadway. The majority of the route (17.5 miles) would consist of an RA-3 typical cross section, which

would have a typical ROW width of 250 feet. The northern 0.7 mile of the route would consist of a rural arterial-2 (RA-2) cross section, while the southern 1.9 miles would have suburban arterial SA-1 cross section. Control of access to the route could be provided for the section of highway classified as RA-3 (17.5 miles), except for the segment through Talisheek (2.0 miles) and where the highway crosses LA 435 and LA 36.

*Alternative 4: Alternative P.* Under Alternative P, a new alignment would begin at the intersection of LA 41 and LA 40 in Bush and proceed southward for approximately 17.4 miles to LA 1088. The majority of the project (15.2 miles) would consist of an RA-3 typical cross section, which has a typical ROW width requirement of 250 feet. The northern 0.7 mile of the project would consist of an RA-2 cross section, which also has a ROW width of 250 feet. The exception to that design would be at the southern end of the project area. The last 1.5 miles would be designed as a suburban arterial -1 typical section, which has a ROW width of approximately 180 feet. The proposed route would use an abandoned railroad corridor from Bush to Talisheek, a distance of approximately 2.5 miles, before turning southwesterly for approximately 13.3 miles on a new alignment to connect with LA 1088 north of I-12. Access for this route would be provided in Bush, at LA 435, at LA 36, and at the intersection with LA 1088. Crossings of existing highways would be at grade.

*Alternative 5: Alternative Q.* Under Alternative Q, a new four-lane highway following the abandoned railroad corridor would be constructed from Bush to a point approximately 1.7 miles north of LA 36. From that point, the proposed route would leave the railroad corridor and connect to LA 434, which ties into I-12 at an existing interchange (Exit 74). This alternative would be approximately 19.8 miles long, with 9.8 miles using the abandoned railroad embankment, 8.7 miles on new alignment, and 1.3 miles on existing roadway. The majority of the alternative (17.2 miles) would consist of an RA-3 typical cross section, which would have a typical ROW width of 250 feet. The northern 0.7 miles of the route would have an RA-2 cross section, with a ROW width of 250 feet. Control of access to the route could be provided for the section of highway classified as RA-3 (17.3 miles), except for the segment through Talisheek (2.0 miles) and where the highway crosses LA 435, LA 36, and connects to LA 434.

In accordance with the National Environmental Policy Act (NEPA), we

have filed the DEIS with the U.S. Environmental Protection Agency (EPA) for publication of their notice of availability in the **Federal Register**. The EPA notice officially starts the 45-day review period for this document. It is the goal of the USACE to have this notice published on the same date as the EPA notice. However, if that does not occur, the date of the EPA notice will determine the closing date for comments on the DEIS.

**Scoping:** A Scoping Meeting was held in Abita Springs, Louisiana, on January 22, 2009 to solicit input from interested agencies and the public regarding the range of issues and alternatives that should be considered in the EIS. A Public notice was posted on the District's webpage and local newspapers, and mailed to current stakeholder lists with notification of the public meetings and requesting input and comments on issues that should be addressed in the DEIS.

A public hearing for this DEIS will be held on September 28, 2011 from 6 to 8:30 p.m. in Abita Springs, Louisiana, at the Abita Springs Town Hall located on 22161 Level Street. The purpose of this public hearing is to provide the public the opportunity to comment, either orally or in writing, on the DEIS. Notification of the hearing will be announced following the same format as the Scoping Meetings announcements.

The DEIS is available online on the New Orleans District Web site at [http://www.mvn.usace.army.mil/ops/regulatory/reg\\_regulatory\\_news.asp](http://www.mvn.usace.army.mil/ops/regulatory/reg_regulatory_news.asp) and the I-12 to Bush Web site at <http://www.i12tobush.com>. Copies of the DEIS are also available for review at the following libraries:

1. St. Tammany Parish Library:
  - Abita Springs Branch, 71683 Leveson Street, Abita Springs, LA 70420.
  - Bush Branch, 81597 Highway 41, Bush, LA 70431.
  - Covington Branch, 310 W. 21st Avenue, Covington, LA 70433.
  - Lee Road Branch, 79213 Highway 40, Covington, LA 70435.
  - Mandeville Branch, 844 Girod Street, Mandeville, LA 70448.
  - Pearl River Branch, 64580 Highway 41, Pearl River, LA 70452.
  - Slidell Branch, 555 Robert Boulevard, Slidell, LA 70458.
2. Franklinton Library, 825 Free Street, Franklinton, LA 70438.
3. Bogalusa Library, 304 Avenue F, Bogalusa, LA 70427.

4. Louisiana State Library, 701 North 4th Street, Baton Rouge, LA 70802.

5. University of New Orleans, Earl K. Long Library, Louisiana Collection, 2000 Lakeshore Drive, New Orleans, LA 70148.

Dated: August 25, 2011.

**Pete J. Serio,**

*Chief, Regulatory Division.*

[FR Doc. 2011-23085 Filed 9-8-11; 8:45 am]

**BILLING CODE 3720-58-P**

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## DEPARTMENT OF EDUCATION

[CFDA Numbers 84.215N; 84.215P]

### Reopening Notice: Promise Neighborhoods Program—Implementation Grant Competition; Promise Neighborhoods Program—Planning Grant Competition

**AGENCY:** Office of Innovation and Improvement, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) reopens the competition for transmittal of applications for new awards for fiscal year (FY) 2011 under the Promise Neighborhoods Program Implementation and Planning grant competitions. The Department takes this action to allow more time for the preparation and submission of applications by prospective eligible applicants affected by the severe storms, flooding, property damage, and loss of electrical power that occurred as a result of Hurricane Irene on the East Coast of the United States, beginning on August 26, 2011, and continuing through the publication of this notice. The reopening of the competitions is intended to help affected eligible applicants compete fairly with other eligible applicants under this competition. Due to the widespread impact of Hurricane Irene, the competition is reopened to all eligible applicants.

**DATES:** The revised deadlines for transmitting applications under the Promise Neighborhoods Program Implementation and Planning grant competitions are listed in the chart entitled "List of Affected Programs" in the **SUPPLEMENTARY INFORMATION** section of this notice.

**Deadline for Intergovernmental Review:** The deadline date for Intergovernmental Review under Executive Order 12372 is changed from

November 3, 2011 to November 10, 2011.

**FOR FURTHER INFORMATION CONTACT:** The addresses and telephone numbers for obtaining applications for or information about the Promise Neighborhoods Program Implementation and Planning grant competitions are in the notice inviting applications for these competitions. We have also provided the date and **Federal Register** citations of the notice inviting applications for these competitions in the chart entitled "List of Affected Programs" in the **SUPPLEMENTARY INFORMATION** section of this notice.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotope, or computer diskette) by contacting the person listed in the notice inviting applications for these programs.

#### SUPPLEMENTARY INFORMATION:

**Eligibility:** On July 6, 2011, we published in the **Federal Register** two notices inviting applications for new awards for FY 2011 under the Promise Neighborhoods Program—one for the Planning grant competition and one for the Implementation grant competition. We are reopening these competitions and establishing new dates for the transmittal deadline for applications and the deadline for intergovernmental review for each of these competitions.

The extension of the application deadline dates in this notice applies to all eligible applicants under the FY 2011 Promise Neighborhoods Program Implementation and Planning grant competitions. We note that under the Promise Neighborhoods Implementation and Planning grant competitions, the eligible applicants are nonprofit organizations that meet the definition of a nonprofit under CFR 77.1(c), which may include a faith-based nonprofit organization; an institute of higher education as defined by section 101(a) of the Higher Education Act of 1965, as amended; and an Indian Tribe (as defined in the original notices inviting applications published in the **Federal Register** on July 6, 2011).

The following is information about the competitions covered by this notice:

## LIST OF AFFECTED PROGRAMS

CFDA No. and name	Publication date and FEDERAL REGISTER citation	Original deadline for transmittal of applications	Revised deadline for transmittal of applications	Original deadline for inter-governmental review	Extended deadline for inter-governmental review
84.215N: Promise Neighborhoods Program—Implementation.	7/6/2011 76 FR 39615.	9/06/2011	9/13/2011	11/03/2011	11/10/2011
84.215P: Promise Neighborhoods Program—Planning.	7/06/2011 76 FR 39630.	9/06/2011	9/13/2011	11/03/2011	11/10/2011

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Dated: September 6, 2011.

**James H. Shelton, III,**

*Assistant Deputy Secretary for Innovation and Improvement.*

[FR Doc. 2011-23121 Filed 9-8-11; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF ENERGY****Cancellation of Supplemental Environmental Impact Statement for Ancillary Facilities for the Richton Site of the Strategic Petroleum Reserve**

**AGENCY:** Department of Energy.

**ACTION:** Notice of Cancellation.

**SUMMARY:** The U.S. Department of Energy (DOE) announces the cancellation of a supplemental environmental impact statement (SEIS) for certain facilities associated with the 2007 selection of Richton, Mississippi, as the location of a new storage site for expanding the Strategic Petroleum Reserve (SPR). In April 2011, Congress rescinded all funding for the SPR expansion project.

**FOR FURTHER INFORMATION CONTACT:** For information on the cancellation of the

SEIS, contact Donald Silawsky, Acting Director, Office of Reserve Lands Management (FE-47), U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, e-mail [donald.silawsky@hq.doe.gov](mailto:donald.silawsky@hq.doe.gov), telephone 202-586-1892. For general information on the DOE NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC-54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202-586-4600 or leave a message at 800-472-2756.

**SUPPLEMENTARY INFORMATION:** The Energy Policy Act of 2005 (EPACT, Pub. L. 109-58) directed DOE to expand the SPR from its current 727 million-barrel capacity to 1 billion barrels. To fulfill the requirements of the National Environmental Policy Act (NEPA) for this expansion project, DOE prepared an environmental impact statement for the *Site Selection for the Expansion of the Strategic Petroleum Reserve* (DOE/EIS-0385). In a Record of Decision (ROD) (72 FR 7964; February 22, 2007), DOE announced its selection of Richton, Mississippi, as the location of a new SPR facility as part of the expansion project.

After selecting the Richton site, DOE engaged in further consultations with the Mississippi Department of Environmental Quality, U.S. Fish and Wildlife Service, and other governmental entities. As a result of those consultations, and to reduce project impacts, DOE proposed alternative sites from those announced in the ROD for some of the ancillary facilities associated with the Richton site: the raw water intake structure, oil terminal, and brine diffuser. DOE determined that alternative locations for those ancillary facilities would present substantial changes to the proposal as analyzed in DOE/EIS-0385 that would be relevant to environmental concerns. DOE published a Notice of Intent to prepare an SEIS to analyze the impacts of potential new locations for the ancillary facilities associated with the Richton site (73 FR 11895; March 5, 2008) and conducted public scoping.

On February 1, 2010, the President submitted a budget request to Congress for Fiscal Year (FY) 2011 that included no new funding to continue SPR expansion efforts and proposed cancellation of previously appropriated expansion funds. In April 2011, Congress passed, and the President signed, the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112-10). Sections 1440 and 1464 of that Act rescinded all unspent balances of prior year funds that had been appropriated for SPR expansion. The President's FY 2012 budget includes no funds for SPR expansion.

With prior appropriated funds rescinded, and no new funds proposed, the SPR expansion project is effectively terminated. DOE is therefore cancelling the preparation of the SEIS for the ancillary facilities of the SPR expansion project at the Richton Site (DOE/EIS-0385-S1).

Issued in Washington, DC, on September 1, 2011.

**David F. Johnson,**

*Deputy Assistant Secretary, Office of Petroleum Reserves.*

[FR Doc. 2011-23087 Filed 9-8-11; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY****Office of Energy Efficiency and Renewable Energy****Nationwide Categorical Waivers Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

**ACTION:** Notice of Limited Waivers.

**SUMMARY:** The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of Section 1605(b)(2), (iron, steel, and the relevant manufactured goods are not produced in the United States in

sufficient and reasonably available quantities and of a satisfactory quality), with respect to Recovery Act projects funded by EERE for: (1) Class 125 Iron (6", 8" and 12") Ball Valves (Standard: Mss SP-72, CWP Rating: 200 psig, Ends: flanged, Seats: PTFE or TFE; ASTM A126); (2) Low Temperature Thermostat (range of 15–55 Fahrenheit, automatic reset); (3) Two-stage, steam heated absorption chillers rated at 450 tons; and (4) 4 Watt 325 lumen dock lamp LED replacement bulbs.

**DATES:** *Effective Date:* August 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Goldstein, Energy Technology Program Specialist, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, Department of Energy, 1000 Independence Avenue, SW., Mailstop EE-2K, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** Under the authority of American Recovery and Reinvestment Act of 2009 (Recovery Act), Public Law 111–5, section 1605(b)(2), the head of a Federal department or agency may issue a “determination of inapplicability” (a waiver of the Buy American provision) if the iron, steel, or relevant manufactured good is not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality (“nonavailability”). The authority of the Secretary of Energy to make all inapplicability determinations was re-delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy (EERE), for EERE projects under the Recovery Act, in Redelegation Order No. 00–002.01E, dated April 25, 2011. Pursuant to this delegation the Acting Assistant Secretary, EERE, has concluded that: (1) Class 125 Iron (6", 8" and 12") Ball Valves (Standard: Mss SP-72, CWP Rating: 200 psig, Ends: flanged, Seats: PTFE or TFE; ASTM A126); (2) Low Temperature Thermostat (range of 15–55 Fahrenheit, automatic reset); (3) Two-stage, steam heated absorption chillers rated at 450 tons; and (4) 4 Watt 325 lumen dock lamp LED replacement bulbs are not produced or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality. The above items, when used on eligible EERE Recovery Act-funded projects, qualify for the “nonavailability” waiver determination.

EERE has developed a robust process to ascertain in a systematic and expedient manner whether or not there is domestic manufacturing capacity for the items submitted for a waiver of the Recovery Act Buy American provision.

This process involves a close collaboration with the United States Department of Commerce National Institute of Standards and Technology (NIST) Manufacturing Extension Partnership (MEP), in order to scour the domestic manufacturing landscape in search of producers before making any nonavailability determinations.

The MEP has 59 regional centers with substantial knowledge of, and connections to, the domestic manufacturing sector. MEP uses their regional centers to ‘scout’ for current or potential manufacturers of the product(s) submitted in a waiver request. In the course of this interagency collaboration, MEP has been able to find exact or partial matches for manufactured goods that EERE grantees had been unable to locate. As a result, in those cases, EERE was able to work with the grantees to procure American-made products rather than granting a waiver.

Upon receipt of completed waiver requests for the four products in the current waiver, EERE reviewed the information provided and submitted the relevant technical information to the MEP. The MEP then used their network of nationwide centers to scout for domestic manufacturers. The MEP reported that their scouting process did not locate any domestic manufacturers for these exact or equivalent items.

In addition to the MEP collaboration outlined above, the EERE Buy American Coordinator worked with other manufacturing stakeholders to scout for domestic manufacturing capacity or an equivalent product for each item contained in this waiver. EERE also conducted significant amounts of independent research to supplement MEP’s scouting efforts, including utilizing the solar experts employed by the Department of Energy’s National Renewable Energy Laboratory. EERE’s research efforts confirmed the MEP findings that the goods included in this waiver are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The nonavailability determination is also informed by the inquiries and petitions to EERE from recipients of EERE Recovery Act funds, and from suppliers, distributors, retailers and trade associations—all stating that their individual efforts to locate domestic manufacturers for these items have been unsuccessful.

Specific technical information for the manufactured goods included in this non-availability determination is detailed below:

(1) Class 125 Iron (6", 8" and 12") Ball Valves (Standard: Mss SP-72, CWP Rating: 200 psig, Ends: Flanged, Seats: PTFE or TFE).

Neither MEP nor DOE was able to locate US made ball valves that meet project specifications because there are no US manufacturers of ball valves with the specified cast iron (ASTM A126), specific to valve pressure parts, pipe fittings, and flanges.

(2) Low Temperature Thermostat (range of 15–55 Fahrenheit, automatic reset).

This expands a waiver granted in November 2010 to include thermostats with a manual reset. There were no US manufacturers located by DOE, MEP or a number of trade groups. The electric low temperature detection thermostats are especially suited for sensing low temperature conditions to avoid freeze-up of hydronic heating coils, cooling coils, liquid heating pipes and similar applications. Typically, the switch opens an electrical circuit to stop the supply fan motor when the temperature at the sensing element falls below the setting of the instrument.

(3) Two-stage, steam heated absorption chillers rated at 450 tons.

There are US manufacturers of chillers, however, not that meet these specifications. MEP, DOE and a number of trade organizations were unable to locate a domestic manufacturer.

(4) 4 Watt 325 lumen dock lamp LED replacement bulbs.

The bulb is designed to fit into existing dock lighting sockets, but utilizes high efficiency LEDs rather than the existing bulb technology. MEP and DOE were unable to locate any other manufacturer making a compatible bulb, other than the foreign manufacturer proposed by the applying grantee.

In light of the foregoing, and under the authority of section 1605(b)(2) of Public Law 111–5 and Redelegation Order 00–002–01E, with respect to Recovery Act projects funded by EERE, I hereby issue a “determination of inapplicability” (a waiver under the Recovery Act Buy American provision) for: (1) Class 125 Iron (6", 8" and 12") Ball Valves (Standard: Mss SP-72, CWP Rating: 200 psig, Ends: flanged, Seats: PTFE or TFE; ASTM A126); (2) Low Temperature Thermostat (range of 15–55 Fahrenheit, automatic reset); (3) Two-stage, steam heated absorption chillers rated at 450 tons; and (4) 4 Watt 325 lumen dock lamp LED replacement bulbs.

Having established a proper justification based on domestic nonavailability, EERE hereby provides notice that on August 2, 2011, four (4) nationwide categorical waivers of

section 1605 of the Recovery Act were issued as detailed *supra*. This notice constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

This waiver determination is pursuant to the delegation of authority by the Secretary of Energy to the Assistant Secretary for Energy Efficiency and Renewable Energy with respect to expenditures within the purview of his responsibility. Consequently, this waiver applies to all EERE projects carried out under the Recovery Act.

**Authority:** Pub. L. 111–5, section 1605.

Issued in Washington, DC on August 2, 2011.

**Henry Kelly,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.*

[FR Doc. 2011–23076 Filed 9–8–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

#### Nationwide Limited Public Interest Waiver Under Section 1605 (Buy American) of the American Recovery and Reinvestment Act of 2009 (Recovery Act)

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE).

**ACTION:** Notice of Limited Public Interest Waiver.

**SUMMARY:** The U.S. Department of Energy (DOE) is hereby granting a nationwide limited waiver of the Buy American requirements of section 1605 of the Recovery Act under the authority of section 1605(b)(1) (amended public interest waiver), with respect to the following solar photo-voltaic (PV) equipment: (1) Domestically-manufactured modules containing foreign-manufactured cells, (2) Foreign-manufactured modules, when completely comprised of domestically-manufactured cells, and (3) Any ancillary items and equipment (including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, cables and all otherwise incidental equipment with the exception of inverters and batteries) when utilized in a solar installation involving a U.S. manufactured PV module, or a module manufactured abroad but comprised exclusively of domestically-manufactured cells.

**DATES:** Effective Date August 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Benjamin Goldstein, Recovery Act Buy American Coordinator, Weatherization and Intergovernmental Program, Office of Energy Efficiency and Renewable Energy (EERE), (202) 287–1553, [buyamerican@ee.doe.gov](mailto:buyamerican@ee.doe.gov), Department of Energy, 1000 Independence Avenue, SW., Mailstop EE–2K, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:** Under the authority of the Recovery Act, section 1605(b)(1), the head of a Federal department or agency may issue a “determination of inapplicability” (a waiver of the Buy American provisions) if the application of section 1605 would be inconsistent with the public interest. On April 25, 2011, the Secretary of Energy delegated the authority to make all inapplicability determinations to the Assistant Secretary for Energy Efficiency and Renewable Energy, for EERE Recovery Act projects.

Pursuant to this delegation, the Assistant Secretary has determined that application of section 1605 restrictions would be inconsistent with the public interest for incidental and/or ancillary solar Photovoltaic (PV) equipment, when this equipment is utilized in solar installations containing domestically manufactured PV cells or modules (panels).

This determination replaces and supersedes the Solar Public Interest Waiver issued August 6, 2010, amended September 30, 2010 and extended February 4, 2011. Although the waiver extension issued February 4, 2011 was slated to be a one-time extension coinciding with the ramp-down of EERE Recovery Act-funded projects, EERE has determined that enough projects remain active to justify a new Public Interest waiver determination. This determination is valid until such time as the Assistant Secretary chooses to modify or revoke the waiver. The Assistant Secretary reserves the right to revisit and amend this determination based on new information or new developments.

This determination waives the Buy American requirements in EERE-funded Recovery Act projects for the purchase of the following solar PV equipment: (1) Domestically-manufactured modules containing foreign-manufactured cells, (2) Foreign-manufactured modules, when completely comprised of domestically-manufactured cells, and (3) Any ancillary items and equipment (including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, cables and all

otherwise incidental equipment with the exception of inverters and batteries) when utilized in a solar installation involving a U.S. manufactured PV module, or a module manufactured abroad but comprised exclusively of domestically-manufactured cells.

**Definitions**—Solar cells are the basic building block of PV technologies. The cells are functional semiconductors, made by processing and treating crystalline silicon or other photo-sensitive materials to create a layered product that generates electricity by absorbing light photons. The individual cells are cut and/or assembled into larger groups known as panels or modules. These two terms are synonymous and used interchangeably in this memorandum. The panel is the end product, and consists of a series of solar cells, a backing surface, and a covering to protect the cells from weather and other types of damage. A solar array is created by installing multiple modules in the same location to increase the electrical generating capacity. Operational solar PV modules and arrays use cells to capture and transfer solar-generated electricity. The solar modules and cells represent the highest intellectual content and dollar-value items associated with solar PV energy generation.

The Buy American provisions contain no requirement with regard to the origin of components or subcomponents in manufactured goods used in a project, as long as the manufacturing occurs in the United States [2 CFR 176.70(a)(2)(ii)]. However, determining where final manufacturing occurs in the context of the solar production chain is complicated. Under a plain reading of the Recovery Act Buy American provisions, only the PV modules would need to be manufactured in the United States, but the source of the high-value and high-intellectual content cells would not be relevant to complying with the Buy American requirements.

EERE and the National Renewable Energy Laboratory have conducted extensive research into the nature of the domestic solar manufacturing industry to determine the best way to apply the Buy American requirements to solar PV projects. EERE considered three basic options: (1) Follow the current interpretation of the Buy American provisions and require that only the modules be produced in the United States, irrespective of the origin of the cells contained in the modules; (2) apply the interpretation that the modules and cells are distinct manufactured goods and thus both must be produced in the United States; and (3) choose a more inclusive approach

that allows a solar installation to comply if either the cells or the modules are manufactured in the United States.

Of the options considered, only option (3) recognizes EERE's determination that the manufacturing process for cells and the final PV module production represent distinct instances of "substantial transformation" in the solar PV manufacturing chain. Conducting either of these discrete activities in the United States creates roughly equal numbers of American jobs. Furthermore, the design and manufacture of the cells captures the largest portion of the intellectual property present in a solar installation.

For all the reasons outlined above, EERE believes the public interest is best served by supporting the domestic cell manufacturing industry. It is therefore in the public interest to issue a waiver of the Recovery Act Buy American provisions that allows grantees to purchase foreign modules made with domestically-manufactured cells, in addition to domestic modules with foreign-produced cells. This reflects EERE's commitment to strengthen the entire domestic PV manufacturing supply chain in the United States.

This public interest waiver determination also resolves questions regarding the applicability of the Buy American provisions to numerous individual manufactured goods that are incidental in cost and technological significance but are ultimately incorporated into the final solar installation. These items, including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, and cables—but excluding inverters and batteries—are generally low-cost incidental items that are incorporated into the installation of PV modules and arrays on public buildings and public works. This public interest waiver for all incidental and ancillary items eliminates potential questions and ambiguities concerning whether the incidental items are final manufactured goods or merely components of a larger solar module, installation or array.

Issuance of this nationwide public interest waiver recognizes EERE's commitment to expeditious costing of Recovery Act dollars by enabling recipients to easily ascertain whether a given solar installation complies with the Buy American provision. Simultaneously, this waiver advances the purpose and the principles of the Buy American provision by focusing on the highest-value and most labor-intensive pieces of solar PV equipment.

In light of the foregoing, and under the authority of section 1605(b)(1) of

Public Law 111–5 and the Redesignation Order of April 25, 2011, with respect to Recovery Act projects funded by EERE, the Assistant Secretary has issued an extension of the amended "determination of inapplicability" (a waiver under the Recovery Act Buy American provisions) for the following items: (1) Domestically-manufactured modules containing foreign-manufactured cells, (2) Foreign-manufactured modules, when completely comprised of domestically-manufactured cells, and (3) Any ancillary items and equipment (including, but not limited to, charge controllers, combiners and disconnect boxes, breakers and fuses, racks, trackers, lugs, wires, cables and all otherwise incidental equipment with the exception of inverters and batteries when utilized in a solar installation involving a U.S. manufactured PV module, or a module manufactured abroad but comprised exclusively of domestic manufactured cells on August 1, 2011.

The Assistant Secretary reserves the right to revisit and amend this determination based on new information or new developments.

**Authority:** Pub. L. 111–5, section 1605.

Issued in Washington, DC.

**Henry Kelly,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy.*

[FR Doc. 2011–23079 Filed 9–8–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 13583–001]

#### **Crane & Company; Notice of Application Accepted for Filing With the Commission, Intent To Waive Scoping, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions, and Establishing an Expedited Schedule for Processing**

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* Exemption from Licensing.
- b. *Project No.:* 13583–001.
- c. *Date filed:* March 9, 2011.
- d. *Applicant:* Crane & Company.

e. *Name of Project:* Byron Weston Hydroelectric Project.

f. *Location:* On the East Branch of the Housatonic River, in the Town of Dalton, Berkshire County, Massachusetts. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Chad Cox, GZA GeoEnvironmental, Inc., One Edgewater Drive, Norwood, MA 02062, (781) 278–5787.

i. *FERC Contact:* Brandon Cherry, (202) 502–8328.

j. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* Due to the small size and particular location of this project and the close coordination with state and federal agencies during the preparation of the application, the 60-day timeframe in 18 CFR 4.34(b) for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions is shortened. Instead, motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions will be due 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a

particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Project Description:* The Byron Weston Hydroelectric Project would consist of: (1) The existing 90-foot-long, 30-foot-high Byron Weston Dam No. 2; (2) an existing 0.94-acre impoundment with a normal water surface elevation of 1,116.7 feet NAVD (1988); (3) an existing intake structure, trashrack, and headgate; (4) an existing 6.5-foot-long, 6-foot-diameter penstock that conveys flow to an existing 50-foot-long, 9.5-foot-wide headrace canal connected to a new 15-foot-long, 4.4-foot-diameter penstock; (5) an existing powerhouse containing one new 250-kilowatt turbine generating unit; (6) a new steel draft tube placed within the existing tailrace; and (7) a new 100-foot-long, 600-volt transmission line connected to the Crane & Company mill complex. The proposed project is estimated to generate an average of 938,000 kilowatt-hours annually.

m. Due to the project works already existing and the limited scope of proposed rehabilitation of the project site described above, the applicant's close coordination with federal and state agencies during the preparation of the application, completed studies during pre-filing consultation, and agency-recommended preliminary terms and conditions, we intend to waive scoping, shorten the notice filing period, and expedite the exemption process. Based on a review of the application, resource agency consultation letters including the preliminary 30(c) terms and conditions, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, which included a public meeting and site visit, and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project construction and operation on geology and soils, aquatic, threatened and endangered species, land use, aesthetic, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the

document. For assistance, contact FERC Online Support.

Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title "Protest", "Motion to Intervene", "Comments," "Reply Comments," "Recommendations," "Terms and Conditions," or "Prescriptions;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *Procedural schedule:* The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target Date
Notice of the availability of the EA.	February 2012.

Dated: September 1, 2011.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2011-23017 Filed 9-8-11; 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:* RP11-2541-000.

*Applicants:* Trailblazer Pipeline Company LLC.

*Description:* Trailblazer Pipeline Company LLC submits tariff filing per 154.204: Tenaska Negotiated Rate and Non-Conforming Agreement to be effective 9/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5104.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11-2542-000.

*Applicants:* Central New York Oil And Gas, LLC.

*Description:* Central New York Oil And Gas, LLC submits tariff filing per 154.402: 2011 ACA Filing of CNYOG to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5130.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11-2543-000.

*Applicants:* Texas Eastern Transmission, LP.

*Description:* Texas Eastern Transmission, LP submits tariff filing per 154.203: 2011 Operational Entitlements Filing to be effective N/A.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5137.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11-2544-000.

*Applicants:* Granite State Gas Transmission, Inc.

*Description:* Granite State Gas Transmission, Inc. submits tariff filing per 154.203: Settlement Agreement Compliance Filing to be effective 8/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5147.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11-2545-000.

*Applicants:* Nautilus Pipeline Company, LLC.

*Description:* Nautilus Pipeline Company, LLC submits tariff filing per

154.204: Annual Charge Adjustment to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5155.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2546–000.

*Applicants:* Garden Banks Gas Pipeline, LLC.

*Description:* Garden Banks Gas Pipeline, LLC submits tariff filing per 154.204: Annual Charge Adjustment to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5157.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2547–000.

*Applicants:* Mississippi Canyon Gas Pipeline, LLC.

*Description:* Mississippi Canyon Gas Pipeline, LLC submits tariff filing per 154.204: Annual Charge Adjustment Filing to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5158.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2548–000.

*Applicants:* WTG Hugoton, LP.

*Description:* WTG Hugoton, LP submits tariff filing per 154.402: WTG Hugoton, LP 2011 Annual Charge Adjustment to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5160.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2549–000.

*Applicants:* West Texas Gas, Inc.

*Description:* West Texas Gas, Inc. submits tariff filing per 154.402: West Texas Gas, Inc. 2011 Annual Charge Adjustment to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5161.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2550–000.

*Applicants:* Western Gas Interstate Company.

*Description:* Western Gas Interstate Company submits tariff filing per 154.402: Western Gas Interstate Company 2011 Annual Charge Adjustment to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5162.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2551–000.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* Texas Gas Transmission, LLC submits tariff filing per 154.204: Cross Timbers Amendment to Negotiated Rate Agreement 29061 to be effective 9/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5180.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2552–000.

*Applicants:* Central New York Oil And Gas, LLC.

*Description:* Central New York Oil And Gas, LLC submits tariff filing per 154.204: CNYOG Nonconforming FWSAs to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5197.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2553–000.

*Applicants:* Enbridge Offshore Pipelines (UTOS) LLC.

*Description:* Enbridge Offshore Pipelines (UTOS) LLC submits tariff filing per 154.204: Annual Charge Adjustment to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5202.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

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:* RP11–2441–001.

*Applicants:* Columbia Gas Transmission, LLC.

*Description:* Columbia Gas Transmission, LLC submits tariff filing per 154.205(b): ACA Errata 2011 to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5200.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2445–001.

*Applicants:* Millennium Pipeline Company, LLC.

*Description:* Millennium Pipeline Company, LLC submits tariff filing per 154.205(b): ACA Errata 2011 to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5205.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2446–001.

*Applicants:* Crossroads Pipeline Company.

*Description:* Crossroads Pipeline Company submits tariff filing per 154.205(b): ACA Errata 2011 to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5199.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2475–001.

*Applicants:* Williston Basin Interstate Pipeline Comp.

*Description:* Williston Basin Interstate Pipeline Company submits tariff filing per 154.205(b): ACA Amendment to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5178.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2476–001.

*Applicants:* Williston Basin Interstate Pipeline Company.

*Description:* Williston Basin Interstate Pipeline Company submits tariff filing per 154.205(b): Semi-annual Fuel & Electric Power Reimbursement Amendment to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5190.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2489–001.

*Applicants:* Empire Pipeline, Inc.

*Description:* Empire Pipeline, Inc. submits tariff filing per 154.205(b): ACA 2011—Correction Filing to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5203.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2503–001.

*Applicants:* Empire Pipeline, Inc.

*Description:* Empire Pipeline, Inc. submits tariff filing per 154.205(b): ACA 2011—Correction Filing to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5204.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2515–001.

*Applicants:* Iroquois Gas

Transmission System, L.P.

*Description:* Iroquois Gas Transmission System, L.P. submits tariff filing per 154.205(b): 09/01/11 ACA 2011 Amendment to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901–5159.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11–2511–001.

*Applicants:* Tennessee Gas Pipeline Company.

*Description:* Tennessee Gas Pipeline Company submits tariff filing per 154.205(b): ACA 2011 Amendment to be effective 10/1/2011.

*Filed Date:* 09/02/2011.

*Accession Number:* 20110902–5000.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 14, 2011.

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 2, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011-23084 Filed 9-8-11; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11-4357-001.

*Applicants:* Marathon Power LLC.

*Description:* Amendment to Application of Marathon Power LLC.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5048.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4393-000.

*Applicants:* TAQA Gen X LLC.

*Description:* TAQA Gen X LLC submits tariff filing per 35.12: TAQA MBR Tariffs to be effective 8/31/2011.

*Filed Date:* 08/30/2011.

*Accession Number:* 20110830-5001.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 20, 2011.

*Docket Numbers:* ER11-4395-000.

*Applicants:* Duke Energy Carolinas, LLC.

*Description:* Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii): Amendment to PMPA NITSA to be effective 8/1/2011.

*Filed Date:* 08/30/2011.

*Accession Number:* 20110830-5080.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 20, 2011.

*Docket Numbers:* ER11-4396-000.

*Applicants:* Louisville Gas and Electric Company.

*Description:* Louisville Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): 08\_30\_11 Transerv Replacement ITO to be effective 9/1/2012.

*Filed Date:* 08/30/2011.

*Accession Number:* 20110830-5090.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 20, 2011.

*Docket Numbers:* ER11-4397-000.

*Applicants:* Dynegy Midwest Generation, LLC.

*Description:* Dynegy Midwest Generation, LLC submits tariff filing per 35.13(a)(2)(iii): Notice of Succession to Black Start Service Agreement to be effective 8/4/2011.

*Filed Date:* 08/30/2011.

*Accession Number:* 20110830-5112.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 20, 2011.

*Docket Numbers:* ER11-4398-000.

*Applicants:* Dynegy Midwest Generation, LLC.

*Description:* Dynegy Midwest Generation, LLC submits tariff filing per 35.13(a)(2)(iii): Notice of Succession to Market-Based Rate Tariff to be effective 8/4/2011.

*Filed Date:* 08/30/2011.

*Accession Number:* 20110830-5117.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 20, 2011.

*Docket Numbers:* ER11-4399-000.

*Applicants:* Dynegy Midwest Generation, LLC.

*Description:* Dynegy Midwest Generation, LLC submits tariff filing per 35.13(a)(2)(iii): Notice of Succession to Reactive Service Rate Schedule to be effective 8/4/2011.

*Filed Date:* 08/30/2011.

*Accession Number:* 20110830-5118.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 20, 2011.

*Docket Numbers:* ER11-4400-000.

*Applicants:* Dynegy Power Marketing, LLC.

*Description:* Dynegy Power Marketing, LLC submits tariff filing per 35.13(a)(2)(iii): Notice of Succession to Market-Based Rate Tariff to be effective 8/4/2011.

*Filed Date:* 08/30/2011.

*Accession Number:* 20110830-5119.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 20, 2011.

*Docket Numbers:* ER11-4401-000.

*Applicants:* Louisville Gas and Electric Company.

*Description:* Louisville Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): 08\_30\_11 BREC Amd NITSA to be effective 8/31/2011.

*Filed Date:* 08/30/2011.

*Accession Number:* 20110830-5135.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 20, 2011.

*Docket Numbers:* ER11-4402-000.

*Applicants:* PJM Interconnection, LLC.

*Description:* PJM Interconnection, LLC submits tariff filing per 35.13(a)(2)(iii): Revisions to the Black Start Service—PJM Tariff Schedule 6A to be effective 11/1/2011.

*Filed Date:* 08/30/2011.

*Accession Number:* 20110830-5148.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 20, 2011.

*Docket Numbers:* ER11-4403-000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): Cantua Solar Station WDT SGIA to be effective 9/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5003.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4404-000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): Giffen Solar Station WDT SGIA to be effective 9/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5004.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: August 31, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011-23083 Filed 9-8-11; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory  
Commission****Combined Notice of Filings No. 1**

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP11–2485–000.  
*Applicants:* Panhandle Eastern Pipe Line Company, LP.  
*Description:* Panhandle Eastern Pipe Line Company, LP submits tariff filing per 154.402: Annual Charge Adjustment (ACA) 2011 to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5050.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2486–000.  
*Applicants:* Algonquin Gas Transmission, LLC.  
*Description:* Algonquin Gas Transmission, LLC submits tariff filing per 154.204: ConEd 2011–09–01 Releases to be effective 9/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5055.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2487–000.  
*Applicants:* Trunkline LNG Company, LLC.  
*Description:* Trunkline LNG Company, LLC submits tariff filing per 154.204: Annual Charge Adjustment (ACA) 2011 to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5057.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2488–000.  
*Applicants:* Southwest Gas Storage Company.  
*Description:* Southwest Gas Storage Company submits tariff filing per 154.204: Annual Charge Adjustment (ACA) 2011 to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5058.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2489–000.  
*Applicants:* Empire Pipeline, Inc.  
*Description:* Empire Pipeline, Inc. submits tariff filing per 154.402: ACA–August 2011 to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5059.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2490–000.  
*Applicants:* Northern Natural Gas Company.

*Description:* Northern Natural Gas Company submits tariff filing per 154.204: 20110831 Archer Daniels Negotiated Rate to be effective 9/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5060.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2491–000.  
*Applicants:* Sea Robin Pipeline Company, LLC.  
*Description:* Sea Robin Pipeline Company, LLC submits tariff filing per 154.204: Annual Charge Adjustment (ACA) 2011 to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5061.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2492–000.  
*Applicants:* Florida Gas Transmission Company, LLC.  
*Description:* Florida Gas Transmission Company, LLC submits tariff filing per 154.204: Annual Charge Adjustment (ACA) 2011 to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5062.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2493–000.  
*Applicants:* Trunkline Gas Company, LLC.  
*Description:* Trunkline Gas Company, LLC submits tariff filing per 154.402: Annual Charge Adjustment (ACA) 2011 to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5063.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2494–000.  
*Applicants:* Sea Robin Pipeline Company, LLC.  
*Description:* Sea Robin Pipeline Company, LLC submits tariff filing per 154.204: Hurricane Surcharge Filing on 8–31–11 to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5064.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2495–000.  
*Applicants:* East Tennessee Natural Gas, LLC.  
*Description:* East Tennessee Natural Gas, LLC submits tariff filing per 154.402: ETNG 2011 ACA Filing to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5068.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2496–000.  
*Applicants:* Florida Gas Transmission Company, LLC.  
*Description:* Florida Gas Transmission Company, LLC submits tariff filing per

154.204: Fuel Filing on 8–31–11 to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5069.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2497–000.  
*Applicants:* Ozark Gas Transmission, LLC.  
*Description:* Ozark Gas Transmission, LLC submits tariff filing per 154.402: Ozark 2011 ACA Filing to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5070.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2498–000.  
*Applicants:* MarkWest Pioneer, LLC.  
*Description:* MarkWest Pioneer, LLC submits tariff filing per 154.402: MarkWest Pioneer ACA Filing to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5071.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2499–000.  
*Applicants:* Gulfstream Natural Gas System, LLC.  
*Description:* Gulfstream Natural Gas System, LLC submits tariff filing per 154.402: Gulfstream 2011 ACA Filing to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5072.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2500–000.  
*Applicants:* Southeast Supply Header, LLC.  
*Description:* Southeast Supply Header, LLC submits tariff filing per 154.402: SESH 2011 ACA Filing to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5073.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2501–000.  
*Applicants:* NGO Transmission, Inc.  
*Description:* NGO Transmission, Inc. submits tariff filing per 154.402: NGO Transmission ACA Filing to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5074.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2502–000.  
*Applicants:* MarkWest New Mexico, LLC.  
*Description:* MarkWest New Mexico, LLC submits tariff filing per 154.402: MarkWest New Mexico ACA Filing to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5077.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2503-000.  
*Applicants:* National Fuel Gas Supply Corporation.

*Description:* National Fuel Gas Supply Corporation submits tariff filing per 154.402: ACA—August 2011 to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5080.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2504-000.  
*Applicants:* Alliance Pipeline L.P.

*Description:* Alliance Pipeline L.P. submits tariff filing per 154.204: 2011 ACA Filing to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5084.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2505-000.  
*Applicants:* Dauphin Island Gathering Partners.

*Description:* Dauphin Island Gathering Partners submits tariff filing per 154.204: Negotiated Rates 2011-08-31 to be effective 9/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5085.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2506-000.  
*Applicants:* Texas Eastern Transmission, LP.

*Description:* Texas Eastern Transmission, LP submits tariff filing per 154.204: ConocoPhillips Revised Negotiated Rate to be effective 9/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5086.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2507-000.  
*Applicants:* Colorado Interstate Gas Company.

*Description:* Colorado Interstate Gas Company submits tariff filing per 154.203: Spruce Hill Non-Conforming Agreements w Black Hills Compliance to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5087.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2508-000.  
*Applicants:* Cameron Interstate Pipeline, LLC.

*Description:* Cameron Interstate Pipeline, LLC submits tariff filing per 154.402: Cameron Interstate Pipeline Annual Charge Adjustment August 31 2011 to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5088.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2509-000.  
*Applicants:* Liberty Gas Storage, LLC.  
*Description:* Liberty Gas Storage, LLC submits tariff filing per 154.402: Liberty Gas Storage Annual Charge Adjustment August 31 2011 to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5089.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2510-000.  
*Applicants:* Trailblazer Pipeline Company LLC.

*Description:* Trailblazer Pipeline Company LLC submits tariff filing per 154.204: Amended Negotiated Rate Filing to be effective 9/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5091.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2511-000.  
*Applicants:* Tennessee Gas Pipeline Company.

*Description:* Tennessee Gas Pipeline Company submits tariff filing per 154.204: ACA 2011 to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5094.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2512-000.  
*Applicants:* Kern River Gas Transmission Company.

*Description:* Kern River Gas Transmission Company submits tariff filing per 154.204: 2011 Apex to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5095.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2513-000.  
*Applicants:* Kinder Morgan Interstate Gas Transmission LLC.

*Description:* Kinder Morgan Interstate Gas Transmission LLC submits tariff filing per 154.204: Negotiated Rate 2011-08-31 Mico A&R to be effective 9/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5100.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2514-000.  
*Applicants:* Gulfstream Natural Gas System, LLC.

*Description:* Gulfstream Natural Gas System, LLC submits tariff filing per 154.204: Peoples Gas System—contract 9000126R2 to be effective 9/30/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5102.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2515-000.  
*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* Iroquois Gas Transmission System, L.P. submits tariff filing per 154.402: 08/31/11 ACA 2011 to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5103.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2516-000.  
*Applicants:* Black Marlin Pipeline Company.

*Description:* Black Marlin Pipeline Company submits tariff filing per 154.402: Annual Charge Adjustment to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5104.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2517-000.  
*Applicants:* Dominion Cove Point LNG, LP.

*Description:* Dominion Cove Point LNG, LP submits tariff filing per 154.402: DCP—2011 Annual Charge Adjustment to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5106.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

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.

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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 1, 2011.

**Nathaniel J. Davis, Sr.,**  
*Deputy Secretary.*

[FR Doc. 2011-23082 Filed 9-8-11; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****Combined Notice of Filings No. 2**

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP11–2518–000.  
*Applicants:* CenterPoint Energy Gas Transmission Company, LLC.  
*Description:* CenterPoint Energy Gas Transmission Company, LLC submits tariff filing per 154.204: CEGT LLC—Negotiated Rate—September 2011 to be effective 9/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5108.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2519–000.  
*Applicants:* Colorado Interstate Gas Company.  
*Description:* Colorado Interstate Gas Company submits tariff filing per 154.203: Spruce Hill Compliance Filing to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5112.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2520–000.  
*Applicants:* TWP Pipeline LLC.  
*Description:* TWP Pipeline LLC submits tariff filing per 154.402: TWP Pipeline LLC ACA Filing to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5124.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2521–000.  
*Applicants:* Dominion Transmission, Inc.  
*Description:* Dominion Transmission, Inc. submits tariff filing per 154.402: DTI—2011 Annual Charge Adjustment to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5127.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2522–000.  
*Applicants:* Central New York Oil and Gas, LLC.  
*Description:* Central New York Oil and Gas, LLC submits tariff filing per 154.203: CNYOG FWS Tariff Filing in Compliance With Docket No. CP10–194–000 to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5131.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2523–000.

*Applicants:* Dominion South Pipeline Company, LP.  
*Description:* Dominion South Pipeline Company, LP submits tariff filing per 154.402: DSP—2011 Annual Charge Adjustment to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5132.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2524–000.  
*Applicants:* Gulf South Pipeline Company, LP.  
*Description:* Gulf South Pipeline Company, LP submits tariff filing per 154.204: Southcross Non-conforming Agreement Filing to be effective 9/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5150.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2525–000.  
*Applicants:* Columbia Gulf Transmission Company.  
*Description:* Columbia Gulf Transmission Company's Annual Cash-Out Report.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5166.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2526–000.  
*Applicants:* Texas Eastern Transmission, LP.  
*Description:* Texas Eastern Transmission, LP submits tariff filing per 154.402: TETLP ACA 2011 FILING to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5172.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2527–000.  
*Applicants:* Algonquin Gas Transmission, LLC.  
*Description:* Algonquin Gas Transmission, LLC submits tariff filing per 154.402: AGT ACA 2011 FILING to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5174.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2528–000.  
*Applicants:* Maritimes & Northeast Pipeline, LLC.  
*Description:* Maritimes & Northeast Pipeline, LLC submits tariff filing per 154.402: MNUS ACA 2011 FILING to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5175.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2529–000.  
*Applicants:* National Fuel Gas Supply Corporation.

*Description:* National Fuel Gas Supply Corporation submits tariff filing per 154.204: Beacon—Non-conforming (Line N) to be effective 9/22/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5177.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2530–000.  
*Applicants:* Central New York Oil and Gas, LLC.  
*Description:* Central New York Oil and Gas, LLC submits tariff filing per 154.204: CNYOG Substitute Pro Forma Firm Wheeling Service Agreement to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5178.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2531–000.  
*Applicants:* Stingray Pipeline Company, LLC.  
*Description:* Stingray Pipeline Company, LLC submits tariff filing per 154.204: Annual Charge Adjustment and Event Tracker filing to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5188.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2532–000.  
*Applicants:* Colorado Interstate Gas Company.  
*Description:* Colorado Interstate Gas Company submits tariff filing per 154.403(d)(2): Quarterly FL&U 10/1/11 to be effective 10/1/2011.  
*Filed Date:* 08/31/2011.  
*Accession Number:* 20110831–5190.  
*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.  
*Docket Numbers:* RP11–2533–000.  
*Applicants:* MIGC LLC.  
*Description:* MIGC LLC submits tariff filing per 154.402: MIGC LLC 2011 ACA Filing to be effective 10/1/2011.  
*Filed Date:* 09/01/2011.  
*Accession Number:* 20110901–5000.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.  
*Docket Numbers:* RP11–2534–000.  
*Applicants:* Gulf South Pipeline Company, LP.  
*Description:* Gulf South Pipeline Company, LP submits tariff filing per 154.204: Enbridge 34685 to Central Crude Capacity Release Negotiated Rate Agreement to be effective 9/1/2011.  
*Filed Date:* 09/01/2011.  
*Accession Number:* 20110901–5060.  
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.  
*Docket Numbers:* RP11–2535–000.  
*Applicants:* Gulf Crossing Pipeline Company LLC.

*Description:* Gulf Crossing Pipeline Company LLC submits tariff filing per 154.204: BP K37-8 Amendment to Negotiated Rate Agreement Filing to be effective 9/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5065.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11-2536-000.

*Applicants:* Panther Interstate Pipeline Energy, LLC.

*Description:* Panther Interstate Pipeline Energy, LLC submits tariff filing per 154.402: Panther 2011 ACA Filing to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5068.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11-2537-000.

*Applicants:* American Midstream (AlaTenn), LLC.

*Description:* American Midstream (AlaTenn), LLC submits tariff filing per 154.402: AlaTenn ACA Filing to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5082.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11-2538-000.

*Applicants:* American Midstream (Midla), LLC.

*Description:* American Midstream (Midla), LLC submits tariff filing per 154.402: Midla ACA Filing to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5083.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11-2539-000.

*Applicants:* MarkWest Pioneer, LLC.  
*Description:* MarkWest Pioneer, LLC submits tariff filing per 154.403(d)(2): MarkWest Pioneer—Quarterly FRP Filing to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5086.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11-2540-000.

*Applicants:* Big Sandy Pipeline, LLC.

*Description:* Big Sandy Pipeline, LLC submits tariff filing per 154.204: Negotiated Rate Agreement—Nytis Exploration to be effective 9/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5093.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

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:* RP11-2450-001.

*Applicants:* WestGas InterState, Inc.

*Description:* WestGas InterState, Inc. submits tariff filing per 154.205(b): 20110831 WGI ACA Refile to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5133.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP10-1403-001.

*Applicants:* Sabine Pipe Line LLC.

*Description:* Sabine Pipe Line LLC submits tariff filing per 154.203: Compliance with NAESB v1.8 and v1.9 to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5157.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2404-001.

*Applicants:* KO Transmission Company.

*Description:* KO Transmission Company submits tariff filing per 154.205(b): Amendment to 2011 ACA Filing to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5171.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2444-001.

*Applicants:* Hardy Storage Company, LLC.

*Description:* Hardy Storage Company, LLC submits tariff filing per 154.205(b): ACA Errata 2011 to be effective 10/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5183.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

*Docket Numbers:* RP11-2481-001.

*Applicants:* Dauphin Island Gathering Partners.

*Description:* Dauphin Island Gathering Partners submits tariff filing per 154.205(b): ACA 2011 Revision to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5003.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11-2482-001.

*Applicants:* Cimarron River Pipeline, LLC.

*Description:* Cimarron River Pipeline, LLC submits tariff filing per 154.205(b): ACA 2011 Amended to be effective 10/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5005.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* RP11-1964-002.

*Applicants:* Questar Pipeline Company.

*Description:* Questar Pipeline Company submits tariff filing per 154.203: RP11-1964-001 Compliance Filing to be effective 5/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5069.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

Any person desiring to protest in any of 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.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011-23081 Filed 9-8-11; 8:45 am]

**BILLING CODE 6717-01-P**

## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

#### **Combined Notice of Filings #1**

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC11-112-000.

*Applicants:* La Paloma Generating Company, LLC, SOLA LTD, Solus Alternative Asset Management LP.

*Description:* Application of La Paloma Generating Company, LLC, *et al* for Order Authorizing Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5233.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-2216-002.

*Applicants:* Entergy Arkansas, Inc.

*Description:* Entergy Arkansas, Inc. submits tariff filing per 35: Non-conforming SA Collation Filing to be effective 8/1/2010.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5189.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4315-001.

*Applicants:* Gila River Power LLC.

*Description:* Gila River Power LLC submits tariff filing per 35: Gila River Supplement to Notice of Succession—Revised Tariff to be effective 8/31/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5135.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4405-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 1876R1 Kansas Electric Power Cooperative, Inc. NITSA NOA to be effective 8/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5105.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4406-000.

*Applicants:* Granite State Electric Company.

*Description:* Granite State Electric Company submits tariff filing per 35.13(a)(2)(iii): Rate Update Filing for Granite State Borderline Tariff to be effective 5/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5128.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4407-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 1636R5 Kansas Electric Power Cooperative, Inc. to be effective 8/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5129.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4408-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Revision to Correct an Inadvertent Error in Schedule 11 Addendum 1 to be effective 4/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5130.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4409-000.

*Applicants:* American Transmission Systems, Incorporated.

*Description:* American Transmission Systems, Incorporated submits tariff filing per 35.15: Cancellation of OATT to be effective 8/31/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5143.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4410-000.

*Applicants:* EWO Marketing, Inc.

*Description:* EWO Marketing, Inc. submits tariff filing per 35.13(a)(2)(iii): EWOM-SRMPA SRPSA Filing to be effective 11/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5165.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4411-000.

*Applicants:* Oklahoma Gas and Electric Company.

*Description:* Notice of Cancellation of Rate Schedule WM-1, Service Agreement No. 95 of Oklahoma Gas and Electric Company.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5168.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4412-000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Cap X Fargo Phase 2 Amendment to be effective 9/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5179.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4413-000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): Cap X Fargo Phase 2 to be effective 9/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5181.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4414-000.

*Applicants:* New England Power Pool Participants Committee.

*Description:* New England Power Pool Participants Committee submits tariff filing per 35.13(a)(2)(iii): Sep 2011 Membership Filing to be effective 9/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5185.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4415-000.

*Applicants:* Entergy Gulf States Louisiana, LLC.

*Description:* Entergy Gulf States Louisiana, LLC submits tariff filing per 35.13(a)(2)(iii): EGSL-SRMPA Filing to be effective 11/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5186.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4415-000.

*Applicants:* Entergy Gulf States Louisiana, LLC.

*Description:* Supplemental Information/Request of Entergy Gulf States Louisiana, LLC.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5226.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4416-000.

*Applicants:* Entergy Power, LLC.

*Description:* Entergy Power, LLC submits tariff filing per 35.13(a)(2)(iii): EPL-EWO Rate Schedule to be effective 11/1/2011.

*Filed Date:* 08/31/2011.

*Accession Number:* 20110831-5187.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, September 21, 2011.

*Docket Numbers:* ER11-4417-000.

*Applicants:* Entergy Arkansas, Inc.

*Description:* Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii): Transfer Agreements to be effective 8/1/2011.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5001.

*Comment Date:* 5 p.m. Eastern Time on Thursday, September 22, 2011.

*Docket Numbers:* ER11-4418-000.

*Applicants:* ISO New England Inc.

*Description:* ISO New England Inc. Resource Termination Filing—Constellation.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5092.

*Comment Date:* 5 p.m. Eastern Time on Thursday, September 22, 2011.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF11-470-000.

*Applicants:* Catawba County, North Carolina.

*Description:* Form 556 of Catawba County, North Carolina for Catawba County EcoComplex Greenhouse CHP.

*Filed Date:* 09/01/2011.

*Accession Number:* 20110901-5070.

*Comment Date:* None Applicable.

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 1, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011-23080 Filed 9-8-11; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PR11-126-000]

#### ECOP Gas Company, LLC; Notice of Filing

Take notice that on September 1, 2011, ECOP Gas Company, LLC (ECOP) submitted a revised Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 ("NGPA"). ECOP's filing proposes a name change from ECOP Gas Company, LLC to Enbridge Pipelines (Oklahoma Transmission) L.L.C. (EPOT) and other minor administrative clarifications, as more fully detailed in the petition.

Any person desiring to participate in this rate proceeding must file a motion 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 and 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 7 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

Dated: September 1, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011-23019 Filed 9-8-11; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 13022-001]

#### Barren River Lake Hydro LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request To Use the Traditional Licensing Process.

b. *Project No.:* 13022-001

c. *Dated Filed:* July 1, 2011

d. *Submitted By:* Barren River Lake Hydro LLC

e. *Name of Project:* Barren River Lake Dam Hydroelectric Project

f. *Location:* On the Barren River, in Allen County, Kentucky. The project would occupy 18.3 acres of land, the majority of which are United States lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations

h. *Potential Applicant Contact:* Brent Smith, Symbiotics LLC, 371 Upper Terrace, Suite 2, Bend, Oregon 97702; (541) 330-8779; e-mail—[brent.smith@symbioticsenergy.com](mailto:brent.smith@symbioticsenergy.com).

i. *FERC Contact:* Sarah Florentino at (202) 502-6863; or e-mail at [sarah.florentino@ferc.gov](mailto:sarah.florentino@ferc.gov).

j. Barren River Lake Hydro LLC filed its request to use the Traditional Licensing Process on July 1, 2011. Barren River Lake Hydro LLC provided public notice of its request on July 3, 2011. In a letter dated September 1, 2011, the Director of the Division of Hydropower Licensing approved Barren River Lake Hydro LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; (b) NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (c) the Kentucky State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Barren River Hydro filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in paragraph h.

n. Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: September 1, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011-23016 Filed 9-8-11; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. PR11-125-000]

**UGI Central Penn Gas, Inc.; Notice of Rate Election**

Take notice that on August 31, 2011, UGI Central Penn Gas, Inc. (CPG) filed a Rate Election pursuant to section 284.123(b)(1) of the Commission's regulations. CPG proposes to utilize the applicable interruptible component of CPG's currently effective Extending Large Firm Delivery Service rate contained in Rate XD on file with the Pennsylvania Public Utility Commission, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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 date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not 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 7 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 e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

*Comment Date:* 5 p.m. Eastern Time on Monday, September 12, 2011.

Dated: September 1, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011-23018 Filed 9-8-11; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Project No. 10172-038]

**Missisquoi River Technologies; Notice of Termination of Exemption By Implied Surrender and Soliciting Comments, Protests, and Motions To Intervene**

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of exemption by implied surrender.

b. *Project No.:* 10172-038.

c. *Date Initiated:* September 1, 2011.

d. *Exemptee:* Missisquoi River Technologies.

e. *Name and Location of Project:* The North Troy Project is located on the Missisquoi River in Orleans County, Vermont.

f. *Filed Pursuant to:* 18 CFR 4.106.

g. *Exemptee Contact Information:* Mr. Michael Fontes, Missisquoi River Technologies, 4594 Western Turnpike, Altamont, NY 12009.

h. *FERC Contact:* Tom Papsidero, (202) 502-6002, or [Thomas.papsidero@ferc.gov](mailto:Thomas.papsidero@ferc.gov).

i. Deadline for filing comments, protests, and motions to intervene is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov/docs-filing/efiling.asp>. The Commission strongly encourages electronic filings. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be sent to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. Please include the project number (P-10172-038) on any documents or motions filed.

j. *Description of Existing Facilities:* The inoperative project consists of the following facilities: (1) A 12-foot-high,

90-foot-long dam; (2) an impoundment having a surface area of 17 acres with negligible storage and a normal water surface elevation of 536.7 feet mean sea level; (3) an intake structure; (4) a 225-foot-long, 6-foot-diameter steel penstock; (5) a powerhouse containing one generating unit having an installed capacity of 400-kW; (6) a tailrace; (7) a 60-foot-long, 13.2 kV transmission line; and (8) appurtenant facilities.

k. *Description of Proceeding:* The exemptee is currently in violation of Standard Articles 1 and 2 of the exemption granted on June 29, 1989 (47 FERC ¶ 62,284). Section 4.106 of the Commission's regulations, 18 CFR 4.106 provides, among other things, that the Commission reserves the right to revoke an exemption if any term or condition of the exemption is violated. The project has not generated since 1998. The project needs a complete upgrade of the powerhouse electrical and mechanical systems as well as repair work to the turbine shaft and wicket gate assembly. The exemptee has not performed the necessary work to restore generation. The exemptee also has not installed a new 60-kW minimum flow turbine necessary to provide a portion of the minimum flow release and bring the total installed capacity up to the authorized generating capacity of 460-kW.

Standard Article 2 of this exemption requires compliance with the mandatory terms and conditions prepared by federal or state fish and wildlife agencies to protect fish and wildlife resources. The exemption contains, among others, the following terms and conditions: (1) An instantaneous minimum flow release of 55 cubic feet per second (cfs) or inflow, whichever is less, into the bypassed reach of the Missisquoi River with at least 21 cfs spilling over the crest of the dam, (2) a plan for monitoring flow releases and providing records of discharges on a regular basis, and (3) downstream fish passage at the project. To date, the exemptee has not complied with these requirements and the project remains inoperative.

Commission staff has sent the exemptee letters stating that failure to operate the project is a violation of the terms and conditions of the exemption. On October 5, 2009, the exemptee filed a letter providing an outline of the remainder of the work needed to complete the repair of the project and restore generation and stated that it should be able to complete the work by September 2010. On June 17, 2011, Commission staff again wrote to the exemptee requiring the exemptee, within 30 days, to file a plan and

schedule to resume operating and show cause why the Commission should not initiate a proceeding to terminate the exemption based on the exemptee's implied surrender of the exemption. In a response filed July 18, 2011, the exemptee stated, among other things, that the status of the project has not changed significantly since a July 2010 inspection by the New York Regional Office, which reported that significant work was needed to resume generation.

l. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the Docket number excluding the last three digits in the docket number field to access the notice. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular proceeding.

o. Filing and Service of Responsive Documents—Any filing must (1) Bear in all capital letters the title "Comments", "Protest", or "Motion to Intervene," as applicable; (2) set forth in the heading the project number of the proceeding to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, protests or motions to intervene must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, protests, or motions to intervene should relate to project works which are the subject of the termination

of exemption. A copy of any protest or motion to intervene must be served upon each representative of the exemptee specified in item g above. If an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this notice must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: September 1, 2011.

**Kimberly D. Bose,**

Secretary.

[FR Doc. 2011-23022 Filed 9-8-11; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 6649-008]

#### Michael J. Donahue; Notice of Termination of Exemption By Implied Surrender and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of exemption by implied surrender.

b. *Project No.:* 6649-008.

c. *Date Initiated:* September 1, 2011.

d. *Exemptee:* Michael J. Donahue.

e. *Name and Location of Project:* The Fairbanks Mill Project is located on the Sleeper's River in Caledonia County, Vermont.

f. *Initiated Pursuant to:* 18 CFR 4.106.

g. *Exemptee Contact Information:* Mr. Michael J. Donahue, Route 3, Box 269, Lincoln, NH 03251.

h. *FERC Contact:* Tom Papsidero, (202) 502-6002, or [Thomas.papsidero@ferc.gov](mailto:Thomas.papsidero@ferc.gov).

i. Deadline for filing comments, protests, and motions to intervene is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the

Commission's Web site at <http://www.ferc.gov/docs-filing/efiling.asp>. The Commission strongly encourages electronic filings. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be sent to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. Please include the project number (P-6649-008) on any documents or motions filed.

j. *Description of Existing Facilities:* The inoperative project consists of the following existing facilities: (1) Timber-crib dam with an overall length of 60 feet and a maximum height of 10 feet; (2) an intake structure; (3) a 2-inch-diameter, 50-foot-long steel penstock; and (4) a powerhouse containing one unit with a total capacity of 18 kilowatts.

k. *Description of Proceeding:* The exemptee is currently in violation of Standard Article 1 of its exemption granted on October 8, 1982 (21 FERC ¶ 62,070). Section 4.106(a) of the Commission's regulations, 18 CFR 4.106(a) (2011), provides, among other things, that the Commission reserves the right to revoke an exemption if any term or condition of the exemption is violated. The project has not generated since the early 1990s and has been abandoned by the exemptee. By not operating the project as proposed and authorized, the exemptee is in violation of the terms and conditions of the exemption.

Based on staff's most recent inspection on August 18, 2010, the exemptee has not made any progress toward bringing the project back into operation. On April 13, 2011, Commission staff sent a letter to the exemptee requiring him to show cause why the Commission should not initiate a proceeding to terminate the exemption based on his implied surrender of the exemption. The letter directed the exemptee to provide information, including documentation of contracts issued, permits obtained, agreements made, etc., and to show cause why the Commission should not terminate the exemption for lack of adequate progress toward the resumption of generation at the project. To date, the exemptee has failed to respond and the project remains inoperative. Commission staff continues to inspect the project every

three years and reports that it remains inoperable and in poor condition.

l. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the Docket number excluding the last three digits in the docket number field to access the notice. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1-866-208-3676 or e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). For TTY, call (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular proceeding.

o. Filing and Service of Responsive Documents—Any filing must (1) Bear in all capital letters the title "Comments", "Protest", or "Motion to Intervene," as applicable; (2) set forth in the heading the project number of the proceeding to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, protests or motions to intervene must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, protests, or motions to intervene should relate to project works which are the subject of the termination of exemption. A copy of any protest or motion to intervene must be served upon each representative of the exemptee specified in item g above. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on

that resource agency. A copy of all other filings in reference to this notice must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: September 1, 2011.

**Kimberly D. Bose,**

Secretary.

[FR Doc. 2011-23021 Filed 9-8-11; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number EPA-HQ-OAQPS-2004-0073; FRL-9461-9]

### Agency Information Collection Activities; Proposed Collection; Comment Request; Requirements for Control Technology Determinations for Constructed and Reconstructed Major Sources of Hazardous Air Pollutants

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on January 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before November 8, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2004-0073, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), Attention Docket ID No. EPA-HQ-OAR-2004-0073.

- *Fax:* (202) 566-1741, Attention Docket ID No. EPA-HQ-OAR-2004-0073.

- *Mail:* U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room 3334, Mail Code: 6102T, Washington, DC 20460, Attention E-Docket ID No. EPA-HQ-OAR-2004-0073.

- *Hand Delivery:* Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room 3334, Mail Code: 6102T, Washington, DC 20460, Attention Docket ID No. EPA-HQ-OAR-2004-0073. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2004-0073. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer, U.S. EPA (C404-02), Attention Docket ID No. EPA-HQ-OAR-2004-0073, Research Triangle Park, NC 27711. Clearly mark the part or all of the information that you claim to be CBI. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**FOR FURTHER INFORMATION CONTACT:**

Debra Dalcher, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policy and Programs Division, Program Design Group, D205-02, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2443, e-mail [dalcher.debra@epa.gov](mailto:dalcher.debra@epa.gov).

**SUPPLEMENTARY INFORMATION:****How can I access the docket and/or submit comments?**

EPA has established a public docket for this ICR under docket ID number EPA-HQ-OAR-2004-0073. The docket is available for online viewing at <http://www.regulations.gov>, or in person viewing at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

Use <http://www.regulations.gov> to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

**What information is EPA particularly interested in?**

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA is soliciting comments and information to enable it to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (ii) 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;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) or examples of

specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What should I consider when I prepare my comments for EPA?**

You may find the following suggestions helpful for preparing comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**To what information collection activity or ICR does this apply?**

*Affected entities:* Owners or operators who construct or reconstruct a major source of HAP emissions must comply with any applicable MACT standard. Where no MACT standard exists, a case-by-case determination of MACT (case-by-case MACT) under CAA section 112(g) must be made. The owner or operator is responsible for obtaining such a case-by-case MACT determination.

State, local, and Tribal agencies with operating permit programs that have been approved by EPA will review information submitted by sources under the CAA section 112(g) provisions. These permitting agencies must determine the level of control that will be necessary to meet case-by-case MACT requirements for new sources. Finally, EPA will review a percentage of the determinations in order to provide oversight of the various State, local, and Tribal permitting authorities.

*Title:* Information Collection Request for 40 CFR Part 63 Regulations Governing Constructed and Reconstructed Major Sources.

*ICR numbers:* EPA ICR No. 1658.05, OMB Control No. 2060-0373.

*ICR status:* EPA ICR No. 1658.04 expires on January 31, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it

displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulation is consolidated in 40 CFR part 9.

*Abstract:* Section 112(g)(2)(B) of the Clean Air Act as amended in 1990 (CAA) requires that maximum achievable control technology (MACT) standards be met by constructed or reconstructed major sources of hazardous air pollutants (HAP). Where no applicable emission limit has been set, the MACT determination shall be made on a case-by-case basis. The source owner or operator must submit certain information to allow the permitting authority to perform a case-by-case MACT determination (40 CFR 63.43(e)) Permitting agencies, either State, local, Tribal or Federal, review information submitted and make case-by-case MACT determinations. Specific activities and requirements are listed and described in the Supporting Statement for the ICR.

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

*Estimated Number of Industry Respondents:* 6.

*Frequency of Response:* Once.

*Estimated total average number of responses for each respondent:* One title V permit application or amendment, or a notification of MACT approval.

*Estimated Total Annual Burden Hours:* 529.

*Estimated Total Annual Cost:* \$37,871.

**Are there changes in the estimates from the last approval?**

Primarily, the decrease in burden is due to finalizing the MACT standards for new and existing industrial, commercial, and institutional boilers and process heaters at major source facilities. Therefore our revised estimate of burden is smaller than that estimated in the last ICR.

**What is the next step in the process for this ICR?**

EPA will consider any comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: September 1, 2011.

**Steve Fruh,**

*Acting Director, Sector Policies and Programs Division.*

[FR Doc. 2011-23138 Filed 9-8-11; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[ER-FRL-8998-9]

**Environmental Impacts Statements; Notice of Availability**

*Responsible Agency:* Office of Federal Activities, General Information (202) 564-1399 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements

Filed 08/29/2011 Through 09/02/2011 Pursuant to 40 CFR 1506.9

*EIS No. 20110292, Draft EIS, FHWA,*

*TN, Dickson Southwest Bypass Project, Transportation Improvement from TN-11 (U.S. 70) West of Dickson to TN-46 and/or I-40 South of Dickson, Funding, Dickson County, TN, Comment Period Ends: 10/24/2011, Contact: Charles J. O'Neill 615-781-5772.*

*EIS No. 20110293, Draft EIS, NPS, 00, Gulf Islands National Seashore General Management Plan, Implementation, Escambia, Santa Rosa and Okaloosa Counties, FL and Jackson and Harrison Counties, MS, Comment Period Ends: 11/07/2011, Contact: Larissa Read 303-969-2472.*

*EIS No. 20110294, Draft EIS, USACE, LA, I-12 to Bush, Louisiana Proposed Highway Project, Proposes to Construct a High-Speed, Four-Lane Arterial Highway from the Southern Terminus of the Current Modern Four-Lane Arterial Portion of Louisiana Highway (LA) 21 in Bush, LA, to Interstate 12 (I-12), St. Tammany Parish, LA, Comment Period Ends: 10/24/2011, Contact: James A. Barlow, Jr., PhD 504-862-2250.*

*EIS No. 20110295, Draft EIS, BLM, CA, Bakersfield Resource Management Plan, To Analyze Alternatives for the Planning and Management of Public Lands and Resources Administered by the BLM, Madera, San Luis Obispo, Santa Barbara, Ventura, Kings, Tulare, Eastern Fresno, and Western Kern Counties, CA, Comment Period Ends: 12/07/2011, Contact: Sue Porter 661-391-6067.*

*EIS No. 20110296, Draft EIS, FWS, AL, Alabama Beach Mouse Project, General Conservation Plan, Issuance of Incidental Take Permit, Implementation, Fort Morgan Peninsula, Baldwin County, AL, Comment Period Ends: 10/24/2011, Contact: David Dell 404-679-7313.*

*EIS No. 20110297, Final EIS, FWS, AL, Beach Club West and Gulf Highlands Condominiums Residential/Recreational Condominium Project, Incidental Take Permits for Construction and Occupancy, Consider Issuance of U.S. Army COE Section 10 and 404 Permits, Baldwin County, AL, Review Period Ends: 10/11/2011, Contact: David Dell 404-679-7313.*

*EIS No. 20110298, Draft EIS, NPS, CA, Golden Gate National Recreation Area and Muir Woods National Monument, Draft General Management Plan, City of San Francisco, Marin, San Francisco, San Mateo Counties, CA, Comment Period Ends: 11/07/2011, Contact: Nancy Horner 415-561-4937.*

*EIS No. 20110299, Draft EIS, BLM, WY, Lander Field Office Planning Area Project, Draft Resource Management Plan, To Analyzes Alternatives for the Planning and Management of Public Lands and Resources Administered by the BLM, Portions of Fremont, Natrona, Carbon, Sweetwater, Hot Springs, and Teton Counties, WY, Comment Period Ends: 12/07/2011, Contact: Chris Carlton 307-775-6227.*

*EIS No. 20110300, Final EIS, USFS, OR, North End Sheep Allotment Project, Proposes to Authorize Grazing Domestic Sheep, Walla Walla Range District of the Umatilla National*

*Forest, Wallowa, Union, and Umatilla Counties, OR, Review Period Ends: 10/11/2011, Contact: Holly Harris 509-522-6290.*

*EIS No. 20110301, Draft EIS, USACE, CA, Phase 3-RD 17 100-Year Levee Seepage Area Project, To Implement Landside Levee Improvements, San Joaquin County, CA, Comment Period Ends: 10/24/2011, Contact: John Suazo 916-557-6719.*

*EIS No. 20110302, Draft EIS, FWS, 00, Sheldon National Wildlife Refuge Project, Draft Resource Conservation Plan, Implementation, Humboldt and Washoe Counties, NV and Lake County, OR, Comment Period Ends: 11/07/2011, Contact: Scott McCarthy 503-231-2232.*

*EIS No. 20110304, Final EIS, NOAA, 00, Amendment 10 to the Fishery Management Plan for Spiny Lobster, Establish Annual Catch Limits and Accountability Measures for Caribbean Spiny Lobster, Gulf of Mexico and South Atlantic Regions, Review Period Ends: 10/11/2011, Contact: Roy E. Crabtree, PhD 727-824-5701.*

*EIS No. 20110305, Final EIS, BOP, 00, Criminal Alien Requirement (CAR) 12 Procurement Project, To Award a Contract to House a Population of Approximately 1,750 Federal, Low-Security Adult Male Criminal Alien in a Contractor Owned and Operated Facility, Possible Site Selection: McRae Correctional Facility, McRae, Georgia, Great Plains Correctional Facility, Hinton, Oklahoma and Scott County, Mississippi, Review Period Ends: 10/11/2011, Contact: Richard A. Cohn 202-514-6470.*

**Amended Notices**

*EIS No. 20110190, Draft EIS, FRA, MS, Tupelo Railroad Relocation Planning and Environmental Study, To Improve Mobility and Safety by Reducing Roadway Congestion, City of Tupelo, MS, Comment Period Ends: 09/12/2011, Contact: John Winkle 202-493-6067. Revision to FR Notice Published 06/24/2011: Extending Comment Period from 08/08/2011 to 09/12/2011.*

*EIS No. 20110252, Final EIS, BLM, WY —Voided—Buckskin Mine Hay Creek II Project, Coal Lease Application WYW-172684, Wyoming Powder River Basin, Campbell County, WY, Review Period Ends: 09/12/2011, Contact: Teresa Johnson 307-261-7600. This FEIS was inadvertently refilled and published in 08/12/2011 FR. The Correct FEIS #20110237 was published in 07/29/2011.*

*EIS No. 20110256, Draft EIS, FRA, CA, California High-Speed Train (HST):*

Fresno to Bakersfield Section High-Speed Train, Proposes to Construct, Operate, and Maintain an Electric-Powered High-Speed Train (HST), Fresno, Kings, Tulare and Kern Counties, CA, Comment Period Ends: 10/13/2011, Contact: David Valenstein 202-493-6368. Revision to FR Notice 08/12/2011: Extended to Comment 09/28/2011 to 10/13/2011.

*EIS No. 20110271, Final EIS, FHWA, CO, North 1-25 Corridor, To Identify and Evaluate Multi-Modal Transportation Improvement along 61 miles from the Fort Collins-Wellington Area, Funding and U.S. Army COE Section 404 Permit, Denver, CO, Review Period Ends: 10/03/2011, Contact: Monica Pavli 720-963-3012. Revision to FR Notice Published 08/19/2011: Extending the Wait Period from 09/19/2011 to 10/03/2011.*

*EIS No. 20110277, Draft Supplement, USFS, CO, San Juan Plan Revision, Updated Information, San Juan Public Lands, Draft Land Management Plan (DLMP), Implementation, San Juan National Forest, Archuleta, Conejos, Dolores, Hinsdale, LaPlata, Mineral, Montezuma, Montrose, Rio Grande, San Juan and San Miguel Counties, CO, Comment Period Ends: 11/25/2011, Contact: Shannon Manfredi 970-385-1229. Revision to FR Notice Published 08/26/2011: Extending Comment from 10/11/2011 to 11/25/2011.*

*EIS No. 20110281, Draft EIS, NPS, IA, Effigy Mounds National Monument, General Management Plan, Implementation, Clayton and Allamakee Counties, IA, Comment Period Ends: 10/31/2011, Contact: Nick Chevance 402-661-1844. Revision of FR Notice Published 09/02/2011: Correction to Comment Period from 10/24/2011 to 10/31/2011.*

Dated: September 6, 2011.

**Cliff Rader,**

*Acting Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 2011-23143 Filed 9-8-11; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[FRL-9461-5]

**Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; Great Lakes Chemical Corporation, El Dorado, AR**

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

**ACTION:** Notice of a final decision on a no migration petition reissuance.

**SUMMARY:** Notice is hereby given that a reissuance of an exemption to the land disposal restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to Great Lakes Chemical Corporation for two Class I injection wells located at El Dorado, Arkansas. The company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the continued underground injection by Great Lakes, of the specific restricted hazardous wastes identified in this exemption, into Class I hazardous waste injection wells No. WDW-5 and WDW-6 at the El Dorado, Arkansas facility until December 31, 2017, unless EPA moves to terminate this exemption. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. A public notice was issued July 7, 2011. The public comment period closed on August 22, 2011. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

**DATES:** This action is effective as of August 31, 2011.

**ADDRESSES:** Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ-S), 1445 Ross Avenue, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Philip Dellinger, Chief Ground Water/UIC Section, EPA—Region 6, telephone (214) 665-7150.

Dated: August 31, 2011.

**Troy Hill,**

*Acting Division Director, Water Quality Protection Division.*

[FR Doc. 2011-23146 Filed 9-8-11; 8:45 am]

**BILLING CODE 6560-50-P**

**FARM CREDIT SYSTEM INSURANCE CORPORATION**

**Farm Credit System Insurance Corporation Board; Regular Meeting**

**SUMMARY:** Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

**DATE AND TIME:** The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 8, 2011, from 1 p.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Dale L. Aultman, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883-4009, TTY (703) 883-4056.

**ADDRESSES:** Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

**SUPPLEMENTARY INFORMATION:** Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Closed Session**

- FCSIC Report on System Performance

**Open Session**

*A. Approval of Minutes*

- June 21, 2011

*B. Business Reports*

- FCSIC Quarterly Financial Reports
- Report on Insured and Other Obligations
- Quarterly Report on Annual Performance Plan

*C. New Business*

- Annual Performance Plan FY 2012-2013
- Proposed 2012 and 2013 Budgets
- Insurance Fund Progress Review and Setting of Premium Range Guidance for 2012

Date: September 2, 2011.

**Mary Alice Donner,**

*Acting Secretary, Farm Credit System  
Insurance Corporation Board.*

[FR Doc. 2011-23039 Filed 9-8-11; 8:45 am]

**BILLING CODE 6710-01-P**

## FEDERAL MARITIME COMMISSION

[Docket No. 11-15]

### **CITGO Refining and Chemicals Company L.P. v. Port of Corpus Christi Authority of Nueces County, Texas; Notice of Filing of Complaint and Assignment**

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by CITGO Refining and Chemicals Company L.P., hereinafter "Complainant," against the Port of Corpus Christi Authority of Nueces County, Texas (PCCA) hereinafter "Respondent." Complainant asserts that it is a limited partnership duly organized and existing under the laws of the State of Delaware, operating a petroleum refinery at two locations along the Corpus Christi Ship Channel. Complainant alleges that Respondent is a marine terminal operator and a "navigation district and political subdivision of the State of Texas."

Complainant alleges that it "has been charged wharfage and other charges calculated as a percentage thereof that are excessive and not reasonably related to the value of services rendered to CITGO." Further, "[t]hrough application of such charges, CITGO has been forced to subsidize costs associated with services provided to other users of port facilities." Complainant alleges that because of these actions and because Respondent is "unreasonably refusing to deal or negotiate with CITGO," the Port "has violated and continues to violate the Shipping Act, 46 U.S.C. 41106(2) and (3) and 41102(c)." Complainant requests the Commission issue an order "[c]ommanding the PCCA to cease and desist from engaging in the aforesaid violations of the Shipping Act; putting in force such practices as the Commission determines to be lawful and reasonable; and \* \* \* [c]ommanding the PCCA to pay to CITGO reparations for violations of the Shipping Act, including the amount of the actual injury, plus interest, costs and attorneys fees; and \* \* \* [c]ommanding any other such relief as the Commission determines appropriate." The full text of the complaint can be found in the Commission's Electronic Reading Room at <http://www.fmc.gov>.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by September 4, 2012 and the final decision of the Commission shall be issued by January 4, 2013.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2011-23070 Filed 9-8-11; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL MARITIME COMMISSION

### **Ocean Transportation Intermediary License; Applicants**

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523-5843 or by e-mail at [OTI@fmc.gov](mailto:OTI@fmc.gov).

A & A Export Inc. (NVO & OFF), 5930 NW. 99th Avenue, Suite #1, Doral, FL 33178, Officers: Gustavo E. Fuentes, President/Secretary (Qualifying Individual), Osmania Fuentes, Vice President/Treasurer Application Type: New OFF & NVO License.  
AA Equipment and Sales, LLC dba AIM Global Logistics (NVO & OFF), 6402 Teluco Street, Houston, TX 77055, Officer: Angelica Garcia-Dunn,

Manager/President/Treasurer (Qualifying Individual), Application Type: New OFF & NVO License.  
Aduanair Cargo & Courier Corp. (NVO & OFF), 5900 NW. 99th Avenue, Suite #6, Doral, FL 33178, Officers: Anamar Del Castillo, President/Secretary (Qualifying Individual), Application Type: New NVO & OFF License.  
Alpha Marine, Inc. (OFF), 7375 Greenbush Avenue, North Hollywood, CA 91605, Officer: Yariv Grinberg, President (Qualifying Individual), Application Type: New OFF License.  
Alto Container Line, Inc. (NVO), 2867 Surveyor Street, Pomona, CA 91768, Officers: Whyee-nen Shao, Vice President of Operations (Qualifying Individual), Alfred R. Garcia, Dir./Chairman/Pres./CFO/Sec., Application Type: QI Change.  
A R O Cargo Services, Inc. (NVO & OFF), 5122 Skillman Avenue, Suite 2R, Woodside, NY 11377, Officer: Olga Manrique, President (Qualifying Individual), Application Type: Add NVO Service.  
Arrow Shipping Line Inc. (NVO), 167-14 146th Road, 2nd Floor, Jamaica, NY 11434, Officer: Po Shan Wong, President/VP/Sec./Treasurer (Qualifying Individual), Application Type: New NVO License.  
Asecomer International Corporation dba Interworld Freight, Inc. (NVO), 8225 NW. 80th Street, Miami, FL 33166, Officer: John O. Crespo, President (Qualifying Individual), Application Type: Trade Name Change.  
Ashimiyu Alowonle dba Classique Companies (NVO & OFF), 6001 Loneoak Road, #2, Rockford, MN 55373, Officer: Ashimiyu Alowonle, Sole Proprietor (Qualifying Individual), Application Type: New OFF & NVO License.  
Baggio, Inc. (NVO & OFF), 150 SE. 2nd Avenue, #1010, Miami, FL 33131, Officers: Lucio D'Isep, Secretary (Qualifying Individual), Paolo Baggio, President, Application Type: New NVO & OFF License.  
BDJ Freight, Inc. dba Profound Freight Inc. (NVO), 2113 Treeridge Circle, Brea, CA 92821, Officer: Jenny J. Yang, Director/Chairman/Secretary (Qualifying Individual), Application Type: Name Change.  
BestOcean Worldwide Logistics, Inc. (NVO & OFF), 1300 Valley Vista Drive, Suite 203, Diamond Bar, CA 91765, Officers: Ivy Zheng, Corporate Secretary (Qualifying Individual), Yan Yang, CEO, Application Type: New NVO & OFF License.  
Beyond Shipping, Inc. (NVO), 2000 Silver Hawk Drive, #2, Diamond Bar, CA 91765, Officer: Yilin Yang, President/Secretary/CFO (Qualifying

- Individual), Application Type: New NVO License.
- Capito Enterprises, Inc. (NVO & OFF), 190 Ellis Road, Lake in the Hills, IL 60156, Officers: Rizalina D. Capito, President/Treasurer (Qualifying Individual), Rosette Capito, Vice President, Application Type: Add OFF Service.
- Caterpillar Logistics Inc. (OFF), 500 N. Morton Avenue, Morton, IL 61550, Officers: Julia Slovak, Assistant Secretary (Qualifying Individual), Stephen P. Larson, President, Application Type: New OFF License.
- Caterpillar Logistics Services LLC (OFF), 500 N. Morton Avenue, Morton, IL 61550, Officers: Michelle L. Wahrenburg, Assistant Secretary (Qualifying Individual), Stephen P. Larson, President, Application Type: Business Structure Change.
- Crowley Caribbean Logistics, LLC (NVO & OFF), Rd 165, KM 2.4, Edif 13, Guaynabo, PR 00970, Officers: John G. Smith, OTI Compliance Officer (Qualifying Officer), John P. Hourihan, Sr. Vice President/Manager, Application Type: New NVO & OFF License.
- CLX Holdings Inc. (NVO), 61–15 98th Street, Suite 14H, Rego Park, NY 11374, Officers: James White, Vice President (Qualifying Individual), Ganesh Parab, President, Application Type: New NVO License.
- Coast to Coast Air Inc. (NVO & OFF), 2951 W. King Street, Cocoa, FL 32926, Officers: Gregory C. Jennings, Vice President (Qualifying Individual), Grover C. Jennings, President, Application Type: New NVO & OFF).
- CTS Global Logistics (Georgia) Inc. dba CTS Global Supply Chain Solutions (NVO & OFF), 5192 Southridge Parkway, Suite 117, Atlanta, GA 30349, Officers: Angela Sturdivant, Vice President (Qualifying Individual), Kangzhen Yin (John Ing), Director/President/Treasurer, Application Type: QI Change.
- Cyclone Shipping, Inc. (NVO), 233 Masters Court, Unit 4, Walnut Creek, CA 94598, Officer: Eric Bailey, President/Secretary/Treasurer (Qualifying Individual), Application Type: New NVO License.
- Echo Trans World Inc. (NVO), 462 7th Avenue, 14th Floor, New York, NY 10018, Officer: Moshe Greenwald, President/Secretary (Qualifying Individual), Application Type: QI Change.
- Elite Freight Forwarders Inc. (OFF), 24 Commerce Street, Suite 1428, Newark, NJ 07102, Officer: Percival Bramble, President/Secretary/Treasurer (Qualifying Individual), Application Type: New OFF License.
- Excom USA Inc. (OFF), 10300 W. McNab Road, Tamarac, FL 33327, Officers: Maria S. Oliveira, President/Secretary (Qualifying Individual), Dercilio F. Oliveira, Vice President, Application Type: New OFF License.
- Fachel International LLC dba Fachel Shipping and Logistics (NVO & OFF), 2400 Gainsborough Court, #D, Parkville, MD 21234, Officers: Shelia J. Worley, Treasurer (Qualifying Individual), Famous I. Osasuyi, Manager, Application Type: New NVO & OFF License.
- Forward System Logistics Inc. (NVO), 144–54 156th Street, Jamaica, NY 11434, Officers: Victor Leung, Secretary (Qualifying Individual), Jerry Lo, President/Treasurer, Application Type: QI Change.
- G & G Global Sales, Inc. (OFF), 134 Park Drive, East Stroudsburg, PA 18302, Officers: Rachele P. Gonzalo, President (Qualifying Individual), Jesse D. Gonzales, Vice President, Application Type: Business Structure Change.
- GSN Worldwide Logistics LLC (NVO & OFF), 55 Carter Drive, Suite 209, Edison, NJ 08817, Officer: Rajiv Jaidka, President (Qualifying Individual), Application Type: Add OFF Service.
- Herve Ballardur International S.A., Corp. dba HBI America (NVO), Saumaty Seon Business Park, 45 Avenue Andre Roussin BP 3, 13321 Marseilles Cedex 16, France, Officers: Herve Ballardur, President/Director (Qualifying Individual), Isabelle Ballardur, Vice President, Application Type: New NVO License.
- International Movers Network Inc. (NVO), 70–20 73rd Street, Glendale, NY 11385, Officers: Or Zohar, Director/President (Qualifying Individual), Gal Zohar, Secretary/Treasurer, Application Type: New NVO License.
- Jaguar Logistics, Inc. (NVO & OFF), 10813 NW. 30th Street, Suite 110–B, Doral, FL 33172, Officers: Becxi Santos, Director (Qualifying Individual), Omar A. Esper, President, Application Type: New NVO & OFF License.
- Kloosterboer International Forwarding, LLC (NVO & OFF), 2025 First Avenue, Suite 1205, Seattle, WA 98121, Officers: Matthew Darbous, Vice President—Operations (Qualifying Individual), Steve Abernathy, President, Application Type: Name Change & QI Change.
- Logikor Inc. (NVO), 320 Pinebush Road, Cambridge, ON N1T1Z6 Canada, Officers: Rick Morgan, Director (Qualifying Individual), Darryl J. King, CEO/Treasurer, Application Type: New NVO License.
- Logistic's World LLC (NVO & OFF), 29 Island Trail, Mount Sinai, NY 11776, Officer: Iffat Furoogh, Member (Qualifying Individual), Application Type: New NVO & OFF License.
- M & D Global Logistics, Inc. (NVO), 2211 S. Hacienda Blvd., Suite 200D, Hacienda Heights, CA 91745, Officers: Jeffrey Wu, Treasurer/CFO/Director (Qualifying Individual), Bofei Zhang, Director/President/CEO, Application Type: New NVO License.
- M Forwarder, LLC (NVO), 161–15 Rockaway Blvd., Suite 209, Jamaica, NY 11434, Officers: Dong Wen Lee, Partner (Qualifying Individual), Rick C. Ma, Partner, Application Type: New NVO License.
- Master Polo Logistics Corporation (NVO & OFF), 8544 NW. 93rd Street, Medley, FL 33166, Officers: Leonardo Capra, Director (Qualifying Individual), Luciano Menezes, Director, Application Type: New NVO & OFF License.
- Meiko America, Inc. (OFF), 19600 Magellan Drive, Torrance, CA 90502, Officers: Michael R. Sole, Vice President (Qualifying Individual), Application Type: QI Change.
- National Air Cargo, Inc. (OFF), 350 Windward Drive, Orchard Park, NY 14127, Officers: Peter W. Cheviot, Managing Director (Qualifying Individual), Preston G. Murray, President/CEO, Application Type: New OFF License.
- NGL International, LLC (OFF), 2121 Abbott Road, Suite 202, Anchorage, AK 99507, Officers: Raymond Donahue, Executive Vice President (Qualifying Individual), John Witte, Member, Application Type: New OFF License.
- NK America, Inc. dba Global Logistics by NK America, Inc. (NVO & OFF), 777 S. Kuther Road, Sidney, OH 45365, Officers: Bruce Hetzler, Vice President (Qualifying Individual), Hiroshi Sakairi, President, Application Type: Trade Name Change.
- Oceane Cargo Link, LLC (NVO & OFF), 4851 Georgia Highway 85, #102, Forest Park, GA 30297, Officer: Kingston Ansah, President/Secretary/CFO (Qualifying Individual), Application Type: New NVO & OFF License.
- Oceania Logistics Inc. (NVO), 131–37 41st Avenue, Suite 2B, Flushing, NY 11355, Officers: Jian Ying Du, Vice President (Qualifying Individual), Shu Wang, President, Application Type: New NVO License.
- Oceanic Cargo Transportation Inc (NVO), 3144 E. Garvey Avenue South,

- West Covina, CA 91791, Officers: Catalina Ricard, Secretary (Qualifying Individual), Alexis Palacio, CEO, Application Type: New NVO License.
- Pactrans Global, LLC (NVO & OFF), 951 Thorndale Avenue, Bensenville, IL 60106, Officers: Alexander F. Pon, Member/Manager (Qualifying Individual), Ketty Y. Pon, Member/Manager, Application Type: New NVO & OFF License.
- PMC Maritime Inc. (NVO), 2955 W. Academy Avenue, Anaheim, CA 92804, Officer: Po Y. Chan, President/Secretary/Treasurer/Director (Qualifying Individual), Application Type: New NVO License.
- Promise Lines, Inc (NVO & OFF), 9225 Brandy Lane, #C, Laurel, MD 20723, Officers: Doreen Oloo-Dale, President (Qualifying Individual), Anthony Dale, Vice President, Application Type: New NVO & OFF License.
- Seagull Maritime Agencies Private Limited (NVO), F-35/3, Okhla Industrial Area, Phase II, New Delhi-110020 India, Officers: Parveen Mehta, Vice President-Ocean Transportation (Qualifying Individual), Rajeev Chopra, President/Secretary, Application Type: QI Change.
- Senko (U.S.A.) Inc. (NVO & OFF), 770 Arthur Avenue, Elk Grove Village, IL 60007, Officers: Kenji Mori, Executive Vice President (Qualifying Individual), Akira Morikawa, Director/President, Application Type: Add NVO Service.
- Sky & Sea Ka Wah Logistics Inc. (NVO & OFF), 4007 Ellesford Avenue, West Covina, CA 91792, Officers: Jie Qing (A.K.A. Jay) Huang, Secretary (Qualifying Individual), Wendy Lou, President, Application Type: New NVO & OFF.
- South Cargo LLC (OFF), 8337 NW. 66th Street, Miami, FL 33166, Officers: Jenny R. Contreras, Manager (Qualifying Individual), Jesus Aznar, Manager, Application Type: New OFF License.
- Supreme International Ltd. (NVO & OFF), 2100 Sibley Blvd., Suite 11, Calumet City, IL 60409, Officer: Bosun Dominic, President/CEO (Qualifying Individual), Application Type: Add OFF Service.
- Thuan Loi Shipping (NVO), 7771 Garvey Avenue, #D, Rosemead, CA 91770, Officer: Stacy Duong, President (Qualifying Individual), Application Type: New NVO License.
- TOC Logistics International, LLC (NVO & OFF), 2629 Waterfront Parkway E. Drive, #380, Indianapolis, IN 46214, Officers: Gurjeet S. Srao, Vice President International (Qualifying Individual), Gary Cardenas, CEO/President, Application Type: New NVO & OFF License.
- Trade Bridge Logistics, Inc. (NVO & OFF), 103 N. 13th Street, Brooklyn, NY 11249, Officers: Hong (Irene) Shi, President (Qualifying Individual), Baozhu Wu, Secretary, Application Type: New NVO & OFF License.
- Transpacific Line, Inc. (NVO), 202-09 43rd Avenue, B4, Bayside, NY 11361, Officers: Liwai Liu, President (Qualifying Individual), Diana Kim, Vice President, Application Type: New NVO License.
- Tri-Coast Shipping & Logistics, L.L.C. (NVO & OFF), 19403 Glade Water Drive, Tomball, TX 77375, Officers: Donald B. Rawlings, Manager (Qualifying Individual), Julie Barnhart, Member/Manager/Secretary/Treasurer, Application Type: New NVO & OFF License.
- Turamco Lines, Inc. (NVO & OFF), 120 Ocean Parkway, Suite 4-H, Brooklyn, NY 11218, Officers: Esra Alpay, Vice President (Qualifying Individual), Hayrettin Gevher, President/CEO/Secretary/Treasurer, Application Type: New NVO & OFF License.
- United Transport Services, Corp. (NVO), 6947 NW. 82nd Avenue, Miami, FL 33166, Officers: Oscar Nova, Director of Operations (Qualifying Individual), Augusto Villegas, President, Application Type: New NVO License.
- Unity Holdings, Inc. (NVO), 2860 W. State Road 84, Suite 118, Dania Beach, FL 33312, Officers: Howard Shiman, Secretary (Qualifying Individual), Dennis Cummings, President, Application Type: New NVO License.
- Universal Pacific Enterprises, Inc. (NVO & OFF), 15061 Tribute Way, Bakersfield, CA 93314, Officers: Justin L. Gonzalez, President (Qualifying Individual), Sally Gonzalez, Vice President/Secretary/CFO, Application Type: New NVO & OFF License.
- Vilkon N.A., Inc. (OFF), 19550 International Blvd., #301, Seatac, WA 98188, Officers: Genadij Solovjov, Vice President (Qualifying Individual), Konstantin Kobrianov, President, Application Type: New OFF License.
- Vista Global Container, Inc. (NVO), 115 North Main Street, Algonquin, IL 60031, Officer: Jeffrey P. Ozburn, President (Qualifying Individual), Application Type: New NVO License.
- W8 Shipping LLC (OFF), 8 Aviation Court, Savannah, GA 31408, Officers: Darius Ziulpa, Member (Qualifying Individual), Gediminas Garmus, Member/Manager, Application Type: New OFF License.
- Watercraft Mix, Inc. dba Export Depot (NVO & OFF), 4380 E. 11th Avenue, Hialeah, FL 33013, Officers: Nathalie Rioz, Secretary (Qualifying Individual), Dmitry Poyarkov, President/Treasurer, Application Type: New NVO & OFF License.
- Weida Freight System, Inc. (NVO), 5341 West 104th Street, Los Angeles, CA 90045, Officers: Andre S. Carvalho, Secretary (Qualifying Individual), Victor Y. Wei, Director/President/CEO, Application Type: New NVO License.
- World Connections, Inc. (OFF), 8380 Isis Avenue, Los Angeles, CA 90045, Officers: Edwin Marfil, President (Qualifying Individual), Danielle Marfil, CFO, Application Type: QI Change.
- Worldwide Freight Logistics Corp. (NVO), 9222 NW. 101 Street, Medley, FL 33178, Officers: Heriberto Sanchez, President (Qualifying Individual), Roxana Sanchez, CEO, Application Type: New OFF License.

Dated: September 2, 2011.

**Rachel E. Dickon,**  
Assistant Secretary.

[FR Doc. 2011-23056 Filed 9-8-11; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR, part 515.

License No.	Name/address	Date reissued
012927N .....	Asecomer International Corporation dba Interworld Freight, Inc. dba Junior Cargo, Inc., 8225 NW. 80th Street, Miami, FL 33166.	June 22, 2011.

**Sandra L. Kusumoto.**

Director, Bureau of Certification and Licensing.

[FR Doc. 2011-23059 Filed 9-8-11; 8:45 am]

BILLING CODE 6730-01-P

**FEDERAL MARITIME COMMISSION****Ocean Transportation Intermediary License; Rescission of Order of Revocation**

Notice is hereby given that the Order revoking the following license is being rescinded by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR, part 515.

License Number: 022541NF.

Name: Oceanair Forwarding, Inc.

Address: 11232 St. Johns Industrial Parkway North, Suite 6, Jacksonville, FL 32246.

Order Published: FR: 7/25/11 (Volume 76, No. 142, Pg. 44332).

**Sandra L. Kusumoto.**

Director, Bureau of Certification and Licensing.

[FR Doc. 2011-23057 Filed 9-8-11; 8:45 am]

BILLING CODE 6730-01-P

**FEDERAL RETIREMENT THRIFT INVESTMENT BOARD****Sunshine Act Meeting**

**TIME AND DATE:** 9 a.m. (EST), September 16, 2011.

**PLACE:** 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of the minutes of the August 15, 2011 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
  - a. Monthly Participant Activity Report.
  - b. Monthly Investment Performance Review.
  - c. Legislative Report.
3. Annual Budget Report.
  - a. Fiscal Year 2011 Results.
  - b. Fiscal Year 2012 Budget.
  - c. Fiscal Year 2013 Estimate.

**CONTACT PERSON FOR MORE INFORMATION:** Thomas J. Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: September 7, 2011.

**Laurissa Stokes,**

Assistant General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2011-23274 Filed 9-7-11; 4:15 pm]

BILLING CODE 6760-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Meeting of the Presidential Advisory Council on HIV/AIDS**

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of HIV/AIDS Policy.

**ACTION:** Notice.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. The meeting will be open to the public.

**DATES:** The meeting will be held Thursday, September 29, 2011 and Friday September 30, 2011. The meeting will be held from 10 a.m. to approximately 5 p.m. on Thursday, September 29, 2011, and 9 a.m. to approximately 3 p.m. on Friday, September 30, 2011.

**ADDRESSES:** Department of Health and Human Services, Room 800, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Mr. Melvin Joppy, Committee Manager, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue, Room 443H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 690-5560. More detailed information about PACHA can be obtained by accessing the Council's Web site at <http://www.pacha.gov>.

**SUPPLEMENTARY INFORMATION:** PACHA was established by Executive Order 12963, dated June 14, 1995 as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies to promote effective prevention of HIV disease and AIDS. The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health,

philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy. The agenda for the upcoming meeting will be posted on the Council's Web site at <http://www.pacha.gov>.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the building. Individuals who plan to attend and need special assistance, such as language interpretation or other reasonable accommodations, should notify the designated contact person. Pre-registration for public attendance is advisable and can be accomplished by contacting the PACHA Committee Manager.

Members of the public will have the opportunity to provide comments during the public comment period(s) of the meeting. Pre-registration is required for public comment. Any individual who wishes to participate in the public comment session must contact: Melvin Joppy, Office of HIV/AIDS Policy, by e-mail at [melvin.joppy@hhs.gov](mailto:melvin.joppy@hhs.gov), no later than close of business Friday, September 23, 2011. Public comment will be limited to three minutes per speaker.

Members of the public who wish to have printed materials distributed to PACHA members for discussion at the meeting are asked to provide, at a minimum, 2 copies of the materials to the PACHA Committee Manager no later than close of business Wednesday, September 28, 2011. Contact information for the PACHA Committee Manager is provided above.

Dated: September 1, 2011.

**Christopher H. Bates,**

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2011-23031 Filed 9-8-11; 8:45 am]

BILLING CODE 4150-43-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****HIT Policy Committee Advisory Meeting; Notice of Meeting**

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology

(ONC). The meeting will be open to the public.

*Name of Committee:* HIT Policy Committee.

*General Function of the Committee:* To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

*Date and Time:* The meeting will be held on October 12, 2011, from 10 a.m. to 3 p.m. Eastern Time.

*Location:* Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC. For up-to-date information, go to the ONC Web site, <http://healthit.hhs.gov>.

*Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202-205-4528, Fax: 202-690-6079, e-mail:

[judy.sparrow@hhs.gov](mailto:judy.sparrow@hhs.gov). Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The committee will hear reports from its workgroups, including the Meaningful Use Workgroup, the Privacy & Security Tiger Team, the Enrollment Workgroup, and the Quality Measures Workgroup. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at <http://healthit.hhs.gov>.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 7, 2011. Oral comments from the public will be scheduled between approximately 1 and 2 p.m. Time allotted for each presentation is limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy

Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://healthit.hhs.gov> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 2).

Dated: September 1, 2011.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2011-23050 Filed 9-8-11; 8:45 am]

**BILLING CODE 4150-45-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### HIT Standards Committee Advisory Meeting; Notice of Meeting

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

*Name of Committee:* HIT Standards Committee.

*General Function of the Committee:* to provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

*Date and Time:* The meeting will be held virtually on October 21, 2011, from 9 a.m. to 12:30 p.m./Eastern Time.

*Location:* The meeting will be conducted virtually only. Dial into the meeting: 1-877-705-6006. For up-to-date information, go to the ONC Web site, <http://healthit.hhs.gov>.

*Contact Person:* Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202-205-4528, Fax: 202-690-6079, e-mail: [judy.sparrow@hhs.gov](mailto:judy.sparrow@hhs.gov). Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The committee will hear reports from its workgroups, including the Clinical Operations, Vocabulary Task Force, Clinical Quality, Implementation, and Enrollment Workgroups. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at <http://healthit.hhs.gov>

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 17, 2011. Oral comments from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m./Eastern Time. Time allotted for each presentation will be limited to three minutes each. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://healthit.hhs.gov> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 2).

Dated: September 1, 2011.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2011-23042 Filed 9-8-11; 8:45 am]

**BILLING CODE 4150-45-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### HIT Policy Committee's Workgroup Meetings; Notice of Meetings

**AGENCY:** Office of the National Coordinator for Health Information Technology, HHS.

**ACTION:** Notice of meetings.

This notice announces forthcoming subcommittee meetings of a federal advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meetings will be open to the public via dial-in access only.

*Name of Committees:* HIT Policy Committee's Workgroups: Meaningful Use, Privacy & Security Tiger Team, Quality Measures, Adoption/Certification, and Information Exchange workgroups.

*General Function of the Committee:* To provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

*Date and Time:* The HIT Policy Committee Workgroups will hold the following public meetings during October 2011: October 5 and 6, Meaningful Use Workgroup's hearing and public meeting, 9 a.m. to 4 p.m./ET; October 7th, Privacy & Security Tiger Team, 2 to 4 p.m./ET; October 18th Meaningful Use Workgroup, 10 a.m. to 12 p.m./ET; October 20th, Privacy & Security Tiger Team, 2 to 4 p.m./ET.

*Location:* All workgroup meetings will be available via webcast; for instructions on how to listen via telephone or Web visit <http://healthit.hhs.gov>. Please check the ONC Web site for additional information or revised schedules as it becomes available. Detailed information on the October 5 and 6 Meaningful Use meetings can be found on the ONC Web site as it becomes available.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202-205-4528, Fax: 202-690-6079, e-mail: [judy.sparrow@hhs.gov](mailto:judy.sparrow@hhs.gov). Please call the contact person for up-to-date information on these meetings. A notice in the **Federal Register** about last minute modifications that affect a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

*Agenda:* The workgroups will be discussing issues related to their specific subject matter, e.g., meaningful use, information exchange, privacy and security, quality measures, governance, or adoption/certification. If background materials are associated with the workgroup meetings, they will be posted on ONC's Web site prior to the meeting at <http://healthit.hhs.gov>.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the workgroups. Written submissions may be made to the contact person on or before two days prior to the workgroup's meeting date. Oral comments from the public will be scheduled at the conclusion of each workgroup meeting. Time allotted for each presentation will be limited to three minutes. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public session, ONC will take written comments after the meeting until close of business on that day.

If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://healthit.hhs.gov> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. 2).

Dated: September 1, 2011.

**Judith Sparrow,**

*Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.*

[FR Doc. 2011-23049 Filed 9-8-11; 8:45 am]

**BILLING CODE 4150-45-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Request for Comments on Research Across Borders: Proceedings of the International Research Panel of the Presidential Commission for the Study of Bioethical Issues

**AGENCY:** Department of Health and Human Services, Office of the Assistant Secretary for Health, Presidential Commission for the Study of Bioethical Issues.

**ACTION:** Notice.

**SUMMARY:** The Presidential Commission for the Study of Bioethical Issues is requesting public comment on the report of the International Research Panel titled, *Research Across Borders: Proceedings of the International Research Panel of the Presidential Commission for the Study of Bioethical Issues*, available for review at <http://www.bioethics.gov>.

**DATES:** To assure consideration, comments must be received by October 11, 2011.

**ADDRESSES:** Individuals, groups, and organizations interested in commenting on this study may submit comments by e-mail to [info@bioethics.gov](mailto:info@bioethics.gov) or by mail to the following address: Public

Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Ave., NW., Suite C-100, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Hillary Wicai Viers, Communications Director, Presidential Commission for the Study of Bioethical Issues, 1425 New York Avenue, NW., Suite C-100, Washington, DC 20005. Telephone: 202-233-3960. E-mail: [Hillary.Viers@bioethics.gov](mailto:Hillary.Viers@bioethics.gov). Additional information may be obtained at <http://www.bioethics.gov>.

**SUPPLEMENTARY INFORMATION:** On November 24, 2009, the President established the Presidential Commission for the Study of Bioethical Issues (Commission) to advise him on bioethical issues generated by novel and emerging research in biomedicine and related areas of science and technology. The Commission is charged to identify and promote policies and practices that assure ethically responsible conduct of scientific research, healthcare delivery, and technological innovation. In undertaking these duties, the Commission seeks to identify and examine specific bioethical, legal, and social issues related to potential scientific and technological advances; examine diverse perspectives and possibilities for international collaboration on these issues; and recommend legal, regulatory, or policy actions as appropriate.

On October 1, 2010, the U.S. Government disclosed that it had supported research on sexually transmitted diseases in Guatemala from 1946 to 1948 involving the intentional infection of vulnerable human populations. In response, President Barack Obama directed the Presidential Commission for the Study of Bioethical Issues (the Commission) to "oversee a thorough fact-finding investigation into the specifics" of the U.S. Public Health Service supported research, and to conduct a review of current human subjects protection "to determine if Federal regulations and international standards adequately guard the health and well-being of participants in scientific studies supported by the Federal Government." The President asked specifically for assurance "that current rules for research participants protect people from harm or unethical treatment, domestically as well as internationally." President Obama directed the Commission to consult with its counterparts in the global community and to seek the insight of international experts as part of its work on contemporary protections for human subjects of research. The Commission

assembled a subcommittee called the International Research Panel, which met three times in 2011. The proceedings of the International Research Panel are now available for public review and comment at the Commission's Web site, [www.bioethics.gov](http://www.bioethics.gov).

Please address comments by e-mail to [info@bioethics.gov](mailto:info@bioethics.gov), or by mail to the following address: Public Commentary, Presidential Commission for the Study of Bioethical Issues, 1425 New York Ave., NW., Suite C-100, Washington, DC 20005. Comments will be publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

Dated: August 30, 2011.

**Valerie H. Bonham,**

*Executive Director, Presidential Commission for the Study of Bioethical Issues.*

[FR Doc. 2011-23030 Filed 9-8-11; 8:45 am]

**BILLING CODE 4154-06-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

[30Day-11-11BJ]

**Agency Forms Undergoing Paperwork Reduction Act Review**

The Centers for Disease Control and Prevention (CDC) publishes a list of

information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639-5960 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov). Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395-5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

CDC Diabetes Prevention Recognition Program (DPRP)—New—Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Centers for Disease Control and Prevention (CDC) is establishing the CDC Diabetes Prevention Recognition Program (DPRP) as authorized by Section 399-V of Public Law 111-148, the Patient Protection and Affordable Care Act. The DPRP will provide a mechanism for recognizing organizations that deliver effective, community-based type 2 diabetes prevention programs according to written program standards.

CDC will collect information to monitor, evaluate, and provide technical

assistance to organizations that apply for recognition through the DPRP. Applicant organizations may be public- or private-sector entities. Information collection will include a one-time, on-line application form to verify the organization's eligibility. Thereafter, each applicant organization will submit de-identified program evaluation (process and outcome) data to CDC every six months. Information will be collected electronically. CDC will use the information to monitor program fidelity to a CDC-approved diabetes prevention curriculum, to evaluate its effectiveness and to provide targeted technical assistance to applicant organizations. Contact information for organizations that fully meet DPRP standards will be made available on the DPRP Web site.

OMB approval is requested for three years. CDC anticipates seeking continued OMB approval throughout the lifetime of the DPRP. Participation in the DPRP is voluntary, and there are no costs to organizations other than their time. The total estimated annualized burden hours are 600.

**ESTIMATED ANNUALIZED BURDEN HOURS**

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs)
Organizations that deliver type 2 diabetes prevention programs.	DPRP Application Form .....	120	1	1
	DPRP Evaluation Data .....	240	2	1

Dated: August 31, 2011.

**Daniel Holcomb,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011-22789 Filed 9-8-11; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**Request for Nominations of Candidates to Serve on the Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC)**

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for membership on the BCCEDCAC. The BCCEDCAC provides advice and guidance to the Secretary, the Assistant Secretary for Health, and the CDC on the early detection and

control of breast and cervical cancer. The role of the BCCEDCAC is to provide advice and make recommendations regarding national program goals and objectives; implementation strategies; program priorities, including surveillance, epidemiologic investigations, education and training, information dissemination, professional interactions and collaborations, and policy.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the field of medicine, including public health,

behavioral science, epidemiology, radiology, pathology, clinical medical care, health education, and surveillance. Members may be invited to serve for four-year terms.

The next cycle of selection of candidates will begin in the Winter of 2011, for selection of potential nominees to replace members whose terms will end on March 31, 2012 and March 31, 2013 respectively. Selection of members is based on candidates' qualifications to contribute to the accomplishment of BCCEDCAC objectives (<http://www.cdc.gov/maso/FACM/facmBCCEDCAC.htm>). The U.S. Department of Health and Human Services policy stipulates that committee membership shall be balanced in terms of professional training and background, points of view represented, and the committee's function. Consideration is given to a broad representation of geographic areas within the U.S., with diverse representation of both genders, ethnic and racial minorities, and persons with disabilities. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government.

Candidates should submit the following items:

- Current curriculum vitae or resume, including complete contact information (telephone numbers, fax number, mailing address, e-mail address).

- At least one letter of recommendation from a person(s) not employed by the U.S. Department of Health and Human Services. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by HHS. Nominations should be submitted (postmarked or received) by October 1, 2011.

- *Electronic submission:* You may submit nominations, including attachments, electronically to [JBlackmon@cdc.gov](mailto:JBlackmon@cdc.gov).

- *Regular, Express or Overnight Mail:* Written nominations may be submitted to the following addressee only: Ms. Jameka Reese Blackmon, M.B.A., C.M.P., c/o BCCEDCAC Secretariat, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., Mailstop K-57, Atlanta, Georgia 30341, Telephone and facsimile submissions cannot be accepted. Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

Candidates invited to serve will be asked to submit the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the

Centers for Disease Control and Prevention." This form allows CDC to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded at [http://www.usoge.gov/forms/oge450\\_pdf/oge450\\_accessible.pdf](http://www.usoge.gov/forms/oge450_pdf/oge450_accessible.pdf).

This form should not be submitted as part of a nomination.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Dated: September 2, 2011.

**Catherine Ramadei,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2011-23122 Filed 9-8-11; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Requirements and Registration for Are You Prepared? Video Contest

**AGENCY:** Centers for Disease Control and Prevention, Department of Health and Human Services.

**ACTION:** General Notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces a new Challenge found at <http://www.Challenge.gov> to support National Preparedness Month. September is National Preparedness Month and HHS/CDC wants to know: *Are You Prepared?* HHS/CDC is challenging the general public to make a 60 second video that shows how you are prepared for any emergency and reinforces the key message: "Get a Kit. Make a Plan. Be Informed." Individuals and groups can enter the contests. Participants are encouraged to use creative ways to prepare for an emergency.

**DATES:** Submissions for this Challenge will be accepted through October 11, 2011. Winners will be announced on or about October 28, 2011 on <http://www.cdc.gov> and <http://www.cdc.gov>

[www.youtube.com/CDCStreamingHealth](http://www.youtube.com/CDCStreamingHealth).

**FOR FURTHER INFORMATION CONTACT:** David Daigle, Office of Public Health Preparedness and Response, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., MS-D44, Atlanta, Georgia 30333, *phone:* 404-639-7405.

#### SUPPLEMENTARY INFORMATION:

##### Subject of Challenge Competition

*Emergency Preparedness Video Contest.* September is National Preparedness Month and we want to know how the public is prepared for all emergencies. We are encouraging people to enter the Are You Prepared? Video Contest by submitting a 60 second or less video that includes our key message, "Get a Kit, Make a Plan, Be Informed." All submissions will be entered through the *Challenge.gov* Web site. This video contest promotes emergency preparedness and engages the public in innovative methods of preparing for emergencies of all types. HHS/CDC wants to engage a younger population that is typically not as prepared in preparation for all hazards. Information on the contest can also be found at <http://prepare/challenge.gov>.

##### Eligibility Rules for Participating in the Competition

The HHS/CDC *Are You Prepared?* Video Contest is only open to individuals, private or public entities, or groups that meet the following requirements: In the case of a private entity, the entity must be incorporated in and maintain a primary place of business in the United States, and in the case of an individual, whether participating singly or in a group, must be a citizen or permanent resident of the United States who is at least thirteen (13) years of age at the time of entry; if the Contestant/Submitter is under eighteen (18) years of age at the time of entry, the Contestant/Submitter must have permission from a parent or guardian. Contestants/Submitters must also have the permission of the parent or guardian of each person under the age of 18 who is seen or heard in the video. Employees and contractors of CDC and HHS are not eligible, nor are their immediate family members. The Contest is subject to all applicable federal laws and regulations. Participation constitutes Contestant's full and unconditional agreement to the Official Rules and CDC administrative decisions, which are final and binding in all matters related to the Contest, and can be found at: <http://www.Challenge.gov>. Eligibility for a prize award is contingent upon fulfilling

all requirements set forth herein. An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

#### Registration Process for Participants

All participants must submit their video through <http://www.Challenge.gov>. Other entries will not be considered.

#### Amount of the Prize

There is no monetary prize given to the winner. Winners will be announced on or about October 28, 2011 on <http://www.cdc.gov> and <http://www.youtube.com/CDCStreamingHealth>.

#### Basis Upon Which Winner Will Be Selected

The winner will be selected based on how effective and creative their video is in addressing emergency preparedness information, specifically the message of "Get a Kit, Make a Plan, Be Informed." Other deciding factors are whether they mentioned possible emergencies (e.g., tornados, hurricanes, earthquakes) and if or how they incorporate the emergency preparedness Web site (<http://emergency.cdc.gov>).

Dated: September 2, 2011.

#### John P. Murphy,

*Business Operations Lead, Office of the Associate Director for Science, Centers for Disease Control and Prevention.*

[FR Doc. 2011-23068 Filed 9-8-11; 8:45 am]

BILLING CODE 4163-18-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifier CMS-10408]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this

collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Early Retiree Reinsurance Program Survey of Plan Sponsors; *Use:* Under the Patient Protection and Affordable Care Act (42 U.S.C. 18002) and implementing regulations at 45 CFR part 149, employment-based plans that offer health coverage to early retirees and their spouses, surviving spouses, and dependents are eligible to receive tax-free reimbursement for a portion of the costs of health benefits provided to such individuals. The statute limits how the reimbursement funds can be used, and requires the Secretary of HHS to develop a mechanism to monitor the appropriate use of such funds. The survey that is the subject of this PRA package, is part of that mechanism. *Form Number:* CMS-10408 (OMB 0938-New); *Frequency:* Yearly; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 3,130; *Total Responses:* 3,130; *Total Hours:* 34,430. (For policy questions regarding this collection contact Catherine Kelly at 301-492-4156. For all other issues call 410-786-1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to [Paperwork@cms.hhs.gov](mailto:Paperwork@cms.hhs.gov), or call the Reports Clearance Office on (410) 786-1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *November 8, 2011*:

1. *Electronically.* You may submit your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options"

to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number \_\_\_\_\_, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: September 6, 2011.

#### Martique Jones,

*Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2011-23118 Filed 9-8-11; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-1587-N2]

#### Medicare Program; Notification of Closure of St. Vincent's Medical Center; Extension of the Deadline for Submission of Applications

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of extension of the Deadline for Submission of Applications.

**SUMMARY:** This notice extends the deadline for hospitals to apply to the Centers for Medicare & Medicaid Services (CMS) to receive St. Vincent's Medical Center's full time equivalent (FTE) resident cap slots. The application deadline, which was September 28, 2011, has been extended to December 1, 2011.

**DATES:** The application deadline is extended to 5 p.m. (e.s.t.) on December 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Renate Dombrowski, (410) 786-4645. Miechal Lefkowitz, (212) 616-2517.

**SUPPLEMENTARY INFORMATION:** On May 31, 2011, we published a notice in the *Federal Register* (76 FR 31340) to announce the closure of St. Vincent's Medical Center and the initiation of an application process for hospitals to apply to the Centers for Medicare & Medicaid Services (CMS) to receive St. Vincent's Medical Center's full time equivalent (FTE) resident cap slots, as provided under section 5506 of the Patient Protection and Affordable Care Act (Pub. L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-

152) (collectively, the “Affordable Care Act”), “Preservation of Resident Cap Positions from Closed Hospitals.” Specifically, section 5506 of the Affordable Care Act authorizes the Secretary to redistribute residency cap slots after a hospital that trained residents in an approved medical residency program(s) closes. St. Vincent’s Medical Center’s official date of termination of the Medicare provider agreement and date of closure is October 31, 2010. The published notice, announcing the hospital closure and initiating the application process to preserve St. Vincent’s resident cap positions stated that the application deadline was September 28, 2011. The date of September 28, 2011, was chosen since the procedure described in the November 24, 2010 **Federal Register** (75 FR 72215) for initiating an application process specifies that the application deadline would be 4 months after issuance of the notice to the public (that is, September 28, 2011, is 4 months after May 31, 2011).

Specifically, section 5506 of the Affordable Care Act instructs the Secretary to increase the FTE resident caps for other hospitals based upon the FTE resident positions in teaching hospitals that closed “on or after a date that is 2 years before the date of enactment” (that is, March 23, 2008). In the November 24, 2010 **Federal Register** (75 FR 72215), we stated that hospitals wishing to apply for FTE resident cap slots from teaching hospitals that closed between March 23, 2008 and through and including August 3, 2010, must submit applications to CMS by April 1, 2011. We further stated that for any teaching hospital closures occurring after August 3, 2010, separate notice would be made announcing the closure and initiating an application process for those slots and a future application deadline. The first application process with the application deadline of April 1, 2011, spanned over a 2-year timeframe (covering all hospital closures between March 28, 2008 and through and including August 3, 2010), and involved 15 closed teaching hospitals, generating a very large number of applications and slots to be redistributed. The closure of St. Vincent’s Medical Center occurred on October 31, 2010, and the notice announcing the closure and initiating the application process was published on May 31, 2011, establishing the September 28, 2011 application deadline. Thus, the application period CMS initiated for the preservation of FTE resident slots due to the closure of St. Vincent’s Medical Center overlaps with the period during which CMS is

processing and reviewing the applications received under the first expansive section 5506 application process, and issuing final determinations to hospitals that may receive increases to their FTE resident caps. Moreover, we note that St. Vincent’s Medical Center is located in the same CBSA as 3 (of the 15) hospitals that closed between March 23, 2008 through August 3, 2010, and many of the hospitals wishing to apply for slots from St. Vincent’s Medical Center have indicated that it would be helpful to receive the results of their applications submitted under the first section 5506 process in order to make informed decisions regarding the number of slots for which to apply from St. Vincent’s Medical Center under this separate application process. CMS does not have a specific deadline by which to issue final determinations to hospitals that receive slots under section 5506 of the Affordable Care Act under the initial expansive application process, yet we understand the concerns of these hospitals and believe it is appropriate, in this case, to extend the application deadline for FTE resident slots from St. Vincent’s Medical Center. Accordingly, we are extending the application deadline for FTE resident slots from St. Vincent’s Medical Center from September 28, 2011 to December 1, 2011. We will consider applications received no later than 5 p.m. (e.s.t) December 1, 2011. Applications must be received, not postmarked, by this date.

We continue to refer readers to [http://www.cms.gov/AcuteInpatientPPS/06\\_dgme.asp#TopOfPage](http://www.cms.gov/AcuteInpatientPPS/06_dgme.asp#TopOfPage) to download a copy of the CMS Evaluation Form 5506, which is the application form that hospitals are to use to apply for slots under section 5506 of the Affordable Care Act. In addition, readers can access this Web site for a copy of the CY 2011 OPSS November 24, 2010 final rule, for an explanation of the policy and procedures for applying for slots and the redistribution of the slots under sections 1886(h)(4)(H)(vi) and 1886(d)(5)(B)(v) of the Social Security Act, as provided by section 5506 of the Affordable Care Act. The mailing addresses for the CMS New York Regional Office and the CMS Central Office are included in this application form.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 1, 2011.

**Donald M. Berwick,**

*Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2011-23120 Filed 9-8-11; 8:45 am]

**BILLING CODE 4120-01-P**

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Food and Drug Administration**

[Docket No. FDA-2011-N-0624]

#### **Agency Information Collection Activities; Proposed Collection; Comment Request; Notice of Participation**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements for filing a notice of participation with FDA.

**DATES:** Submit either electronic or written comments on the collection of information by November 8, 2011.

**ADDRESSES:** Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150-400B, Rockville, MD 20850, 301-796-7726, [Ila.Mizrachi@fda.hhs.gov](mailto:Ila.Mizrachi@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR

1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the

validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Notice of Participation—21 CFR 12.45 (OMB Control Number 0910-0191)—Extension**

Section 12.45 (21 CFR 12.45), issued under section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371), sets forth the format and procedures for any interested person to file a petition to participate in a formal evidentiary hearing, either personally or through a representative. Section 12.45 requires that any person filing a notice of participation state their specific interest in the proceedings, including the specific issues of fact about which the

person desires to be heard. This section also requires that the notice include a statement that the person will present testimony at the hearing and will comply with specific requirements in 21 CFR 12.85, or, in the case of a hearing before a Public Board of Inquiry, concerning disclosure of data and information by participants (21 CFR 13.25). In accordance with § 12.45(e), the presiding officer may omit a participant's appearance.

The presiding officer and other participants will use the collected information in a hearing to identify specific interests to be presented. This preliminary information serves to expedite the prehearing conference and commits participation.

The respondents are individuals or households, State or local governments, not-for-profit institutions and businesses, or other for-profit groups and institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
12.45 .....	4	1	4	3	12

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimates for this collection of information are based on Agency records and experience over the past 3 years.

Dated: September 2, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011-23105 Filed 9-8-11; 8:45 am]

BILLING CODE 4160-01-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2011-N-0608]

**Agency Information Collection Activities; Proposed Collection; Comment Request; MedWatch: The Food and Drug Administration Medical Products Reporting Program**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the

Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on revisions to Form FDA 3500 and Form FDA 3500A, and proposed consumer version of Form FDA 3500 (known as the MedWatch reporting form) used in the FDA Medical Products Reporting Program.

**DATES:** Submit either electronic or written comments on the collection of information by November 8, 2011.

**ADDRESSES:** Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:**

Jonna Capezuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-3794, [Jonnalynn.capezuto@fda.hhs.gov](mailto:Jonnalynn.capezuto@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under the PRA (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice

of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

*MedWatch: The FDA Medical Products Reporting Program—(OMB Control Number 0910-0291)—Extension*

To ensure the marketing of safe and effective products, postmarketing adverse outcomes and product problems must be reported for all FDA-regulated human health care products, including drugs, both prescription and over-the-counter (OTC); biologics; medical devices; dietary supplements and other special nutritional products (*e.g.*, infant formula and medical foods); and cosmetics. In addition, FDA has regulatory responsibility for tobacco products and an interest in receiving reports about adverse outcomes and product problems for these products.

Under sections 505, 512, 513, 515, 519, and 903 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355, 357, 360b, 360c, 360e, 360i, and 393) and section 351 of the Public Health Service Act (42 U.S.C. 262), FDA has the responsibility to ensure the safety and effectiveness of drugs, biologics, and devices. Under section 502(a) of the FD&C Act (21 U.S.C. 352(f)(2)), a drug or device is misbranded if its labeling is false or misleading. Under section 502(f)(1) of the FD&C Act, it is misbranded if it fails to bear adequate warnings, and under section 502(j), it is misbranded if it is dangerous to health when used as directed in its labeling. Under section 502(t)(2) of the FD&C Act, devices are considered to be misbranded if there has been a failure or refusal to give required notification or to furnish required material or information required under section 519. Requirements regarding mandatory reporting of adverse events or product problems have been codified in parts 310, 314, 600, and 803 (21 CFR 310, 314, 600, and 803), specifically

§§ 310.305, 314.80, 314.98, 600.80, 803.30, 803.50, 803.53, and 803.56, and specified in sections 760 and 761 of the FD&C Act. Mandatory reporting of adverse reactions for human cells, tissues, and cellular- and tissue-based products (HCT/Ps) has been codified in 21 CFR 1271.350.

FDA regulates the safety (*i.e.*, adulteration) of dietary supplements under section 402 of the FD&C Act (21 U.S.C. 342). Dietary supplements do not require premarket approval by FDA and the Agency bears the burden to gather and review evidence that a dietary supplement may be adulterated under section 402 of the FD&C Act after that product is marketed. Under section 761(b)(1) of the FD&C Act (21 U.S.C. 379aa-1(b)(1)), a dietary supplement manufacturer, packer, or distributor whose name appears on the label of a dietary supplement marketed in the United States is required to submit to FDA any serious adverse event report it receives regarding use of the dietary supplement in the United States.

Mandatory reporting, since 1993, has been supplemented by voluntary reporting by health care professionals, their patients, and consumers via the MedWatch reporting process. To carry out its responsibilities, the Agency needs to be informed when an adverse event, product problem, error with use of a human medical product or evidence of therapeutic failure (inequivalence) is suspected or identified in clinical use. When FDA receives this information from either health care professionals or patients, the report becomes data that will be used to assess and evaluate the risk associated with the product, and then FDA will take whatever action is necessary to reduce, mitigate, or eliminate the public's exposure to the risk through regulatory and public health interventions.

To implement these provisions for reporting on human medical products during their postapproval and marketed lifetimes, two forms are available from the Agency. Form FDA 3500 is used for voluntary (*i.e.*, not mandated by law or regulation) reporting by health care professionals and the public. Form FDA 3500A is used for mandatory reporting (*i.e.*, required by law or regulation).

Respondents to this collection of information are health care professionals; medical care organizations and other user-facilities (*e.g.*, extended care facilities, ambulatory surgical centers); consumers; manufacturers of biological, dietary supplement, and drug products or medical devices; and importers.

## II. Use of Form FDA 3500 (Voluntary Version)

The voluntary version of the form is used to submit all reports not mandated by Federal law or regulation. Individual health professionals are not required by law or regulation to submit reports to the Agency or the manufacturer, with the exception of certain adverse reactions following immunization with vaccines as mandated by the National Childhood Vaccine Injury Act of 1986. Those mandatory reports are not submitted to FDA on the 3500 or 3500A form but are submitted to the joint FDA/Centers for Disease Control and Prevention Vaccines Adverse Event Reporting System (VAERS) on the VAERS-1 form (see [http://vaers.hhs.gov/resources/vaers\\_form.pdf](http://vaers.hhs.gov/resources/vaers_form.pdf)).

Hospitals are not required by Federal law or regulation to submit reports associated with drug products, biological products, or special nutritional products. However, hospitals and other user facilities are required by Federal law to report medical device-related deaths and serious injuries.

Under Federal law and regulation (section 761(b)(1) of the FD&C Act (21 U.S.C. 379aa-1(b)(1))), a dietary supplement manufacturer, packer, or distributor whose name appears on the label of a dietary supplement marketed in the United States is required to submit to FDA any serious adverse event report it receives regarding use of the dietary supplement in the United States. However, FDA bears the burden to gather and review evidence that a dietary supplement may be adulterated under section 402 of the FD&C Act after that product is marketed. Therefore, the Agency depends on the voluntary reporting by health professionals and especially by consumers of suspected serious adverse events and product quality problems associated with the use of dietary supplements.

## III. Use of Form FDA 3500A (Mandatory Version)

### A. Drug and Biologic Products

In sections 505(j) and 704 (21 U.S.C. 374) of the FD&C Act, Congress has required that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the FD&C Act authorizes investigational powers to FDA for enforcement of the FD&C Act. These statutory requirements regarding mandatory reporting have been codified by FDA under 21 parts 310 and 314 (drugs) and 600 (biologics) of the Code of Federal Regulations. Parts

310, 314, and 600 mandate the use of the FDA Form 3500A form for reporting to FDA on adverse events that occur with drugs and biologics. Mandatory reporting of adverse reactions for HCT/Ps has been codified in 21 CFR 1271.350.

The majority of the mandatory reports for drug products, which at inception of Form FDA 3500A's use were received by Agency on the paper version of Form FDA 3500A (by mail or FAX), are now submitted and received by the Agency via an electronic submission route. In that case, the Form FDA 3500A is not used.

#### *B. Medical Device Products*

Section 519 of the FD&C Act (21 U.S.C. 360i) requires manufacturers and importers of devices intended for human use to establish and maintain records, make reports, and provide information as the Secretary of Health and Human Services may by regulation reasonably require to assure that such devices are not adulterated or misbranded and to otherwise assure its safety and effectiveness. The Safe Medical Device Act of 1990, signed into law on November 28, 1990, amends section 519 of the FD&C Act. The amendment requires that user facilities such as hospitals, nursing homes, ambulatory surgical facilities, and outpatient treatment facilities report deaths related to medical devices to FDA and to the manufacturer, if known. Serious illnesses and injuries are to be reported to the manufacturer or to FDA if the manufacturer is not known. These statutory requirements regarding mandatory reporting have been codified by FDA under 21 CFR part 803 (part 803). Part 803 mandates the use of the FDA Form 3500A for reporting to FDA on medical devices. The Medical Device User Fee and Modernization Act of 2002, Public Law 107-250, signed into law October 26, 2002, amended section 519 of the FD&C Act. The amendment (section 303) required FDA to revise the MedWatch forms "to facilitate the reporting of information \* \* \* relating to reprocessed single-use devices, including the name of the reprocessor and whether the device has been reused."

#### *C. Nonprescription Drug Products and Dietary Supplements*

Section 502(x) in the FD&C Act (21 U.S.C. 352(x)) implements the requirements of the Dietary Supplement and Nonprescription Drug Consumer Protection Act, which became law (Pub. L. 109-462) on December 22, 2006. These requirements apply to manufacturers, packers, and distributors

of nonprescription (OTC) human drug products marketed without an approved application. The law requires reports of serious adverse events to be submitted to FDA by manufacturers of dietary supplements and nonprescription drugs.

#### **IV. Proposed Modifications to Existing Forms 3500 and 3500A**

##### *A. General Changes*

The proposed modifications to Form FDA 3500 and Form FDA 3500A reflect changes that will bring the form into conformation, since the previous authorization in 2008, with current regulations, rules, and guidances.

##### *B. Changes Proposed for Form FDA 3500*

No additional fields will be added and no fields deleted. There are no proposed formatting changes to the location or distribution of the fields. Modifications are proposed to several field labels and descriptions to better clarify for reporters the range of reportable products, including tobacco products and food (*e.g.*, food allergens causing allergic or anaphylaxis reactions). Descriptive text in the field labels and instructions were modified to permit a better understanding of data requested. For section E, field E4, the label "Other" will be renamed "Unique Identifier #" in anticipation of the use of this product information by the Agency for specific characterization and identification of the medical device. The form remains a one-sided, one-page form with instructions for use on the reverse side and a self-addressed, postage-paid return mailer.

##### *C. Changes Proposed for Form FDA 3500A*

Certain formatting changes are proposed to allow mandatory reporters to better utilize available space for data entry and facilitate specification of the device product's coding. In section D, field D2, it is proposed that the same field be used to request the procode (D2b) to correspond to the existing common device name (D2a). The D4 field currently named "Other" will be renamed "Unique Identifier #." Section H, currently named "Device Manufacturers Only" will be renamed "Manufacturers Only." Field H1 will have the "Other" checkbox removed, and field H6, renamed "Event Problem and Evaluation Codes" will have patient code and device code boxes added, as in the existing form's field F10. In section G, field G5, STN # will be relabeled BLA #. Given the need to contact mandatory reporters in a timely manner, the Agency proposes that a

field be added to Form FDA 3500A to request an e-mail address for the mandatory reporter, to supplement the phone number and mailing address currently included on the form. This change is proposed for fields E1 and G1.

#### **V. Proposed Addition of Consumer Version of Form FDA 3500**

FDA supports and encourages direct reporting to the Agency by consumers (patients and their caregivers) of suspected serious adverse outcomes and other product problems associated with human medical products (<http://www.fda.gov/Safety/ReportAProblem/default.htm>). Since the inception of the MedWatch program, launched in July 1993 by then FDA Commissioner David Kessler, the program has been promoting and facilitating voluntary reporting by both the general public and health care professionals (Ref. 1). FDA has further encouraged voluntary reporting by requiring inclusion of the MedWatch toll-free telephone number or the MedWatch Internet address on all outpatient drug prescriptions dispensed, as mandated by section 17 of the Best Pharmaceuticals for Children's Act (Pub. L. 107-109).

On March 25, 2008, section 906 of the FDA Amendments Act amended section 502(n) of the FD&C Act and mandated that published direct-to-consumer advertisements for prescription drugs include the following statement printed in conspicuous text (this includes vaccine products): "You are encouraged to report negative side effects of prescription drugs to the FDA. Visit <http://www.fda.gov/medwatch>, or call 1-800-FDA-1088." Most private vendors of consumer medication information, the drug product-specific instructions dispensed to consumers at outpatient pharmacies, remind patients to report "side effects" to FDA and provide contact information to permit reporting via the MedWatch process and Form FDA 3500.

Currently, the non-health care professional public may submit voluntary reports using Form FDA 3500 (<http://www.fda.gov/Safety/MedWatch/HowToReport/ucm053074.htm>). This reporting form was created 20 years ago, and modeled after an earlier version of the Agency's reporting form for health care professionals. Form FDA 3500 is provided in paper and electronic formats (HTML version at <http://www.fda.gov/medwatch/report.htm> and fillable pdf version at <http://www.fda.gov/downloads/Safety/MedWatch/HowToReport/DownloadForms/ucm082725.pdf>), and is used to report to the Agency about serious adverse events, product

problems, product use errors, and therapeutic failure (therapeutic inequivalence). Reporting is supported for all FDA-regulated human medical care products, including drugs, biologicals, medical devices, special nutritional products, dietary supplements, cosmetics, and nonprescription (OTC) human drug products marketed without an approved application.

Qualitative assessment by social scientists, and comments and feedback from the public, have recognized that Form FDA 3500 is written and formatted at a literacy/comprehensibility level that far exceeds the level recommended for the general public by health literacy experts and does not conform to recommendations in the Plain Writing Act of 2010 (<http://www.gpo.gov/fdsys/pkg/PLAW-111publ274/pdf/PLAW-111publ274.pdf>).

The proposed consumer version of the voluntary Form FDA 3500 will request no new data from the voluntary reporter not already included in the existing Form FDA 3500 that is currently used for reporting from both health care professionals and consumers (patients). Certain existing fields, not considered essential data for the consumer report but present on the standard (i.e., health care professional) version of Form FDA 3500, have been eliminated to facilitate and expedite consumer submissions and reduce reporting burden. The formatting and the plain language used is compatible with the intent of the Plain Writing Act and is expected to provide non-health care professionals with a second option to the existing Form FDA 3500 that will reduce the burden of reporting by facilitating their understanding of the requested data and further clarify the voluntary reporting process.

The proposed consumer version of Form FDA 3500 evolved from several iterations of draft versions, with input from human factors experts, from other regulatory agencies and with extensive input from consumer advocacy groups and the general public. The Agency recognizes that many consumer reporters have a preference for accessing a copy of the voluntary reporting form on the Internet or submitting to FDA using an electronic version of the form. The Agency currently supports voluntary reporting with the forms submitted by mail, by FAX, by telephone via the toll free 800 number and online at <http://www.fda.gov/medwatch/report.htm>. It is the Agency's expectation that an approved consumer version of the voluntary form will be provided for consumer use by these same channels.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

FDA Center FDA Form (21 CFR Section)	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Center for Biologics Evaluation and Research/Center for Drug Evaluation and Research:					
Form 3500 .....	28,952	1	28,952	0.6	17,371
Form 3500A (§§ 310.305, 314.80, 314.98, and 600.80) .....	599	96	57,504	1.1	63,254
Center for Devices and Radiological Health:					
Form 3500 .....	4,585	1	4,585	0.6	2,751
Form 3500A (§ 803) .....	1,485	225	334,125	1.1	367,538
Center for Food Safety and Applied Nutrition:					
Form 3500 .....	297	1	297	0.6	178
Form 3500A .....	1,039	1	1,039	1.1	1,143
Total .....					452,235

<sup>1</sup>There are no capital costs or operating and maintenance costs associated with this collection of information.

**VI. Reference**

The following reference has been placed on display in the Division of Dockets Management (see ADDRESSES) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Kessler, D.A., "Introducing MEDWatch: A New Approach to Reporting Medication and Device Adverse Effects and Product Problems," *Journal of the American Medical Association*, vol. 269, pp. 2765–2768, 1993.

Dated: September 6, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–23094 Filed 9–8–11; 8:45 am]

**BILLING CODE 4160–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA–2011–N–0625]

**Agency Information Collection Activities; Proposed Collection; Comment Request; Filing Objections and Requests for a Hearing on a Regulation or Order**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to

publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements for filing objections and requests for a hearing on a regulation or order.

**DATES:** Submit either electronic or written comments on the collection of information by November 8, 2011.

**ADDRESSES:** Submit electronic comments on the collection of information to <http://www.regulations.gov>. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the

docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150-400B, Rockville, MD 20850, 301-796-7726, *Ila.Mizrachi@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice

of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Filing Objections and Requests for a Hearing on a Regulation or Order—21 CFR Part 12—(OMB Control Number 0910-0184)—Extension**

The regulations in 21 CFR 12.22, issued under section 701(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(e)(2)), set forth the

instructions for filing objections and requests for a hearing on a regulation or order under § 12.20(d) (21 CFR 12.20(d)). Objections and requests must be submitted within the time specified in § 12.20(e). Each objection for which a hearing has been requested must be separately numbered and specify the provision of the regulation or the proposed order. In addition, each objection must include a detailed description and analysis of the factual information and any other document, with some exceptions, supporting the objection. Failure to include this information constitutes a waiver of the right to a hearing on that objection. FDA uses the description and analysis to determine whether a hearing request is justified. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under 21 CFR 12.24 and do not limit the evidence that may be presented if a hearing is granted.

Respondents to this information collection are those parties that may be adversely affected by an order or regulation.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN <sup>1</sup>

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
12.22 .....	3	1	3	20	60

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on past filings. Agency personnel responsible for processing the filing of objections and requests for a public hearing on a specific regulation or order estimate approximately three requests are received by the Agency annually, with each requiring approximately 20 hours of preparation time.

Dated: September 2, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011-23106 Filed 9-8-11; 8:45 am]

**BILLING CODE 4160-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2011-D-0480]

**Draft Guidance for Industry: Submission of Warning Plans for Cigarettes and Smokeless Tobacco Products; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Submission of Warning Plans for Cigarettes and Smokeless Tobacco Products." This draft guidance document is intended to assist persons submitting warning plans to FDA under the Comprehensive

Smokeless Tobacco Health Education Act, as amended by the Family Smoking Prevention and Tobacco Control Act; and under the Federal Cigarette Labeling and Advertising Act, as amended by the Family Smoking Prevention and Tobacco Control Act, when that requirement takes effect.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 8, 2011.

Submit either electronic or written comments on the proposed collection of information by November 8, 2011.

**ADDRESSES:** Submit electronic comments on the draft guidance to <http://www.regulations.gov>. Submit written comments, including comments regarding the proposed collection of information, to the Division of Dockets Management (HFA-305), Food and Drug

Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance document entitled "Submission of Warning Plans for Cigarettes and Smokeless Tobacco Products" to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850-3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:**

*With regard to the draft guidance:* Gail Schmerfeld, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850-3229, 1-877-287-1373, [gail.schmerfeld@fda.hhs.gov](mailto:gail.schmerfeld@fda.hhs.gov).

*With regard to the proposed collection of information:* Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., P150-400B, Rockville, MD 20850, 301-796-3794, [Jonnalynn.capezzuto@fda.hhs.gov](mailto:Jonnalynn.capezzuto@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is announcing the availability of the draft guidance entitled "Submission of Warning Plans for Cigarettes and Smokeless Tobacco Products." This guidance, when finalized, will provide industry with information on how to submit warning plans for smokeless tobacco products under section 3 of the Comprehensive Smokeless Tobacco Health Education Act of 1986 (Smokeless Tobacco Act) and warning plans for cigarettes under section 4 of the Federal Cigarette Labeling and Advertising Act (FCLAA) when that requirement takes effect.

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111-31) into law. The Tobacco Control Act grants FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health generally and to reduce tobacco use by minors. Section 201 of the Tobacco Control Act amended section 4 of FCLAA (15 U.S.C. 1333). When it takes effect, section 4 of FCLAA will require the submission of warning plans for cigarette packaging and advertising to FDA. Section 204 of the Tobacco Control Act amended section 3 of the Smokeless Tobacco Act (15 U.S.C. 4402), requiring the submission of

warning plans for smokeless tobacco product packaging and advertising to FDA. The warning plans must be submitted by the tobacco product manufacturer, importer, distributor, or retailer, be approved by FDA, and provide for the random display of specified health warnings on packages and quarterly rotation of those health warnings in advertisements.

This draft guidance is intended to assist persons submitting warning plans for cigarettes and for smokeless tobacco products. The guidance discusses, among other things: The statutory requirement to submit a warning plan; definitions; who submits a warning plan; the scope of a warning plan; when to submit a warning plan; what information to include in a warning plan; where to submit; and what approval of a warning plan means.

**II. Significance of Guidance**

FDA is issuing this draft guidance document consistent with FDA's good guidance practices regulations (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on "Submission of Warning Plans for Cigarettes and Smokeless Tobacco Products." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

**III. Paperwork Reduction Act of 1995**

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical

utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Draft Guidance for Industry: Submission of Warning Plans for Cigarettes and Smokeless Tobacco Products (OMB Control Number 0910—New)

This draft guidance is intended to assist persons submitting warning plans for smokeless tobacco products under section 3 of the Smokeless Tobacco Act and for cigarettes under section 4 of FCLAA, when that requirement takes effect. The guidance document discusses, among other things: The statutory requirement to submit a warning plan; definitions; who submits a warning plan; the scope of a warning plan; when to submit a warning plan; what information should be submitted in a warning plan; where to submit a warning plan; and what approval of a warning plan means. FDA may collect statutorily mandated warning plan information for smokeless tobacco products under OMB control number 0910-0671. The purpose of the proposed information collection is to allow FDA to collect statutorily mandated information regarding warning plans for cigarettes and administrative information related to warning plans for both cigarettes and smokeless tobacco products.

Section 4 of FCLAA states that each cigarette package and advertisement must bear one of nine health warning statements and requires the submission of warning plans for cigarette packages and advertisements to FDA for review and approval. These requirements are currently not in effect. Section 4(d) of FCLAA (15 U.S.C. 1333(d)) requires FDA to issue regulations that require color graphics depicting the negative health consequences of smoking to accompany those warning statements. Section 201(b) of the Tobacco Control Act states that the requirements take effect 15 months after FDA issues these regulations. Under the provision, however, if a cigarette product was manufactured prior to the effective date of the final rule but its package does not contain a required warning, the product may be introduced into commerce in the United States within 30 days from such effective date. After the 30-day period,

manufacturers must not introduce into domestic commerce any cigarette the package of which does not contain a required warning (*i.e.*, a textual warning statement and accompanying graphic), irrespective of the date of manufacture. FDA published a proposed rule regarding these requirements on November 12, 2010 (see 75 FR 69524). FDA published the final rule on June 22, 2011 (see 76 FR 36628). This rule is effective September 22, 2012.

#### A. Warning Plans for Cigarettes

The requirement for submission of warning plans for cigarettes, and the specific requirements relating to the random display of required warnings on cigarette packaging and quarterly rotation of required warnings in cigarette advertising, appear at 15 U.S.C. 1333(c). In particular, warning plans for cigarette packaging must provide that all of the required warnings are randomly displayed in each 12-month period on each brand of the product; are randomly displayed in as equal a number of times as is possible on each brand of the product; and are randomly distributed in all areas of the United States in which the product is marketed. For FDA to approve it, a warning plan must provide for the required equal distribution and display of required warnings on packaging and must assure that all of the required warnings will be displayed by the manufacturer, importer, distributor, or retailer at the same time.

For FDA to approve it, a warning plan for cigarette advertising must provide that all of the required warnings are rotated quarterly in alternating sequence in advertisements for each brand of cigarettes.

Section 3 of the Smokeless Tobacco Act states that each smokeless tobacco product package and advertisement must bear one of four required warning statements and requires the submission of warning plans for smokeless tobacco product packages and advertisements to FDA for review and approval. The requirement for an FDA approved warning plan became effective June 22, 2010. On June 8, 2010, FDA announced by guidance its intent not to enforce the requirement that a brand of smokeless tobacco product must have an FDA-approved warning plan so long as a warning plan for the brand was

submitted to FDA by July 22, 2010, and implemented (see 75 FR 32481). FDA expects to begin enforcing the requirement under Section 3 that there be an approved warning plan 6 months after the publication of the notice of availability of a final guidance on the "Submission of Warning Plans for Cigarettes and Smokeless Tobacco Products" or 6 months after the publication of a final regulation regarding the submission of warning plans, whichever comes first.

#### B. Warning Plans for Smokeless Tobacco Products

The requirement for submission of warning plans for smokeless tobacco products, and the specific requirements relating to the random display of required warning statements on smokeless tobacco packaging and quarterly rotation of required warning statements in smokeless tobacco product advertising, appear at 15 U.S.C. 4402(b)(3). In particular, warning plans for smokeless tobacco product packaging must provide that all of the required warnings are randomly displayed in each 12-month period on each brand of the product; are randomly displayed in as equal a number of times as is possible on each brand of the product; and are randomly distributed in all areas of the United States in which the product is marketed. For FDA to approve it, a warning plan must provide for the required equal distribution and display of required warning statements on packaging and must assure that all of the required warning statements will be displayed by the manufacturer, importer, distributor, or retailer at the same time.

Warning plans for smokeless tobacco product advertising must provide that all of the required warning statements are rotated quarterly in alternating sequence in advertisements for each brand of smokeless tobacco product.

In an important change from prior law, outdoor billboard advertising for smokeless tobacco products must now include the required warning statements. Prior to its amendment by the Tobacco Control Act, the Smokeless Tobacco Act exempted outdoor billboard advertising from the requirement that smokeless tobacco product advertisements bear required warning statements, but the Tobacco

Control Act amendments eliminated this exemption (which had been codified at 15 U.S.C. 4402(a)(2)). Thus, it is unlawful for any smokeless tobacco product manufacturer, packager, importer, distributor, or retailer to advertise or cause to be advertised within the United States a smokeless tobacco product on an outdoor billboard unless the advertisement bears one of the required warning statements.

Because section 9(1) of the Smokeless Tobacco Act, 15 U.S.C. 4408(1) (as amended by section 101(c) of the Tobacco Control Act), defines "smokeless tobacco," by reference to section 900(18) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387(18)), as "any tobacco product that consists of cut, ground, powdered, or leaf tobacco and that is intended to be placed in the oral or nasal cavity," smokeless tobacco products intended to be placed in the nasal cavity must now comply with the warning requirements in section 3 of the Smokeless Tobacco Act. At this time, as an exercise of enforcement discretion, FDA does not intend to commence or recommend enforcement of the requirement that smokeless tobacco products marketed solely for use in the nasal cavity bear either the "WARNING: This product can cause mouth cancer" or the "WARNING: This product can cause gum disease and tooth loss" so long as a warning plan providing that packages and advertising for such products will bear the other two warnings has been submitted to FDA and implemented. FDA will give further consideration to the warnings smokeless tobacco products marketed solely for use in the nasal cavity should bear. FDA intends to provide further public notice prior to revising or rescinding this enforcement policy.

#### C. Description of Respondents

The respondents to this collection of information are manufacturers, importers, distributors, and retailers of cigarettes and/or smokeless tobacco products who are required to submit warning plans for cigarettes and smokeless tobacco products to FDA under FCLAA and the Smokeless Tobacco Act.

FDA estimates the burden of this collection of information as follows:

TABLE 1—CIGARETTE WARNING PLANS REPORTING BURDEN  
[New Collection of Information]

Respondent by type of document	Number of respondents	Hours per response	Total burden hours
Cover Letter			
Manufacturers, Distributors, and Importers .....	226	5	1,130
Retailers .....	544	5	2,720
Total Cover Letters .....	770	.....	3,850
Warning Plan			
Manufacturers, Distributors, and Importers .....	226	120	27,120
Retailers .....	544	120	65,280
Total Warning Plans .....	770	.....	92,400
Total Burden Hours .....	.....	.....	96,250

TABLE 2—SMOKELESS TOBACCO PRODUCT WARNING PLANS REPORTING BURDEN  
[New Cover Letter Plus Existing Collection of Information]

Respondent by type of document	Number of respondents	Hours per response	Total burden hours
Cover Letter			
Manufacturers, Distributors, and Importers .....	20	5	100
Retailers .....	10	5	50
Total Cover Letters .....	30	.....	150
Warning Plan			
Manufacturers, Distributors, and Importers * .....	.....	.....	.....
Retailers .....	10	120	1,200
Total Warning Plans * .....	10	.....	1,200
Total Burden Hours .....	.....	.....	1,350

\* The burden for collection of the warning plans for Smokeless Tobacco Products from manufacturers, distributors, and importers is approved and covered under OMB control number 0910-0671.

FDA’s estimate of the number of respondents in table 1 of this **Federal Register** document is based on the number of warning plans for cigarettes submitted to the Federal Trade Commission prior to the implementation of the Tobacco Control Act on June 22, 2009, which grants FDA authority to regulate the manufacture, marketing, and distribution of tobacco products to protect public health generally and to reduce tobacco use by minors. Using data from 34 State retailer lists, FDA identified 544 cigarette retailers who have 20 or more locations, and thus, may be more likely than smaller retailers to create their own advertisements and submit warning plans to FDA for those advertisements.

Thus, FDA estimates the number of manufacturers, importers, distributors, and retailers who are expected to submit warning plans for cigarette products in table 1 of this **Federal Register** document to be 770. Based on its experience, FDA estimates it may take between 2 and 8 hours to prepare and submit a cover letter, depending on the number of products and brands submitted. FDA estimates it could take

2 to 3 days for a person in a smaller firm to prepare warning plans, and up to a week for a person in a larger firm, depending on the number of products and brands submitted.

The burden hours for the preparation and submission of warning plans by manufacturers, distributors, and importers for smokeless tobacco products in table 2 of this document have already been approved by OMB under OMB control number 0910-0671. Based on plans submitted to FDA to date, we estimate the number of retailers who will submit warning plans for smokeless tobacco products to be 10. FDA estimates the burden hours for retailers to prepare warning plans to be 1,200. FDA estimates the additional burden hours for preparation of the cover letter is 150 hours (100 burden hours for manufacturers, distributors, and importers and 50 burden hours for retailers).

FDA estimates, therefore, that it will take an average of 5 hours to prepare and submit a cover letter and 120 hours to prepare and submit a warning plan for packaging and advertising. The total number of burden hours are estimated

to be 1,350 hours ([150 cover letter burden hours] + [1,200 warning plan burden hours].)

**IV. Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

**V. Electronic Access**

Persons with access to the Internet may obtain an electronic version of this draft guidance document at either <http://www.regulations.gov> or <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm>.

Dated: September 2, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011-23099 Filed 9-8-11; 8:45 am]

**BILLING CODE 4160-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2011-D-0376]

#### **Draft Guidance for Industry; Dietary Supplements: New Dietary Ingredient Notifications and Related Issues; Availability; Extension of Comment Period**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending the comment period by 60 days to December 2, 2011, for the notice entitled "Draft Guidance for Industry; Dietary Supplements: New Dietary Ingredient Notifications and Related Issues; Availability," that appeared in the **Federal Register** of July 5, 2011 (76 FR 39111). In that document, FDA announced the availability of a draft guidance for industry and requested comments. The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

**DATES:** Submit either electronic or written comments by December 2, 2011.

**ADDRESSES:** Submit electronic comments to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Corey Hilmas, Center for Food Safety and Applied Nutrition (HFS-810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240-402-2375.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

In the **Federal Register** of July 5, 2011 (76 FR 39111), FDA published a notice with a 90-day comment period to request comments on the draft guidance for industry entitled "Draft Guidance for Industry; Dietary Supplements: New Dietary Ingredient Notifications and

Related Issues." Comments on the draft guidance will assist FDA in the development of final guidance for industry on new dietary ingredient notifications and related issues.

The Agency has received a request for a 45-day extension of the comment period for this notice. FDA has considered the request and is extending the comment period for the notice entitled "Draft Guidance for Industry; Dietary Supplements: New Dietary Ingredient Notifications and Related Issues; Availability," until December 2, 2011. The Agency believes that this extension allows adequate time for interested persons to submit comments without significantly delaying action by the Agency.

##### **II. Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

##### **III. Electronic Access**

Persons with access to the Internet may obtain the draft guidance at either <http://www.fda.gov/RegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>. Always access an FDA guidance document by using FDA's Web site listed previously to find the most current version of the guidance.

Dated: September 2, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011-23098 Filed 9-8-11; 8:45 am]

**BILLING CODE 4160-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2011-D-0147]

#### **Draft Guidance for Industry and Food and Drug Administration Staff; Demonstrating the Substantial Equivalence of a New Tobacco Product: Responses to Frequently Asked Questions; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Demonstrating the Substantial Equivalence of a New Tobacco Product: Responses to Frequently Asked Questions." This draft guidance provides responses to questions FDA has received on the Family Smoking Prevention and Tobacco Control Act's (Tobacco Control Act) provisions on new tobacco products and substantial equivalence, including questions on changes to packaging and labeling. This draft guidance is not final nor is it in effect at this time.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment of this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by November 8, 2011.

**ADDRESSES:** Submit electronic comments on the draft guidance to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

Submit written requests for single copies of the draft guidance document entitled "Demonstrating the Substantial Equivalence of a New Tobacco Product: Responses to Frequently Asked Questions" to the Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850-3229. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** *With regard to the draft guidance:* Annette Marthaler, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1-877-287-1373, [annette.marthaler@fda.hhs.gov](mailto:annette.marthaler@fda.hhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

This draft guidance provides responses to questions we have received on the Federal Food, Drug, and Cosmetic Act's (the FD&C Act) provisions on new tobacco products and

substantial equivalence (sections 905(j) and 910 of the FD&C Act, as amended by the Tobacco Control Act (21 U.S.C. 387e(j) and 387j)). In this draft guidance, FDA provides responses to questions related to the submission of 905(j) (substantial equivalence) reports in specific scenarios, including questions on whether changes to packaging and labeling and changes to additive specifications should be submitted in a 905(j) report to the Center for Tobacco Products. The draft guidance also provides information about discussing submissions.

## II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on "Demonstrating the Substantial Equivalence of a New Tobacco Product: Responses to Frequently Asked Questions." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

## III. Electronic Access

An electronic version of the draft guidance document is available on the Internet at <http://www.regulations.gov> and <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/default.htm>.

## IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in sections 905(j) and 910 of the FD&C Act, as amended by the Tobacco Control Act have been approved under OMB control number 0910–0673; the collections of information in 21 CFR part 25 have been approved under OMB control number 0910–0322.

## V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the

heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 2, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–23100 Filed 9–8–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2011–N–0002]

### Food and Drug Administration Health Professional Organizations Conference

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public conference.

The Food and Drug Administration (FDA) is announcing a conference for representatives of Health Professional Organizations. Dr. Margaret Hamburg, Commissioner of the Food and Drugs, and Dr. Janet Woodcock, Director of FDA's Center for Drug Evaluation and Research have been invited to speak about their visions of the relationship between the Agency and the health professional community. Other topics on the agenda include Risk Evaluation and Mitigation Strategies and the Unapproved Drugs Initiative.

**Date and Time:** The conference will be held on October 31, 2011, from 8 a.m. to 1:30 p.m.

**Location:** The conference will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002.

**Contact Person:** For further information contact Janelle Derbis, Office of Special Health Issues, 10903 New Hampshire Ave., Silver Spring, MD 20993, 312–596–6516, Fax: 312–886–1682, [Janelle.Derbis@fda.hhs.gov](mailto:Janelle.Derbis@fda.hhs.gov).

**Registration:** Register at <http://www.cvent.com/d/fcq7vv/4W> by October 7, 2011. Please include the name and title of the person attending, the name of the organization, address, and telephone number. There is no registration fee for this conference. Early registration is suggested because space is limited. We request that organizations limit the number of representatives to two. For further registration information, call 1–866–318–4357.

**SUPPLEMENTARY INFORMATION:** The aim of the conference is to further the public health mission of the FDA through

training, collaboration, and structured discussion between health professional organizations and FDA staff. The Office of Special Health Issues serves as a liaison between the FDA Centers and the public on matters that involve medical product safety and also acts as the public's link to information about the medical product approval process.

The topics of discussion for this conference will include three separate panels that will highlight examples where FDA and health professional organizations collaborate to further public health. The goal of the panel presentations is to exchange ideas, highlight the value of FDA and health professional organizations working together, and encourage collaboration to promote public health. A list of concurrent breakout session topics is included in the agenda to facilitate informal discussion on how FDA and health professional organizations can collaborate more effectively. Please indicate during your registration the topics of greatest interest to you for the breakout session.

If you need special accommodations due to a disability, please contact Janelle Derbis at least 7 days in advance.

Dated: September 6, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–23101 Filed 9–8–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

**Name of Committee:** National Institute of Mental Health Special Emphasis Panel; Conflicts and Eating Disorders.

**Date:** October 4, 2011.

**Time:** 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892-9606, 301-443-1513, [bollefr@mail.nih.gov](mailto:bollefr@mail.nih.gov).

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; Translational Research for the Development of Novel Interventions for Mental Disorders.

*Date:* October 4, 2011.

*Time:* 12:30 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892-9606, 301-443-1513, [bollefr@mail.nih.gov](mailto:bollefr@mail.nih.gov).

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; Services Conflicts.

*Date:* October 14, 2011.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

*Contact Person:* Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892-9608, 301-402-8152, [mbroitma@mail.nih.gov](mailto:mbroitma@mail.nih.gov).

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel; NIMH Pathway to Independence (K99) Review.

*Date:* October 18, 2011.

*Time:* 12 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Megan Libbey, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852-9609, 301-402-6807, [libbeym@mail.nih.gov](mailto:libbeym@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: September 1, 2011.

**Jennifer S. Spaeth,**  
*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011-23093 Filed 9-8-11; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### CENTER FOR SCIENTIFIC REVIEW; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group; Basic Mechanisms of Cancer Therapeutics Study Section.

*Date:* September 26–27, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

*Contact Person:* Lambratu Rahman Sesay, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301-451-3493, [rahman-sesay@csr.nih.gov](mailto:rahman-sesay@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Cancer Therapeutics AREA Grant Applications.

*Date:* September 27–28, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)

*Contact Person:* Denise R Shaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301-435-0198, [shawdeni@csr.nih.gov](mailto:shawdeni@csr.nih.gov).

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Medical Imaging Study Section.

*Date:* October 2–3, 2011.

*Time:* 7 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

*Contact Person:* Xiang-Ning Li, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, 301-435-1744, [lixiang@csr.nih.gov](mailto:lixiang@csr.nih.gov).

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology B Study Section.

*Date:* October 3–4, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

*Contact Person:* Lee Rosen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435-1171, [rosenl@csr.nih.gov](mailto:rosenl@csr.nih.gov).

*Name of Committee:* Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Clinical Molecular Imaging and Probe Development.

*Date:* October 3–4, 2011.

*Time:* 7 p.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

*Contact Person:* Eileen W Bradley, DSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435-1179, [bradleye@csr.nih.gov](mailto:bradleye@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Synthetic and Biological Chemistry B.

*Date:* October 4, 2011.

*Time:* 11 a.m. to 12 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:* Mike Radtkem, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301-435-1728, [radtkem@csr.nih.gov](mailto:radtkem@csr.nih.gov).

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function A Study Section.

*Date:* October 6–7, 2011.

*Time:* 8 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* George Washington University Inn, 824 New Hampshire Ave., NW., Washington, DC 20037.

*Contact Person:* David R. Jollie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435-1722, [jollieda@csr.nih.gov](mailto:jollieda@csr.nih.gov).

*Name of Committee:* Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiac Contractility, Hypertrophy, and Failure Study Section.

*Date:* October 6–7, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Renaissance, Washington, DC Hotel, 999 Ninth Street, NW., Washington, DC 20001–4427.

*Contact Person:* Olga A Tjurmina, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, [ot3d@nih.gov](mailto:ot3d@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Macromolecular Structure and Function C.

*Date:* October 6, 2011.

*Time:* 10 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Arnold Revzin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, [revzina@csr.nih.gov](mailto:revzina@csr.nih.gov).

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group; Drug Discovery and Molecular Pharmacology Study Section.

*Date:* October 10–11, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

*Contact Person:* Jeffrey Smiley, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–594–7945, [smileyja@csr.nih.gov](mailto:smileyja@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Biobehavioral Regulation, Learning and Ethology.

*Date:* October 14, 2011.

*Time:* 9 a.m. to 10 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

*Contact Person:* Biao Tian, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, 301–402–4411, [tianbi@csr.nih.gov](mailto:tianbi@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 2, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–23091 Filed 9–8–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Advisory Committee to the Director, National Institutes of Health.

*Date:* September 21, 2011.

*Time:* 9 a.m. to 11 a.m.

*Agenda:* ACD–NCATS Working Group will present its recommendations to the full ACD for discussion.

*Place:* National Institutes of Health, Building 1, 1 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 103, Bethesda, MD 20892, 301–496–4272, [woodgs@od.nih.gov](mailto:woodgs@od.nih.gov).

This meeting is being published less than 15 days prior to the meeting due to scheduling constraints.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://acd.od.nih.gov>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 2, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–23147 Filed 9–8–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center For Scientific Review Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group Radiation Therapeutics and Biology Study Section.

*Date:* September 26–27, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Washington, 1515 Rhode Island Ave., NW., Washington, DC 20005.

*Contact Person:* Bo Hong, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, [hongb@csr.nih.gov](mailto:hongb@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Member Conflict's: Topics in Bioengineering, Computation, and Biological Modeling 1.

*Date:* September 29–30, 2011.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Joseph Thomas Peterson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, [peterstonjt@csr.nih.gov](mailto:peterstonjt@csr.nih.gov).

*Name of Committee:* Biobehavioral and Behavioral Processes Integrated Review Group Child Psychopathology and Developmental Disabilities Study Section.

*Date:* October 3–4, 2011.

*Time:* 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Jane A Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, [doussarj@csr.nih.gov](mailto:doussarj@csr.nih.gov).

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group Virology—B Study Section.

*Date:* October 4–5, 2011.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

*Contact Person:* John C Pugh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1206, MSC 7808, Bethesda, MD 20892, (301) 435–2398, [pughjohn@csr.nih.gov](mailto:pughjohn@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel PAR–11–045: Outcome Measures for Use in Treatment Trials for Individuals with Intellectual and Developmental Disabilities (R01).

*Date:* October 4, 2011.

*Time:* 1 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Jane A Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, [doussarj@csr.nih.gov](mailto:doussarj@csr.nih.gov).

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group Cancer Immunopathology and Immunotherapy Study Section.

*Date:* October 13, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Denise R Shaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, [shawdeni@csr.nih.gov](mailto:shawdeni@csr.nih.gov).

*Name of Committee:* Infectious Diseases and Microbiology Integrated Review Group Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

*Date:* October 13–14, 2011.

*Time:* 8:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

*Contact Person:* Guangyong Ji, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301–435–1146, [jig@csr.nih.gov](mailto:jig@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 1, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–23095 Filed 9–8–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3329–EM; Docket ID FEMA–2011–0001]

#### Virginia; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the Commonwealth of Virginia (FEMA–3329–EM), dated August 26, 2011, and related determinations.

**DATES:** *Effective Date:* August 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of August 26, 2011.

The counties of Essex, Gloucester, Henrico, King George, King and Queen, Louisa, Sussex, and York and the Independent City of Richmond for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–23026 Filed 9–8–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3328–EM; Docket ID FEMA–2011–0001]

#### New York; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of New York (FEMA–3328–EM), dated August 26, 2011, and related determinations.

**DATES:** *Effective Date:* August 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of August 26, 2011.

Columbia, Delaware, Greene, Orange, Putnam, Rockland, Schoharie, Sullivan, Ulster, and Westchester Counties for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011-23024 Filed 9-8-11; 8:45 am]

**BILLING CODE 9111-23-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-3327-EM; Docket ID FEMA-2011-0001]

**North Carolina; Amendment No. 1 to Notice of an Emergency Declaration**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of North Carolina (FEMA-3327-EM), dated August 25, 2011, and related determinations.

**DATES:** *Effective Date:* August 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of August 25, 2011.

Beaufort, Bertie, Brunswick, Camden, Chowan, Columbus, Duplin, Edgecombe, Gates, Greene, Hertford, Lenoir, Martin, New Hanover, Pasquotank, Pender, Wayne, and Washington Counties for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011-23027 Filed 9-8-11; 8:45 am]

**BILLING CODE 9111-23-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID FEMA-2007-0008]

**National Advisory Council**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Committee Management; Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The National Advisory Council will meet on September 27-28, 2011, in Arlington, VA. The meeting will be open to the public.

**DATES:** The National Advisory Council will meet Tuesday, September 27, 2011, from 9:30 a.m. EDT to 5:30 p.m. EDT and on Wednesday, September 28, 2011, 8:30 a.m. EDT to 5:10 p.m. EDT. Please note that the meeting may close early if the committee has completed its business.

**ADDRESSES:** The meeting will be held at the Crystal City Marriott at Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, VA 22202.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Patricia A. Kalla of the Office of the National Advisory Council as soon as possible. See contact information under **FOR FURTHER INFORMATION CONTACT** section below.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Written comments or requests to make oral presentations must be submitted in writing no later than September 16, 2011 and must be identified by Docket ID FEMA-2007-0008 and may be submitted by *one* of the following methods:

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

- *E-mail:* FEMA-RULES@dhs.gov. Include the Docket ID FEMA-2007-0008 in the subject line of the message.
- *Fax:* (703) 483-2999.
- *Mail:* FEMA, 500 C Street, SW., Room 840, Washington, DC 20472-3100.

*Instructions:* All submissions received must include the words “Federal Emergency Management Agency” and the Docket ID FEMA-2007-0008 for this action. 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 National Advisory Council, go to <http://www.regulations.gov>.

A public comment period will be held during the meeting on September 28, 2011, from 2:30 p.m. EDT to 3:15 p.m. EDT, and speakers are requested to register in advance, be present and seated by 1:30 p.m. EDT, and limit their comments to 3 minutes. With 3 minutes per speaker, the public comment is limited to no more than 10 speakers. Please note that the public comment period may start and end before the time indicated, if the committee has finished its business. Contact Patricia A. Kalla, Designated Federal Officer (DFO), to register as a speaker.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Kalla, DFO, Office of the National Advisory Council, Federal Emergency Management Agency (Room 832), 500 C Street, SW., Washington, DC 20472-3100, telephone (202) 646-3746, fax (202) 646-3930, and e-mail [FEMA-NAC@dhs.gov](mailto:FEMA-NAC@dhs.gov). The National Advisory Council Web site is located at: <http://www.fema.gov/about/nac/>.

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463). The National Advisory Council (NAC) advises the Administrator of the Federal Emergency Management Agency (FEMA) on all aspects of emergency management. The NAC incorporates State, local, and Tribal governments, and private sector partners’ input in the development and revision of FEMA policies and strategies. FEMA’s Office of the NAC serves as the focal point for all NAC coordination.

**Agenda**

The NAC will meet for the purpose of reviewing the progress and/or potential recommendations of the following NAC subcommittees: Preparedness and Protection, Response and Recovery, Public Engagement and Mission Support, and Federal Insurance and Mitigation. The NAC will discuss “Whole Community” concept and how to effectively engage all members of the community. In the area of flood risk mapping, discussions will focus on messaging and risk perception. The

NAC will hold discussions on the Presidential Policy Directive 8 (PPD-8) on National Preparedness, the Strategic Foresight Initiative (SFI), the Emergency Management Institute, and the Radiological Emergency Preparedness (REP) Program. Additionally, members appointed on June 15, 2011, will be sworn-in during the first day of the meeting.

PPD-8, signed on March 30, 2011, directs the development of a national preparedness goal that identifies the core capabilities necessary for preparedness and a national preparedness system to guide activities that will enable the Nation to achieve the goal. PPD-8 replaces Homeland Security Presidential Directive 8 (HSPD-8) and Annex 1.

FEMA launched the SFI to promote broader and longer term thinking on world changes that can have major effects on the emergency management community. More information on SFI can be found online at [https://www.fema.gov/about/programs/oppa/strategic\\_foresight\\_initiative.shtm](https://www.fema.gov/about/programs/oppa/strategic_foresight_initiative.shtm).

FEMA established the REP Program to (1) Ensure the health and safety of citizens living around commercial nuclear power plants would be adequately protected in the event of a nuclear power plant accident; and (2) inform and educate the public about radiological emergency preparedness. More information on the REP Program can be found online at [http://www.fema.gov/about/divisions/thd\\_repp.shtm](http://www.fema.gov/about/divisions/thd_repp.shtm).

Dated: September 2, 2011.

**W. Craig Fugate,**  
Administrator, Federal Emergency  
Management Agency.

[FR Doc. 2011-23048 Filed 9-8-11; 8:45 am]

**BILLING CODE 9111-48-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5477-N-36]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Juanita Perry, Department of Housing and Urban Development, 451 Seventh

Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, Room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For

complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925-3047; COE: Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP-CR, 441 G Street, NW, Washington, DC 20314; (202) 761-5542; NAVY: Mr. Albert Johnson, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave., SW., Suite 1000, Washington, DC 20374; (202) 685-9305; (These are not toll-free numbers).

Dated: September 1, 2011.

**Mark R. Johnston,**

*Deputy Assistant Secretary for Special Needs.*

**TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 09/09/2011**

**Unsuitable Properties**

*Building*

Alaska

Bldg. 5312

9th Street

JBER AK 99506

Landholding Agency: Air Force

Property Number: 18201130010

Status: Underutilized

Reasons: Secured Area, Extensive deterioration

Bldgs. 662 and 664

5th Street

Elmendorf AK 99505

Landholding Agency: Air Force

Property Number: 18201130011

Status: Unutilized

Reasons: Secured Area, Extensive deterioration

Bldg. 5226

2552 Coman Street

Eielson AK 99702

Landholding Agency: Air Force

Property Number: 18201130012

Status: Unutilized

Reasons: Contamination, Extensive deterioration, Secured Area

Bldg. 658

Elmendorf

Elmendorf AK 99505

Landholding Agency: Air Force

Property Number: 18201130013

Status: Unutilized

Reasons: Secured Area, Extensive deterioration

**Unsuitable Properties**

*Building*

Alaska

Bldg. 3305

Sourdough Inn

Eielson AK 99702

Landholding Agency: Air Force

Property Number: 18201130014

Status: Unutilized

Reasons: Secured Area, Extensive deterioration

Bldg. 3354

MFH Self Help Store

Eielson AK 99702

Landholding Agency: Air Force

Property Number: 18201130015

Status: Unutilized

Reasons: Secured Area, Extensive deterioration

5 Bldgs.

Elmendorf

JBER AK 99506

Landholding Agency: Air Force

Property Number: 18201130017

Status: Underutilized

Directions: 7210, 5303, 12757, 12761, 12763

Comments: Reasons for unsuitability vary among properties.

Reasons: Secured Area, Within airport runway clear zone, Within 2000 ft. of

flammable or explosive material, Extensive deterioration

Bldgs. 719 and 3055

Eareckson Air Station

Eareckson AK 99546

Landholding Agency: Air Force

Property Number: 18201130019

Status: Unutilized

Reasons: Secured Area, Extensive deterioration

**Unsuitable Properties**

*Building*

Alaska

Bldg. 3356

Eielson AFB

Eielson AK 99702

Landholding Agency: Air Force

Property Number: 18201130020

Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 667

5th Street

Elmendorf AK 99505

Landholding Agency: Air Force

Property Number: 18201130038

Status: Unutilized

Reasons: Secured Area, Extensive deterioration

California

3 Bldgs.

USAF

Barkdale CA 71110

Landholding Agency: Air Force

Property Number: 18201130007

Status: Unutilized

Directions: B-4134, B-4143, B4714

Comments: Reasons for unsuitability vary among properties.

Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

14 Bldgs.

Surf Road

Vandenberg CA 93437

Landholding Agency: Air Force

Property Number: 18201130016

Status: Unutilized

Directions: 595, 768, 995, 996, 997, 1537,

1538, 1539, 1820, 1835, 1960, 22104,

22107, 22112

Reasons: Secured Area, Extensive deterioration

**Unsuitable Properties**

*Building*

California

16 Bldgs.

Edwards AFB

Edwards CA 93524

Landholding Agency: Air Force

Property Number: 18201130035

Status: Unutilized

Directions: 5516, 9644, 2111, 4286, 4290,

4291, 4292, 4410, 4412, 4954, 4957, 4963,

4964, 5502, 5512, 5514

Reasons: Secured Area, Extensive deterioration, Within airport runway clear zone, Contamination

Florida

Bldgs. 3013 and 3018

Duke Field

Okaloosa FL 32542

Landholding Agency: Air Force

Property Number: 18201130021

Status: Underutilized

Reasons: Extensive deterioration, Within 2000 ft. of flammable or explosive material, Secured Area

Facility 3021

Duke Field

Okaloosa FL 32542

Landholding Agency: Air Force

Property Number: 18201130029

Status: Underutilized

Reasons: Contamination, Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

**Unsuitable Properties**

*Building*

Florida

Bldg. 1050

28 South Blvd.

Avon Park FL 33825

Landholding Agency: Air Force

Property Number: 18201130036

Status: Unutilized

Reasons: Secured Area, Extensive deterioration

Hawaii

6 Bldgs.

Wake Island

Wake Island HI 96898

Landholding Agency: Air Force

Property Number: 18201130018

Status: Unutilized

Directions: 400, 1403, 1406, 1407, 1408, 1411

Reasons: Extensive deterioration, Secured Area, Floodway, Contamination

Idaho

7 Bldgs.

Falcon Street

Mountain Home ID 83648

Landholding Agency: Air Force

Property Number: 18201130008

Status: Underutilized

Directions: 4201, 4202, 4205, 4206, 4207,

4208, 4209

Reasons: Extensive deterioration, Secured Area

**Unsuitable Properties**

*Building*

Idaho

6 Bldgs.

Mountain Home AFB

Mountain Home ID 83647

Landholding Agency: Air Force

Property Number: 18201130032

Status: Excess

Directions: 2408, 1222, 1224, 1226, 1229, 1359

Comments: Reasons for unsuitability varies among properties

Reasons: Extensive deterioration, Within airport runway clear zone, Secured Area

Illinois

4 Bldgs.

Scott AFB

Scott IL 62225

Landholding Agency: Air Force

Property Number: 18201130023

Status: Excess  
 Directions: 48, 1910, 1527, 1911  
 Reasons: Secured Area

#### Unsuitable Properties

##### Building

Illinois  
 5 Bldgs.  
 Abraham Lincoln Capitol Airport  
 Springfield IL 62707  
 Landholding Agency: Air Force  
 Property Number: 18201130033  
 Status: Excess  
 Directions: 404857, 406865, 404844, 404843,  
 404857  
 Reasons: Within airport runway clear zone,  
 Secured Area

##### Iowa

Storage Shed  
 Island View Park  
 Centerville IA 52544  
 Landholding Agency: COE  
 Property Number: 31201130007  
 Status: Underutilized  
 Reasons: Extensive deterioration

#### Unsuitable Properties

##### Building

Maryland  
 Marine State Airport—1080  
 MD Air Nat'l Guard  
 Baltimore MD 21220  
 Landholding Agency: Air Force  
 Property Number: 18201130027  
 Status: Excess  
 Reasons: Secured Area, Within 2000 ft. of  
 flammable or explosive material, Within  
 airport runway clear zone

##### 4 Bldgs.

Naval Operational Support Ctr.  
 Baltimore MD 21230  
 Landholding Agency: Navy  
 Property Number: 77201130016  
 Status: Unutilized

Directions: 9, 12, 14, 19  
 Reasons: Extensive deterioration, Secured  
 Area, Contamination, Floodway

#### Unsuitable Properties

##### Building

Massachusetts  
 5 Bldgs.  
 Otis ANGB  
 Otis MA 02542  
 Landholding Agency: Air Force  
 Property Number: 18201130028  
 Status: Excess  
 Directions: 180, 191, 198, 201, 3230  
 Comments: Reasons for unsuitability vary  
 among properties  
 Reasons: Extensive deterioration, Secured  
 Area, Within airport runway clear zone

##### Montana

Malmstrom Radio Relay Annex  
 Malmstrom AFB  
 Malmstrom MT  
 Landholding Agency: Air Force  
 Property Number: 18201130004  
 Status: Excess  
 Reasons: Extensive deterioration

#### Unsuitable Properties

##### Building

Montana  
 9 Bldgs.  
 Malmstrom AFB  
 Malmstrom MT 59402  
 Landholding Agency: Air Force  
 Property Number: 18201130005  
 Status: Unutilized  
 Directions: 219, 250, 1409, 1410, 1902, 1903,  
 1904, 1905, 2041  
 Reasons: Secured Area

##### New Hampshire

Bldg. 256  
 Portsmouth Internal Airport  
 Newington NH 03803  
 Landholding Agency: Air Force  
 Property Number: 18201130031  
 Status: Excess  
 Reasons: Within 2000 ft. of flammable or  
 explosive material, Secured Area

#### Unsuitable Properties

##### Building

New Jersey  
 Bldgs. 2304 and 9144  
 Joint Base McGuire-Dix-Lakehurst  
 Trenton NJ  
 Landholding Agency: Air Force  
 Property Number: 18201130024  
 Status: Unutilized  
 Reasons: Secured Area, Extensive  
 deterioration

##### New Mexico

Bldgs. 525 and 730  
 Kirtland AFB  
 Kirtland NM 87117  
 Landholding Agency: Air Force  
 Property Number: 18201130002  
 Status: Unutilized  
 Reasons: Secured Area, Extensive  
 deterioration

#### Unsuitable Properties

##### Building

New Mexico  
 Bldg. 1800  
 Cannon AFB  
 Cannon NM 88103  
 Landholding Agency: Air Force  
 Property Number: 18201130009  
 Status: Underutilized  
 Reasons: Within airport runway clear zone,  
 Secured Area

##### 2 Bldgs.

Connecticut Holloman AFB  
 Holloman NM 88310  
 Landholding Agency: Air Force  
 Property Number: 18201130037  
 Status: Unutilized  
 Directions: 272 and 273  
 Reasons: Within airport runway clear zone,  
 Secured Area

##### Bldg. 1030

2251 Air Guard Dr. SE  
 Kirtland NM 87117  
 Landholding Agency: Air Force  
 Property Number: 18201130039  
 Status: Underutilized  
 Reasons: Secured Area

#### Unsuitable Properties

##### Building

New York  
 Bldg. 104  
 Rome Research Site  
 Rome NY 13441  
 Landholding Agency: Air Force  
 Property Number: 18201130001  
 Status: Unutilized  
 Reasons: Secured Area

Ohio  
 Facility 30089  
 5490 Pearson  
 Wright Patterson AFB OH 45433  
 Landholding Agency: Air Force  
 Property Number: 18201130022  
 Status: Excess  
 Reasons: Extensive deterioration, Secured  
 Area

#### Unsuitable Properties

##### Building

Ohio  
 5 Bldgs.  
 2660 South East Road  
 Swanton OH 43558  
 Landholding Agency: Air Force  
 Property Number: 18201130026  
 Status: Underutilized  
 Directions: 120, 128, 132, 139, 306  
 Comments: Reasons for unsuitability vary  
 among properties.  
 Reasons: Secured Area, Extensive  
 deterioration

##### Texas

Bldg. 23  
 SWG-Ft. Point Road  
 Galveston TX 77550  
 Landholding Agency: COE  
 Property Number: 31201130008  
 Status: Unutilized  
 Reasons: Secured Area

#### Unsuitable Properties

##### Building

Utah  
 Bldgs. 3201 and 3003  
 Francis Peak  
 Farmington UT 84025  
 Landholding Agency: Air Force  
 Property Number: 18201130025  
 Status: Excess  
 Reasons: Secured Area, Within 2000 ft. of  
 flammable or explosive material

##### Wyoming

6 Bldgs.  
 USAF  
 Warren WY 82005  
 Landholding Agency: Air Force  
 Property Number: 18201130006  
 Status: Unutilized  
 Directions: 835, 836, 839, 945, 985, 2350  
 Reasons: Secured Area

[FR Doc. 2011-22867 Filed 9-8-11; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5502-N-03]

### Notice of Single Family Loan Sales (SFLS 2011-3)

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice of sales of mortgage loans.

**SUMMARY:** This notice announces HUD's intention to competitively sell certain unsubsidized single family mortgage loans, in a sealed bid sale offering called SFLS 2011-3, without Federal Housing Administration (FHA) mortgage insurance. This notice also generally describes the bidding process for the sale and certain persons who are ineligible to bid. This third sale of Fiscal Year (FY) 2011 is scheduled for September 14, 2011.

**DATES:** For this sale action, the Bidder's Information Package (BIP) was made available to qualified bidders on August 15, 2011. Bids for the SFLS 2011-3 sale must be submitted on the bid date, which is currently scheduled for September 14, 2011 (Bid Date). HUD anticipates that award(s) will be made on or about September 15, 2011 (the Award Date).

**ADDRESSES:** To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents are available on the HUD Web site at: <http://www.hud.gov/sfloansales>. Please mail and fax executed documents to HUD's Asset Sales Office:

Asset Sales Office, United States Department of Housing and Urban Development, 451 7th Street, SW., Room 3136, Washington, DC 20410, Attention: Single Family Sale Coordinator, Fax: 202-708-2771.

**FOR FURTHER INFORMATION CONTACT:** John Lucey, Deputy Director, Asset Sales Office, Room 3136, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000; telephone 202-708-2625, extension 3927. Hearing- or speech-impaired individuals may call 202-708-4594 (TTY). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:** HUD announces its intention to sell in SFLS 2011-3 certain unsubsidized non-performing mortgage loans (Mortgage Loans) secured by single family properties located throughout the United States. A listing of the Mortgage

Loans is included in the due diligence materials made available to qualified bidders. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

#### The Bidding Process

The BIP describes in detail the procedure for bidding in SFLS 2011-3. The BIP also includes a standardized non-negotiable Conveyance, Assignment and Assumption Agreement (CAA Agreement). Qualified bidders will be required to submit a deposit with their bid. Deposits are calculated based upon each qualified bidder's aggregate bid price.

HUD will evaluate the bids submitted and determine the successful bid, in terms of the best value to HUD, in its sole and absolute discretion. If a qualified bidder is successful, the qualified bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. For the SFLS 2011-3 sale action, settlements are expected to take place on October 13, 2011 and November 17, 2011.

This notice provides some of the basic terms of sale. The CAA Agreement, which is included in the BIP, provides comprehensive contractual terms and conditions. To ensure a competitive bidding process, the terms of the bidding process and the CAA Agreement are not subject to negotiation.

#### Due Diligence Review

The BIP describes how qualified bidders may access the due diligence materials remotely via a high-speed Internet connection.

#### Mortgage Loan Sale Policy

HUD reserves the right to remove Mortgage Loans from SFLS 2011-3 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, and include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as specifically provided in the CAA Agreement.

The SFLS 2011-3 sale of Mortgage Loans are assigned to HUD pursuant to section 204(a)(1)(A) of the National Housing Act as amended under Title VI of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999. The sale of the Mortgage Loans is pursuant to

section 204(g) of the National Housing Act.

#### Mortgage Loan Sale Procedure

HUD selected an open competitive whole-loan sale as the method to sell the Mortgage Loans. This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

#### Bidder Ineligibility

In order to bid in the SFLS 2011-3 sale, a prospective qualified bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in SFLS 2011-3:

(1) An employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) An individual or entity that is debarred, suspended, or excluded from doing business with HUD pursuant to Title 24 of the Code of Federal Regulations, Part 24, and Title 2 of the Code of Federal Regulations, Part 2424;

(3) An individual or entity that has been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency.

(4) An individual or entity that has been debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any Federal, State or local government agency, division or department;

(5) A contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with the Sales;

(6) An individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 3 above to assist in preparing any of its bids on the Mortgage Loans;

(7) An individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in single family asset sales;

(8) An entity or individual that serviced or held any Mortgage Loan at

any time during the 2-year period prior to the Award Date is ineligible to bid on such Mortgage Loan or on the pool containing such Mortgage Loan, and

(9) An entity or individual that is: (a) Any affiliate or principal of any entity or individual described in the preceding sentence (sub-paragraph 8); (b) any employee or subcontractor of such entity or individual during that 2-year period prior to Award Date; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

#### Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding SFLS 2011–3, including, but not limited to, the identity of any successful qualified bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to SFLS 2011–3, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

#### Scope of Notice

This notice applies to SFLS 2011–3 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: August 30, 2011.

**Carol Galante,**

*Acting Assistant Secretary for Housing—  
Federal Housing Commissioner.*

[FR Doc. 2011–23032 Filed 9–8–11; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS–R1–R–2011–N028; 10137–1265–0000 9B]

#### Sheldon National Wildlife Refuge, Washoe and Humboldt Counties, NV, and Lake County, OR; Draft Comprehensive Conservation Plan and Environmental Impact Statement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (Draft CCP) and draft environmental impact statement (Draft

EIS) for the Sheldon National Wildlife Refuge (Refuge) for public review and comment. In these documents, we describe alternatives, including our preferred alternative, for managing the Refuge for 15 years, following approval of the final CCP.

**DATES:** To ensure consideration, please send your written comments by November 8, 2011.

**ADDRESSES:** You may submit comments or requests for copies or more information by any of the following methods. You may request hard copies or a CD-ROM of the documents.

*E-mail:* [SheldonCCP@fws.gov](mailto:SheldonCCP@fws.gov). Include “Sheldon Refuge draft CCP/EIS” in the subject line of the message.

*Internet:* <http://www.fws.gov/pacific/planning/main/docs/NV/docssheldon.htm>.

*Fax:* Attn: John Kasbohm, Project Leader, 541–947–4414.

*U.S. Mail:* Sheldon-Hart Mountain National Wildlife Refuge Complex, P.O. Box 111, Lakeview, OR 97630.

*In-Person Drop-off, Viewing, or Pickup:* Call 541–947–3315 to make an appointment (necessary for view/pickup only) during regular business hours at the above address. For more information on locations for viewing or obtaining documents, see Public Availability of Documents under **SUPPLEMENTARY INFORMATION**.

**FOR MORE INFORMATION CONTACT:** Aaron Collins, Planning Team Leader, (541) 947–3315.

#### **SUPPLEMENTARY INFORMATION:**

##### **Introduction**

With this notice, we continue the CCP process for Sheldon Refuge. We started this process through a notice published in the **Federal Register** on May 12, 2008 (73 FR 27003). We now announce a Draft CCP/EIS, prepared pursuant to the National Wildlife Refuge System Administration Act, as amended, and the National Environmental Policy Act of 1969 (NEPA).

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and

their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Habitat management activities proposed in the Draft CCP/EIS include improving the conditions of wetland, riparian, desert grassland, and shrub-steppe habitats, with emphasis on removing feral animals, reducing invasive species, reducing encroachment of western juniper, and where feasible, restoring fire to improve habitat diversity and plant community succession.

Public-use management actions proposed in the Draft CCP/EIS include expanding and improving trails, signs, campgrounds, and visitor contact facilities for wildlife observation and photography, sport fishing, and hunting; continuing fishing and hunting coordination with the States; improving information available to all visitors; formally designating authorized motorized vehicle routes; and reducing illegal activities.

#### **Background**

Sheldon Refuge encompasses approximately 575,000 acres primarily in northwestern Nevada, but includes a small portion within south-central Oregon. Originally established to protect and conserve the American pronghorn, the Refuge provides important habitat for a variety of wildlife, including greater sage-grouse, pygmy rabbit, American pika, mule deer, California bighorn sheep, Sheldon tui chub, and a variety of migratory birds, including shorebirds, raptors, and passerines. Habitat types found on the Refuge are primarily shrub-steppe uplands, but also include important springs and spring brooks, basalt cliffs and canyons; emergent marshes; juniper, mountain mahogany, and aspen woodlands; and desert greasewood flats.

The purpose of the CCP is to fulfill the purposes for which the Refuge was established and to provide reasonable, scientifically-grounded guidance for improving the Refuge's shrub-steppe, riparian, wetland, and cliff-talus habitats for the long-term conservation of native plants and animals, endemic fish, and migratory birds while providing high-quality public-use programs for hunting, fishing, wildlife observation, photography, and environmental education and interpretation. The Draft CCP/EIS

identifies appropriate actions to protect and sustain biological features of the Refuge's sagebrush obligate wildlife populations and habitats, the migratory shorebird populations that use the Refuge, and candidate or rare species.

### CCP Alternatives We Are Considering

The Service identified and evaluated three alternatives for managing the Sheldon Refuge for the next 15 years, including a No Action Alternative (Alternative 1). Brief descriptions of the alternatives follow.

*Alternative 1: Current Management.* Alternative 1 reflects current management of Sheldon Refuge and serves as the baseline for comparing and contrasting the other management alternatives. Under Alternative 1, the Refuge's management focus would be on maintaining habitats throughout the Refuge in their current conditions and preventing further degradation of fish and wildlife habitats. The primary action would be to continue the current program of gathering feral horses and burros through regular roundups, and allowing their adoption, in order to maintain a relatively stable population of approximately 800 feral horses and 90 feral burros.

Wildland fire suppression and mechanical cutting and thinning of encroaching juniper would continue, in order to maintain sagebrush habitats in a late stage of plant community succession and avoid potential widespread growth of invasive annual grasses. Prescribed burning would continue to be used to maintain wet meadow and grassland habitats in an early to mid stage of plant community succession.

Public uses such as wildlife observation, photography, hunting, and fishing would continue through the maintenance of existing facilities, which include ponds, reservoirs, fishing docks, primary roads, and 13 campgrounds in primitive, semi-primitive, and developed conditions. Stocking fish in Refuge reservoirs would continue, and the limited collection of rocks and minerals would be allowed to continue. Under Alternative 1, we would not change the current proposal for lands designated as wilderness. The Refuge would officially designate roads and routes necessary for wildlife-dependent public uses throughout Sheldon Refuge, consistent with existing Executive orders, Federal regulations, and Service policies, where such uses would be compatible with Refuge purposes.

*Alternative 2: Intensive Habitat Management.* Under Alternative 2, the Service's preferred alternative, the Refuge would focus on improving

habitat for all fish and wildlife, especially those necessary for healthy populations of sagebrush obligate wildlife species such as American pronghorn and greater sage-grouse. Actions to improve habitats within the Refuge would include the adoption, and if necessary, auction of all feral horses and burros on the Refuge within 5 years of implementing the CCP, consistent with Service policy. Other management actions to improve habitat conditions would include relocating campgrounds away from sensitive riparian habitats, reducing western juniper and sagebrush encroaching into adjacent habitats, and, where feasible, increasing the occurrence and frequency of fire, to restore more natural habitat conditions, diversity, and plant community succession. Removing abandoned commercial livestock developments and reducing invasive plants along road corridors would be emphasized.

Wildlife-dependent public uses would also be emphasized, with opportunities for hunting, fishing, wildlife observation, photography, interpretation, and environmental education maintained or improved from present conditions. Recreation opportunities for limited collection of rock and mineral specimens would be allowed to continue, with added emphasis on visitor information related to relevant laws, regulations, and interpretation of the area's geology. The State of Nevada fish stocking program would continue, limiting stocked fish species to those naturally occurring within the local area.

Under Alternative 2, we would recommend wilderness designation for approximately the same number of acres in the current proposal, but the location and distribution of the areas recommended would differ. Contingent upon approval of the wilderness recommendation, we would open some designated primitive routes for motorized vehicle use under Alternative 2. Several segments of existing and proposed routes would be realigned to reduce erosion and other impacts to riparian habitats.

Alternative 2 is the Service's preferred alternative because it is expected to result in the greatest improvement of habitat conditions for native fish, wildlife, and plants on the Refuge. It also achieves the purposes for which the Refuge was established.

*Alternative 3: Less Intensive Management.* Under Alternative 3, the Refuge's management focus would be on mimicking or restoring natural processes, to maintain, enhance, and where possible, increase native fish, wildlife, and plant diversity

representative of historical conditions in the Great Basin. Emphasis would be placed on improving shrub-steppe habitats and restoring modified and/or degraded habitats to a more native condition, while using less intensive and less costly management actions where appropriate. Habitat management actions would include the adoption and, if necessary, auction of all feral horses and burros from the Refuge within 10 years. Other habitat management efforts would emphasize natural habitat restoration and creating conditions where natural processes, such as fire, could be allowed more frequently, with less dependence on prescribed fire and other intensive management actions.

Public-use opportunities for wildlife observation, photography, hunting, and fishing would be available at most current sites, except fish stocking would be discontinued at one of the two reservoirs currently stocked within the Refuge. Campgrounds would be consolidated to establish larger individual campgrounds with better amenities. Under Alternative 3, we would propose the least number of acres for designation as wilderness, compared to the other alternatives. Contingent upon this proposal, Alternative 3, we would open some designated primitive routes to motorized vehicle use that would not require intensive restoration or management to minimize adverse impacts.

### Public Availability of Documents

In addition to methods in **ADDRESSES**, you can view or obtain documents at the following locations.

- Our Web site: <http://www.fws.gov/pacific/planning/main/docs/NV/docssheldon.htm>.
- Lake County Public Library, 513 Center St., Lakeview, OR.
- Humboldt County Public Library, 85 East Fifth St., Winnemucca, NV.
- Washoe County Public Library, 301 South Center St., Reno, NV.

### Submitting Comments

Public comments are requested, considered, and incorporated throughout the planning process; please see **DATES** for due dates. Comments on the Draft CCP/EIS will be analyzed by the Service and addressed in final planning documents.

### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: August 31, 2011.

**Robyn Thorson,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 2011-23119 Filed 9-8-11; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

#### Announcement of National Geospatial Advisory Committee Meeting

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** The National Geospatial Advisory Committee (NGAC) will meet on October 4–5, 2011 at the National Conservation Training Center, 698 Conservation Way, Shepherdstown, WV 25443. The meeting will be held in Room #201 Instructional East.

The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, has been established to advise the Chair of the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A-16. Topics to be addressed at the meeting include:

- Recent FGDC Activities
- NGAC Feedback on Geospatial Platform
- Innovative Strategies for Geospatial Programs and Partnerships
- Geospatial Workforce Development
- NGAC Tribal Subcommittee
- NGAC Subcommittee Activities

The meeting will include an opportunity for public comment during the morning of October 5. Comments may also be submitted to the NGAC in writing. Members of the public who wish to attend the meeting must register in advance for clearance into the meeting site. Please register by contacting Arista Maher at the Federal Geographic Data Committee (703-648-6283, [amaher@fgdc.gov](mailto:amaher@fgdc.gov)). Registrations are due by September 26. While the meeting will be open to the public, seating may be limited due to room capacity.

**DATES:** The meeting will be held on October 4 from 8:30 a.m. to 5 p.m. and on October 5 from 8:30 a.m. to 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** John Mahoney, U.S. Geological Survey (206-220-4621).

**SUPPLEMENTARY INFORMATION:** Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting are available at <http://www.fgdc.gov/ngac>.

Dated: September 2, 2011.

**Ivan DeLoatch,**

*Executive Director, Federal Geographic Data Committee.*

[FR Doc. 2011-23038 Filed 9-8-11; 8:45 am]

**BILLING CODE 4311-AM-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLWYR0500.L16100000.DP0000.LXSS047K0000]

#### Notice of Availability of the Draft Resource Management Plan and Associated Environmental Impact Statement for the Lander Resource Management Plan Revision Project, Lander Field Office, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability.

**SUMMARY:** In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and the Federal Land Policy and Management Act (FLPMA) of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Draft Environmental Impact Statement (EIS) for the Lander Field Office and by this notice is announcing the opening of a 90-day comment period.

**DATES:** To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability (NOA) of the Draft RMP/EIS in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices, media releases, and/or the project Web site: <http://www.blm.gov/wy/st/en/programs/Planning/rmps/lander.html>.

**ADDRESSES:** You may submit comments related to the Lander Resource Management Plan Revision Project by any of the following methods:

*Web site:* <http://www.blm.gov/wy/st/en/programs/Planning/rmps/lander.html>.

*E-mail:* [LRMP.WYMail@blm.gov](mailto:LRMP.WYMail@blm.gov).  
*Mail:* Lander Field Office, Attn: RMP Project Manager, 1335 Main Street, Lander, Wyoming 82520.

Copies of the Draft RMP/EIS are available at the following locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.
- Bureau of Land Management, Lander Field Office, 1335 Main Street, Lander, Wyoming 82520.
- Bureau of Land Management, Wind River/Bighorn Basin District Office, 101 South 23rd Street, Worland, Wyoming 82401.

#### FOR FURTHER INFORMATION CONTACT:

Kristin Yannone, RMP Project Manager, telephone 307-332-8400; address 1335 Main Street, Lander, Wyoming 82520; e-mail [kristin\\_yannone@blm.gov](mailto:kristin_yannone@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The planning area for the Project includes lands within the BLM Lander Field Office's administrative boundaries, including all of Fremont County and some of Teton, Sweetwater, Hot Springs, and Natrona counties in Wyoming. The planning area includes all lands, regardless of jurisdiction, totaling approximately 6.6 million acres; however, the BLM will only make decisions on lands that fall under the BLM's jurisdiction. BLM-administered surface, totaling approximately 2.4 million acres, and Federal mineral estate, totaling 2.8 million acres, make up the decision area. The revised RMP will replace the 1987 Lander RMP. The Draft RMP/EIS includes a series of management actions, within four management alternatives, designed to address management challenges and issues raised during scoping. These include, but are not limited to, mineral development, livestock grazing, air quality, special management areas including areas of critical environmental concern (ACEC), wildlife habitats including that of the Greater sage-grouse, and management of the settings of the congressionally designated trails. The four alternatives are:

- Alternative A: Continues existing management practices (no action alternative);

- Alternative B: Emphasizes conservation of natural and cultural resources while providing for compatible development and use;
- Alternative C: Emphasizes resource development and use while protecting natural and cultural resources; and
- Alternative D: Provides development opportunities while protecting sensitive resources (preferred alternative).

The preferred alternative has been identified as described in 40 CFR 1502.14(e). However, identification of a preferred alternative does not represent the final agency decision. The proposed RMP and final EIS will reflect changes or adjustments based on information received during public comment, new information, or changes in BLM policies or priorities. The proposed RMP may include portions of any analyzed alternatives. For this reason, the BLM encourages comments on all alternatives and management actions described in the Draft RMP/EIS.

In accordance with 43 CFR 1610.7–2(b), this NOA announces a concurrent public comment period on proposed ACECs. Alternative B proposes 15 ACECs, the most in any alternative, of which 9 were designated as ACECs in the 1987 Lander RMP. Alternative B would manage all ACECs as closed to all mineral activity including solid and fluid mineral leasing and would pursue withdrawal of all ACECs from locatable mineral entry. Alternative C would designate no ACECs. The management restrictions vary by alternative. The ACECs and the most restrictive management are:

- *Lander Slope*, 25,065 acres, designated in the 1987 RMP. Value(s) of concern—paleontological, visual resources, and wildlife habitat. Proposed use limitation(s): right-of-way (ROW) exclusion area, closed to all mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, closed to pursue withdrawal from locatable mineral entry, motorized vehicle use limited to designated roads and trails, and a small area closed to motorized and mechanized travel for recreational use or with seasonal restrictions.
- *Red Canyon*, 15,109 acres designated in the 1987 RMP. Value(s) of concern—visual resources and wildlife habitat. Proposed use limitation(s): right-of-way (ROW) exclusion area, closed to all mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, closed to pursue withdrawal from locatable mineral entry, motorized

vehicle use limited to designated roads and trails, and a small area closed to motorized and mechanized travel for recreational use or with seasonal restrictions.

- *Dubois Badlands*, 4,903 acres designated in the 1987 RMP. Value(s) of concern—visual resources and fragile soils. Proposed use limitation(s): right-of-way (ROW) exclusion area, closed to all mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, closed in order to pursue withdrawal from locatable mineral entry, and motorized vehicle use limited to designated roads and trails.

- *Whiskey Mountain*, 8,776 acres designated in the 1987 RMP. Value(s) of concern—bighorn sheep habitat. Proposed use limitation(s): right-of-way (ROW) exclusion area, closed to mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, and motorized vehicle use limited to designated roads and trails with seasonal closures. Pursue extending locatable mineral withdrawals for a 20-year period.

- *East Fork*, 4,431 acres designated in the 1987 RMP with a proposed expansion of an additional 3,313 acres. Value(s) of concern—elk habitat. Proposed use limitation(s): ROW exclusion area, closed to mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, and motorized vehicle use limited to designated roads and trails with seasonal closures. Pursue extending locatable mineral withdrawals for a 20-year period.

- *Beaver Rim*, 6,421 acres designated in the 1987 RMP with a proposed expansion of an additional 14,111 acres. Value(s) of concern—geologic visual resources, Native American concerns, unique plant communities, and raptor nesting and habitat areas. Proposed use limitation(s): ROW exclusion area, closed to mineral leases, closed to geophysical exploration, closed to pursue withdrawal from locatable mineral entry, closed to mineral material disposals and related exploration and development activities, and motorized vehicle use limited to designated roads and trails.

- *Green Mountain*, 14,612 acres designated in the 1987 RMP with a proposed expansion of an additional 10,248 acres. Value(s) of concern—habitat for a resident elk population. Proposed use limitation(s): ROW exclusion area, closed to mineral leases, closed to geophysical exploration,

closed to mineral material disposals and related exploration and development activities, closed to pursue withdrawal from locatable mineral entry, and motorized vehicle use limited to designated roads and trails with seasonal closures.

- *National Historic Trails*, 27,728 acres designated in the 1987 RMP. Value(s) of concern—the immediate setting of the national historic trails. Proposed use limitation(s): Right-of-way (ROW) exclusion area, closed to all mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, closed to pursue withdrawal from locatable mineral entry, and motorized vehicle use limited to designated roads and trails.

- *South Pass Historical Mining Area*, 12,576 acres designated in the 1987 RMP. Value(s) of concern—historical and visual resources associated with historic mining and its setting. Proposed use limitation(s): right-of-way (ROW) exclusion area, closed to all mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, closed to pursue withdrawal from locatable mineral entry, and motorized vehicle use limited to designated roads and trails.

- *Continental Divide Scenic Trail*, not designated in 1987 RMP. Alternative B proposes 259,380 acres. Value(s) of concern—recreation and visual resources associated with the congressionally designated national scenic trail. Proposed use limitation(s): right-of-way (ROW) exclusion area, closed to all mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, closed to pursue withdrawal from locatable mineral entry, and motorized vehicle use limited to designated roads and trails in a buffer along the Trail.

- *Cedar Ridge*, not designated in 1987 RMP. Alternative B proposes 7,039 acres. Value(s) of concern—paleontological resources and Native American religious and sacred sites and their settings. Proposed use limitation(s): right-of-way (ROW) exclusion area, closed to all mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, closed to pursue withdrawal from locatable mineral entry, and motorized vehicle use limited to designated roads and trails.

- *Castle Gardens*, not designated in 1987 RMP. Alternative B proposes 8,469 acres. Value(s) of concern—paleontological resources and Native

American religious and sacred sites and their settings. Proposed use limitation(s): right-of-way (ROW) exclusion area, closed to all mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, closed to pursue withdrawal from locatable mineral entry, and motorized vehicle use limited to designated roads and trails.

- *Sweetwater Rocks*, not designated in the 1987 RMP. Alternative B proposes 152,347 acres. Value(s) of concern—geologic and visual resources and recreational values. Proposed use limitation(s): right-of-way (ROW) exclusion area, closed to all mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, closed to pursue withdrawal from locatable mineral entry, and motorized vehicle use limited to designated roads and trails.

- *Regional Historic Trails and Early Highways*, not designated in the 1987 RMP. Alternative B proposes 89,016 acres. Value(s) of concern—historical/cultural resources and their settings. Proposed use limitation(s): right-of-way (ROW) exclusion area, closed to all mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, closed to pursue withdrawal from locatable mineral entry, and motorized vehicle use limited to designated roads and trails in a buffer around the trails.

- *Government Draw/Upper Sweetwater sage-grouse*, not designated by the 1987 RMP. Alternative B proposes 1,246,791 acres. Value(s) of concern—Greater sage-grouse habitat. Proposed use limitation(s): right-of-way (ROW) exclusion area, closed to all mineral leases, closed to geophysical exploration, closed to mineral material disposals and related exploration and development activities, closed to pursue withdrawal from locatable mineral entry, and motorized vehicle use limited to designated roads and trails.

Alternative A proposes to maintain the nine existing ACECs. Alternative B proposes to establish all of the ACECs listed above and to pursue withdrawals from locatable mineral entry for 1,396,844 acres. Alternative C proposes to eliminate all ACECs and manage the areas with standard stipulations (such as a  $\frac{1}{2}$ -mile buffer on each side of the national historic trails).

Alternative D, the preferred alternative, proposes ACEC designation for the following ACECs that are the same as designated in the 1987 RMP: Lander Slope (25,065 acres), Red

Canyon (15,109 acres), Whiskey Mountain (8,776 acres), and Beaver Rim (6,421 acres). The following ACECs were designated in the 1987 RMP but expanded in the preferred alternative: East Fork (4,431 acres plus 6,777 acres—including acres that were transferred from the Dubois Badlands ACEC designated in 1987 but not in the preferred alternative), and Green Mountain (14,612 acres plus an additional 6,777 acres). The preferred alternative modifies the 1987 designated South Pass Historic Mining Area to include additional lands associated with the congressionally designated trails for a total of 124,229 acres. A portion of the Government Draw/Upper Sweetwater sage-grouse ACEC is identified for management as a reference and education area containing the Twin Creek ACEC of 36,302 acres. The preferred alternative did not adopt the following ACECs proposed under Alternative B: Cedar Ridge, Castle Gardens, Sweetwater Rocks, Continental Divide National Scenic Trail, Regional Historic Trails and Early Highways, and Government Draw/Upper Sweetwater sage-grouse. 13,378 acres in ACECs are closed to pursue withdrawal from locatable mineral entry.

The BLM initiated a wild and scenic rivers (WSR) review of all BLM-administered public lands along waterways within the Lander Field Office. The BLM requests the public to submit information regarding the suitability of eligible river segments for inclusion in the National Wild and Scenic Rivers System. The BLM will use comments submitted during the announced comment period to gather additional data to determine suitability for inclusion into the National Wild and Scenic Rivers System.

You may submit comments in writing to the BLM at any public meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. In order to reduce the use of paper and control costs, the BLM strongly encourages the public to submit comments electronically at the project Web site or via e-mail. Only comments submitted using the methods described in the **ADDRESSES** section above will be accepted. Comments submitted must include the commenter's name and street address. Whenever possible, please include reference to either the page or section in the Draft RMP/EIS to which the comment applies. Please note that public comments and information submitted including names, street addresses and e-mail addresses of persons who submit comments will be available for public review and

disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

**Authority:** 40 CFR 1506.6, 1506.10; 43 CFR 1610.2, 1610.7–2 and 8350.

**Donald A. Simpson,**  
*State Director.*

[FR Doc. 2011–22946 Filed 9–7–11; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLCAC06000.L16100000.DP0000.  
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#### Notice of Availability of the Draft Bakersfield Resource Management Plan and Draft Environmental Impact Statement, California

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for the Bakersfield Field Office (FO) planning area and by this notice is announcing the opening of the comment period.

**DATES:** To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP/Draft EIS within 90 days following the date the Environmental Protection Agency publishes this notice of availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public participation activities at least 15 days in advance through public notices,

media releases, the BLM Web page and/or mailings.

**ADDRESSES:** You may submit comments related to the Bakersfield Resource Management Plan, including potential designation of areas of critical environmental concern (ACEC), by any of the following methods:

- *E-mail:* [cacalrmp@ca.blm.gov](mailto:cacalrmp@ca.blm.gov).
- *Fax:* (661) 391-6143, Attention: Bakersfield RMP.

- *Mail:* Bakersfield RMP, BLM Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, California 93308.

Copies of the Bakersfield Draft RMP/Draft EIS are available in the Bakersfield FO at the above address; the California State Office at 2800 Cottage Way, Suite W 1834, Sacramento, CA 95825; and at the BLM's Web site <http://www.ca.blm.gov/bakersfield>.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Sue Porter, Bakersfield Planning & Environmental Coordinator, telephone: (661) 391-6000 or the Bakersfield FO RMP line at (661) 391-6022; address: Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, California 93308; e-mail:

[cacalrmp@ca.blm.gov](mailto:cacalrmp@ca.blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The Draft RMP/Draft EIS addresses public land and resources managed by the Bakersfield FO in an 8 county, 17 million acre region of central California in Kings, San Luis Obispo, Santa Barbara, Tulare, Ventura, Madera, eastern Fresno, and western Kern counties. The Bakersfield RMP will replace the 1997 Caliente RMP and the 1984 Hollister RMP, as amended, for the management of approximately 404,000 acres of public land and 1.2 million acres of Federal mineral estate. The Bakersfield RMP does not address management of the California Coastal National Monument or the Carrizo Plain National Monument. Planning decisions in the RMP will apply only to the BLM-administered public lands and mineral estate in the planning area.

The purpose of the Bakersfield RMP is to establish goals, objectives, and management actions for BLM public lands that address current issues, knowledge, and conditions. The Draft RMP/Draft EIS has been developed with broad public participation in

accordance with FLPMA and NEPA. Preliminary planning issues were presented for public review and comment in the March 2008 **Federal Register** Notice of Intent (NOI); additional public comments were solicited through scoping letters, meetings, and the RMP Web site. Six planning issues were identified through the scoping process: (1) Access and availability of public lands for recreational and open spaces; (2) balance between the travel network and protection of natural and cultural resources; (3) protection of threatened and endangered species, critical habitat, other biological resources, cultural and paleontological resources in a multiple-use environment; (4) livestock grazing management to provide for economic benefit, rural lifestyles and vegetation management while protecting other resources; (5) balance between energy development and other land use authorizations with resource values; and (6) climate change.

The Draft RMP/Draft EIS includes five management alternatives:

- The No Action alternative (Alternative A) would continue current management under the existing 1997 Caliente RMP and 1984 Hollister RMP, as amended.
- Alternative B balances resource conservation and ecosystem health with the production of commodities and public use of the land. Alternative B is the Preferred Alternative.
- Alternative C emphasizes conserving cultural and natural resources, maintaining functioning natural systems, and restoring natural systems that are degraded.
- Alternative D follows Alternative C in all aspects except Alternative D eliminates livestock grazing from BLM managed lands in the planning area.
- Alternative E emphasizes the production of natural resources, commodities and public use opportunities.

The Preferred Alternative has been identified as described in 40 CFR 1502.14(e). Identification of this alternative, however, does not represent final agency direction, and the Proposed RMP may reflect changes or adjustments based on information received during public comment, from new information, or from changes in BLM policies or priorities. The Proposed RMP may include objectives and actions described in the other analyzed alternatives. For this reason, the BLM invites and encourages comments on all alternatives, objectives, and actions described in the Draft RMP/Draft EIS.

Pursuant to 43 CFR 1610.7-2(b), this notice announces a concurrent public

comment period on proposed ACECs. Ten new ACEC designations are proposed and five existing ACECs have proposed boundary changes:

*Ancient Lakeshores* (1,985 acres): This proposal combines the existing 402-acre Alkali Sink and 40-acre Goose Lake ACECs with lands at Atwell Island. Relevant values are cultural, special status species (wildlife and plants), and plant community. Proposed limitations address land use authorizations, livestock grazing, mineral development and recreation.

*Bitter Creek* (6,121 acres): This newly proposed ACEC contains relevant values of special status wildlife species. Proposed limitations address land use authorizations, mineral development and recreation. Other restrictions include closing public access to lands adjacent to a national wildlife refuge.

*Compensation Lands* (283 acres): Relevant values for this newly proposed ACEC are special status wildlife and plant species. Proposed limitations address land use authorizations, livestock grazing, mineral development, and recreation. Other restrictions include management to benefit species identified in applicable US Fish and Wildlife Service or California Department of Fish and Game biological opinions, agreements, or other documents.

*Cyrus Canyon* (5,374 acres): Relevant values for this newly proposed ACEC are special status plant species. Proposed limitations address land use authorizations, livestock grazing, mineral development and recreation.

*Erskine Creek* (4,019 acres): Relevant values for this newly proposed ACEC are special status wildlife and plant species, geologic, and riparian. Proposed limitations address land use authorizations, livestock grazing, mineral development and recreation.

*Granite Cave* (42 acres): Relevant values for this newly proposed ACEC are cultural and geologic. Proposed limitations address land use authorizations and mineral development. Other restrictions include prohibited public access.

*Hopper Mountain* (4,974 acres): Relevant values for this newly proposed ACEC are special status wildlife species. Proposed limitations address land use authorizations, livestock grazing, mineral development, and recreation. Other restrictions include potentially restricting public access during condor use periods.

*Irish Hills* (1,654 acres): Relevant values for this newly proposed ACEC are special status plant species and rare plant communities. Proposed limitations address land use

authorizations, livestock grazing, mineral development, and recreation.

**Kaweah** (27,041 acres): This proposal incorporates an expansion of the existing 26,468-acre Case Mountain ACEC with the North Fork of the Kaweah River. Relevant values are cultural, historic, special status wildlife and plant species, geologic, and riparian. Proposed limitations address land use authorizations, livestock grazing, mineral development, and recreation. Other restrictions include closure or seasonal restrictions to recreation sites along the North Fork of the Kaweah River.

**Kettleman Hills** (13,695 acres): This proposal expands the existing ACEC through the addition of 3,901 acres. Relevant values are special status wildlife species, paleontological, and plant community. Proposed limitations address land use authorizations, mineral development, and recreation.

**Lokern-Buena Vista** (15,465 acres): This proposal combines the existing Lokern ACEC with an additional 8,833 acres in the Buena Vista Hills. Relevant values are special status wildlife and plant species and plant community. Proposed limitations address land use authorizations, mineral development, and recreation.

**Los Osos** (5 acres): Relevant values for this newly proposed ACEC are cultural, special status wildlife and plant species, and plant community. Proposed limitations address land use authorizations, livestock grazing, mineral development, and recreation. Other restrictions include limiting public access to pedestrians; cross-country travel would be prohibited.

**Piute Cypress** (2,517 acres): This proposal expands the existing ACEC by 1,413 acres. Relevant values are special status plant species. Proposed limitations address land use authorizations, livestock grazing, mineral development, and recreation.

**Rusty Peak** (787 acres): Relevant values for this newly proposed ACEC are special status plant species and rare plant community. Proposed limitations address land use authorizations, livestock grazing and mineral development.

**Upper Cuyama Valley** (8,935 acres): Relevant values for this newly proposed ACEC are special status wildlife and plant species. Proposed limitations address land use authorizations, livestock grazing, mineral development, and recreation.

Alternative B, the Preferred Alternative, proposes ACEC designation for Ancient Lakeshores; Bitter Creek; Blue Ridge; Compensation Lands; Cypress Mountain; Cyrus Canyon;

Erskine Creek; Hopper Mountain; Horse Canyon; Kaweah; Kettleman Hills; Lokern-Buena Vista; Los Osos; Piute Cypress; Point Sal; Tierra Redonda; and Upper Cuyama Valley for a total of 99,619 acres proposed to be managed as ACECs.

Lands with wilderness characteristics are addressed in accordance with Section 201 and 202 of FLPMA. The Preferred Alternative would protect approximately 3,470 acres of lands with wilderness characteristics.

Please note that public comments and information submitted including names, street addresses, and e-mail addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, e-mail 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.

**Thomas Pogacnik,**

*Deputy State Director, Natural Resources.*

**Authority:** 40 CFR 1506.6, 1506.10, and 43 CFR 1610.2.

[FR Doc. 2011-22961 Filed 9-7-11; 8:45 am]

**BILLING CODE 4310-40-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[LLAK910000 L13100000.DB0000 LXSINSSI0000]**

**Notice of Public Meeting, North Slope Science Initiative—Science Technical Advisory Panel**

**AGENCY:** Bureau of Land Management, Alaska State Office, North Slope Science Initiative, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, North Slope Science Initiative (NSSI)—Science Technical Advisory Panel (STAP) will meet as indicated below.

**DATES:** The meeting will be held Oct. 4 and 5, 2011, in Anchorage, Alaska. The meetings will begin at 9 a.m. at the

Subsistence Board Room, 2nd Floor, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska. Public comment will be received between 3 and 4 p.m. on Tuesday, Oct. 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** John F. Payne, Executive Director, North Slope Science Initiative, AK-910, c/o Bureau of Land Management, 222 W. Seventh Avenue, #13, Anchorage, AK 99513, (907) 271-3431 or e-mail [jpayne.blm.gov](mailto:jpayne.blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The NSSI STAP provides advice and recommendations to the NSSI Oversight Group regarding priority information needs for management decisions across the North Slope of Alaska. These priority information needs may include recommendations on inventory, monitoring, and research activities that contribute to informed resource management decisions. This meeting will include an overview of the recent Oversight Group retreat, assignments to review and provide recommendations on the draft Arctic Landscape Conservation Cooperation science strategy and the status of the 2011 NSSI Report to Congress.

All meetings are open to the public. The public may present written comments to the Science Technical Advisory Panel through the Executive Director, North Slope Science Initiative. Each formal meeting will also have time allotted for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, transportation, or other reasonable accommodations, should contact the Executive Director, North Slope Science Initiative. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Dated: September 1, 2011.

**Julia Dougan,**

*Acting State Director.*

[FR Doc. 2011-23066 Filed 9-8-11; 8:45 am]

BILLING CODE 1310-JA-P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

#### Notice of Proposed Information Collection

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for its Abandoned mine reclamation funds. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

**DATES:** OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by October 11, 2011, in order to be assured of consideration.

**ADDRESSES:** Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Department of Interior Desk Officer, by telefax at (202) 395-5806 or via e-mail to [OIRA\\_Docket@omb.eop.gov](mailto:OIRA_Docket@omb.eop.gov). Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 203—SIB, Washington, DC 20240, or electronically to [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov).

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John Trelease at (202) 208-2783, or electronically at [jtrelease@osmre.gov](mailto:jtrelease@osmre.gov). You may also review this collection by going to <http://www.reginfo.gov> (Information Collection Review, Currently Under Review, Agency is Department of the Interior, DOI-OSMRE).

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB)

regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval of the collection of information contained in 30 CFR 872—Abandoned mine reclamation funds. OSM is requesting a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection is 1029-0054. Regulatory authorities are required to respond to this collection to obtain a benefit.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on June 22, 2011 (76 FR 36575). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

*Title:* 30 CFR 872—Abandoned mine reclamation funds.

*OMB Control Number:* 1029-0054.

*Summary:* 30 CFR 872 establishes a procedure whereby States and Indian tribes submit written statements announcing the State's/Tribe's decision not to submit reclamation plans and, therefore, not be granted AML funds.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* State and Tribal abandoned mine land reclamation agencies.

*Total Annual Responses:* 1.

*Total Annual Burden Hours:* 1.

*Total Annual Non-Wage Costs:* \$0.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed under **ADDRESSES**. Please refer to the appropriate OMB control number 1029-0054 in your correspondence.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may

be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 1, 2011.

**Stephen M. Sheffield,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2011-22948 Filed 9-8-11; 8:45 am]

BILLING CODE 4310-05-M

## INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-724]

### In the Matter of Certain Electronic Devices With Image Processing Systems, Components Thereof, and Associated Software; Notice of Commission Determination to Review a Final Initial Determination; Schedule for Filing Written Submission 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 the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") in the above captioned investigation on July 1, 2011, finding a violation of section 337 (19 U.S.C. 1337). The Commission requests briefing from the parties on the issues under review and from the parties and the public on remedy, the public interest, and bonding, as indicated in this notice.

**FOR FURTHER INFORMATION CONTACT:** Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2661. 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<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>.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on May 19, 2010, based on a complaint filed by S3 Graphics Co. Ltd. and S3 Graphics Inc. (collectively, "S3G"). 75 FR 38118 (July 1, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices with image processing systems, components thereof, and associated software by reason of infringement of various claims of United States Patent Nos. 7,043,087 ("the '087 patent"); 6,775,417 ("the '417 patent"); 6,683,978 ("the '978 patent"); and 6,658,146 ("the '146 patent"). *Id.* The complaint named Apple Inc. of Cupertino, California ("Apple") as the only respondent. *Id.*

On July 1, 2011, the ALJ issued his final initial determination ("ID") in this investigation finding a violation of section 337 based on conclusions that certain Mac computers imported by Apple infringe claim 11 of the '978 patent and claims 4 and 16 of the '146 patent, that those patent claims are not invalid, that S3G has a domestic industry related to those patents, and that S3G satisfied the importation requirement. The ID found that a patent exhaustion defense relieved Apple of liability for some of its infringing products, but not others. The ID further found no violation with respect to the '087 and '417 patents. The ID concluded that certain Apple products infringe the '087 and '417 patents, but that the asserted claims in those patents are invalid. Along with the ID, the ALJ issued a recommended determination on remedy and bonding ("RD"). Complainant S3G, respondent Apple, and the Commission investigative attorney ("IA") filed petitions for review of the ID on July 18, 2011. S3G, Apple, and the IA each filed responses to the petitions for review on July 26, 2011.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in its entirety.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in the following issues:

(1) Please comment on the Commission's statutory authority to find

a violation under 19 U.S.C. 1337(a)(1)(B)(i) where direct infringement is asserted and the accused article does not meet every limitation of the asserted patent claim at the time it is imported into the United States.

(2) Please comment on the Commission's statutory authority to find a violation under 19 U.S.C.

1337(a)(1)(B)(i) where an imported article is used in the United States to directly infringe a method claim, but where there is no evidence of contributory infringement or inducement of infringement on the part of the importer.

(3) Please comment on whether, in evaluating the scope of the Commission's authority, any significance should be attributed to the fact that 35 U.S.C. 271(a) defines patent infringement in terms of a person who "makes, uses, offers to sell, or sells \* \* \* or imports" a patented invention, while 19 U.S.C. 1337(a)(1)(B) defines as unlawful only the actions of "importation" and "sale."

(4) Some ALJ and Commission decisions have found the requirements of section 337 to be satisfied so long as there is some "nexus" between the products imported and the alleged infringement. Please comment on the history and application of this nexus requirement in patent and non-patent cases. Please also address the continuing relevance of the nexus requirement, if any, after the 1988 amendments to section 337 of the Tariff Act of 1930.

(5) The ID found that Apple infringes claim 11 of the '978 patent when, *inter alia*, it "sells applications containing compressed DXT texture." (ID at 69.) Please identify all evidence in the record, if any, supporting this finding.

(6) Apple contends that the ALJ did not decide whether accused articles having graphics processing units ("GPUs") supplied by NVIDIA Corporation ("NVIDIA") infringe any asserted patent claims. (Apple Resp. Pet. at 62.) Please identify (a) The portions of the ID, if any, that show the ALJ addressed infringement relating to the NVIDIA GPUs; and (b) the evidence in the record, if any, that accused articles incorporating the NVIDIA GPUs infringe an asserted patent claim. Please also address whether review of this issue has been preserved.

(7) Please identify all evidence in the record, if any, that a person of ordinary skill in the art at the time of the asserted inventions would have been motivated to use headers in the invention disclosed in U.S. Patent No. 5,046,119 to Hoffert ("Hoffert").

(8) Please identify all evidence in the record, if any, that a person of ordinary skill in the art at the time of the asserted inventions would have been motivated to combine teachings from the 1995 article titled "Hardware for Superior Texture Performance," by Knittel *et al.*, with the invention disclosed in Hoffert.

(9) The petitions raise the question of whether Apple's purchase of certain processing units from NVIDIA and Intel convey a right to practice the asserted patents. Please provide legal authority, if any, addressing the question of whether the authorized purchase of a patented component gives the purchaser the right to (a) Use its own independent implementation of the patented technology, and (b) the right to use the purchased component in conjunction with other components that together utilize the patented technology. In the context of this issue, please provide factual explanations, based on the record, as to how the Mac OS X devices use combinations of licensed and unlicensed components and/or software to implement the technology alleged to infringe the asserted patent claims.

(10) The petitions raise the question of whether patent licenses to Intel and NVIDIA exhaust S3G's rights in the patents as to downstream purchasers from Intel and NVIDIA. Please address this argument in the context of this investigation in view of *LG Elecs. Inc. v. Hitachi Ltd.*, 655 F. Supp. 2d 1036, 1047-48 (N.D. Cal. 2009) ("the license agreement represented a sale for exhaustion purposes"), *Certain Semiconductor Chips with Minimized Chip Package Size and Products Containing Same*, No. 337-TA-630, ID at 153 (U.S.I.T.C. Aug. 28, 2009) (complainant "cannot enforce patent law remedies against Respondents as it relates to those [products] purchased from [complainant's] licensees thereafter"), and any other pertinent legal authorities. Please also comment on whether Apple has properly raised and preserved this argument.

(11) Please identify the distinctions, if any, between Apple's defense under an implied license theory and Apple's defense under a patent exhaustion theory.

(12) Please comment on the correct legal standard for determining whether an invention has been abandoned, suppressed, or concealed under 35 U.S.C. 102(g).

(13) Please comment on the bond that should be set in this case should the Commission determine that a remedy and bond are appropriate. Please specifically address each of the bond amount issues identified by the ALJ in the ID at 286-87.

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(s) 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 likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. L. No. 2843 (December 1994) (Commission Opinion).

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 U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). 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 if a remedy is ordered.

**Written Submissions:** The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written

submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommendation on remedy and bonding set forth in the RD. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that each of the asserted patents are set to expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Friday, September 16, 2011. Reply submissions must be filed no later than the close of business on Friday, September 23, 2011. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42-46 and 210.50).

By order of the Commission.

Issued: September 2, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011-23058 Filed 9-8-11; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF LABOR

[OMB No. 1205-0371]

### Comment Request for Information Collection for the Work Opportunity Tax Credit (WOTC) Program: Extension With Non-Substantive Revisions

**AGENCY:** Employment and Training Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the collection of data for the WOTC program. OMB approval for the information collection forms expires November 30, 2011.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee's section below on or before November 8, 2011.

**ADDRESSES:** Submit written comments to Kimberly Vitelli, Room C-4510, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone No: 202-693-3045 (this is not a toll-free number). Fax: 202-693-3015. E-mail: [vitelli.kimberly@dol.gov](mailto:vitelli.kimberly@dol.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Data on the WOTC program is collected by the state workforce agencies (SWAs) using ETA Form 9058—Report 1, "Certification Workload and Characteristics of Certified Individuals, Work Opportunity Tax Credit" and provided to the Office of Workforce Investment, Washington, DC, through ETA's regional offices. (1) ETA Form 9058—Report 1 is a quarterly management report divided into two parts. Part I collects "Certification Workload" data and part II. collects "Characteristics of Certified Individuals." The SWAs submit this report using the Internet-based Tax Credit Reporting System of the Enterprise Business Services System (EBSS). The data obtained from this report and from the other four administrative and processing forms (ETA Forms 9061-9063 and 9065) are

used for WOTC national office program performance management and outcome reporting. (2) The “Individual Characteristics Form—Work Opportunity Tax Credit” (ICF), ETA Form 9061 is a form required to be used, without modification, by all employers or their representatives. The purpose of the ICF is to expedite certification processing by enabling the individual for whom a certification is requested to be identified with a specific target group and to match the ICF with IRS form 8850. (3) The “Conditional Certification—Work Opportunity Tax Credit,” ETA Form 9062 is a required form that must be used, without modification, by all SWAs, participating agencies and programs to which the SWAs may delegate responsibility for Conditional Certification authority. The Conditional Certification form establishes that the named individual has been tentatively determined eligible as a member of the WOTC targeted group indicated, and therefore hiring this person may lead to an employer Certification under the WOTC program. (4) The “Employer Certification—Work Opportunity Tax Credit,” ETA Form 9063 is an optional form. The form provides the employer with a record of the results of the SWA’s eligibility determination on the employer’s certification request. In accordance with Public Law 104–188, this form can only be issued by a State Employment Security Agency (now SWA) created

under the Wagner-Peyser Act of 1933, as amended, or a Designated Local Agency (DLA). SWAs that opt to design and use a state-specific employer certification form must ensure the state-specific form contains all of the information that appears on the optional ETA form. This form can only be issued by the SWA or DLA. (5) The “Agency Declaration of Verification Results—Work Opportunity Tax Credit,” ETA Form 9065 is an optional ETA form for internal SWA use in recording the results of verification activities conducted by the SWA. If the SWA elects to use an alternative form to record verification results, the alternative form must contain ALL of the information that appears in the optional form.

*The American Recovery and Reinvestment Act of 2009* (ARRA) (Pub. L. 111–5), created the following two target groups: (1) Unemployed Veterans and (2) Disconnected Youth. The legislative authority for these two groups expired on December 31, 2010. Current revisions to the reporting and administrative/processing forms include removal of the two expired ARRA groups and related instructions.

**II. Review Focus**

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**III. Current Actions**

*Type of Review:* Extension Request, Without Substantive Revisions, of a Currently Approved Collection.

*Title:* Work Opportunity Tax Credit Program.

*OMB Number:* 1205–0371.

*Affected Public:* State Workforce Agencies; the business sector and the target group members.

*Form(s):* ETA Form 9058; ETA Forms 9061–9063; and 9065.

*Annual Frequency:* ETA Form 9058, quarterly; ETA Forms 9061–9063 and 9065, on occasion.

*Estimated Time per Respondent:*

Requirement	Total respondents	Frequency	Annual response	Average response time in hours	Annual burden hours
Form 9058—Report 1 .....	52	Quarterly .....	208	1.00	208
Employer/Job-seeker Complete Form 9061 .....	990,000	On occasion .....	990,000	.33	326,700
Form 9061 processed by SWAs .....	52	On occasion .....	990,000	.33	326,700
Form 9062 .....	52	On occasion .....	40	.33	13
Form 9063 .....	52	On occasion .....	440,000	.33	145,200
Form 9065 .....	52	Quarterly .....	208	1.00	208
Record Keeping .....	52	Annually .....	52	931	48,412
States’ Plans .....	52	Annually—Per Year .....	52	8.00	416
States’ Modified Plans .....	52	Annually—Per Year .....	52	1.00	52
<b>Total .....</b>	<b>990,416</b>	<b>.....</b>	<b>2,420,612</b>	<b>.....</b>	<b>847,909</b>

*Total Burden Hours:* 847,909.  
*Total Burden Cost (capital/startup):* 0.  
*Total Burden Cost (operating/maintaining):* 0.  
*Total Annual Burden Cost for Respondents:* 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, the 31st day of August 2011.

**Jane Oates,**  
*Assistant Secretary, Employment and Training Administration.*

[FR Doc. 2011–23115 Filed 9–8–11; 8:45 am]

**BILLING CODE 4510–FN–P**

**DEPARTMENT OF LABOR**

**Office of the Secretary**

**Industrial Relations Promotion Project, Phase II in Vietnam**

**AGENCY:** Bureau of International Labor Affairs, U.S. Department of Labor.

**ACTION:** Notice of intent to award sole source (Cooperative Agreement).

**SUMMARY:** The U.S. Department of Labor (USDOL), Bureau of International Labor

Affairs (ILAB), intends to award a sole source award to DAI/Nathan Group LLC (DAI) for the purpose of implementing a program to strengthen compliance with international labor standards in Vietnam, focusing specifically on improving labor administration, freedom of association, collective bargaining and dispute resolution.

*Total Estimated Value of the Grant/Agreement Action:* \$1,500,000.

*Anticipated Length of Agreement:* Two (2) years (9/30/2011 to 9/30/2013).

*Grant Authority:* Department of Labor Manual Series (DLMS)-2, Chapter 830(g)(3): The Recipient, DAI, has unique qualifications to perform the type of activity to be funded. DAI, through its Industrial Relations Promotion Project (IRRP), is the only organization that has the recognized authority and capacity to fulfill the intent of the IRRP Phase II in Vietnam. DAI/IRRP has worked closely with the Government of Vietnam and worker and employer organizations. Given the complexity of building working relationships and trust with Vietnamese counterparts, DAI has made great strides on that front and, as a result, is uniquely positioned to be an effective implementing partner, particularly in building labor inspectorate capacity. DAI/IRRP is the only organization that can continue these efforts without interruption in support of the implementation of Vietnam's new legislation and consistent with USG trade and Labor Dialogue-related efforts. The Project will continue to work in coordination with other USAID funded DAI projects in Vietnam. DAI's Support for Trade Acceleration Project (STAR Plus) supports the Government of Vietnam's efforts to implement trade and investment reform to attract investment and promote private sector growth and has worked with the Ministry of Justice on law and judicial reform. DAI's Vietnam Competitiveness Initiative Phase II Project (VNCI) works with STAR Plus and the Government of Vietnam to improve government administration, reduce the regulatory burden on the private sector, and generate new employment. In Phase I, IRRP has engaged in a number of activities that directly support Phase II objectives. The US embassy provided a letter in support of continued funding of DAI/IRRP based, on part, on the importance of the objectives and DAI/IRRP unique qualifications to achieve them.

*Recipient Involvement:*

DAI will:

- Strengthen the effectiveness of Vietnam's labor administration, with a focus on the labor inspection system, its

management, regulations, data collection, training, research and related areas.

- Promote collective bargaining and the prevention and resolution of collective disputes and sound industrial relations by developing approaches in cooperation with trade unions/worker organizations, employers and MOLISA.
- Help develop dispute resolution systems in new legislation for interest-based and rights-based disputes.
- Strengthen capacity in worker organizations to organize and effectively represent workers in the private sector.

*Key Dates:* This notice will remain open for approximately three days from posting in the **Federal Register**. The Cooperative Agreement is projected for award on or before September 30, 2011.

*Submission Information:* This funding announcement is not a request for applications. This announcement is only to provide public notice of The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs intention to fund the following project activities without full and open competition.

**FOR FURTHER INFORMATION CONTACT:** Ms. Brenda J. White, Grant Officer. E-mail address: [white.brenda.j@dol.gov](mailto:white.brenda.j@dol.gov). All inquiries should make reference to the USDOL Industrial Relations Promotion Project, Phase II in Vietnam.

Signed at Washington, DC, this 29th day of August, 2011.

**Brenda J. White,**

*Grant Officer.*

[FR Doc. 2011-23029 Filed 9-8-11; 8:45 am]

**BILLING CODE 4510-28-P**

## DEPARTMENT OF LABOR

### Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

**AGENCY:** Veterans' Employment and Training Service, Labor.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO). The ACVETEO will discuss Department of Labor's Veterans' Employment and Training Services' (VETS) core programs and new initiatives regarding efforts that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for persons or organizations to address the committee. Any individual or organization that

wishes to do so should contact Mr. Gregory Green (202) 693-4734. Time constraints may limit the number of outside participants/presentations. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Wednesday, September 21, 2011 by contacting Mr. Gregory Green (202) 693-4734. Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed. The meeting site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

*Date and Time:* Thursday, September 29, 2011, beginning at 10 a.m. and ending at approximately 4 p.m. (E.S.T.).

**ADDRESSES:** U.S. Department of Labor, Room S-2508, 200 Constitution Avenue, NW., Washington, DC 20210. ID is required to enter the building.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nancy L. Hogan, Designated Federal Official, Advisory Committee on Veterans' Employment, Training and Employer Outreach, (202) 693-4700, or Mr. Gregory Green (202) 693-4734.

**SUPPLEMENTARY INFORMATION:** ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary of Labor for Veterans' Employment and Training (VETS), with respect to outreach activities and employment and training needs of Veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Signed in Washington, DC, this 2nd day of September, 2011.

**Joseph C. Juarez,**

*Acting, Deputy Assistant Secretary, Veterans' Employment and Training Service.*

[FR Doc. 2011-23028 Filed 9-8-11; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration**

[Docket No. OSHA-2011-0060]

**Methylene Chloride Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Methylene Chloride Standard (29 CFR 1910.1052).

**DATES:** Comments must be submitted (postmarked, sent, or received) by November 8, 2011.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA-2011-0060, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number (OSHA-2011-0060) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments or other material in the

docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

**SUPPLEMENTARY INFORMATION:****I. Background**

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

As required by the PRA-95, OSHA published a notice in the **Federal Register** on March 16, 2011 (76 FR 14432, Docket No. OSHA-2011-0060) requesting public comment on its proposed extension of the information collection requirements contained in the existing Standard on Methylene Chloride (29 CFR 1910.1052, "the Standard"). The notice was part of a preclearance consultation program

intended to provide those interested parties the opportunity to comment on OSHA's request for an extension by OMB of a previous approval of the information collection requirements in the Standard. No public comments were received.

However, as a result of the Standards Improvement Project-Phase III final rule (76 FR 33590), published on June 8, 2011, the "transfer of records" requirement contained in the Standard (former 29 CFR 1910.1052(m)(5)) was revoked. In accordance with PRA-95, prior to issuance of the final rule, on May 27, 2011, OSHA submitted a revised ICR to OMB requesting approval to remove this requirement and the associated burden hours and costs. On August 11, 2011, OMB issued a Notice of Action (NOA) indicating approval of the request.

In addition, the NOA instructed the Department of Labor to publish a second notice in the **Federal Register** to solicit comments on its proposal to extend the Office of Management and Budget's approval of the information collection requirements. In response, this notice fulfills the NOA instructions. The Agency will respond to any comments submitted in response to this notice and submit the final ICR to OMB.

The Standard protects workers from the adverse health effects that may result from their exposure to methylene chloride (MC). The requirements in the Standard include worker exposure monitoring, notifying workers of their MC exposures, administering medical examinations to workers, providing examining physicians with specific program and worker information, ensuring that workers receive a copy of their medical examination results, training workers on the hazards of MC, maintaining workers' exposure monitoring and medical examination records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected workers, and their authorized representatives.

**II. Special Issues for Comment**

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

### III. Proposed Actions

OSHA is requesting an adjustment decrease in burden hours from 67,361 to 63,560 (a total decrease of 3,801 hours). The adjustment is primarily due to a decrease in covered workers.

*Type of Review:* Extension of a currently approved collection.

*Title:* Methylene Chloride Standard (29 CFR 1910.1052).

*OMB Number:* 1218-0179.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 90,596.

*Frequency of Response:* Annually; semi-annually, quarterly; on occasion.

*Total Responses:* 250,924.

*Average Time per Response:* Varies from 1 hour for administering a medical examination to 5 minutes to maintain a worker's medical or exposure record.

*Estimated Total Burden Hours:* 63,560.

*Estimated Cost (Operation and Maintenance):* \$19,214,570.

### IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows:

(1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA-2011-0060). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627.

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

### V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4-2010 (75 FR 55355).

Signed at Washington, DC, on September 2, 2011.

**David Michaels,**

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

[FR Doc. 2011-23055 Filed 9-8-11; 8:45 am]

**BILLING CODE 4510-26-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### Notice of Information Collection

**AGENCY:** National Aeronautics and Space Administration (NASA).

*Notice:* (11-078)

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3506(c)(2)(A)).

**DATES:** All comments should be submitted within 30 calendar days from the date of this publication.

**ADDRESSES:** All comments should be addressed to Lori Parker, National

Aeronautics and Space Administration, Washington, DC 20546-0001.

### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street SW, JF000, Washington, DC 20546, (202) 358-1351, [Lori.Parker@nasa.gov](mailto:Lori.Parker@nasa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Abstract

NASA desires to expand the scope of the existing Women in STEM High School Aerospace Scholars (WISH) which was a pilot project in FY11. Applicants will apply voluntarily to be considered for this opportunity. This data collection is solely for identifying interested, qualified applicants to participate in a multiple month on-line curriculum delivery and those who successfully complete the on-line curriculum will be invited to participate in a one-week experience at a specific site.

#### II. Method of Collection

Electronic.

#### III. Data

*Title:* NASA High School Aerospace Scholars.

*OMB Number:* 2700-0149.

*Type of review:* Regular.

*Affected Public:* Individuals or households.

*Number of Respondents:* 1600.

*Responses Per Respondent:* 1.

*Annual Responses:* 1600.

*Hours per Request:* 4.

*Annual Burden Hours:* 6400.

*Frequency of Report:* Annually.

#### IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection.

They will also become a matter of public record.

**Lori Parker,**

*NASA PRA Clearance Officer.*

[FR Doc. 2011-23077 Filed 9-8-11; 8:45 am]

**BILLING CODE P**

## NATIONAL SCIENCE FOUNDATION

### Committee on Equal Opportunities in Science and Engineering (CEOSE); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Committee on Equal Opportunities in Science and Engineering (1173).

*Dates/Time:* October 17, 2011, 9 a.m.–5:30 p.m. October 18, 2011, 9 a.m.–2:00 p.m.

*Place:* National Science Foundation (NSF), 4201 Wilson Boulevard, Arlington, VA 22230.

To help facilitate your entry into the building, contact the individual listed below. Your request to attend this meeting must be received by e-mail ([mtolbert@nsf.gov](mailto:mtolbert@nsf.gov)) on or prior to October 14, 2011.

*Type of Meeting:* Open.

*Contact Person:* Dr. Margaret E.M. Tolbert, Senior Advisor and CEOSE Designated Federal Officer, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Telephone Numbers:* (703) 292-4216, 703-292-8040 [mtolbert@nsf.gov](mailto:mtolbert@nsf.gov).

*Minutes:* Meeting minutes and other information may be obtained from the Senior Advisor and CEOSE Designated Federal Officer at the above address or the Web site at <http://www.nsf.gov/od/oia/activities/ceose/index.jsp>.

*Purpose of Meeting:* To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

*Agenda:*

#### Monday, Oct 17, 2011

*Opening Statement by the CEOSE Chair Presentations and Discussions:*

- Concurrence on the CEOSE Minutes of the June 13–14, 2011 Meeting.
- Presentation of Key Points from the Meeting among the National Science Foundation Director and CEOSE officers.
- Discussion of the Process for the Selection of CEOSE Members, Status of Inter-Agency collaboration on Broadening Participation, and Introduction of Federal CEOSE Liaisons.
- Appointment of CEOSE Officers, Subcommittee Members, and CEOSE Liaisons to NSF Advisory Committees.
- Plans for the Mini-Symposium on the Science of Broadening Participation.
- Beginning the Discussion on Potential Efficiencies for SESTAT.

- A Conversation with Dr. Cora B. Marrett, Deputy Director of the National Science Foundation.
- Broadening Participation Activities of Two NSF Directorates: (1) Directorate for Computer and Information Science and Engineering, and (2) Directorate for Biological Sciences.
- Discussions on Various Diversity and Inclusion Topics by Federal Agency Liaisons to CEOSE.

#### Tuesday, October 18, 2011

*Opening Statement by the CEOSE Chair Presentations, Discussions, and Reports:*

- Broadening Participation Activities in EHR: Focus on Research on Gender and the Education of Persons with Disabilities.
- Broadening Participation in the STEM Enterprise: The NSF Role.
- Accomplishments of NSF in Response to Management Directive 715.
- Briefing on the Development of Pilot Activities for Enhancements to the Merit Review Process.
- Reports by CEOSE Liaisons to NSF Advisory Committees.
- Discussion of CEOSE Unfinished and New Business.

Dated: September 6, 2011.

**Susanne Bolton,**

*Committee Management Officer.*

[FR Doc. 2011-23069 Filed 9-8-11; 8:45 am]

**BILLING CODE 7555-01-P**

## POSTAL REGULATORY COMMISSION

[Docket No. A2011-58; Order No. 838]

### Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Bentonville, Ohio post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

**DATES:** *Administrative record due (from Postal Service):* September 14, 2011; *deadline for notices to intervene:* September 26, 2011. See the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

**ADDRESSES:** Submit comments electronically by accessing the “Filing Online” link in the banner at the top of the Commission’s Web site (<http://www.prc.gov>) or by directly accessing the Commission’s Filing Online system at <https://www.prc.gov/prc-pages/filing-online/login.aspx>. Commenters who cannot submit their views electronically

should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202-789-6820 (case-related information) or [DocketAdmins@prc.gov](mailto:DocketAdmins@prc.gov) (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on August 30, 2011, the Commission received a petition for review of the Postal Service’s determination to close the Bentonville post office in Bentonville, Ohio. The petition was filed by Linda Naylor on behalf of the Citizens of Bentonville (Petitioner) and is postmarked August 24, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011-58 to consider Petitioner’s appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 4, 2011.

*Categories of issues apparently raised.* Petitioner contends that: (1) The Postal Service failed to consider the effect of the closing on the community (see 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (see 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service’s determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 14, 2011. See 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 14, 2011.

*Availability; Web site posting.* The Commission has posted the appeal and supporting material on its Web site at <http://www.prc.gov>. Additional filings in this case and participants’ submissions also will be posted on the Commission’s Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission’s Web site is available online or by contacting the Commission’s webmaster via telephone

at 202-789-6873 or via electronic mail at [prc-webmaster@prc.gov](mailto:prc-webmaster@prc.gov).

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at [prc-dockets@prc.gov](mailto:prc-dockets@prc.gov) or via telephone at 202-789-6846.

**Filing of documents.** All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, <http://www.prc.gov>, unless a waiver is obtained. See 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at [prc-dockets@prc.gov](mailto:prc-dockets@prc.gov) or via telephone at 202-789-6846.

The Commission reserves the right to redact personal information which may

infringe on an individual's privacy rights from documents filed in this proceeding.

**Intervention.** Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. See 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before September 26, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. See 39 CFR 3001.9(a) and 3001.10(a).

**Further procedures.** By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. See 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or

memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. See 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 14, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 14, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**  
*Acting Secretary.*

#### PROCEDURAL SCHEDULE

August 30, 2011 .....	Filing of Appeal.
September 14, 2011 .....	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 14, 2011 .....	Deadline for the Postal Service to file any responsive pleading.
September 26, 2011 .....	Deadline for notices to intervene (see 39 CFR 3001.111(b)).
October 4, 2011 .....	Deadline for Petitioner's Form 61 or initial brief in support of petition (see 39 CFR 3001.115(a) and (b)).
October 24, 2011 .....	Deadline for answering brief in support of the Postal Service (see 39 CFR 3001.115(c)).
November 8, 2011 .....	Deadline for reply briefs in response to answering briefs (see 39 CFR 3001.115(d)).
November 15, 2011 .....	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
December 22, 2011 .....	Expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(d)(5)).

[FR Doc. 2011-23023 Filed 9-8-11; 8:45 am]

BILLING CODE 7710-FW-P

#### POSTAL REGULATORY COMMISSION

[Docket No. A2011-59; Order No. 839]

#### Post Office Closing

**AGENCY:** Postal Regulatory Commission.  
**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Velpen, Indiana post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

**DATES:** *Administrative record due (from Postal Service):* September 14, 2011; *deadline for notices to intervene:* September 26, 2011. See the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

**ADDRESSES:** Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (<http://www.prc.gov>) or by directly accessing the Commission's Filing Online system at <https://www.prc.gov/prc-pages/filing-online/login.aspx>. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202-789-6820 (case-related information) or [DocketAdmins@prc.gov](mailto:DocketAdmins@prc.gov) (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on August 30, 2011, the Commission received a petition for review of the Postal Service's determination to close the Velpen post office in Velpen, Indiana. The petition was filed by Karen Brown (Petitioner)

and is postmarked August 20, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011-59 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than October 4, 2011.

*Categories of issues apparently raised.* Petitioner contends that the Postal Service failed to consider the effect of the closing on the community. See 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 14, 2011.

See 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 14, 2011.

**Availability; Web site posting.** The Commission has posted the appeal and supporting material on its Web site at <http://www.prc.gov>. Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202-789-6873 or via electronic mail at [prc-webmaster@prc.gov](mailto:prc-webmaster@prc.gov).

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at [prc-dockets@prc.gov](mailto:prc-dockets@prc.gov) or via telephone at 202-789-6846.

**Filing of documents.** All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and

10(a) at the Commission's Web site, <http://www.prc.gov>, unless a waiver is obtained. See 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at [prc-dockets@prc.gov](mailto:prc-dockets@prc.gov) or via telephone at 202-789-6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

**Intervention.** Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. See 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before September 26, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. See 39 CFR 3001.9(a) and 3001.10(a).

**Further procedures.** By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. See 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of

expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. See 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 14, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than September 14, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**  
*Acting Secretary.*

#### PROCEDURAL SCHEDULE

August 30, 2011 .....	Filing of Appeal.
September 14, 2011 .....	Deadline for the Postal Service to file the applicable administrative record in this appeal.
September 14, 2011 .....	Deadline for the Postal Service to file any responsive pleading.
September 26, 2011 .....	Deadline for notices to intervene ( <i>see</i> 39 CFR 3001.111(b)).
October 4, 2011 .....	Deadline for Petitioner's Form 61 or initial brief in support of petition ( <i>see</i> 39 CFR 3001.115(a) and (b)).
October 24, 2011 .....	Deadline for answering brief in support of the Postal Service ( <i>see</i> 39 CFR 3001.115(c)).
November 8, 2011 .....	Deadline for reply briefs in response to answering briefs ( <i>see</i> 39 CFR 3001.115(d)).
November 15, 2011 .....	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings ( <i>see</i> 39 CFR 3001.116).
December 19, 2011 .....	Expiration of the Commission's 120-day decisional schedule ( <i>see</i> 39 U.S.C. 404(d)(5)).

[FR Doc. 2011-23044 Filed 9-8-11; 8:45 am]

BILLING CODE 7710-FW-P

#### SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

**American Capital Partners Limited, Inc., American Educators Financial Corp. (n/k/a Asia Ventures Corp.), Austral Pacific Energy Ltd., Bidville, Inc. (n/k/a PrimEdge, Inc.), Bio-Warm Corp. (n/k/a PHI Gold Corp.), Black Rock Golf Corp. (a/k/a Aurus Corp.), Broadband Wireless International Corp., BSK & Tech, Inc., and Buffalo Gold Ltd.; Order of Suspension of Trading**

September 7, 2011.

It appears to the Securities and Exchange Commission that there is a

lack of current and accurate information concerning the securities of American Capital Partners Limited, Inc. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Educators Financial Corp. (n/k/a Asia Ventures Corp.) because it has not filed any periodic reports since the period ended September 30, 1993.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Austral Pacific Energy Ltd. because it has not filed any periodic reports since the period ended December 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bidville, Inc. (n/k/a PrimEdge, Inc.) because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bio-Warm Corp. (n/k/a PHI Gold Corp.) because it has not filed any periodic reports since the period ended May 31, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Black Rock Gold Corp. (a/k/a Aurus Corp.) because it has not filed any periodic reports since the period ended March 31, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Broadband Wireless International Corp. because it has not filed any periodic reports since the period ended March 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BSK & Tech, Inc. because it has not filed any periodic reports since it filed a registration statement on January 23, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Buffalo Gold Ltd. because it has not filed any periodic reports since the period ended December 31, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. E.D.T. on September 7, 2011, through 11:59 p.m. E.D.T. on September 20, 2011.

By the Commission.

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 2011-23224 Filed 9-7-11; 4:15 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### **Astralis Ltd., Cavit Sciences, Inc., Crystal International Travel Group, Inc., and Tasker Products Corp.; Order of Suspension of Trading**

September 7, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Astralis Ltd. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Cavit Sciences, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Crystal International Travel Group, Inc. because it has not filed any periodic reports since the period ended July 31, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tasker Products Corp. because it has not filed any periodic reports since the period ended June 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. E.D.T. on September 7, 2011 through 11:59 p.m. E.D.T. on September 20, 2011.

By the Commission.

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-23233 Filed 9-7-11; 4:15 pm]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65246; File No. SR-NASDAQ-2011-120]

### **Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center**

September 1, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on August 25, 2011, The NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on September 1, 2011. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at NASDAQ’s principal office, at the Commission’s Public Reference Room, and at the Commission’s Web site at <http://www.sec.gov>.

#### **II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASDAQ 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. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ is amending Rule 7018 to make two modifications to its pricing schedule for routing and execution of quotes/orders through the NASDAQ Market Center of securities priced at \$1 or more. First, NASDAQ is proposing to extend and modify, for one month the Attributable Market Provider pilot program to continue to encourage more extensive market making activity on NASDAQ. Under the pilot, set forth in NASDAQ Rule 7018(a)(4), a market maker with an MPID through which it has registered as a market maker in a daily average of more than 5,000 securities during the month will receive an additional credit of \$0.0004 per share executed with respect to attributable quotes/orders that provide liquidity through such MPID, in addition to the credit that it is otherwise entitled to receive under Rule 7018. Currently, the maximum additional rebate that a member can receive under this pilot program is \$250,000 per month. NASDAQ is reducing the maximum from \$250,000 to \$100,000 during the one-month extension of the pilot.

The cap applies on a per member basis, regardless of the number of MPIDs through which the member qualifies for the program. Through the program, NASDAQ hopes to see a continuation of increased market maker participation and contribution of attributable liquidity in order to enhance price discovery. Throughout the pilot period, NASDAQ will evaluate the costs and benefits of the program, and will then either allow the pilot to lapse or file to extend, modify, or make the program permanent.

Second, NASDAQ is raising from \$0.0027 to \$0.0029 the charge for members entering Directed Orders sent to NASDAQ OMX PSX. The current charge of \$0.0027 reflects a premium of \$0.0002 above the standard charge for removing liquidity at NASDAQ OMX PSX. Effective September 1, 2011, NASDAQ OMX PSX will be increasing by \$0.0002 the charge for removing liquidity. Therefore, to maintain the \$0.0002 premium above that rate, NASDAQ is increasing the rate for Directed Orders sent to NASDAQ OMX PSX by \$0.0002 to \$0.0029.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the

provisions of Section 6 of the Act,<sup>3</sup> in general, and with Section 6(b)(4) of the Act,<sup>4</sup> in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms.

Extending the proposed Attributable Market Provider program is reasonable because it will continue a fee reduction for members that qualify for the program, without increasing the costs borne by other members. It is reasonable that NASDAQ lowers the maximum credit due to its analysis of the current mix of usage of the pilot program by its various members. Moreover, the proposed program is consistent with an equitable allocation of fees because it allocates a higher rebate to members that make significant contributions to NASDAQ market quality by making markets in a large number of stocks and that contribute to price discovery by posting attributable quotes/orders. Although members qualifying for the program may use non-attributed and non-displayed orders, the enhanced rebate will be paid only with respect to attributable, displayed liquidity. Based on three months of experience with the pilot, NASDAQ believes that the program does encourage some market makers to become active in more stocks and display more shares of liquidity, thereby benefiting other market participants that will receive a more complete understanding of the supply and demand for particular stocks and that will be able to access the liquidity displayed by such market makers.

With respect to the charge for sending Directed Orders to NASDAQ OMX PSX, NASDAQ believes that raising the fee by \$0.0002 is reasonable and an equitable allocation of fees in that this increase maintains a stable premium of \$0.0002 over the charge for removing liquidity on NASDAQ OMX PSX. This premium represents a fee for usage of NASDAQ's state-of-the-art routing service.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from

compliance with the statutory standards applicable to exchanges.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.<sup>5</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File

<sup>3</sup> 15 U.S.C. 78f.

<sup>4</sup> 15 U.S.C. 78f(b)(4).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

Number SR–NASDAQ–2011–120 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–120. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–120 and should be submitted on or before September 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Dated: September 1, 2011

**Elizabeth M. Murphy**

Secretary

[FR Doc. 2011–23034 Filed 9–8–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65249; File No. SR–NYSEArca–2011–63]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the United States Metals Index Fund, the United States Agriculture Index Fund and the United States Copper Index Fund Under NYSE Arca Equities Rule 8.200

September 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that, on August 19, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the United States Metals Index Fund (“USMI”), the United States Agriculture Index Fund (“USAI”) and the United States Copper Index Fund (“USCU”) (together, the “Funds”) under NYSE Arca Equities Rule 8.200. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts either by listing or pursuant to unlisted trading privileges (“UTP”).<sup>3</sup> The Exchange proposes to list and trade shares (“Units”) of the Funds pursuant to NYSE Arca Equities Rule 8.200.

The Exchange notes that the Commission has previously approved the listing and trading of other issues of Trust Issued Receipts on the American Stock Exchange LLC,<sup>4</sup> trading on NYSE Arca pursuant to unlisted trading privileges (“UTP”),<sup>5</sup> and listing on NYSE Arca.<sup>6</sup> Among these is the United States Commodity Index Fund, which, like the Funds, is a series of the United States Commodity Index Funds Trust (“Trust”).<sup>7</sup> In addition, the Commission has approved the listing and trading of other exchange-traded fund-like products linked to the performance of underlying commodities.<sup>8</sup>

The Units represent beneficial ownership interests in the Funds, as described in the Registration Statement.<sup>9</sup> The Funds are commodity

<sup>3</sup> Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

<sup>4</sup> See, e.g., Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39).

<sup>5</sup> See, e.g., Securities Exchange Act Release No. 58163 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR–NYSEArca–2008–73).

<sup>6</sup> See, e.g., Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91).

<sup>7</sup> See Securities Exchange Act Release No. 62527 (July 19, 2010), 75 FR 43606 (July 26, 2010) (SR–NYSEArca–2010–44) (order approving listing on the Exchange of United States Commodity Index Fund).

<sup>8</sup> See, e.g., Securities Exchange Act Release Nos. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR–NYSEArca–2007–91) (order granting accelerated approval for NYSE Arca listing the iShares GS Commodity Trusts); 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28) (order granting accelerated approval for NYSE Arca listing the ETFs Silver Trust); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (order granting accelerated approval for NYSE Arca listing the ETFs Gold Trust); 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (order approving listing on NYSE Arca of the ETFs Platinum Trust).

<sup>9</sup> See the Funds' registration statement on Form S–1 for the United States Commodity Index Funds Trust, dated November 24, 2010 (File No. 333–170844) relating to the Funds (“Registration

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>6</sup> 17 CFR 200.30–3(a)(12).

pools that are series of the Trust, a Delaware statutory trust. The Funds are managed and controlled by United States Commodity Funds LLC (“Sponsor”). The Sponsor is a Delaware limited liability company that is registered as a commodity pool operator (“CPO”) with the Commodity Futures Trading Commission (“CFTC”) and is a member of the National Futures Association (“NFA”).

#### United States Metals Index Fund (“USMI”)

According to the Registration Statement, the investment objective of USMI is for the daily changes in percentage terms of its Units’ net asset value (“NAV”) to reflect the daily changes in percentage terms of the SummerHaven Dynamic Metals Index Total Return (the “Metals Index”), less USMI’s expenses. The Metals Index is designed to reflect the performance of a diversified group of metals. The Metals Index is owned and maintained by SummerHaven Index Management, LLC (“SummerHaven Indexing”) and calculated and published by the Exchange.

The Metals Index is a metal sector index designed to broadly represent industrial and precious metals while overweighting the components that are assessed to be in a low inventory state and underweighting the components assessed to be in a high inventory state. The Metals Index consists of six (6) base metals and four (4) precious metals. The base metals are aluminum, copper, zinc, nickel, tin, and lead. The precious metals are gold, silver, platinum, and palladium. Each metal is assigned a base weight based on an assessment of market liquidity and the metal’s overall economic importance.

Academic research by Professors Gorton, Rouwenhorst and Hayashi has shown that commodities in relatively low inventory states tend to have higher returns than commodities in relatively high inventory states.<sup>10</sup> Furthermore, relative inventory comparisons can be estimated by the price-based signals of momentum and basis. Momentum is the percentage price change in a commodity over the previous year. Basis is the annualized percentage difference between the nearest-to-maturity contract and the second nearest-to-maturity contract. Using these price-based signals, metals determined to be in low

inventory state will be weighted more heavily, and metals in high inventory state will be weighted less heavily during any given month.

The Metals Index is rules-based and is rebalanced monthly based on observable price signals described above. In this context, the term “rules-based” is meant to indicate that the composition of the Metals Index in any given month will be determined by quantitative formulas relating to the prices of the futures contracts that relate to the commodities that are included in the Metals Index. Such formulas are not subject to adjustment based on other factors.

Futures contracts for metals in the Metals Index that are traded on New York Mercantile Exchange (“NYMEX”), London Metal Exchange (“LME”), and Commodity Exchange, Inc. (“COMEX”) are collectively referred to herein as “Eligible Metals Futures Contracts.” The 10 Eligible Metals Futures Contracts that at any given time have been designated as a component of the Metals Index are referred to as the “Benchmark Component Metals Futures Contracts.” The relative weighting of the Benchmark Component Metals Futures Contracts will change on a monthly basis, based on quantitative formulas developed by SummerHaven Indexing relating to the prices of the Benchmark Component Metals Futures Contracts.

The overall return on the Metals Index is generated by two components: (i) Uncollateralized returns from the Benchmark Component Metals Futures Contracts comprising the Metals Index, and (ii) a daily fixed income return reflecting the interest earned on a hypothetical 3-month U.S. Treasury Bill collateral portfolio, calculated using the weekly auction rate for the 3-Month U.S. Treasury Bill published by the U.S. Department of the Treasury. Information regarding the Metals Index methodology may also be accessed by the public from SummerHaven Indexing’s Web site at <http://www.summerhavenindex.com>.

Because the Metals Index is comprised of actively traded contracts with scheduled expirations, it can be calculated only by reference to the prices of contracts for specified expiration, delivery or settlement periods, referred to as contract expirations. The contract expirations included in the Metals Index for each commodity during a given year are designated by SummerHaven Indexing, provided that each contract must be an active contract. An active contract for this purpose is a liquid, actively-traded contract expiration, as defined or identified by the relevant trading facility or, if no such definition or identification is provided by the relevant trading

facility, as defined by standard custom and practice in the industry.

If a Futures Exchange<sup>11</sup> ceases trading in all contract expirations relating to a particular Benchmark Component Metals Futures Contract, SummerHaven Indexing may designate a replacement contract on the particular metal. The replacement contract must satisfy the eligibility criteria for inclusion in the Metals Index. To the extent practicable, the replacement will be effected during the next monthly review of the composition of the Metals Index. If that timing is not practicable, SummerHaven Indexing will determine the date of the replacement based on a number of factors, including the differences between the existing Benchmark Component Metals Futures Contract and the replacement contract with respect to contractual specifications and contract expirations.

If a Benchmark Component Metals Futures Contract is eliminated and there is no replacement contract, the underlying metal will necessarily drop out of the Metals Index.

USMI will seek to achieve its investment objective by investing to the fullest extent possible in Benchmark Component Metals Futures Contracts. Then, if constrained by regulatory requirements (as described below) or in view of market conditions (as described below), USMI will invest next in other Eligible Metals Futures Contracts based on the same metal as the futures contracts subject to such regulatory constraints or market conditions, and finally, to a lesser extent, in other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Metals Futures Contracts if one or more other Eligible Metals Futures Contracts is not available. When USMI has invested to the fullest extent possible in exchange-traded futures contracts, USMI may then invest in other contracts and instruments based on the Benchmark Component Metals Futures Contracts or the metals included in the Metals Index, such as cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts. Other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Metals Futures Contracts and other contracts and instruments based on the Benchmark Component Metals Futures Contracts, as

Statement”). The discussion herein relating to the Trust and the Units is based, in part, on the Registration Statement.

<sup>10</sup> See “The Fundamentals of Commodity Futures Returns,” Gorton, Rouwenhorst and Hayashi (September 2008), Yale International Center for Finance Working Paper No. 07–08.

<sup>11</sup> COMEX, NYMEX, LME, Kansas City Board of Trade (“KCBT”), ICE Futures (“ICE Futures”), Chicago Board of Trade (“CBOT”) and Chicago Mercantile Exchange (“CME”) are referred to, collectively, as the “Futures Exchanges.”

well as metals included in the Metals Index, are collectively referred to as “Other Metals-Related Investments,” and together with Benchmark Component Metals Futures Contracts and other Eligible Metals Futures Contracts, “Metals Interests.”

**Regulatory Requirements.** As noted above, USMI may at times invest in other Eligible Metal Futures Contracts based on the same metal as the futures contracts subject to regulatory constraints (as described below), and then, to a lesser extent, in Other Metals-Related Investments in order to comply with regulatory requirements. An example of such regulatory requirements would be if USMI is required by law or regulation, or by one of its regulators, including a Futures Exchange, to reduce its position in one or more Benchmark Component Metals Futures Contracts to the applicable position limit or to a specified accountability level for such contracts, USMI’s assets could be invested in one or more other Eligible Metal Futures Contracts. If one or more such Eligible Metal Futures Contracts were unavailable or economically impracticable, USMI could invest in Other Metals-Related Investments that are intended to replicate the return on the Metals Index or particular Benchmark Component Metals Futures Contracts. Another example would be if, because USMI’s assets were reaching higher levels, it exceeded position limits, accountability levels or other regulatory limits and, to avoid triggering such limits or levels, it invested in one or more other Eligible Metal Futures Contracts to the extent practicable and then in Other Metals-Related Investments.<sup>12</sup>

When investing in Other Metals-Related Investments, USMI will first invest in other exchange traded futures contracts that are economically identical or substantially similar to the Benchmark Component Metals Futures Contracts and then in cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts.

<sup>12</sup> Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFTC has been tasked with implementing rules and regulations that are expected to impact position limits and visibility levels and other regulatory requirements that will be applicable to the Funds and their respective holdings.

**Market Conditions.** As also noted above, there may be market conditions that could cause USMI to invest in other Eligible Metal Futures Contracts that are based on the same metal as the futures contracts subject to such market conditions (as described below). One such type of market condition would be where demand for Benchmark Component Metals Futures Contracts exceeded supply and as a result USMI was able to obtain more favorable terms under other Eligible Metal Futures Contracts. An example of more favorable terms would be where the aggregate costs to USMI from investing in other Eligible Metal Futures Contracts (including actual or expected direct costs such as the costs to buy, hold, or sell such investments, as well as indirect costs such as opportunity costs) were less than the costs of investing in Benchmark Component Metal Futures Contracts. Only after USMI becomes subject to position limits in any Eligible Metal Futures Contracts will USMI invest in Other Metals-Related Investments to replicate exposure to the Eligible Metal Futures Contract that is position-limited. Generally, USMI will only invest in this manner in other Eligible Metal Futures Contracts or Other Metals-Related Investments if it results in materially more favorable terms, and if such investments result in a specific benefit for USMI or its shareholders, such as being able to more closely track its benchmark.

USMI’s trading advisor is SummerHaven Investment Management, LLC (“SummerHaven”). The Sponsor expects to manage USMI’s investments directly, using the trading advisory services of SummerHaven for guidance with respect to the Metals Index and the Sponsor’s selection of investments on behalf of USMI. The Sponsor is also authorized to select futures commission merchants to execute USMI’s transactions in Benchmark Component Metals Futures Contracts, other Eligible Metal Futures Contracts and Other Metals-Related Investments. The Sponsor, SummerHaven Indexing and SummerHaven are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Metals Index or USMI’s portfolio.<sup>13</sup>

<sup>13</sup> The Sponsor represents that, in the event the Sponsor, SummerHaven Indexing, or

According to the Registration Statement, it is anticipated that USMI will invest such that daily changes in USMI’s NAV will closely track the daily changes in the Metals Index.<sup>14</sup> USMI’s positions in Metals Interests will be rebalanced on a monthly basis in order to track the changing nature of the Metals Index. In order that USMI’s trading does not unduly cause extraordinary market movements, and to make it more difficult for third parties to profit by trading based on market movements that could be expected from changes in the Benchmark Component Metals Futures Contracts, USMI’s investments typically will not be rebalanced entirely on a single day, but rather will typically be rebalanced over a period of four days. After fulfilling the margin and collateral requirements with respect to USMI’s Metals Interests, the Sponsor will invest the remainder of USMI’s proceeds from the sale of baskets in short-term obligations of the United States government (“Treasury Securities” or “Treasuries”) or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts).

According to the Registration Statement, the Sponsor endeavors to place USMI’s trades in Metals Interests and otherwise manage USMI’s investments so that A will be within plus/minus 10 percent of B, where:

- A is the average daily percentage change in USMI’s NAV for any period of 30 successive NYSE Arca trading days as of which USMI calculates its NAV, and
- B is the average daily percentage change in the Metals Index over the same period.

The table immediately below lists the eligible metals, the relevant Futures Exchange on which each Eligible Metals Futures Contract is listed and quotation details including imposed price and position limits:

SummerHaven becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

<sup>14</sup> As of January 31, 2011, the Metals Index reflects commodities in two commodity sectors: precious metals (representing approximately 38% of the Metals Index) and industrial metals (representing approximately 62% of the Metals Index).

Commodity	Designated contract	Exchange	Units	Accountability levels—single month	Accountability levels—all months	Position limits—spot month	Position limits—single month and all months	Trading hours (E.T.)
Aluminum ..	High Grade Primary Aluminum.	LME .....	25 metric tons.	None .....	None .....	None .....	None .....	06:55 AM– 12:00 PM
Copper .....	Copper .....	COMEX ..	25,000 lbs	5000 .....	5000 .....	1200 .....	None .....	08:10 AM–1:00 PM
Lead .....	Lead .....	LME .....	25 metric tons.	None .....	None .....	None .....	None .....	07:15 AM– 11:45 AM
Nickel .....	Primary Nickel.	LME .....	6 metric tons.	None .....	None .....	None .....	None .....	07:10 AM– 11:50 AM
Tin .....	Tin .....	LME .....	5 metric tons.	None .....	None .....	None .....	None .....	07:05 AM– 11:40 AM
Zinc .....	Special High Grade Zinc.	LME .....	25 metric tons.	None .....	None .....	None .....	None .....	06:50 AM– 11:35 AM
Gold .....	Gold .....	COMEX ..	100 troy oz.	6000 .....	6000 .....	3000 .....	None .....	08:20 AM–1:05 PM
Silver .....	Silver .....	COMEX ..	5,000 troy oz.	6000 .....	6000 .....	1500 .....	None .....	08:25 AM–1:25 PM
Platinum ....	Platinum ...	NYMEX ..	50 troy oz.	1500 .....	1500 .....	None .....	None .....	08:30 AM–1:00 PM
Palladium ..	Palladium	NYMEX ..	100 troy oz.	1000 .....	1000 .....	650 .....	None .....	08:20 AM–1:30 PM

The Sponsor believes that market arbitrage opportunities will cause USMI's Unit price on NYSE Arca to closely track USMI's NAV per Unit. The Sponsor believes that the net effect of this expected relationship and the expected relationship described above between USMI's NAV and the Metals Index will be that the changes in the price of USMI's Units on NYSE Arca will closely track, in percentage terms, changes in the Metals Index, less USMI's expenses.

According to the Registration Statement, the Benchmark Component Metals Futures Contracts for each metal will remain in the Metals Index from month to month. Weights for each of the Benchmark Component Metals Futures Contracts are determined for the next month. The methodology used to calculate the Metals Index weighting is based solely on quantitative data using observable futures prices and is not subject to human bias. The monthly weighting selection is a three-step process based upon examination of the relevant futures prices for each metal. For each metal in the Metals Index, the index selects a specific Benchmark Component Metals Futures Contract with a tenor (*i.e.*, contract month) among the Eligible Metals Futures Contracts based upon the relative prices of the Benchmark Component Metals Futures Contract within the eligible range of contract months. The previous notwithstanding, the contract expiration is not changed for that month if a Benchmark Component Metals Futures Contract remains in the Metals Index, as long as the contract does not expire or enter its notice period in the subsequent month.

In the event of a commodity futures market where near month contracts to expire trade at a higher price than next month contracts to expire, a situation referred to as “backwardation,” then absent the impact of the overall movement in commodity prices, the value of the Metals Index would tend to rise as it approaches expiration. As a result USMI may benefit because it would be selling more expensive contracts and buying less expensive ones on an ongoing basis. Conversely, in the event of a commodity futures market where near month contracts trade at a lower price than next month contracts, a situation referred to as “contango,” then absent the impact of the overall movement in commodity prices, the value of the Metals Index would tend to decline as it approaches expiration. As a result USMI's total return may be lower than might otherwise be the case because it would be selling less expensive contracts and buying more expensive ones. The impact of backwardation and contango may cause the total return of USMI to vary significantly from the total return of other price references, such as the spot price of the commodities comprising the Metals Index. In the event of a prolonged period of contango, and absent the impact of rising or falling commodity prices, this could have a significant negative impact on USMI's NAV and total return.

USMI will invest in Metals Interests to the fullest extent possible without being leveraged or unable to satisfy its expected current or potential margin or collateral obligations with respect to its investments in Metals Interests. The primary focus of the Sponsor is the

investment in Metals Interests and the management of USMI's investments in Treasury Securities, cash and/or cash equivalents.

The Sponsor will employ a “neutral” investment strategy for USMI intended to track the changes in the Metals Index regardless of whether the Metals Index goes up or goes down. USMI's “neutral” investment strategy is designed to permit investors generally to purchase and sell USMI's Units for the purpose of investing indirectly in the commodities market in a cost-effective manner, and/or to permit participants in the commodities or other industries to hedge the risk of losses in their commodity-related transactions. Accordingly, depending on the investment objective of an individual investor, the risks generally associated with investing in the commodities market and/or the risks involved in hedging may exist. In addition, an investment in USMI involves the risks that the changes in the price of the USMI's Units will not accurately track the changes in the Metals Index, and that changes in the Metals Index will not closely correlate with changes in the spot prices of the commodities underlying the Benchmark Component Metals Futures Contracts. Furthermore, USMI also invests in short-term Treasury Securities or holds cash to meet its current or potential margin or collateral requirements with respect to its investments in Metals Interests and invests cash not required to be used as margin or collateral. There is not expected to be any meaningful

correlation between the performance of USMI's investments in Treasury Securities, cash or cash equivalents and the changes in the price of the Metals Index. While the level of interest earned on or the market price of these investments may in some respect correlate to changes in the price of the Metals Index, this correlation is not anticipated as part of the USMI's efforts to meet its objectives. This and certain risk factors discussed in the Registration Statement may cause a lack of correlation between changes in USMI's NAV and changes in the price of the Metals Index. The Sponsor does not intend to operate USMI in a fashion such that its per Unit NAV will equal, in dollar terms, the spot prices of the commodities underlying the Benchmark Component Metals Futures Contracts that comprise the Metals Index or the prices of any particular group of Benchmark Component Metals Futures Contracts.

#### United States Agriculture Index Fund ("USAI")

According to the Registration Statement, the investment objective of USAI is for the daily changes in percentage terms of its Units' NAV to reflect the daily changes in percentage terms of the SummerHaven Dynamic Agriculture Index Total Return (the "Agriculture Index"), less USAI's expenses. The Agriculture Index is designed to reflect the performance of a diversified group of agricultural commodities. The Agriculture Index is owned and maintained by SummerHaven Indexing and calculated and published by the Exchange.

The Agriculture Index is an agricultural sector index designed to broadly represent major agricultural commodities while overweighting the components that are assessed to be in a low inventory state and underweighting the components assessed to be in a high inventory state.

The Agriculture Index consists of fourteen agricultural markets: soybeans, corn, soft red winter wheat, hard red winter wheat, soybean oil, soybean meal, canola, sugar, cocoa, coffee, cotton, live cattle, feeder cattle and lean hogs. Each agricultural commodity is assigned a base weight based on an assessment of market liquidity and the commodity's overall economic importance. Each commodity is U.S. Dollar based, with the exception of canola, which is quoted in Canadian Dollars and converted to U.S. Dollars for the purpose of the Agriculture Index calculation.

Academic research by Professors Gorton, Rouwenhorst and Hayashi has

shown that commodities in relatively low inventory states tend to have higher returns that [sic] commodities in relatively high inventory states.<sup>15</sup> Furthermore, relative inventory comparisons can be estimated by the price-based signals of momentum and basis. Momentum is the percentage price change in a commodity over the previous year. Basis is the annualized percentage difference between the nearest-to-maturity contract and the second nearest-to-maturity contract. Using these price-based signals, agricultural commodities determined to be in low inventory state will be weighted more heavily, and agricultural commodities in high inventory state will be weighted less heavily during any given month.

The Agriculture Index is rules-based and rebalanced monthly based on observable price signals described above. In this context, the term "rules-based" is meant to indicate that the composition of the Agriculture Index in any given month will be determined by quantitative formulas relating to the prices of the futures contracts that relate to the commodities that are included in the Agriculture Index. Such formulas are not subject to adjustment based on other factors.

Futures contracts for agricultural commodities in the Agriculture Index that are currently traded on the ICE Futures, CBOT, CME, KCBT and ICE Canada are collectively referred to herein as "Eligible Agriculture Futures Contracts." The 14 Eligible Agriculture Futures Contracts that at any given time have been designated as a component of the Agriculture Index are referred to as the "Benchmark Component Agriculture Futures Contracts." The relative weighting of the Benchmark Component Agriculture Futures Contracts will change on a monthly basis, based on quantitative formulas developed by SummerHaven Indexing relating to the prices of the Benchmark Component Agriculture Futures Contracts.

The overall return on the Agriculture Index is generated by two components: (i) uncollateralized returns from the Benchmark Component Agriculture Futures Contracts comprising the Agriculture Index, and (ii) a daily fixed income return reflecting the interest earned on a hypothetical 3-month U.S. Treasury Bill collateral portfolio, calculated using the weekly auction rate for the 3-Month U.S. Treasury Bill published by the U.S. Department of the Treasury. Because the Agriculture Index is comprised of actively traded contracts with scheduled expirations, it can be

calculated only by reference to the prices of contracts for specified expiration, delivery or settlement periods, referred to as contract expirations. The contract expirations included in the Agriculture Index for each commodity during a given year are designated by SummerHaven Indexing, provided that each contract must be an active contract. An active contract for this purpose is a liquid, actively-traded contract expiration, as defined or identified by the relevant trading facility or, if no such definition or identification is provided by the relevant trading facility, as defined by standard custom and practice in the industry. Information regarding the Agriculture Index methodology may also be accessed by the public from SummerHaven Indexing's Web site at <http://www.summerhavenindex.com>.

If a Futures Exchange ceases trading in all contract expirations relating to a particular Benchmark Component Agriculture Futures Contract, SummerHaven Indexing may designate a replacement contract on the particular agricultural commodity. The replacement contract must satisfy the eligibility criteria for inclusion in the Agriculture Index. To the extent practicable, the replacement will be effected during the next monthly review of the composition of the Agriculture Index. If that timing is not practicable, SummerHaven Indexing will determine the date of the replacement based on a number of factors, including the differences between the existing Benchmark Component Agriculture Futures Contract and the replacement contract with respect to contractual specifications and contract expirations.

If a Benchmark Component Agriculture Futures Contract is eliminated and there is no replacement contract, the underlying agricultural commodity will necessarily drop out of the Agriculture Index.

USAI will seek to achieve its investment objective by investing to the fullest extent possible in Benchmark Component Agriculture Futures Contracts. Then, if constrained by regulatory requirements (described below) or in view of market conditions (described below), USAI will invest next in other Eligible Agriculture Futures Contracts based on the same agricultural commodity as the futures contracts subject to such regulatory constraints or market conditions, and finally, to a lesser extent, in other exchange traded futures contracts that are economically identical or substantially similar to the Benchmark Component Agriculture Futures Contracts, if one or more Eligible Agriculture Futures Contracts is

<sup>15</sup> See note 10, *supra*.

not available. When USAI has invested to the fullest extent possible in exchange-traded futures contracts, USAI may then invest in other contracts and instruments based on the Benchmark Component Agriculture Futures Contracts or the agricultural commodities included in the Agriculture Index, such as cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts. Other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Agriculture Futures Contracts and other contracts and instruments based on the Benchmark Component Agriculture Futures Contracts, as well as metals included in the Agriculture Index, are collectively referred to as "Other Agriculture-Related Interests," and together with Benchmark Component Agriculture Futures Contracts and other Eligible Agriculture Futures Contracts, "Agriculture Interests."

*Regulatory Requirements.* As noted above, USAI may at times invest in Eligible Agriculture Futures Contracts based on the same agricultural commodity as the futures contracts subject to regulatory constraints (as described below), and then to a lesser extent in Other Agriculture-Related Investments in order to comply with regulatory requirements. An example of such regulatory requirements would be if USAI is required by law or regulation, or by one of its regulators, including a Futures Exchange, to reduce its position in one or more Benchmark Component Agriculture Futures Contracts to the applicable position limit or to a specified accountability level for such contracts, USAI's assets could be invested in one or more other Eligible Agriculture Futures Contracts. If one or more such Eligible Agriculture Futures Contracts was unavailable or economically impracticable, USAI could invest in Other Agriculture-Related Investments that are intended to replicate the return on the Agriculture Index or particular Benchmark Component Agriculture Futures Contracts. Another example would be if because USAI's assets were reaching higher levels, it exceeded position limits, accountability levels or other regulatory limits and, to avoid triggering such limits or levels, it invested in one or more other Eligible Agriculture

Futures Contracts to the extent practicable and then in Other Agriculture-Related Investments.

When investing in Other Agriculture-Related Investments, USAI will first invest in other exchange traded futures contracts that are economically identical or substantially similar to the Benchmark Component Agriculture Futures Contracts and then in cash settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts.

*Market Conditions.* As also noted above, there may be market conditions that could cause USAI to invest in other Eligible Agriculture Futures Contracts that are based on the same agricultural commodity as the futures contracts subject to such market conditions (as described below). One such type of market condition would be where demand for Benchmark Component Agriculture Futures Contracts exceeded supply and as a result USAI was able to obtain more favorable terms under other Eligible Agriculture Futures Contracts. An example of more favorable terms would be where the aggregate costs to USAI from investing in other Eligible Agriculture Futures Contracts or Other Agriculture-Related Investments (including actual or expected direct costs such as the costs to buy, hold, or sell such investments, as well as indirect costs such as opportunity costs) were less than the costs of investing in Benchmark Component Agriculture Futures Contracts. Only after USAI becomes subject to position limits in any Eligible Agriculture Futures Contract will USAI invest in Other Agriculture-Related Investments to replicate exposure to the Eligible Agriculture Futures Contract that is position-limited. Generally, USAI will only invest in this manner in other Eligible Agriculture Futures Contracts or Other Agriculture-Related Investments if it results in materially more favorable terms, and if such investments result in a specific benefit for USAI or its shareholders, such as being able to more closely track its benchmark.

USAI's trading advisor is SummerHaven. The Sponsor expects to manage USAI's investments directly, using the trading advisory services of SummerHaven for guidance with respect to the Agriculture Index and the Sponsor's selection of investments on

behalf of USAI. The Sponsor is also authorized to select futures commission merchants to execute USAI's transactions in Benchmark Component Agriculture Futures Contracts, other Eligible Agriculture Futures Contracts and Other Agriculture-Related Investments. The Sponsor, SummerHaven Indexing and SummerHaven are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Agriculture Index or USAI's portfolio.<sup>16</sup>

According to the Registration Statement, it is anticipated that USAI will invest such that daily changes in USAI's NAV will closely track the daily changes in the Agriculture Index.<sup>17</sup> USAI's positions in Agriculture Interests will be rebalanced on a monthly basis in order to track the changing nature of the Agriculture Index. In order that USAI's trading does not unduly cause extraordinary market movements, and to make it more difficult for third parties to profit by trading based on market movements that could be expected from changes in the Benchmark Component Agriculture Futures Contracts, USAI's investments typically will not be rebalanced entirely on a single day, but rather will typically be rebalanced over a period of four days. After fulfilling the margin and collateral requirements with respect to USAI's Agriculture Interests, the Sponsor will invest the remainder of USAI's proceeds from the sale of baskets in Treasury Securities or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts).

According to the Registration Statement, the Sponsor endeavors to place USAI's trades in Agriculture Interests and otherwise manage USAI's investments so that A will be within plus/minus 10 percent of B, where:

- A is the average daily percentage change in USAI's NAV for any period of 30 successive NYSE Arca trading days as of which USAI calculates its NAV, and
- B is the average daily percentage change in the Agriculture Index over the same period.

The table immediately below lists the eligible agricultural commodities, the relevant Futures Exchange on which each Eligible Agriculture Futures Contract is listed and quotation details.

<sup>16</sup> See note 13, *supra*.

<sup>17</sup> As of January 31, 2011, the Agriculture Index reflects commodities in three commodity sectors:

grains (representing approximately 47% of the Agriculture Index), soft commodities (e.g., sugar, cotton, coffee, cocoa) (representing approximately

36% of the Agriculture Index), and livestock (representing approximately 17% of the Agriculture Index).

Commodity	Designated contract	Exchange	Units	Accountability levels—single month	Accountability levels all months	Position limits—spot month	Position limits—single month	Position limits—all months	Trading hours (E.T.)
Soybeans.	Soybeans.	CBOT .....	5,000 bushels.	None .....	None .....	600	6500 .....	10000 ...	10:30 AM–2:15 PM
Corn .....	Corn .....	CBOT .....	5,000 bushels.	None .....	None .....	600	13500 ...	22000 ...	10:30 AM–2:15 PM
Soft Red Winter Wheat.	Soft Red Winter Wheat.	CBOT .....	5,000 bushels.	None .....	None .....	600	5000 .....	6500 .....	10:30 AM–2:15 PM
Hard Red Winter Wheat.	Hard Red Winter Wheat.	KCBT .....	5,000 bushels.	None .....	None .....	600	5000 .....	6500 .....	09:30 AM–1:15PM
Soybean Oil.	Soybean Oil.	CBOT .....	60,000 lbs.	None .....	None .....	540	5000 .....	6500 .....	10:30 AM–2:15 PM
Soybean Meal.	Soybean Meal.	CBOT .....	100 tons	None .....	None .....	720	5000 .....	6500 .....	09:30 AM–1:15 PM
Coffee ...	Coffee “C”.	ICE–US ...	37,500 lbs.	5000 .....	5000 .....	500	5000 .....	5000 .....	03:30 AM–2:00 PM
Cocoa ...	Cocoa ...	ICE–US ...	10 metric tons.	6000 .....	6000 .....	1000	None ...	None ...	04:00 AM–2:00 PM
Sugar ...	World Sugar No. 11.	ICE–US ...	112,000 lbs.	10000 .....	15000 .....	5000	None ...	None ...	03:30 AM–2:00 PM
Canola ...	Canola ..	ICE–CAN-ADA.	20 tonnes.	None .....	None .....	1000	None ...	None ...	08:00 PM–2:15 PM
Cotton ...	Cotton ...	ICE–US ...	50,000 lbs.	None .....	None .....	300	3500 .....	5000 .....	9:00 PM–2:30 PM
Feeder Cattle.	Feeder Cattle.	CME .....	50,000 lbs.	None .....	None .....	300	1950 .....	None ...	09:05 AM–1:00 PM
Live Cattle.	Live Cattle.	CME .....	40,000 lbs.	None .....	None .....	450	6300 .....	None ...	10:05 AM–2:00 PM
Lean Hogs.	Lean Hogs.	CME .....	40,000 lbs.	None .....	None .....	950	4150 .....	None ...	09:05 AM–1:00 PM

The Sponsor believes that market arbitrage opportunities will cause USAI's Unit price on NYSE Arca to closely track USAI's NAV per Unit. The Sponsor believes that the net effect of this expected relationship and the expected relationship described above between USAI's NAV and the Agriculture Index will be that the changes in the price of USAI's Units on NYSE Arca will closely track, in percentage terms, changes in the Agriculture Index, less USAI's expenses.

According to the Registration Statement, the Benchmark Component Agriculture Futures Contracts for each agricultural commodity will remain in the Agriculture Index from month to month. Weights for each of the Benchmark Component Agriculture Futures Contracts in the Agriculture Index are determined for the next month. The methodology used to calculate the Agriculture Index weighting is based solely on quantitative data using observable futures prices and is not subject to human bias. The monthly weighting selection is a three-step process based upon examination of the relevant futures prices for each agricultural

commodity. For each agricultural commodity in the Agriculture Index, the index selects a specific Benchmark Component Agriculture Futures Contract with a tenor (*i.e.*, contract month) among the Eligible Agriculture Futures Contracts based upon the relative prices of the Benchmark Component Agriculture Futures Contracts within the eligible range of contract months. The previous notwithstanding, the contract expiration is not changed for that month if a Benchmark Component Agriculture Futures Contract remains in the Agriculture Index, as long as the contract does not enter expire or enter its notice period in the subsequent month.

In the event of a commodity futures market where near month contracts to expire trade at a higher price than next month contracts to expire, a situation referred to as “backwardation,” then absent the impact of the overall movement in commodity prices, the value of the Agriculture Index would tend to rise as it approaches expiration. As a result USAI may benefit because it would be selling more expensive contracts and buying less expensive

ones on an ongoing basis. Conversely, in the event of a commodity futures market where near month contracts trade at a lower price than next month contracts, a situation referred to as “contango,” then absent the impact of the overall movement in commodity prices, the value of the Agriculture Index would tend to decline as it approaches expiration. As a result USAI's total return may be lower than might otherwise be the case because it would be selling less expensive contracts and buying more expensive ones. The impact of backwardation and contango may cause the total return of USAI to vary significantly from the total return of other price references, such as the spot price of the commodities comprising the Agriculture Index. In the event of a prolonged period of contango, and absent the impact of rising or falling commodity prices, this could have a significant negative impact on USAI's NAV and total return.

USAI will invest in Agriculture Interests to the fullest extent possible without being leveraged or unable to satisfy its expected current or potential margin or collateral obligations with respect to its investments in Agriculture

Interests. The primary focus of the Sponsor is the investment in Agriculture Interests and the management of USAI's investments in Treasury Securities, cash and/or cash equivalents.

The Sponsor will employ a "neutral" investment strategy for USAI intended to track the changes in the Agriculture Index regardless of whether the Agriculture Index goes up or goes down. USAI's "neutral" investment strategy is designed to permit investors generally to purchase and sell USAI's Units for the purpose of investing indirectly in the commodities market in a cost-effective manner, and/or to permit participants in the commodities or other industries to hedge the risk of losses in their commodity-related transactions. Accordingly, depending on the investment objective of an individual investor, the risks generally associated with investing in the commodities market and/or the risks involved in hedging may exist. In addition, an investment in USAI involves the risks that the changes in the price of the USAI's Units will not accurately track the changes in the Agriculture Index, and that changes in the Agriculture Index will not closely correlate with changes in the spot prices of the commodities underlying the Benchmark Component Agriculture Futures Contracts. Furthermore, USAI also invests in short-term Treasury Securities or holds cash to meet its current or potential margin or collateral requirements with respect to its investments in Agriculture Interests and invests cash not required to be used as margin or collateral. There is not expected to be any meaningful correlation between the performance of USAI's investments in Treasury Securities, cash or cash equivalents and the changes in the price of the Agriculture Index. While the level of interest earned on or the market price of these investments may in some respect correlate to changes in the price of the Agriculture Index, this correlation is not anticipated as part of USAI's efforts to meet its objectives. This and certain risk factors discussed in the Registration Statement may cause a lack of correlation between changes in USAI's NAV and changes in the price of the Agriculture Index. The Sponsor does not intend to operate USAI in a fashion such that its per Unit NAV will equal, in dollar terms, the spot prices of the commodities underlying the Benchmark Component Agriculture Futures Contracts that comprise the Agriculture Index or the prices of any particular

group of Benchmark Component Agriculture Futures Contracts.

United States Copper Index Fund ("USCUF")

According to the Registration Statement, the investment objective of USCUF is for the daily changes in percentage terms of its Units' NAV to reflect the daily changes in percentage terms of the SummerHaven Copper Index Total Return (the "Copper Index"), less USCUF's expenses. The Copper Index is designed to reflect the performance of the investment returns from a portfolio of futures contracts for copper that are traded on the COMEX (such futures contracts, collectively, "Eligible Copper Futures Contracts"). The Copper Index is owned and maintained by SummerHaven Indexing and calculated and published by the Exchange.

For reasons discussed below, the Copper Index is comprised of either two or three Eligible Copper Futures Contracts that are selected on a monthly basis based on quantitative formulas relating to the prices of the Eligible Copper Futures Contracts developed by SummerHaven Indexing. The Eligible Copper Futures Contracts that at any given time make up the Copper Index are referred to herein as "Benchmark Component Copper Futures Contracts."

The Copper Index is a single-commodity index designed to be an investment benchmark for copper as an asset class. The Copper Index is composed of copper futures contracts on the COMEX exchange. The Copper Index attempts to maximize backwardation and minimize contango while utilizing contracts in liquid portions of the futures curve.

The Copper Index is rules-based and is rebalanced monthly based on observable price signals. In the case of the Copper Index, the price signal is based on "basis." Basis is the annualized percentage difference between the nearest-to-maturity contract's price and the second nearest-to-maturity contract's price. The basis calculation can produce a positive number, such that the nearest-to-maturity contract is higher than the second nearest-to-maturity contract's price (a condition also referred to as "backwardation"), or it can produce a negative number, such that the nearest-to-maturity contract's price is lower than the second nearest-to-maturity contract's price (a condition also referred to as "contango").

At the end of each month, (1) the copper futures curve is assessed to be in either backwardation or contango as discussed above, and (2) the annualized

percentage price difference between the closest-to-expiration Eligible Copper Futures Contract and each of the next four Eligible Copper Futures Contracts is calculated. If the copper futures curve is in backwardation at the end of a month, the Copper Index takes positions in the two Eligible Copper Futures Contracts with the highest annualized percentage price difference, each weighted at 50%. If the copper futures curve is in contango, then the Copper Index takes positions in three Eligible Copper Futures Contracts, as follows: first, the Copper Index takes positions in the two Eligible Copper Futures Contracts with the highest annualized percentage price difference, each weighted at 25%; then the Copper Index also takes a position in the nearest-to-maturity December Eligible Copper Futures Contract that has expiration more distant than the fourth nearest Eligible Copper Futures Contract, which position is weighted at 50%.

In this context, the term "rules-based" is meant to indicate that the composition of the Copper Index in any given month will be determined by quantitative formulas relating to the prices of the futures contracts that are included in the Copper Index. Such formulas are not subject to adjustment based on other factors.

The overall return on the Copper Index is generated by two components: (i) Uncollateralized returns from the Benchmark Component Copper Futures Contracts comprising the Copper Index, and (ii) a daily fixed income return reflecting the interest earned on a hypothetical 3-month U.S. Treasury Bill collateral portfolio, calculated using the weekly auction rate for the 3-Month U.S. Treasury Bills published by the U.S. Department of the Treasury. Because the Copper Index is comprised of actively traded contracts with scheduled expirations, it can be calculated only by reference to the prices of contracts for specified expiration, delivery or settlement periods, referred to as contract expirations. The contract expirations included in the Copper Index for each commodity during a given year are designated by SummerHaven Indexing, provided that each contract must be an active contract. An active contract for this purpose is a liquid, actively-traded contract expiration, as defined or identified by the relevant trading facility or, if no such definition or identification is provided by the relevant trading facility, as defined by standard custom and practice in the industry. Information regarding the Copper Index methodology may also be accessed by the public from SummerHaven

Indexing's Web site at <http://www.summerhavenindex.com>.

If a Futures Exchange ceases trading in all contract expirations relating to a Benchmark Component Copper Futures Contract, SummerHaven Indexing may designate a replacement contract. The replacement contract must satisfy the eligibility criteria for inclusion in the Copper Index. To the extent practicable, the replacement will be effected during the next monthly review of the composition of the Copper Index. If that timing is not practicable, SummerHaven Indexing will determine the date of the replacement based on a number of factors, including the differences between the existing Benchmark Component Copper Futures Contract and the replacement contract with respect to contractual specifications and contract expirations.

USCUI will seek to achieve its investment objective by investing to the fullest extent possible in the Benchmark Component Copper Futures Contracts. Then if constrained by regulatory requirements (described below) or in view of market conditions (described below), USCUI will invest next in other Eligible Copper Futures Contracts, and finally to a lesser extent, in other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Copper Futures Contracts if one or more other Eligible Copper Futures Contracts is not available. When USCUI has invested to the fullest extent possible in exchange-traded futures contracts, USCUI may then invest in other contracts and instruments based on the Benchmark Component Copper Futures Contracts, other Eligible Copper Futures Contracts or copper, such as cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts. Other exchange-traded futures contracts that are economically identical or substantially similar to the Benchmark Component Copper Futures Contracts and other contracts and instruments based on the Benchmark Component Copper Futures Contracts, are collectively referred to as "Other Copper-Related Investments," and together with Benchmark Component Copper Futures Contracts and other Eligible Copper Futures Contracts, "Copper Interests."

**Regulatory Requirements.** As noted above, USCUI may at times invest in other Eligible Copper Futures Contracts based on the same metal as the futures contracts subject to regulatory constraints (as described below), and finally to a lesser extent, in other exchange traded futures contracts that

are economically identical or substantially similar to the Benchmark Component Copper Futures Contracts if one or more other Eligible Copper Futures Contracts is not available in order to comply with regulatory requirements. An example of such regulatory requirements would be if USCUI is required by law or regulation, or by one of its regulators, including a Futures Exchange, to reduce its position in one or more Benchmark Component Copper Futures Contracts to the applicable position limit or to a specified accountability level for such contracts, USCUI's assets could be invested in one or more other Eligible Copper Futures Contracts. If one or more such Eligible Copper Futures Contracts were unavailable or economically impracticable, USCUI could invest in Other Copper-Related Investments that are intended to replicate the return on the Copper Index or particular Benchmark Component Copper Futures Contracts. Another example would be if, because USCUI's assets were reaching higher levels, it exceeded position limits, accountability levels or other regulatory limits and, to avoid triggering such limits or levels, it invested in one or more other Eligible Copper Futures Contracts to the extent practicable and then in Other Copper-Related Investments.

When investing in Other Copper-Related Investments, USCUI will first invest in other exchange traded futures contracts that are economically identical or substantially similar to the Benchmark Component Copper Futures Contracts, other Eligible Copper Futures Contracts, and then in cash-settled options, forward contracts, cleared swap contracts and swap contracts other than cleared swap contracts.

**Market Conditions.** As also noted above, there may be market conditions that could cause USCUI to invest in other Eligible Copper Futures Contracts that are based on the same metal as the futures contracts subject to such market conditions (as described below). One such type of market condition would be where demand for Benchmark Component Copper Futures Contracts exceeded supply and as a result USCUI was able to obtain more favorable terms under other Eligible Copper Futures Contracts. An example of more favorable terms would be where the aggregate costs to USCUI from investing in other Eligible Copper Futures Contracts (including actual or expected direct costs such as the costs to buy, hold, or sell such investments, as well as indirect costs such as opportunity costs) were less than the costs of investing in Benchmark Component

Copper Futures Contracts. Only after USCUI becomes subject to position limits in any Eligible Copper Futures Contract will USCUI invest in Other Copper-Related Investments to replicate exposure to the Eligible Copper Futures Contract that is position-limited. Generally, USCUI will only invest in this manner in other Eligible Copper Futures Contracts or Other Copper-Related Investments if it results in materially more favorable terms, and if such investments result in a specific benefit for USCUI or its shareholders, such as being able to more closely track its benchmark.

USCUI's trading advisor is SummerHaven. The Sponsor expects to manage USCUI's investments directly, using the trading advisory services of SummerHaven for guidance with respect to the Copper Index and the Sponsor's selection of investments on behalf of USCUI. The Sponsor is also authorized to select futures commission merchants to execute USCUI's transactions in Benchmark Component Copper Futures Contracts and Other Copper-Related Investments. The Sponsor, SummerHaven Indexing and SummerHaven are not affiliated with a broker-dealer and are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Copper Index or USCUI's portfolio.<sup>18</sup>

According to the Registration Statement, it is anticipated that USCUI will invest in Benchmark Component Copper Futures Contracts, other Eligible Copper Futures Contracts and Other Copper-Related Investments such that daily changes in USCUI's NAV will closely track the daily changes in the Copper Index. USCUI's positions in Copper Interests will be rebalanced on a monthly basis in order to track the changing nature of the Copper Index. In order that USCUI's trading does not unduly cause extraordinary market movements, and to make it more difficult for third parties to profit by trading based on market movements that could be expected from changes in the Benchmark Component Copper Futures Contracts, USCUI's investments typically will not be rebalanced entirely on a single day, but rather will typically be rebalanced over a period of four days. After fulfilling the margin and collateral requirements with respect to USCUI's Copper Interests, the Sponsor will invest the remainder of USCUI's proceeds from the sale of baskets in Treasury Securities or cash equivalents, and/or hold such assets in cash (generally in interest-bearing accounts).

<sup>18</sup> See note 13, *supra*.

According to the Registration Statement, the Sponsor endeavors to place USCUI's trades in Copper Interests and otherwise manage USCUI's investments so that A will be within plus/minus 10 percent of B, where:

- A is the average daily percentage change in USCUI's NAV for any period of 30 successive NYSE Arca trading days as of which USCUI calculates its NAV, and

- B is the average daily percentage change in the Copper Index over the same period.

The table immediately below lists the Futures Exchange on which the Eligible Copper Futures Contracts are listed and quotation details.

Commodity	Designated contract	Exchange	Units	Accountability levels—single month	Accountability levels—all months	Position limits—spot month	Position limits—single month and all months	Trading hours (E.T.)
Copper ..	Copper .....	COMEX ..	25,000 lbs.	5000 .....	5000 .....	1200 .....	None .....	08:10 AM–1:00 PM

The Sponsor believes that market arbitrage opportunities will cause USCUI's Unit price on NYSE Arca to closely track USCUI's NAV per Unit. The Sponsor believes that the net effect of this expected relationship and the expected relationship described above between USCUI's NAV and the Copper Index will be that the changes in the price of USCUI's Units on NYSE Arca will closely track, in percentage terms, changes in the Copper Index, less USCUI's expenses.

In the event of a commodity futures market where near month contracts to expire trade at a higher price than next month contracts to expire, a situation referred to as "backwardation," then absent the impact of the overall movement in commodity prices, the value of the Copper Index would tend to rise as it approaches expiration. As a result USCUI may benefit because it would be selling more expensive contracts and buying less expensive ones on an ongoing basis. Conversely, in the event of a commodity futures market where near month contracts trade at a lower price than next month contracts, a situation referred to as "contango," then absent the impact of the overall movement in commodity prices, the value of the Copper Index would tend to decline as it approaches expiration. As a result USCUI's total return may be lower than might otherwise be the case because it would be selling less expensive contracts and buying more expensive ones. The impact of backwardation and contango may cause the total return of USCUI to vary significantly from the total return of other price references, such as the spot price of the commodities comprising the Copper Index. In the event of a prolonged period of contango, and absent the impact of rising or falling commodity prices, this could have a significant negative impact on USCUI's NAV and total return.

USCUI will invest in Copper Interests to the fullest extent possible without being leveraged or unable to satisfy its expected current or potential margin or collateral obligations with respect to its investments in Copper Interests. The primary focus of the Sponsor is the investment in Copper Interests and the management of USCUI's investments in Treasury Securities, cash and/or cash equivalents.

The Sponsor will employ a "neutral" investment strategy for USCUI intended to track the changes in the Copper Index regardless of whether the Copper Index goes up or goes down. USCUI's "neutral" investment strategy is designed to permit investors generally to purchase and sell USCUI's Units for the purpose of investing indirectly in the commodities market in a cost-effective manner, and/or to permit participants in the commodities or other industries to hedge the risk of losses in their commodity-related transactions. Accordingly, depending on the investment objective of an individual investor, the risks generally associated with investing in the commodities market and/or the risks involved in hedging may exist. In addition, an investment in USCUI involves the risks that the changes in the price of the USCUI's Units will not accurately track the changes in the Copper Index, and that changes in the Copper Index will not closely correlate with changes in the spot prices of the commodities underlying the Benchmark Component Copper Futures Contracts. Furthermore, USCUI also invests in short-term Treasury Securities or holds cash to meet its current or potential margin or collateral requirements with respect to its investments in Copper Interests and invests cash not required to be used as margin or collateral. There is not expected to be any meaningful correlation between the performance of a USCUI's investments in Treasury Securities, cash or cash equivalents and

the changes in the price of the Copper Index. While the level of interest earned on or the market price of these investments may in some respect correlate to changes in the price of the Copper Index, this correlation is not anticipated as part of the USCUI's efforts to meet its objectives. This and certain risk factors discussed in the Registration Statement may cause a lack of correlation between changes in USCUI's NAV and changes in the price of the Copper Index. The Sponsor does not intend to operate USCUI in a fashion such that its per Unit NAV will equal, in dollar terms, the spot prices of the commodities underlying the Benchmark Component Copper Futures Contracts that comprise the Copper Index or the prices of any particular group of Benchmark Component Copper Futures Contracts.

#### Creation and Redemption of Units

Each Fund will create Units only in blocks of 100,000 Units called Creation Baskets and redeem Units only in blocks of 100,000 Units called Redemption Baskets. Only authorized purchasers may purchase or redeem Creation Baskets or Redemption Baskets, respectively. An authorized purchaser is under no obligation to create or redeem baskets, and an authorized purchaser is under no obligation to offer to the public Units of any baskets it does create. Baskets are generally created when there is a demand for Units, including, but not limited to, when the market price per Unit is at a premium to the NAV per Unit. Authorized purchasers will then sell such Units, which will be listed on NYSE Arca, to the public at per Unit offering prices that are expected to reflect, among other factors, the trading price of the Units on NYSE Arca, the NAV of the applicable Fund at the time the authorized purchaser purchased the Creation Baskets and the NAV at the time of the offer of the Units to the public, the

supply of and demand for Units at the time of sale, and the liquidity of the applicable Fund's Benchmark Component Futures Contracts and Other Related Investments.<sup>19</sup> Baskets are generally redeemed when the market price per Unit is at a discount to the NAV per Unit. Retail investors seeking to purchase or sell Units on any day will effect such transactions in the secondary market, on NYSE Arca, at the market price per Unit, rather than in connection with the creation or redemption of baskets.

Purchase and redemption orders must be placed by 10:30 a.m. Eastern Time ("E.T.") or the close of regular trading on the NYSE Arca, whichever is earlier.

The creation and redemption of baskets are only made in exchange for delivery to the applicable Fund or the distribution by the applicable Fund of the amount of Treasury Securities and/or cash equal to the combined NAV of the number of Units included in the baskets being created or redeemed, determined as of 4 p.m. E.T. on the day the order to create or redeem baskets is properly received.

All proceeds from the sale of Creation Baskets will be invested as quickly as practicable in the investments described in the Registration Statement. Investments and related margin or collateral are held through the custodian for the Funds, Brown Brothers Harriman & Co., in accounts with the applicable Fund's commodity futures broker, Newedge USA, LLC, or, in some instances when agreed to by the applicable Fund, in collateral accounts held by third parties with respect to its non-exchange traded or cleared over-the-counter applicable interests.

The Funds will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A-3<sup>20</sup> under the Act, the Trust relies on the exception contained in Rule 10A-3(c)(7).<sup>21</sup> A minimum of 100,000 Units for each Fund will be outstanding as of the start of trading on the Exchange.

A more detailed description of the Funds' investments as well as investment risks, are set forth in the Registration Statement. All terms relating to the Funds that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

<sup>19</sup> Other Related Metal Investments, Other Related Agriculture Investments and Other Related Copper Investments are collectively referred to as "Other Related Investments."

<sup>20</sup> 17 CFR 240.10A-3.

<sup>21</sup> 17 CFR 240.10A-3(c)(7).

#### Net Asset Value

A Fund's NAV is calculated by:

- Taking the current market value of its total assets, and
- Subtracting any liabilities.

Brown Brothers Harriman & Co., Inc. (the "Administrator"), will calculate the NAV of each Fund once each NYSE Arca trading day. The NAV for a particular trading day will be released after 4 p.m. E.T. Trading during the Core Trading Session on NYSE Arca typically closes at 4 p.m. E.T. The Administrator will use the closing prices on the relevant Futures Exchanges of the Applicable Benchmark Component Futures Contracts (determined at the earlier of the close of such exchange or 2:30 p.m. E.T.) for the contracts traded on the Futures Exchanges, but will calculate or determine the value of all other investments of a Fund using market quotations, if available, or other information customarily used to determine the fair value of such investments as of the earlier of the close of NYSE Arca or 4 p.m. E.T. in accordance with the current Administrative Agency Agreement among Brown Brothers Harriman & Co., Inc., each Fund and the Sponsor.

"Other information" customarily used in determining fair value includes information consisting of market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other market data in the relevant market; or information of the types described above from internal sources if that information is of the same type used by the Funds in the regular course of their business for the valuation of similar transactions. The information may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilized. Third parties supplying quotations or market data may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

In addition, other Applicable Benchmark Component Futures Contracts, Other Related Investments and Treasuries held by a Fund will be valued by the Administrator, using rates and points received from client-approved third party vendors (such as Reuters and WM Company) and advisor quotes.

#### Availability of Information Regarding the Units

The NAV for the Funds will be disseminated daily to all market participants at the same time. The Exchange will make available on its Web site daily trading volume of each of the Units, closing prices of such Units, and number of Units outstanding.

The closing prices and settlement prices of the futures contracts are also readily available from the websites of the relevant Futures Exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Complete real-time data for the futures contracts is available by subscription from Reuters and Bloomberg. The relevant Futures Exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective websites. The specific contract specifications for the futures contracts are also available on such websites, as well as other financial informational sources. Information regarding exchange-traded cash-settled options and cleared swap contracts will be available from the applicable exchanges and major market data vendors. Quotation and last-sale information regarding the Units will be disseminated through the facilities of the CTA. In addition, the Funds' websites will display the applicable end of day closing index levels and NAV. The Web site for USMI is <http://www.unitedstatesmetalsindexfund.com>; the Web site for USAI is <http://www.unitedstatesagricultureindexfund.com>; and the Web site for USCUI is <http://www.unitedstatescopperindexfund.com>.

The Funds will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and value (in U.S. dollars) of financial instruments and characteristics of such instruments and cash equivalents, and amount of cash held in the portfolios of the Funds. This Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Sponsor of the portfolio composition to authorized purchasers so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to authorized purchasers. Accordingly, each investor will have access to the current portfolio composition of the Funds through each Fund's Web site.

The Metals Index, Agriculture Index and Copper Index are calculated and disseminated by NYSE Arca to market data vendors during NYSE Arca Core Trading Hours, from 9:30 a.m. E.T. to 4 p.m. E.T., daily on 15 second intervals based on the most recent reported prices of the underlying commodities in the Indexes. A static Index value will be disseminated between the close of trading of all applicable Futures Contracts on Futures Exchanges and the close of the NYSE Arca Core Trading Session.

#### Dissemination of Indicative Fund Value

In addition, in order to provide updated information relating to each Fund for use by investors and market professionals, NYSE Arca will calculate and disseminate throughout the Core Trading Session on each trading day an updated Indicative Fund Value ("IFV"). The IFV will be calculated by using the prior day's closing NAV per Unit of the Fund as a base and updating that value throughout the trading day to reflect changes in the most recently reported price level of the Applicable Index as reported by Bloomberg or another reporting service.

The IFV Unit basis disseminated during NYSE Arca Core Trading Session hours should not be viewed as an actual real time update of the NAV, because NAV is calculated only once at the end of each trading day based upon the relevant end of day values of the applicable Fund's investments.

The IFV will be disseminated on a per Unit basis every 15 seconds during the regular NYSE Arca Core Trading Session. The normal trading hours of the Futures Exchanges vary, with some ending their trading hours before the close of the Core Trading Session on NYSE Arca (for example, the normal trading hours of the NYMEX are 10 a.m. E.T. to 2:30 p.m. E.T. When a Fund holds applicable Benchmark Component Futures Contracts from Futures Exchanges with different trading hours than NYSE Arca there will be a gap in time at the beginning and/or the end of each day during which Units will be traded on NYSE Arca, but real-time Futures Exchange trading prices for Applicable Benchmark Component Futures Contracts traded on such Futures Exchanges will not be available. As a result, during those gaps there will be no update to the IFV. A static IFV will be disseminated between the close of trading of all applicable Futures Contracts on Futures Exchanges and the close of the NYSE Arca Core Trading Session.

In addition, other applicable Benchmark Component Futures

Contracts, Other Related Investments and Treasuries held by a Fund will not be included in the IFV. The IFV is based on the prior day's NAV and moves up and down solely according to changes in the Applicable Index value as reported on Bloomberg or another reporting service.

The Exchange believes that dissemination of the IFV provides additional information that is not otherwise available to the public and is useful to investors and market professionals in connection with the trading of the Units of each Fund on NYSE Arca.

#### Trading Rules

The Exchange deems the Units to be equity securities, thus rendering trading in the Units subject to the Exchange's existing rules governing the trading of equity securities. Units will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The trading of the Units will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit ("ETP") Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule<sup>22</sup> or by the halt or suspension of trading of the underlying futures contracts.

The Exchange represents that the Exchange may halt trading during the

day in which the interruption to the dissemination of the IFV or the value of the underlying futures contracts occurs. If the interruption to the dissemination of the IFV or the value of the underlying futures contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, to monitor trading in the Units. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Units, the physical commodities included in, or options, futures or options on futures on, Units through ETP Holders, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on exchanges that are members of the Intermarket Surveillance Group ("ISG"), including CME, CBOT, COMEX, NYMEX (all of which are part of CME Group, Inc.) and ICE Futures. In addition, the Exchange currently has in place a comprehensive surveillance sharing agreement with the LME and KCBT for the purpose of providing information in connection with trading in or related to futures contracts traded on LME and KCBT, respectively. A list of ISG members is available at <http://www.isgportal.org>.<sup>23</sup>

<sup>23</sup> The Exchange notes that not all Other Related Investments may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>22</sup> See NYSE Arca Equities Rule 7.12.

In addition, with respect to each Fund's futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Units during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Units in Creation Baskets and Redemption Baskets (and that Units are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (4) how information regarding the IFV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to a Fund. The Exchange notes that investors purchasing Units directly from a Fund will receive a prospectus. ETP Holders purchasing Units from a Fund for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that a Fund is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the trading of futures contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Units of a Fund and that the NAV for the

Units is calculated after 4 p.m. E.T. each trading day. The Bulletin will disclose that information about the Units of a Fund is publicly available on the Fund's Web site.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>24</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Units will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The closing prices and settlement prices of the futures contracts held by the Funds are readily available from the websites of the relevant Futures Exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The relevant Futures Exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. Quotation and last sale information for the Units will be available via CTA. In addition, the Funds' Web sites will display the applicable end of day closing index levels and NAV. The Funds' total portfolio composition will be disclosed on the Funds' Web sites.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Funds and the Units, thereby promoting market transparency. NYSE Arca will calculate and disseminate throughout the Core Trading Session on each trading day an

updated IFV. Trading in Units of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Units and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, IFV, and quotation and last sale information for the Units.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

<sup>24</sup> 15 U.S.C. 78f(b)(5).

(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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2011-63 on the subject line.

##### *Paper comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2011-63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2011-63 and should be submitted on or before September 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2011-23035 Filed 9-8-11; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65256; File No. SR-C2-2011-008]

### Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Approving Proposed Rule Change to Establish a Pilot Program To List and Trade a p.m.-Settled Cash-Settled S&P 500 Index Option Product

September 2, 2011.

#### I. Introduction

On February 28, 2011, C2 Options Exchange, Incorporated (the "Exchange" or "C2") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to permit the listing and trading of p.m.-settled, cash-settled options on the Standard & Poor's 500 Index ("S&P 500"). The proposed rule change was published for comment in the *Federal Register* on March 8, 2011.<sup>3</sup> The Commission received seven comment letters on the proposal, some of which urged the Commission to disapprove the proposal.<sup>4</sup> C2 responded to the comment letters in a response letter dated April 20, 2011.<sup>5</sup> To ensure that the Commission had sufficient time to consider and take action on the Exchange's proposal in light of, among other things, the comments received on the proposal, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine

whether to disapprove the proposed rule change, to June 6, 2011.<sup>6</sup>

In order to solicit additional input from interested parties, including relevant data and analysis, on the issues presented by C2's proposed rule change, on June 3, 2011, the Commission instituted proceedings to determine whether to approve or disapprove C2's proposal.<sup>7</sup> In its order instituting the proceedings, the Commission specifically noted its interest in receiving additional data and analysis relating to the potential effect that proposed p.m.-settled index options could have on the underlying cash equities markets. In response to the proceedings, the Commission received an additional three comment letters on the proposal as well as a rebuttal letter from C2.<sup>8</sup> This order approves the proposed rule change on a 14-month pilot basis.

#### II. Description of the Proposal

The Exchange's proposal would permit it to list and trade cash-settled S&P 500 index options with third-Friday-of-the-month ("Expiration Friday") expiration dates for which the exercise settlement value will be based on the index value derived from the closing prices of component securities ("p.m.-settled"). The proposed contract (referred to as "SPXPM") would use a \$100 multiplier, and the minimum trading increment would be \$0.05 for options trading below \$3.00 and \$0.10 for all other series. Strike price intervals would be set no less than 5 points apart. Consistent with existing rules for index options, the Exchange would allow up to twelve near-term expiration months, as well as LEAPS. Expiration processing would occur on the Saturday following Expiration Friday. The product would have European-style exercise and would not be subject to position limits, though there would be enhanced reporting requirements.

The Exchange proposes that the SPXPM product be approved on a pilot basis for an initial period of fourteen months. As part of the pilot program, the Exchange committed to submit a pilot program report to the Commission at least two months prior to the

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 64011 (March 2, 2011), 76 FR 12775 ("Notice").

<sup>4</sup> See Letters to Elizabeth M. Murphy, Secretary, Commission, from Randall Mayne, Blue Capital Group, dated March 18, 2011 and April 28, 2011 ("Mayne Letter 1" and "Mayne Letter 2"); Michael J. Simon, Secretary, International Securities Exchange, LLC ("ISE"), dated March 29, 2011 and May 11, 2011 ("ISE Letter 1" and "ISE Letter 2"); Andrew Stevens, Legal Counsel, IMC Financial Markets, dated March 24, 2011 ("IMC Letter"); John Trader, dated April 20, 2011 ("Trader Letter"); and JP, dated April 30, 2011 ("JP Letter").

<sup>5</sup> See Letter to Elizabeth M. Murphy, Secretary, Commission, from Joanne Moffic-Silver, Secretary, C2, dated April 20, 2011 ("C2 Response Letter").

<sup>6</sup> See Securities Exchange Act Release No. 64266 (April 8, 2011), 76 FR 20757 (April 13, 2011).

<sup>7</sup> See Securities Exchange Act Release No. 64599 (June 3, 2011), 76 FR 33798 (June 9, 2011).

<sup>8</sup> See Letters to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary, International Securities Exchange, LLC dated July 11, 2011 ("ISE Letter 3"); William J. Brodsky, Chairman and Chief Executive Officer, C2, dated July 11, 2011 ("CBOE Letter 3"); Thomas Foertsch, President, Exchange Capital Resources, dated July 11, 2011; and William J. Brodsky, Chairman and Chief Executive Officer, C2, dated July 25, 2011.

expiration date of the program (the "annual report"). The annual report would contain an analysis of volume, open interest, and trading patterns. The analysis would examine trading in the proposed option product as well as trading in the securities that comprise the S&P 500 index. In addition, for series that exceed certain minimum open interest parameters, the annual report would provide analysis of index price volatility and share trading activity. In addition to the annual report, the Exchange committed to provide the Commission with periodic interim reports while the pilot is in effect that would contain some, but not all, of the information contained in the annual report. In its filing, C2 notes that it would provide the annual and interim reports to the Commission on a confidential basis.<sup>9</sup>

### III. Comments Received

In response to the initial notice of C2's proposal, the Commission received seven comment letters, some of which expressed concern with the proposal.<sup>10</sup> One commenter specifically urges the Commission to disapprove the proposal.<sup>11</sup> Commenters expressing concern with the proposal raised several issues, including: The potential for adverse effects on the underlying cash markets that could accompany the reintroduction of p.m. settlement; concern with the similarity (but lack of fungibility) between the existing S&P 500 index option traded on the Chicago Board Options Exchange, Incorporated ("CBOE") and the proposed S&P 500 index option that would be traded on C2; the lack of proposed position limits for SPXPM; and issues regarding exclusive product licensing. Three commenters expressed support for the proposal.<sup>12</sup>

In the proceedings to determine whether to approve or disapprove the proposal, the Commission preliminarily summarized the issues raised by the commenters, and also set forth a series of questions and requests for data on the issue of p.m. settlement. In response to the proceedings, the Commission received three letters, including one from C2, one from ISE that expands on the concerns it previously raised and reiterates its recommendation for the Commission to disapprove the proposal, and one from a new commenter that supports the proposal because it will

offer investors greater flexibility.<sup>13</sup> The Commission also received an additional letter from C2 responding to the comments of ISE.<sup>14</sup> The comments received are addressed below.

### IV. Discussion and Commission Findings

After careful consideration of the proposal and the comments received, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,<sup>15</sup> and, in particular, the requirements of Section 6 of the Act.<sup>16</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>17</sup> which requires that an exchange have rules designed to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

#### A. Relationship to the National Market System

One commenter believes that separate a.m. and p.m.-settled S&P 500 index options could potentially bifurcate the market for CBOE's existing a.m.-settled SPX contract.<sup>18</sup> This commenter notes that the SPX, which trades only on CBOE, accounts for 60% of all index options trading, and argues that the sole difference in settlement between SPX on CBOE and the proposed S&P 500 index options on C2 (*i.e.*, a.m. vs. p.m. settlement) is a "sham" that is intended to "keep them non-fungible," which would "make a mockery of Section 11A of the Act."<sup>19</sup> The commenter states that the objectives of Section 11A are reflected in a national market system plan for options that requires exchanges to prevent trading through better priced quotations displayed on other options exchanges, and that making a p.m.-settled S&P 500 index option non-fungible with CBOE's SPX would allow the CBOE group to establish two "monopolies" in S&P 500 options, one floor-based (CBOE) and one electronic (C2) that would avoid the application of the limitation on trade throughs.<sup>20</sup> The commenter also contends the proposal

is designed to protect CBOE's floor-based SPX trading without having to accommodate the more narrow quotes that would likely occur on C2 in an electronically-traded p.m.-settled product.<sup>21</sup>

Another commenter asserts that CBOE and C2 should trade a fungible S&P 500 index option in order to address what the commenter describes as "huge customer-unfriendly spreads" in SPX.<sup>22</sup> The commenter argues that if the CBOE believes p.m. settlement is superior to a.m. settlement, then CBOE should file to change SPX to p.m. settlement so that the product traded on C2 would be fungible with that proposed to be traded on CBOE.<sup>23</sup>

In response, C2 argues that the difference between a.m.-settled and p.m.-settled S&P 500 index option would be a material term and that C2's proposed S&P 500 index option could not be fungible with, nor could it be linked with, CBOE's SPX option.<sup>24</sup>

The Commission agrees that the difference between a.m.-settled SPX and the proposed p.m.-settled SPXPM involves a materially different term (*i.e.*, settlement time) that makes C2's proposed SPXPM index option a different security than, and thus not fungible with, CBOE's SPX option.<sup>25</sup> The Commission notes that it has permitted very similar but different products to trade on the same exchange or on different exchanges without those separate products being fungible. For example, the Commission previously approved for CBOE the listing and trading of a.m.-settled S&P 500 index options during a time when CBOE also traded p.m.-settled S&P 500 index options, and the two separate products were not fungible.<sup>26</sup>

<sup>21</sup> See ISE Letter 1, *supra* note 4, at 2.

<sup>22</sup> See Trader Letter, *supra* note 4, at 1. See also JP Letter, *supra* note 4, at 1.

<sup>23</sup> See Trader Letter, *supra* note 4, at 1.

<sup>24</sup> See C2 Response Letter, *supra* note 5, at 3.

<sup>25</sup> Consequently, rules applicable to prevent trading through better priced quotations in the same security displayed on other options exchanges would not be applicable for trading between these two products.

Similarly, in response to a comment that investors would be confused by the presence of an a.m.-settled SPX on CBOE and a p.m.-settled S&P 500 index option on C2 (see ISE Letter 1, *supra* note 4, at 3), the Commission does not believe that SPX on CBOE and a p.m.-settled S&P 500 index option on C2 would cause investor confusion. The two products would trade under different ticker symbols and any potential for investor confusion could be mitigated through investor outreach and education initiatives. Furthermore, as C2 notes in its response letter, CBOE currently lists two options on the S&P 100 (American-style OEX and European-style XEO) and is not aware of any investor confusion among the products. See C2 Response Letter, *supra* note 5, at 3.

<sup>26</sup> See *infra* note 44 (citing to Securities Exchange Act Release No. 24367). See also Securities

<sup>13</sup> See ECR Letter, *supra* note 8.

<sup>14</sup> See C2 Rebuttal Letter, *supra* note 8.

<sup>15</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> See ISE Letter 1, *supra* note 4, at 4.

<sup>19</sup> *Id.* at 2. See also ISE Letter 2, *supra* note 4, at 3-4.

<sup>20</sup> See ISE Letter 1, *supra* note 4, at 3.

<sup>9</sup> See Notice, *supra* note 3, at 12777.

<sup>10</sup> See Mayne Letter 1, ISE Letter 1, ISE Letter 2, and Trader Letter, *supra* note 4.

<sup>11</sup> See ISE Letter 1 and ISE Letter 2, *supra* note 4.

<sup>12</sup> See Mayne Letter 2, IMC Letter, and JP Letter, *supra* note 4.

One commenter also raises concerns about the potential effect on competition of C2 listing and trading an option product that is subject to an exclusive license, citing to concerns they express with respect to the SPX product traded on CBOE.<sup>27</sup>

The Commission recognizes the potential impact on competition resulting from the inability of other options exchanges to list and trade SPXPM. In acting on this proposal, however, the Commission has balanced the potentially negative competitive effects with the countervailing positive competitive effects of C2's proposal. The Commission believes that the availability of SPXPM on the C2 exchange will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the S&P 500 stocks. Further, this product could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure. Also, we note that it is possible for other exchanges to develop or license the use of a new or different index to compete with the S&P 500 index and seek Commission approval to list and trade options on such index.

Accordingly, with respect to the Commission's consideration of C2's proposed rule change at this time, the Commission finds that it does not impose any burden on competition not

necessary or appropriate in furtherance of the purposes of the Act.<sup>28</sup>

### B. Position Limits

Under C2's proposal, position limits would not apply to SPXPM. One commenter argues that position limits should apply to SPXPM.<sup>29</sup> This commenter notes that, since 2001 when the Commission approved a CBOE rule filing to remove all position limits for SPX options,<sup>30</sup> the Commission has generally expected exchanges to apply a model, such as the Dutt-Harris model, to determine the appropriate position limits for all new index options products.<sup>31</sup> Because C2 claims that the product is new and non-fungible, the commenter argues that the Commission should apply the Dutt-Harris model to require C2 to impose position limits on SPXPM.<sup>32</sup>

In its response to comments, C2 notes that the Dutt-Harris Paper acknowledges that S&P 500 options have, and should have, extraordinarily large position limits and Dutt-Harris observes that position limits are most useful when market surveillance is inadequate.<sup>33</sup> C2 argues that position limits suggested by the Dutt-Harris model for an S&P 500 index option would be so large as to be irrelevant and that positions of such magnitude would attract scrutiny from surveillance systems that would, as a consequence, serve as an effective substitute for position limits.<sup>34</sup> Further,

<sup>28</sup> The Commission may in the future determine it appropriate to consider or address competitive issues related to exclusive licensing of index option products on a more comprehensive level.

<sup>29</sup> See ISE Letter 1, *supra* note 4, at 6.

<sup>30</sup> See Securities Exchange Act Release No. 44994 (October 26, 2002), 66 FR 55722 (November 2, 2001). In this filing, the Commission relied in part on CBOE's ability to provide enhanced surveillance and reporting safeguards to detect and deter trading abuses arising from the elimination of position and exercise limits in options on the S&P 500.

<sup>31</sup> See ISE Letter 1, *supra* note 4, at 6. In a 2005 paper from Hans Dutt and Lawrence Harris, titled "Position Limits for Cash-Settled Derivative Contracts" ("Dutt-Harris Paper") the authors developed a model to determine appropriate position limits for cash-settled index derivatives. The authors concluded that the then-prevailing position limits were lower than the model suggested would be appropriate for many derivative contracts. The authors also concluded, however, that position limits are not as important for broad-based index derivative contracts that are cash settled because they are composed of highly liquid and well-followed securities. As such, the authors note that it would require very high trading volumes to manipulate the underlying securities and, consequently, any attempted manipulation would be more easily detectable and prosecutable.

<sup>32</sup> See ISE Letter 1, *supra* note 4, at 6.

<sup>33</sup> See C2 Response Letter, *supra* note 5, at 5.

<sup>34</sup> See *id.* Generally, position limits are intended to prevent the establishment of options positions that could be used or that might create incentives to manipulate or disrupt the underlying market to benefit the holder of the options. See, e.g.,

in its response letter, C2 summarizes the circumstances and considerations relied upon by the Commission when it approved the elimination of position limits on CBOE's S&P 500 index option, including the enormous capitalization of the index and enhanced reporting and surveillance for the product.<sup>35</sup> Thus, because of the enhanced reporting and surveillance for this product, described below, C2 argues that the absence of position limits on its proposed S&P 500 index option would not be inconsistent with Dutt-Harris.<sup>36</sup>

The Exchange represents, however, that it will implement enhanced reporting requirements pursuant to its Rule 4.13 (Reports Related to Position Limits) and Interpretation and Policy .03 to its Rule 24.4 (Position Limits for Broad-Based Index Options), which sets forth the reporting requirements for certain broad-based indexes that do not have position limits.<sup>37</sup>

In 2001, when the Commission permanently approved a CBOE rule (which had been in place for a two-year pilot period) to eliminate position limits on SPX (as well as options on the Dow Jones Industrial Average and the S&P 100 index),<sup>38</sup> the Commission stated that because the S&P 500 index is a broad-based index with a considerable capitalization, manipulation of the 500 component stocks underlying the index would require extraordinarily large positions that would be readily detectable by enhanced surveillance procedures. In its approval order, the Commission relied in part on CBOE's enhanced surveillance and reporting procedures that are intended to allow CBOE to detect and deter trading abuses in the absence of position limits. In particular, CBOE requires its members to submit a report to CBOE when the member builds a position of 100,000+ contracts. Among other things, the report includes a description of the

Securities Exchange Act Release Nos. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR-CBOE-97-11) (approving increases to the position and exercise limits for options on the Standard & Poor's 100 Stock Index ("OEX"), the OEX firm facilitation exemption, and the OEX index hedge exemption); Dutt-Harris Paper, *supra* note 31 ("Position limits directly limit manipulation by limiting the size of derivative positions that would benefit from manipulative practices.").

<sup>35</sup> See C2 Response Letter, *supra* note 5, at 5-6. C2 represents in its response letter that it would monitor trading in p.m.-settled S&P 500 index options in the same manner as CBOE does for other broad-based index options with no position limits. See *id.* at 6.

<sup>36</sup> See *id.*

<sup>37</sup> See Notice, *supra* note 3, at note 4 and accompanying text.

<sup>38</sup> See Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (SR-CBOE-2001-22).

Exchange Act Release No. 51619 (Apr. 27, 2005), 70 FR 22947 (May 3, 2005) (order approving ISE's listing and trading of options on various Russell Indexes, including options based upon one-tenth values of the Russell Indexes).

<sup>27</sup> See ISE Letter 1, *supra* note 4, at 6-7 (arguing in part that "CBOE's monopoly in the product imposes significant harm to investors," including the fact that "CBOE charges for trading SPX options that are much greater than the fees for multiply listed options" and "the quotes in SPX options are much wider than they would be if there was competition from other exchanges," as well as that "CBOE is able to use the monopolistic revenue stream from these options to subsidize other products \* \* \*") and ISE Letter 2, *supra* note 4, at 3-4 (arguing in part that "[t]he Proposal is harmful to investors because it \* \* \* perpetuates the unreasonably high monopolistic pricing and artificially wide spreads that result from the lack of competition in this product.").

The issue of state law intellectual property rights of index developers in the use of their indexes to trade derivatives is the subject of litigation between CBOE and ISE (as well as other parties). See *Chicago Board Options Exchange, Incorporated et al. v. International Securities Exchange, et al.*, Case No. 06 CH 24798 (Cir. Ct. of Cook Cty., Ch. Div. July 8, 2010), appeal docketed, No. 1-10-2228 (Ill. App. Ct. August 9, 2010). See also *Board of Trade of the City of Chicago v. Dow Jones & Co., Inc.*, 98 Ill.2d 109 (1983). In issuing this order, the Commission expresses no view with respect to the matters underlying this ongoing litigation, including their validity or the enforceability of the exclusivity agreement.

option position, whether the position is hedged (and, if so, a description of the hedge), and whether collateral was used (and, if so, a description of the collateral). This enhanced surveillance and reporting arrangement allows CBOE to continually monitor, assess, and respond to any concerns at an early stage. To complement its enhanced surveillance and reporting requirements, CBOE has the ability to intervene to impose additional margin or assess capital charges when warranted. Thus, together with the "enormous capitalization"<sup>39</sup> of the S&P 500 index and the deep and liquid markets for the S&P 500 stocks, the Commission found that CBOE's enhanced surveillance procedures "reduce[] concerns regarding market manipulation or disruption in the underlying market."<sup>40</sup>

C2 has represented in this filing that its enhanced surveillance requirements and procedures for SPXPM would be identical to the surveillance and reporting requirements and procedures used by CBOE with respect to SPX. Accordingly, the Commission believes that position limits would not be necessary for SPXPM options as long as C2 has in place and enforces effective enhanced surveillance and reporting requirements. These enhanced procedures will allow the Exchange to see, with considerable advance notice, the accumulation of large positions, which it can then monitor more closely as necessary and take additional action if appropriate.<sup>41</sup>

### C. Reintroduction of P.M. Settlement

When cash-settled<sup>42</sup> index options were first introduced in the 1980s, they generally utilized closing-price settlement procedures (*i.e.*, p.m. settlement).<sup>43</sup> The Commission became

<sup>39</sup> *Id.* at 55723.

<sup>40</sup> *Id.*

<sup>41</sup> In addition, the Commission notes that C2 would have access to information through its membership in the Intermarket Surveillance Group with respect to the trading of the securities underlying the S&P 500 index, as well as tools such as large options positions reports to assist its surveillance of SPXPM options.

In approving the proposed rule change, the Commission also has relied upon the Exchange's representation that it has the necessary systems capacity to support new options series that will result from this proposal. See Notice, *supra* note 3, at 12777.

<sup>42</sup> The seller of a "cash settled" index option pays out the cash value of the applicable index on expiration or exercise. A "physically settled" option, like equity and ETF options, involves the transfer of the underlying asset rather than cash. See Characteristics and Risks of Standardized Options, available at: <http://www.theocc.com/components/docs/riskstoc.pdf>, for a discussion of settlement.

<sup>43</sup> The exercise settlement value for a p.m.-settled index option is generally determined by reference

concerned about the impact of p.m. settlement on cash-settled index options on the markets for the underlying stocks at the close on expiration Fridays.<sup>44</sup> These concerns were heightened during the quarterly expirations of the third Friday of March, June, September and December when options, index futures, and options on index futures all expire simultaneously. P.m.-settlement was believed to have contributed to above-average volume and added market volatility on those days, which sometimes led to sharp price movements during the last hour of trading.<sup>45</sup> As a consequence, the close of

to the reported level of the index as derived from the closing prices of the component securities (generally based on the closing prices as reported by the primary exchange on which the stock is listed) on the last business day before expiration (*e.g.*, the Friday before Saturday expiration). See Characteristics and Risks of Standardized Options, available at: <http://www.theocc.com/components/docs/riskstoc.pdf>, for a discussion of settlement value.

<sup>44</sup> See, *e.g.*, Securities Exchange Act Release Nos. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002) (adopting release concerning cash settlement and regulatory halt requirements for security futures products) ("Regulators and self-regulators were concerned that the liquidity constraints faced by the securities markets to accommodate expiration-related buy or sell programs at the market close on expiration Fridays could exacerbate ongoing market swings during an expiration and could provide opportunities for entities to anticipate these pressures and enter orders as part of manipulative or abusive trading practices designed to artificially drive up or down share prices."); 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR-CBOE-87-11) (order approving a proposal for S&P 500 index options with an exercise settlement value based on an index value derived from opening, rather than closing, prices); and 32868 (September 10, 1993), 58 FR 48687 (September 10, 1993) (notice of filing and order granting accelerated approval of proposed rule change by the New York Stock Exchange, Inc. ("NYSE") relating to changes in auxiliary closing procedures for expiration days) (stating, "[a]s long as some index derivative products continue to expire based on closing stock prices on expiration Fridays, the Commission agrees with the NYSE that such procedures are necessary to provide a mechanism to handle the potential large imbalances that can be engendered by firms unwinding index derivative related positions"). The cash settlement provisions of stock index futures and options contracts facilitated the growth of sizeable index arbitrage activities by firms and professional traders and made it relatively easy for arbitrageurs to buy or sell the underlying stocks at or near the market close on expiration Fridays (*i.e.*, the third Friday of the expiration month) in order to "unwind" arbitrage-related positions. These types of unwinding programs at the close on expiration Fridays often severely strained the liquidity of the securities markets as the markets, and in particular the specialists on the NYSE, faced pressure to attract contra-side interest in the limited time that was permitted to establish closing prices. See Securities Exchange Act Release No. 44743 (August 24, 2001), 66 FR 45904 (August 30, 2001) (File No. S7-15-01) (proposing release concerning cash settlement and regulatory halt requirements for security futures products).

<sup>45</sup> See, *e.g.*, Securities Exchange Act Release Nos. 24276 (March 27, 1987); 52 FR 10836 (April 3, 1987) (notice of filing and order granting accelerated approval to a proposed rule change by

trading on the quarterly expiration Friday became known as the "triple witching hour." Besides contributing to investor anxiety, heightened volatility during the expiration periods created the opportunity for manipulation and other abusive trading practices in anticipation of the liquidity constraints.<sup>46</sup>

In light of the concerns with p.m. settlement and to help ameliorate the price effects associated with expirations of p.m.-settled, cash-settled index products, in 1987, the Commodity Futures Trading Commission ("CFTC") approved a rule change by the Chicago Mercantile Exchange to provide for a.m. settlement for index futures, including futures on the S&P 500 index.<sup>47</sup> The Commission subsequently approved a rule change by CBOE to list and trade a.m.-settled S&P 500 index options.<sup>48</sup> In

the NYSE relating to opening price settlement of expiring NYSE Composite and Beta Index options); 37894 (October 30, 1996), 61 FR 56987 (November 5, 1996) (notice of filing and order granting accelerated approval of proposed rule change by the NYSE permanently approving the expiration day auxiliary closing procedures pilot program); and 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002) (adopting release concerning cash settlement and regulatory halt requirements for security futures products) (reaffirming the Commission's view of the advantages of a.m. settlement). See also Hans Stoll and Robert Whaley, Expiration Day Effects of Index Options & Futures (March 15, 1986) (noting that share volume on the NYSE was much higher in the last hour of a quarterly expiration Friday when both options and futures expire than on non-expiration Fridays).

<sup>46</sup> See, *e.g.*, Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 (May 24, 2002) (adopting release concerning cash settlement and regulatory halt requirements for security futures products) (explaining that entities could take advantage of illiquidity resulting from the unwinding of arbitrage-related positions on expiration Fridays to manipulate share prices).

<sup>47</sup> See Proposed Amendments Relating to the Standard and Poor's 500, the Standard and Poor's 100 and the Standard Poor's OTC Stock Price Index Futures Contract, 51 FR 47053 (December 30, 1986) (notice of proposed rule change from the Chicago Mercantile Exchange). See also Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR-CBOE-87-11) (noting that the Chicago Mercantile Exchange moved the S&P 500 futures contract's settlement value to opening prices on the delivery date).

The exercise settlement value for an a.m.-settled index option is determined by reference to the reported level of the index as derived from the opening prices of the component securities on the business day before expiration.

<sup>48</sup> See Securities Exchange Act Release No. 24367 (April 17, 1987), 52 FR 13890 (April 27, 1987) (SR-CBOE-87-11) (order approving a proposal for S&P 500 index options with an exercise settlement value based on an index value derived from opening, rather than closing, prices). At the time it approved CBOE's introduction of a.m. settlement for cash-settled index options, the Commission identified two benefits to a.m. settlement for cash-settled index options. See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR-CBOE-92-09). First, it provides additional time to test price discovery, as market participants have the remainder of the regular

1992, the Commission approved CBOE's proposal to transition all of its European-style cash-settled options on the S&P 500 index to a.m. settlement.<sup>49</sup> Thereafter, the Commission approved proposals by the options markets to transfer most of their cash-settled index products to a.m. settlement.<sup>50</sup>

The Commission and the CFTC noted the benefits of a.m. settlement in a 2001 joint release concerning securities futures, where they observed that "the widespread adoption of opening-price settlement procedures in index futures and options has served to mitigate the liquidity strains that had previously been experienced in the securities markets on expirations."<sup>51</sup>

trading day to adjust to opening session price movements and determine whether those movements reflect changes in fundamental values or short-term supply and demand conditions. Second, it provides more opportunity to trade out of positions acquired during the opening auction. In this respect, attracting contra-side interest to a single-priced auction to offset an order imbalance (such as those attributable to index arbitrage) may more readily be achieved in an opening auction on Friday morning than a closing auction on Friday afternoon because the morning session allows market participants that have provided that liquidity to have the remainder of the regular trading day to liquidate their positions. In contrast, positions acquired in a Friday afternoon closing auction generally cannot be liquidated as readily and efficiently until the following Monday. Holding positions overnight, or over a weekend, may entail greater risk than holding intraday positions. To accept such risk (real or perceived), market participants generally will require a greater premium, which may translate into greater price concessions, and thus lead to greater volatility in the closing auction. In other words, a consequence of p.m. settlement may be enhanced volatility at the close. See, e.g., Securities Exchange Act Release No. 44743 (August 24, 2001), 66 FR 45904 at 45908 (August 30, 2001) ("Steep discounts (premiums) were necessary in part because traders who bought (sold) stocks to offset unwinding programs had to maintain their newly acquired long (short) positions over the weekend—during which time they were subject to considerable market risk.").

<sup>49</sup> See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR-CBOE-92-09) (order approving CBOE's proposal relating to position limits for SPX index options based on the opening price of component securities).

<sup>50</sup> CBOE's index options on the S&P 100 (OEX), however, kept their p.m. settlement. See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (SR-CBOE-92-09). No futures or options on futures trade on the S&P 100 index. Other types of options utilize p.m. settlement, including physically-settled single-stock options and options on ETFs.

<sup>51</sup> See Securities Exchange Act Release No. 44743 (August 24, 2001), 66 FR 45904 at 45908 (August 30, 2001) (proposing release for a joint rule between the Commission and the CFTC generally stipulating, among other provisions, that the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities). See also Securities Exchange Act Release No. 45956 (May 17, 2002), 67 FR 36740 at 36741-42 (May 24, 2002) (adopting release concerning cash settlement and regulatory halt requirements for security futures products in which the Commission reaffirmed the

Since 1992, the Commission has approved proposals that provide for cash-settled index options with p.m. settlement on a limited basis for options products that generally are characterized by lower relative volume and that generally do not involve settlement on the third Friday of a month.<sup>52</sup> At the time of each approval, the Commission stated that limited approvals on a pilot basis would allow the exchange and the Commission to monitor the potential for adverse market effects and modify or terminate the pilots, if necessary. Notably, with the exception of FLEX Index options, these recently-approved p.m.-settled contracts do not involve expiration on the third Friday of the month. These new contracts, including FLEX, have also been characterized by limited volume, and would not be expected to have a pronounced effect on volatility in the underlying securities at the close as a result.

In response to C2's proposal, two commenters raise concerns over the reintroduction of p.m. settlement on a potentially popular index derivative and

advantages of a.m. settlement) ("[O]pening price settlement procedures offered several features that enabled the securities markets to better handle expiration-related unwinding programs.").

<sup>52</sup> In particular, in 1993, the Commission approved CBOE's proposal to list and trade p.m.-settled, cash-settled options on certain broad-based indexes expiring on the first business day of the month following the end of each calendar quarter ("Quarterly Index Expirations"). See Securities Exchange Act Release No. 31800 (February 1, 1993), 58 FR 7274 (February 5, 1993) (SR-CBOE-92-13). In 2006, the Commission approved, on a pilot basis, CBOE's listing of p.m.-settled index options expiring on the last business day of a calendar quarter ("Quarterly Options Series"). See Securities Exchange Act Release No. 54123 (July 11, 2006), 71 FR 40558 (July 17, 2006) (SR-CBOE-2006-65). In January 2010, the Commission approved CBOE's listing of p.m.-settled FLEX options on a pilot basis.<sup>52</sup> See Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087) (order approving rule change to establish a pilot program to modify FLEX option exercise settlement values and minimum value sizes). FLEX options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. Prior to 2010, only a.m. settlement based on opening prices of the underlying components of an index could be used to settle a FLEX index option if it expired on, or within two business days of, a third-Friday-of-the-month expiration ("Blackout Period"). Last year, the Commission approved a pilot program to permit FLEX index options with p.m. settlement that expire within the Blackout Period. See Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR-CBOE-2009-087). In September 2010, the Commission approved CBOE's listing of p.m.-settled End of Week expirations (expiring on each Friday, other than the third Friday) and End of Month expirations (expiring on the last trading day of the month) for options on broad-based indexes, also on a pilot basis. See Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (SR-CBOE-2009-075).

the possible impact that doing so could have on the underlying cash equities markets.<sup>53</sup> One commenter urges the Commission to consider why markets went to a.m. settlement in the early 1990s and opines that hindsight supports the conclusion that a.m. settlement has been good for the markets.<sup>54</sup> While acknowledging that the answer is not clear, the commenter asks the Commission to consider whether it is now safe to return to the dominance of p.m.-settled index options and futures.<sup>55</sup> However, this commenter submitted a subsequent letter in which he agreed with the Exchange that "conditions today are vastly different" from those that drove the transition to a.m. settlement.<sup>56</sup> The commenter concludes that C2's proposal should be approved on a pilot basis, which would allow the Commission to collect data to closely analyze the impact of the proposal.<sup>57</sup>

A different commenter describes the history behind the transition to a.m. settlement and criticizes C2 for trivializing that history.<sup>58</sup> This commenter argues that a mainstream return to the "discredited" p.m. settlement would "risk undermining the operation of fair and orderly financial markets."<sup>59</sup> The commenter notes that experience with the "flash crash" of May 6, 2010 demonstrates that the current market structure struggles to find price equilibriums, and that dispersed trading is a "mirage" as participants often flock to the same liquidity centers in time of stress.<sup>60</sup> In its July comment letter, the commenter took a slightly different approach by arguing that fragmentation is the biggest change to the markets since 1987 when markets moved to a.m. settlement.<sup>61</sup> The commenter notes that even with almost all volume concentrated on one exchange back in the 1980s, the markets could not address closing liquidity and volatility concerns and prevent market disruptions on "triple witch" settlement

<sup>53</sup> See ISE Letter 1, *supra* note 4, at 4-5; ISE Letter 2, *supra* note 4, at 2-3; and Mayne Letter 1, *supra* note 4, at 1-2.

<sup>54</sup> See Mayne Letter 1, *supra* note 4, at 1 (noting that concerns with p.m. settlement "led to the advent of the far more innocuous, and perhaps more fair 'AM-Print' method of determining the final value for expiring index options. To judge by the abatement of the negative press, hindsight would seem to support that the AM-Print made for a more level playing field.")

<sup>55</sup> See *id.* at 2.

<sup>56</sup> See Mayne Letter 2, *supra* note 4, at 1.

<sup>57</sup> See *id.*

<sup>58</sup> See ISE Letter 1, *supra* note 4, at 4.

<sup>59</sup> *Id.*

<sup>60</sup> See *id.*

<sup>61</sup> See ISE Letter 3, *supra* note 8, at 2.

dates.<sup>62</sup> The commenter believes that fragmentation makes it almost impossible for any single market to concentrate liquidity at the close to produce an effective clearing price at times of market volatility.<sup>63</sup> In addition, the commenter argues that exchange-specific closing procedures are only applicable to trading on one exchange, which represents a small fraction of the overall market today, and therefore will have little ability to dampen market volatility.<sup>64</sup> The commenter believes that C2's proposal would exacerbate liquidity strains by reintroducing an extraordinary market event—the triple witching hour—and argues that allowing S&P 500 index options to be based on closing settlement prices, even on a pilot basis, would re-introduce the potential for extreme market volatility at expiration.<sup>65</sup>

In addition, the commenter states that Commission approval of C2's proposal would lead to the reintroduction of multiple p.m.-settled derivatives and argues that while the SPXPM pilot would be troubling, having multiple pilots operating simultaneously would undermine the industry-wide move to a.m. settlement.<sup>66</sup> The Commission generally considers relevant information available to it at the time it reviews each filing in evaluating whether the filing is consistent with the Act.<sup>67</sup>

Taking the opposite view, two commenters urge the Commission to approve the proposal on a pilot basis.<sup>68</sup> One commenter asserts its belief that C2's proposal will not cause greater volatility in the underlying securities of the S&P 500 index.<sup>69</sup> This commenter opines that whether an options contract is p.m.-settled as opposed to a.m.-settled is not a contributing factor to volatility, and the commenter notes that there is more liquidity in the securities underlying the S&P 500 index at the close compared to the opening.<sup>70</sup> The commenter states that exchanges are well equipped to handle end-of-day volume and that existing p.m.-settled products do not contribute to increased volatility.<sup>71</sup> The other commenter states

that the reintroduction of p.m. settlement is long overdue and would attract liquidity from dark pools, crossing mechanisms, and the over-the-counter markets.<sup>72</sup>

In its initial response to comments, C2 argues that the concerns from 18 years ago that led to the transition to a.m. settlement for index derivatives have been largely mitigated.<sup>73</sup> C2 argues that expiration pressure in the underlying cash markets at the close has been greatly reduced with the advent of multiple primary listing and unlisted trading privilege markets, and that trading is now widely dispersed among many market centers.<sup>74</sup> C2 further argues that opening procedures in the 1990s were deemed acceptable to mitigate one-sided order flow driven by index option expiration and that today's more sophisticated automated closing procedures should afford a similar, if not greater, level of comfort.<sup>75</sup> Specifically, C2 notes that many markets, notably The NASDAQ Stock Market LLC (“Nasdaq”) and the NYSE, now utilize automated closing cross procedures and have closing order types that facilitate orderly closings, and that these closing procedures are well-equipped to mitigate imbalance pressure at the close.<sup>76</sup> In addition, C2 believes that after-hours trading now provides market participants with an alternative to help offset market-on-close imbalances.<sup>77</sup>

C2 also notes that for roughly five years (1987–1992) CBOE listed both a.m.- and p.m.-settled SPX and did not observe any related market disruptions during that period in connection with the dual a.m./p.m. settlement.<sup>78</sup> Finally, C2 believes that p.m.-settled options predominate in the over-the-counter (“OTC”) market, and C2 is not aware of any adverse effects in the underlying cash markets attributable to the considerable volume of OTC trading.<sup>79</sup> C2 asserts that given the changes since the 1980s, concerns with p.m. settlement are “misplaced” and have been “negated” now that closing procedures on the cash equities markets have become more automated with real-time data feeds that are distributed to a wider array of market participants.<sup>80</sup>

The Commission agrees with C2 that the closing cross mechanisms on the primary listing stock markets have matured considerably since the late 1980s. Closing procedures used by the primary equity markets now offer a more transparent and automated process for attracting contra-side interest and determining closing prices in a manner that is comparable to the process used to determine opening prices.<sup>81</sup> The Commission recognizes, however, that the ability of such procedures to counter-balance any potential negative effects that could stem from p.m. settlement is dependent on their ability to attract liquidity in a fragmented market to the primary listing exchanges during a very concentrated window of time at the close of trading on expiration Fridays. Consequently, the potential effect that p.m.-settlement of cash-settled index options could have on the underlying cash equities markets at expiration remains unclear and the Commission remains concerned about

suggests that the opposite may be true in some cases (such as the market events of May 6, 2010). See ISE Letter 1, *supra* note 4, at 5.

<sup>81</sup> Nasdaq (see Nasdaq Rule 4754), NYSE (see NYSE Rule 123C), and NYSE Amex LLC (“NYSE Amex”) (see NYSE Amex Rule 123C) all have automated closing cross procedures for their equities markets, which are designed to attract liquidity, to determine a price for a security that minimizes any imbalance, and to match orders at the 4:00 p.m. close. Participants of these exchanges generally receive frequently-disseminated market data reports reflecting any imbalance, which is intended to attract offsetting interest to minimize or eliminate an imbalance heading into the close. NYSE Arca, Inc. has closing procedures (NYSE Arca Rule 7.35), but it only conducts a closing cross for securities in which it is the primary listing market as well as for all exchange-listed derivatives.

Additionally, to minimize the potential for price swings at the close, Nasdaq provides that the closing price must be within an acceptable range of 10% of the midpoint of the NBBO, while the NYSE permits the Designated Market Maker in a stock to request that the exchange extend its trading day to not longer than 4:30 p.m. to allow for the solicitation and entry of orders that are specifically solicited to offset an imbalance existing as of 4 p.m. To further minimize selling pressure at the NYSE, market-on-close and limit-on-close orders may be entered after 3:45 p.m. only if they offset an imbalance. The NYSE also provides for closing-only orders that only execute if they offset an imbalance. The Commission views these closing cross procedures as a significant change in how orders are handled at the close of trading that could potentially help reduce volatility at the close caused by p.m. settlement.

C2 also notes that SPXPM expiration dates would be predetermined and known in advance and, as a consequence, this awareness could facilitate the generation of contra-side trading interest. See C2 Response Letter, *supra* note 5, at 3. The potential for reoccurring heightened volatility during these expiration periods may, however, increase the opportunity for manipulation and other abusive trading practices in anticipation of the liquidity constraints. To the extent such volatility was possible, active surveillance and robust enforcement activity by C2 and other self-regulatory organizations around expiration dates would help to address the potential for abusive trading.

<sup>62</sup> See *id.*

<sup>63</sup> See *id.*

<sup>64</sup> See *id.*

<sup>65</sup> See ISE Letter 1, *supra* note 4, at 5. This commenter also notes that recently-imposed circuit breakers in the cash equities markets do not apply in the final 25 minutes of trading. See *id.*

<sup>66</sup> See ISE Letter 3, *supra* note 8, at 3.

<sup>67</sup> See 15 U.S.C. 78s(b) (concerning Commission consideration of proposed rule changes submitted by self-regulatory organizations).

<sup>68</sup> See IMC Letter, *supra* note 4, at 1–2 and JP Letter, *supra* note 4.

<sup>69</sup> See IMC Letter, *supra* note 4, at 1.

<sup>70</sup> See *id.*

<sup>71</sup> See *id.* at 2.

<sup>72</sup> See JP Letter, *supra* note 4.

<sup>73</sup> See C2 Response Letter, *supra* note 5, at 4.

<sup>74</sup> See *id.*

<sup>75</sup> See C2 Response Letter, *supra* note 5, at 4.

<sup>76</sup> See *id.*

<sup>77</sup> See *id.* at 2.

<sup>78</sup> See Notice, *supra* note 3, at 12776.

<sup>79</sup> See *id.*

<sup>80</sup> See C2 Response Letter, *supra* note 5, at 2 and 4. In its comment letter, ISE notes that C2's claim that electronic trading can smooth out the price-setting process is “disingenuous” as recent history

the possible effect on volatility at the close of a return to p.m. settlement for cash-settled index options.<sup>82</sup>

C2 cites to the Commission's recent approval of a series of proposals that authorized the expansion of a limited subset of options products to p.m. settlement along with data collected in connection with those products as revealing no evidence that p.m. settlement is likely to have a disruptive effect on volatility at the close.<sup>83</sup> We do not believe that such an inference necessarily can be drawn. These prior approvals involved sub-categories of options that are generally characterized by relatively low volume and thus would not be expected to have a pronounced effect on volatility in the underlying securities at the close on expiration.<sup>84</sup> Further, many of these products are not authorized for listing with expiration on the third Friday of a month when other cash-settled index derivatives expire. For example, C2 mentions CBOE's experience with End-of-Week p.m.-settled options (which it notes is the most heavily traded of CBOE's new special-dated expiration products), and concludes that they fail to show any evidence of disruptive volatility on the settlement days for these contracts.<sup>85</sup> Despite the fact that End-of-Week p.m.-settled options constitute over 7% of CBOE's S&P 500 index option volume, their volume does not compare to that of CBOE's SPX product, which accounts for 60% of all index options trading. For this reason, it is difficult to draw any conclusions about the potential impact of p.m.-settled S&P 500 index options on the market for the underlying component stocks based on the existing p.m.-settled cash-settled options. Further, past experience suggests that the potential

impact would be more significant if both index options *and* index futures (and options on index futures) were offered with p.m. settlement.

While the enhanced closing processes on the primary listing markets may serve to mitigate some of the risk that imbalances on the underlying cash markets prior to the close could lead to excess volatility, the extent of that mitigation is unclear. A pilot program would provide an opportunity to observe and analyze the actual effects on the underlying cash markets of SPXPM. Further, to the extent that trading interest is redirected to the primary markets during times of stress, as one commenter noted, it could be conducive to addressing an imbalance to concentrate liquidity on the primary markets during the close. In particular, those markets conduct automated closing cross procedures, described above,<sup>86</sup> that are designed to more efficiently disseminate information broadly and attract and offset imbalances. We note, however, that despite C2's emphasis on the higher volumes in today's markets compared with the 1980s and the dispersion of trading to more venues,<sup>87</sup> volume statistics are not necessarily indicative or predictive of the level of available liquidity.<sup>88</sup>

Finally, C2 estimates that 95% of OTC options based on the S&P 500 index are p.m.-settled,<sup>89</sup> and states that SPXPM will attract some of that trading interest. C2 notes that doing so would be consistent with the objectives of the Dodd-Frank Wall Street Reform and Consumer Protection Act and could help mitigate counterparty risks faced by OTC market participants.<sup>90</sup> The Commission agrees that the proposal could benefit investors to the extent it attracts trading in p.m.-settled S&P 500 index options from the opaque OTC market to the more transparent exchange-listed markets.

Further, C2's proposal will offer investors another investment option through which they could obtain and hedge exposure to the S&P 500 stocks. In addition, C2's proposal will provide investors with the ability to trade an option on the S&P 500 index in an all-

electronic market, which may better meet the needs of investors who may prefer to trade electronically.<sup>91</sup> Accordingly, C2's proposal will provide investors with added flexibility through an additional product that may be better tailored to meet their particular investment, hedging, and trading needs.

To assist the Commission in assessing any potential impact of a p.m.-settled S&P 500 index option on the options markets as well as the underlying cash equities markets, as discussed above,<sup>92</sup> C2 has proposed to submit data to the Commission on a confidential basis in connection with the pilot. The Commission believes that C2's proposed fourteen-month pilot, together with the data and analysis that C2 will provide to the Commission, will allow C2 and the Commission to monitor for and assess the potential for adverse market effects. Specifically, the data and analysis will assist the Commission in evaluating the effect of allowing p.m. settlement for S&P 500 index options on the underlying component stocks.

In light of the fact that approval of C2's proposal would be a change from a.m. settlement for cash-settled index options, the Commission instituted proceedings to determine whether to approve or disapprove the proposal. In particular, through specific requests for comment and data, the Commission solicited input from market participants on the potential impact on the markets, particularly the underlying cash equities markets.

As discussed above, the Commission remains concerned about the potential impact on the market at expiration for the underlying component stocks for a p.m.-settled, cash-settled index option such as SPXPM. The potential impact today remains unclear, given the significant changes in the closing procedures of the primary markets over the past two decades. The Commission is mindful of the historical experience with the impact of p.m. settlement of cash-settled index derivatives on the underlying cash markets, discussed at length above, but recognizes, however, that these risks may be mitigated today by the enhanced closing procedures that are now in use at the primary equity markets.

Finally, approval of C2's proposal on a pilot basis will enable the Commission to collect current data to assess and monitor for any potential for impact on markets, including the underlying cash

<sup>82</sup> The Commission's concern with the potential effect that p.m.-settlement of cash-settled index options could have on the underlying cash equities markets at expiration takes into consideration, as C2 notes, that the use of closing prices by retail and institutions investors is widespread. See C2 Letter 3, *supra* note 8, at 6. For example, mutual funds use closing prices to calculate their net asset values. Therefore, any event or product that potentially introduces additional volatility into the process of determining closing prices has the potential to harm investors and the public interest.

<sup>83</sup> See C2 Letter 3, *supra* note 8, at 4–5.

<sup>84</sup> We note that historical experience with respect to more heavily traded index options and index futures indicates that p.m. settlement carries additional risks for enhanced volatility on settlement days. See, e.g., Hans Stoll and Robert Whaley, *Expiration Day Effects of Index Options & Futures* (March 15, 1986) (concluding that price effects "are observable on quarterly futures expirations \* \* \* [and] [t]he volatility of prices is significantly higher on such expiration days, and the stock market indices tend to fall on such expiration days.').

<sup>85</sup> See *id.* at 5.

<sup>86</sup> See *supra* note 81.

<sup>87</sup> See *id.*

<sup>88</sup> See, e.g., Findings Regarding the Market Events of May 6, 2010, Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, available at <http://www.sec.gov/news/studies/2010/marketevents-report.pdf>, at page 6 ("As the events of May 6 demonstrate, especially in times of significant volatility, high trading volume is not necessarily a reliable indicator of market liquidity.').

<sup>89</sup> See C2 Letter 3, *supra* note 8, at 13.

<sup>90</sup> See *id.*

<sup>91</sup> See, e.g., Exchange Capital Resources Letter, *supra* note 8, at 3 (stating in part that " \* \* \* the addition of the SPXPM product will offer the investor greater flexibility and opportunity to participate in S&P 500 option product line.')

<sup>92</sup> See Section II (Description of the Proposal).

equities markets. In particular, the data collected from C2's pilot program will help inform the Commission's consideration of whether the SPXPM pilot should be modified, discontinued, extended, or permanently approved. It also could benefit investors and the public interest to the extent it attracts trading in p.m.-settled S&P 500 index options from the opaque OTC market to the more transparent exchange-listed markets, where trading in the product will be subject to exchange trading rules and exchange surveillance.

Thus, based on the discussion above, the Commission finds that C2's current proposal is consistent with the Act, including Section 6(b)(5) thereof in that it is designed to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. In light of the enhanced closing procedures and the potential benefits to investors discussed above, the Commission finds that it is appropriate and consistent with the Act to approve C2's proposal on a pilot basis. The collection of data during the pilot and C2's active monitoring of any effects of SPXPM on the markets will help the Commission assess the impact of p.m. settlement in today's market.

## V. Conclusion

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act,<sup>93</sup> that the proposed rule change (SR-C2-2011-008) be, and hereby is, approved on a 14-month pilot basis only.

By the Commission.

**Elizabeth M. Murphy**,  
Secretary.

[FR Doc. 2011-23045 Filed 9-8-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[RELEASE NO. 34-65255; File No. SR-MSRB-2011-12]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed New Rule G-42, on Political Contributions and Prohibitions on Municipal Advisory Activities; Proposed Amendments to Rules G-8, on Books and Records, G-9, on Preservation of Records, and G-37, on Political Contributions and Prohibitions on Municipal Securities Business; Proposed Form G-37/G-42 and Form G-37x/G-42x; and a Proposed Restatement of a Rule G-37 Interpretive Notice

September 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("the Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 19, 2011, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB is filing with the SEC a proposed rule change consisting of (i) Proposed MSRB Rule G-42 (on political contributions and prohibitions on municipal advisory activities); (ii) proposed amendments that would make conforming changes to MSRB Rules G-8 (on books and records), G-9 (on preservation of records), and G-37 (on political contributions and prohibitions on municipal securities business); (iii) proposed Form G-37/G-42 and Form G-37x/G-42x; and (iv) a proposed restatement of a Rule G-37 interpretive notice issued by the MSRB in 1997 ("Rule G-37 Interpretive Notice").<sup>3</sup>

The MSRB requests that, if approved by the Commission, the proposed rule change be made effective six months after the date on which the Commission first approves rules defining the term "municipal advisor" under the

Exchange Act or such later date as the Commission approves the proposed rule change; provided, however, that the MSRB requests that no contribution made prior to the effective date of proposed Rule G-42 would result in a ban pursuant to proposed Rule G-42(b)(i);<sup>4</sup> and, provided that any ban on municipal securities business under Rule G-37(b)(i) in existence prior to the effective date of proposed Rule G-42 would continue until it otherwise would have terminated under Rule G-37(b)(i), as in effect prior to the effective date of proposed Rule G-42.

The text of the proposed rule change is available on the MSRB's Web site at <http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx>, at the MSRB's principal office, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act")<sup>5</sup> authorized the MSRB to establish a comprehensive body of regulation for municipal advisors and provided that municipal advisors to municipal entities have a Federal fiduciary duty.<sup>6</sup> The Dodd-Frank Act required the MSRB to adopt rules for municipal advisors that, in addition to implementing the Federal fiduciary duty, are designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.<sup>7</sup> It also expanded the mission

<sup>4</sup> As described in more detail below, under proposed Rule G-42(b)(i) certain contributions could result in a ban on municipal advisory business for compensation, a ban on solicitations of third-party business for compensation, and a ban on the receipt of compensation for the solicitation of third-party business.

<sup>5</sup> Public Law No. 111-203, 124 Stat. 1376 (2010).

<sup>6</sup> See 15B(c)(1) of the Exchange Act.

<sup>7</sup> See Section 15B(b)(2)(C) of the Exchange Act.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Interpretation of Prohibition on Municipal Securities Business Pursuant to Rule G-37 (February 21, 1997), reprinted in MSRB Rule Book.

<sup>93</sup> 15 U.S.C. 78s(b)(2).

of the MSRB to include the protection of municipal entities<sup>8</sup> and obligated persons, in addition to the protection of investors and the public interest.

Municipal advisors that seek to influence the award of business by government officials by making or soliciting political contributions to those officials distort and undermine the fairness of the process by which government business is awarded. These practices can harm municipal entities and their citizens by resulting in inferior services and higher fees, as well as contributing to the violation of the public trust of elected officials that might allow political contributions to influence their decisions regarding public contracting.

Similarly, Rule G-37 was adopted by the MSRB in 1994 due to concerns about the opportunity for abuses and the problems associated with political contributions by dealers in connection with the award of municipal securities business.<sup>9</sup> When it filed proposed Rule G-37 with the Commission,<sup>10</sup> the MSRB stated that it believed that there had been numerous instances in which dealers had been awarded municipal securities business because of their political contributions. Even when such improprieties had not occurred, the MSRB believed that political contributions created a potential conflict of interest for issuers, or at the very least the appearance of a conflict, when dealers made contributions to officials responsible for, or capable of influencing the outcome of, the award of municipal securities business and then were awarded business by issuers associated with such officials. The MSRB said:

The problems associated with political contributions undermine investor confidence in the municipal securities market, which is crucial to the long-term health of the market, both in terms of liquidity and capital-raising ability \* \* \*. The payment of such contributions to obtain business creates

<sup>8</sup> "Municipal entity" is defined in Section 15B(e)(8) of the Exchange Act as any State, political subdivision of a State, or municipal corporate instrumentality of a State, including—(A) Any agency, authority, or instrumentality of the State, political subdivision, or municipal corporate instrumentality; (B) any plan, program, or pool of assets sponsored or established by the State, political subdivision, or municipal corporate instrumentality or any agency, authority, or instrumentality thereof; and (C) any other issuer of municipal securities.

<sup>9</sup> Municipal securities business generally consists of negotiated underwritings, private placements, and serving as remarketing agent or financial advisor on a new issue of municipal securities. See Rule G-37(g)(vii).

<sup>10</sup> See File No. SR-MSRB-94-2 (January 12, 1994); "Political Contributions and Prohibitions on Municipal Securities Business: Proposed Rule G-37," MSRB Reports, Vol. 14, No. 1 (January 1994).

artificial barriers to those dealers not willing or able to make such payments, thereby harming investors and the public interest by stifling competition and increasing market costs associated with doing municipal securities business. Accordingly, \* \* \* regulatory action is necessary to protect investors and maintain the integrity of the market.

#### Proposed New MSRB Rule G-42

Proposed Rule G-42 concerns political contributions made by all municipal advisors, both those that are dealers and those that are not. Like Rule G-37, the proposed rule would not ban political contributions. Instead, proposed Rule G-42 would:

- Prohibit a municipal advisor from engaging in "municipal advisory business" with a municipal entity for compensation for a period of time beginning on the date of a non-*de minimis*<sup>11</sup> political contribution to an "official of the municipal entity" by the municipal advisor, any of its municipal advisor professionals ("MAPs"), or a political action committee controlled by the municipal advisor or a MAP, and ending two years after all municipal advisory business with the municipal entity has been terminated;<sup>12</sup>

- Prohibit a municipal advisor from soliciting third-party business<sup>13</sup> from a municipal entity for compensation, or receiving compensation for the solicitation of third-party business from a municipal entity, for two years after a non-*de minimis* political contribution to an "official of the municipal entity;"<sup>14</sup>

- Prohibit municipal advisors and MAPs from soliciting contributions, or coordinating contributions, to officials of municipal entities with which the municipal advisor is engaging or seeking to engage in municipal advisory

<sup>11</sup> Proposed Rule G-42(g)(ii) would provide in pertinent part: The term "*de minimis*," when used in connection with contributions made by a municipal advisor professional or a non-MAP executive officer, refers to contributions made \* \* \* to officials of a municipal entity for whom the municipal advisor professional or non-MAP executive officer was entitled to vote at the time of the contribution and which contributions, in total, were not in excess of \$250 to each official of such municipal entity, per election.

<sup>12</sup> See proposed Rule G-42(b)(i).

<sup>13</sup> Proposed Rule G-42(g)(xiv) would provide that: "third-party business" means an engagement by a municipal entity of a broker, dealer, municipal securities dealer, or municipal advisor (other than the municipal advisor that is soliciting the municipal entity) that does not control, is not controlled by, or is not under common control with, the person soliciting such third-party business for or in connection with municipal financial products or the issuance of municipal securities, or of an investment adviser (as defined in section 202(a)(11) of the Investment Advisers Act of 1940) to provide investment advisory services to or on behalf of a municipal entity.

<sup>14</sup> See proposed Rule G-42(b)(i).

business or from which the municipal advisor is soliciting third-party business;<sup>15</sup>

- Prohibit municipal advisors and MAPs from soliciting payments, or coordinating payments, to political parties of states or localities with which the municipal advisor is engaging in, or seeking to engage in, municipal advisory business or from which the municipal advisor is soliciting third-party business;<sup>16</sup>

- Prohibit municipal advisors and MAPs from committing indirect violations of proposed Rule G-42;<sup>17</sup>

- Require quarterly disclosures to the MSRB of certain contributions and related information;<sup>18</sup> and

- Permit certain exemptions from the ban on business for compensation, either by the SEC, upon application,<sup>19</sup> or automatically.<sup>20</sup>

#### Proposed Amendments to Existing MSRB Rules

*MSRB Rule G-37.* The proposed amendments to Rule G-37 would remove any references to "financial advisory and consulting services," because those activities would be covered by proposed Rule G-42. The definitions of "solicit," "affiliated company," and "affiliated person of the broker, dealer, or municipal securities dealer" would be conformed to those in proposed Rule G-42. The reference in Rule G-37(b)(1)(B) to "any municipal finance professional associated with such broker, dealer or municipal securities dealer" has been changed to "any municipal finance professional of such broker, dealer, or municipal securities dealer," because, by definition, all municipal finance professionals are associated persons of brokers, dealers, or municipal securities dealers. Clarifications to Rule G-37 would provide that, in order for certain contributions not to result in a ban on municipal securities business or required reporting to the MSRB, they must be made to officials of issuers for whom the municipal finance professionals may vote at the time of the contribution. References to Forms G-37 and G-37x would be changed to Forms G-37/G-42 and G-37x/G-42x, which would be the combined "macroforms"

<sup>15</sup> See proposed Rule G-42(c)(i).

<sup>16</sup> See proposed Rule G-42(c)(ii). An exception from this prohibition would be provided for certain supervisors and executives of municipal advisors that are only municipal advisors because they provide advice to municipal entities or obligated persons and do not solicit any third-party business from municipal entities.

<sup>17</sup> See proposed Rule G-42(d).

<sup>18</sup> See proposed Rule G-42(e).

<sup>19</sup> See proposed Rule G-42(h).

<sup>20</sup> See proposed Rule G-42(i).

used by both dealers and municipal advisors to make reports to the MSRB under Rule G-37(e) and proposed Rule G-42(e), respectively. Such forms would be required to be submitted electronically.

*MSRB Rules G-8 and G-9.* Proposed Rule G-42 would necessitate amendments to Rule G-8 (on books and records) and Rule G-9 (on preservation of records). The proposed amendments to Rule G-8 would require municipal advisors to create and maintain records necessary for the enforcement of the proposed rule, including, but not limited to, political contributions and payments; lists of MAPs and non-MAP executive officers; the states in which the municipal advisor is engaging or is seeking to engage in municipal advisory business with municipal entities or soliciting third-party business; a list of municipal entities with which the municipal advisor has engaged in municipal advisory business and the type of municipal advisory business; a list of the third-party business awarded; and Forms G-37/G-42 and G-37x/G-42x. The proposed amendments to Rule G-9 generally would require municipal advisors to preserve records required to be made pursuant to the proposed amendments to Rule G-8 for six years. The proposed amendments to Rules G-8 and G-9 would subject municipal advisors to recordkeeping and record retention requirements related to proposed Rule G-42 that are substantially similar to those to which dealers are already subject under Rule G-37. The provisions of Rule G-8 and G-9 concerning Rule G-37 recordkeeping and preservation would change references to Forms G-37 and 37x to Forms G-37/G-42 and G-37x/G-42x. References to receipts of mailing the forms would also be removed, because the forms would only be submitted electronically.

#### *Restated Rule G-37 Interpretive Notice*

The Rule G-37 Interpretive Notice was drafted before municipal advisors to municipal entities were subject to a Federal fiduciary duty and includes language providing guidance on the application of the ban on municipal securities business in circumstances where a non-*de minimis* contribution occurs during the course of an existing financial advisory relationship. Proposed Rule G-42 is inconsistent with the Rule G-37 Interpretive Notice, which would permit financial advisors to complete certain financial advisory engagements while continuing to receive compensation. Accordingly, the MSRB is proposing to restate the Rule G-37 Interpretive Notice to remove

references to financial advisory services, which would instead be covered by proposed Rule G-42. A conforming change would also reference contributions made to officials of issuers to whom municipal finance professionals could vote at the time of the contribution.

#### 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act, which provides that:

The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act, provides that the rules of the MSRB shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15(b)(2) of the Exchange Act because it would help to prevent municipal advisors from seeking to influence the award of business by government officials by making or soliciting political contributions to those officials, which contributions distort and undermine the fairness of the process by which government business is awarded. The proposed rule change would help protect municipal entities and help to perfect the mechanism of a free and open market in municipal securities. Just as pay to play activities by some dealers had the potential to undermine the integrity of the municipal securities market and were addressed by Rule G-37, pay to play activities by some municipal advisors could similarly damage the public's confidence in the municipal marketplace. The proposed amendments to Rules G-8 and G-9 would assist in the enforcement of Rule

G-42. The proposed amendments to Rule G-37 would make conforming changes. The new Forms G-37/G-42 and G-37x/G-42x would eliminate the need for duplicative filings for dealers that engage in both municipal securities business and municipal advisory activities. The proposed restatement of the Rule G-37 Interpretive Notice would remove provisions that would be otherwise inconsistent with proposed Rule G-42.

Section 15B(b)(2)(L)(iv) of the Exchange Act requires that rules adopted by the Board:

not impose a regulatory burden on small municipal advisors that is not necessary or appropriate in the public interest and for the protection of investors, municipal entities, and obligated persons, provided that there is robust protection of investors against fraud.

While the proposed rule change would affect all municipal advisors, it would be a necessary regulatory burden because it would hamper practices that can harm municipal entities and their citizens by resulting in inferior services and higher fees to investors and the public, as well as contributing to the violation of the public trust of elected officials that might allow political contributions to influence their decisions regarding public contracting. While the proposed rule change might burden some small municipal advisors, any such burden would be outweighed by the need to protect their issuer clients.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since the proposed amendments to Rule G-37, the associated amendments to Rule G-8, and the proposed restatement of the Rule G-37 Interpretive Notice would apply equally to all dealers and proposed Rule G-42 and the associated amendments to Rules G-8 and G-9 would apply equally to all municipal advisors. Proposed Forms G-37/G-42 and G-37x/G-42x would apply equally to all dealers and municipal advisors.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

On January 14, 2011, the MSRB requested comment on a draft of the proposed rule change ("draft Rule G-42").<sup>21</sup> The MSRB received comment letters from (1) Acacia Financial Group,

<sup>21</sup> See Exhibit 2.

Inc.; (2) the American Bankers Association; (3) AGFS; (4) BMO Capital Markets GKST Inc. (“BMO”); (5) Mr. W. Hardy Callcott; (6) Mr. Robert Fisher; (7) G.L. Hicks Financial LLC; (8) H.J. Umbaugh & Associates; (9) the National Association of Independent Public Finance Advisors; (10) Repex & Co., Inc.; (11) the Securities Industry and Financial Markets Association; (12) the State of Texas (Texas Comptroller of Public Accounts); (13) the State of Texas (Office of Attorney General); (14) T. Rowe Price; (15) The PFM Group; and (16) WM Financial Strategies.<sup>22</sup> The comments are summarized by topic as follows:

Harmonization of Draft Rule G–42 and MSRB Rule G–37 with the Securities and Exchange Commission Investment Adviser Act Rule 206(4)–5 (the “SEC Pay to Play Rule”)

Acacia Financial Group, Inc. (“Acacia Financial”), the American Bankers Association (“ABA”), Mr. W. Hardy Callcott (“Mr. Callcott”), the Securities Industry and Financial Markets Association (“SIFMA”), and T. Rowe Price called for draft Rule G–42 and, in some cases Rule G–37, to be consistent with the SEC pay to play rule and for conforming changes to Rule G–37, arguing that such consistency is necessary because many municipal advisors will be subject to both the SEC rules and the MSRB rules. Specifically, the ABA said that, “imposing two overlapping but inconsistent sets of rules on the same conduct would be inconsistent with the spirit of President Obama’s January 18, 2011 Executive Order, “Improving Regulation and Regulatory Review,” which provides, in part: “Our regulatory system \* \* \* must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends.”

Definition of “De Minimis” Political Contribution

*Comment:* Each of these commenters said that the MSRB should harmonize draft Rule G–42 and Rule G–37 with the SEC pay to play rule by defining a “*de minimis*” political contribution as one not exceeding \$350 per election for an issuer official for whom a municipal advisor professional (“MAP”) may vote at the time of the contribution and \$150 per election for other issuer officials. The ABA said that the Rule G–37 definition of *de minimis* political contribution has not been amended since the rule’s adoption in 1994 and that the SEC, “which has most recently reviewed the current economic and

political environment in the context of its deliberations on its adviser rule, determined that increased thresholds were warranted to account for inflation since 1994.”

*MSRB Response:* The MSRB has determined to apply the current Rule G–37 “*de minimis*” political contribution limit to municipal advisors under proposed Rule G–42. Even though the Board is sensitive to differing regulations on the same topic, the Board is very concerned that allowing contributions of \$150 per election to officials for whom municipal advisors cannot vote (as permitted by the SEC rule) is likely to result in the bundling of political contributions by large municipal advisor firms, despite the prohibition on such activity under proposed Rule G–42(c)(i). The Board has similar concerns about making a comparable amendment to Rule G–37. The MSRB has also clarified that, in order for a contribution or payment to be considered *de minimis*, it must be made to an official of a municipal entity or a bond ballot campaign the MAP or non-MAP executive officer could vote for at the time of the contribution, or to a political party of a state or political subdivision in which the MAP or a non-MAP executive officer could vote at the time of the contribution. Comparable clarifying changes have been made to Rule G–37. This clarification is consistent with the way in which Rule G–37 has previously been interpreted.

Look-Back Provision

*Comment:* The ABA also suggested that the MSRB conform the look-back provision of draft Rule G–42 to the SEC pay to play rule, which provides that, in the case of employees who do not solicit investment advisory business, a two-year “time out” from compensation for investment advisory services will be triggered by non-*de minimis* political contributions made by new “covered associates” within the six months prior to their employment. A two-year look-back provision covers employees who do solicit investment advisory business. The ABA said that the draft Rule G–42 look-back provisions generally<sup>23</sup> would trigger a ban on business for compensation if an employee had made a contribution within two years before becoming an MAP. The ABA also said that such a restriction, “would require municipal advisor employers to rely on the accurate disclosures of new hires and may preclude an employer from

hiring an otherwise qualified candidate because of his or her legal and legitimate political contributions.”

*MSRB Response:* The look-back period for individuals who solicit municipal advisory business or third-party business would be two years, which is the same as the look-back period for solicitors in the SEC pay to play rule. Under both rules, employers would need to adopt means designed to elicit information about contributions made by prospective employees during the two years preceding their employment. Unlike the SEC pay to play rule, proposed Rule G–42 would include within the definition of MAP those associated persons of a municipal advisor who are engaged in municipal advisory business with a municipal entity. The MSRB believes that these individuals have the greatest interest in obtaining municipal advisory business and, therefore, their political contributions present the most significant potential for abuse. The look-back period for those individuals would also be two years, which is the same as the look-back period under Rule G–37 for those individuals who are primarily engaged in municipal securities business. The two-year look-back provision of Rule G–37 for most new employees has worked well over the many years it has been in effect, and the MSRB has determined not to change it for either Rule G–37 or proposed Rule G–42.

Other

*Comment:* Acacia Financial also requested that the provisions of draft Rule G–42 related to who is subject to the rule and the contribution recipients be made the same as those of the SEC pay to play rule.

*MSRB Response:* Unlike the SEC pay to play rule, proposed Rule G–42 would include within the definition of MAP all those associated persons of a municipal advisor who are engaged in municipal advisory business with a municipal entity. This provision is consistent with how the term “municipal finance professional” (“MFP”) is defined under current Rule G–37. As said above, the MSRB believes that these individuals have the greatest interest in obtaining municipal advisory business and, therefore, their political contributions present the most significant potential for abuse. Therefore, the MSRB has determined not to change this aspect of proposed Rule G–42. As to the recipients of political contributions, proposed Rule G–42 pertains to contributions made to certain officials of municipal entities, while the SEC pay to play rule pertains to contributions made

<sup>23</sup> A six-month look-back provision applies to individuals who are only MAPs because they supervise the municipal advisory activities of other MAPs.

<sup>22</sup> See Exhibit 2.

to certain officials of government entities. The definition of “official of a municipal entity” in proposed Rule G-42 is based both on the statutory definition of “municipal entity” and on the definition of “official of an issuer” in Rule G-37. The definitions of the contribution recipients in proposed Rule G-42 and the SEC pay to play rule are effectively the same. The MSRB perceives no administrative burden associated with any slight differences and has determined not to make any changes.

#### Harmonization of Draft Rule G-42 with Rule G-37

*Comment:* SIFMA said that the MSRB should also harmonize draft Rule G-42 with Rule G-37 by:

(1) Allowing dealer municipal advisors to report their non-*de minimis* political contributions and municipal advisory activities either on Form G-42 or on a “macroform” Form G-37/G-42;<sup>24</sup>

(2) Narrowing the definition of “supervisors” that are MAPs by limiting it to those individuals who supervise the municipal advisory activities of others and not including those individuals who supervise other activities of MAPs;

(3) Requiring reporting of solicitations only if they are successful;<sup>25</sup>

(4) Requiring reporting of municipal advisory business only in the quarter in which it is obtained; and

(5) Using a “primarily engaged in municipal advisory business” standard, rather than an “engaged in municipal advisory business” standard in the definition of MAP.<sup>26</sup> Alternatively, SIFMA said that the MSRB should clarify that only “advice” within the meaning of the statute is covered. SIFMA also recommended that the MSRB adopt a *de minimis* exception to the definition of “municipal advisor professional.”

*MSRB Response:* (1) The MSRB agrees with SIFMA’s comment on the use of a “macroform” (Form G-37/G-42) and has revised proposed Rule G-42(e) accordingly.

(2) The MSRB agrees with SIFMA’s comment on the types of supervisors that should be considered MAPs and has revised proposed Rule G-42(g)(iv)(D) accordingly.

(3) The MSRB agrees with SIFMA’s comment on the reporting of solicitations and has amended proposed

Rule G-42(e)(i)(C)(2) to require the reporting of a list of the third-party business awarded during the calendar quarter by state, rather than all solicitations.

(4) As to the required reporting of municipal advisory business engaged in during a calendar quarter, the wording of proposed Rule G-42(e)(i)(C)(1) would not differ from the wording of Rule G-37(e)(i)(C). The instructions for Form G-37 (pp. 14–15) clarify that reporting of financial advisory business must occur two times: First, when a financial advisory engagement is entered into and second, when a transaction that is the subject of the engagement closes. The instructions for Form G-37/G-42 would contain similar instructions.

(5) SIFMA’s proposal that the MSRB use a “primarily engaged in municipal advisory business” standard in the definition of MAP would create a loophole by allowing individuals who are only occasionally financial advisors to escape the coverage of both Rule G-37 and proposed Rule G-42. The use of a “primarily engaged” standard in Rule G-37 was appropriate because Rule G-37(g)(iv)(A) defines as MFPs those associated persons who are “primarily engaged in municipal securities representative activities, as defined in Rule G-3(a)(i).” The term “municipal securities representative activities” includes a number of activities, such as sales and trading, that do not involve contact with officials of issuers. Had the MSRB not used a “primarily engaged” standard in Rule G-37, a broker’s occasional sales activities could have subjected the broker to Rule G-37, even if the broker had no contact whatsoever with issuer officials. Under proposed Rule G-42, a person could be a MAP when engaged in municipal advisory business, which is defined only with reference to activities that involve contact with issuer officials. In this respect, proposed Rule G-42 is distinguishable from Rule G-37 and this difference in the definition of MAP and MFP is appropriate. Therefore, the MSRB has not made this change. For the same reasons, the MSRB does not consider it appropriate to adopt a *de minimis* exception to the definition of MAP. The MSRB also notes that SIFMA’s arguments on the definitions of “advice” are more appropriately directed to the SEC.

#### Ban on Receipt of Compensation

*Comment:* The ABA said that the MSRB should prohibit only compensation for new municipal advisory services, consistent with Rule G-37. The ABA also said that the prohibitions of draft Rule G-42 should

only apply to the municipal advisor and those employees of the municipal advisor that are actually engaged in the solicitation or provision of municipal advisory business and not to those individuals who are only MAPs as a result of their supervisory or management activities.

*MSRB Response:* Proposed Rule G-42’s ban on business for compensation follows the structure of the SEC pay to play rule, as recommended previously by the ABA. The MSRB considers a mere ban on future municipal advisory business to be inadequate and believes that such ban also should apply to existing engagements. Supervisors of MAPs who are either engaged in municipal advisory business or solicit business also have a significant interest in whether such business is obtained. Particularly given that the MSRB has determined to narrow the types of supervisors who would be considered MAPs, the MSRB considers it appropriate for their contributions to have the potential to trigger a ban on business for compensation.

*Comment:* SIFMA said that the two-year ban on receipt of compensation for municipal advisory business should run from the date of the non-*de minimis* contribution and end two years later, rather than ending two years after all municipal advisory business with the municipal entity has been terminated. SIFMA also said that solicitors should be able to receive compensation for solicitations completed before the making of a non-*de minimis* contribution.

*MSRB Response:* The MSRB does not agree with SIFMA’s comment regarding a flat two-year ban and has determined not to revise the proposed rule. Making SIFMA’s suggested change would permit municipal advisors to remain in place with the understanding that they would receive their compensation at the end of two years. Many municipal advisory engagements concern transactions that might not close for at least two years, with payment contingent on the transaction closing, so SIFMA’s suggested change would mean that the ban would have little practical effect in many cases. Furthermore, the MSRB does not agree with SIFMA’s proposal concerning the receipt of compensation for solicitations already successfully completed at the time of a non-*de minimis* contribution. Under the SEC pay to play rule, an investment adviser may not compensate an intermediary that is an investment adviser if the intermediary has made a non-*de minimis* contribution within two years. The SEC rule does not distinguish between solicitations that have already

<sup>24</sup> See also comments of BMO.

<sup>25</sup> See also comments of BMO.

<sup>26</sup> Proposed Rule G-42(g)(iv)(A) includes within the definition of MAP “any associated person engaged in municipal advisory business with a municipal entity.”

been completed and new solicitations. SIFMA has presented no argument as to why broker-dealer intermediaries and investment adviser intermediaries should be treated differently.

*Comment:* H. J. Umbaugh & Associates (“Umbaugh”) supported a longer ban, recommending that the term of the ban should be identical to the term of the related office to which the non-*de minimis* political contribution relates, which could be as long as four years.

*MSRB Response:* While the MSRB is sensitive to the concern expressed by Umbaugh about the continuing influence of political contributions, it has determined that certain boundaries on the consequences of a non-*de minimis* political contribution must be established in view of First Amendment concerns. The two-year ban in proposed Rule G-42 is based on Rule G-37, which has survived constitutional challenge.<sup>27</sup>

*Comment:* The National Association of Independent Public Finance Advisors (“NAIPFA”) said that draft Rule G-42 and Rule G-37 should both provide that non-*de minimis* political contributions to an official of a municipal entity by non-MAP and non-MFP executive officers, respectively, should trigger a two-year ban on their respective business because the “allowance of such contributions provides large firms an opportunity to make significant ‘indirect’ contributions that directly benefit the municipal business of such firms.”

*MSRB Response:* As is the case with Rule G-37, proposed Rule G-42 is narrowly tailored to address the potential for *quid pro quo* behavior in the selection of businesses performing key municipal services, while at the same time recognizing the First Amendment rights of citizens to support candidates for public office. While non-*de minimis* contributions by non-MFP executive officers (in the case of Rule G-37) and non-MAP executive officers (in the case of proposed Rule G-42) will not necessarily trigger a ban on business, they must be reported to the MSRB. If they represent an attempt to circumvent the prescriptions of either rule, they may trigger a ban on business under either Rule G-37(d) or proposed Rule G-42(d), respectively.

<sup>27</sup> *Blount v. SEC*, 61 F.3d 938 (DC Cir. 1995), cert. denied, 517 U.S. 1119 (1996). In *Blount*, the court determined that Rule G-37 was constitutional under a strict scrutiny analysis by finding that the rule was narrowly tailored to serve a compelling government interest. The court found the SEC’s interests in protecting investors from fraud and protecting underwriters from unfair, corrupt practices to be compelling.

#### Recordkeeping and Reporting Requirements

*Comment:* NAIPFA supported the draft changes to Rules G-8 and G-9 related to the recordkeeping provisions of draft Rule G-42, as well as mandatory electronic reporting to the MSRB. However, some commenters said that certain of the reporting and recordkeeping provisions of the rule would be difficult and expensive to manage. The ABA said that the reporting and recordkeeping provisions of the draft rule were overly broad and would yield little benefit in return, particularly the provision that requires reporting of all solicitations, whether successful or not. The ABA also stated that the MSRB and the SEC would force market participants to adopt unnecessarily complex and burdensome compliance systems. BMO objected to the need to file separate Forms G-37 and G-42.

*MSRB Response:* As previously said, the MSRB has determined to require reporting of a list of the third-party business awarded during the calendar quarter by state, rather than all solicitations. The MSRB has also determined to allow reporting of required information under proposed Rule G-42 on a combined “macroform” (Form G-37/G-42). The MSRB does not believe that the recordkeeping and reporting requirements of the proposed rule change would be complex or burdensome. Dealers are already subject to the same requirements. The MSRB believes that the proposed rule change is a necessary regulatory burden that will assist in the enforcement of the proposed rule. Any potential burden would be outweighed by the need to protect municipal entities and their constituents.

*Comment:* Mr. Robert Fisher (“Mr. Fisher”) said that draft Rule G-42 should provide an exemption from reporting for municipal advisors that do not make political contributions and whose MAPs and PACs do not make political contributions. However, Mr. Fisher suggested that such an exemption would have to incorporate an “aggressive” look-back provision in order to capture any contribution that could disqualify the municipal advisor from engaging in a municipal advisory activity under the rule.

*MSRB Response:* While the MSRB is sensitive to the concerns expressed by Mr. Fisher, it has determined that, in order to ensure effective enforcement of the rule, all municipal advisors should be required to file Form G-37/G-42 as long as they are engaged in municipal advisory business or the solicitation of

third-party business. Political contributions made in one quarter do not necessarily result in municipal advisory business in the same quarter. Sometimes municipal advisory business may be obtained based on an understanding that a non-*de minimis* political contribution will be made in a subsequent quarter. Requiring the reporting of municipal advisory business only after a non-*de minimis* political contribution has been made by a MAP would not provide enforcement officials with the information they need to enforce compliance with the rule. Reporting of municipal advisory business need only be made in the calendar quarter in which the engagement has commenced and in the calendar quarter in which a transaction closes.

*Comment:* Repex & Co., Inc. (“Repex”) said that “[i]f any forms are to be filed they should be filed only by those firms that do business with those municipalities, state pensions etc.” and that “[t]he little firms are suffocating.”

*MSRB Response:* Only municipal advisors engaged in municipal advisory business with municipal entities or that solicit third-party business from municipal entities would be subject to the reporting requirements of proposed Rule G-42(e). A municipal advisor that is only engaged in municipal advisory activities with an obligated person need not file reports with the MSRB.

#### Scope of Draft Rule G-42.

*Comment:* Some commenters said that pending SEC rulemaking concerning the definition of “municipal advisor” should be completed before the MSRB filed proposed Rule G-42 with the SEC and that an additional MSRB comment period might be warranted. For example, the Attorney General of the State of Texas said such [SEC] rulemaking, “\* \* \* is likely to have a significant impact on the substance, interpretation and enforcement of MSRB rules” and requested the opportunity to provide comments as necessary pending the outcome of the SEC’s rulemaking process.<sup>28</sup> SIFMA said that the MSRB should use a two-stage rulemaking process and move forward with rulemaking on those municipal advisors that are clearly covered by the statute and delay rulemaking on those who are only municipal advisors within the expansive definition of the term proposed by the SEC.

*MSRB Response:* The MSRB is sensitive to the concerns expressed by these commenters and has requested

<sup>28</sup> See also State of Texas/Comptroller of Public Accounts.

that the proposed rule change be made effective six months after the SEC has adopted a final rule defining the term “municipal advisor.” Contributions made prior to the effective date would not result in a ban under proposed Rule G–42(b), provided that any ban under Rule G–37(b)(i) in existence prior to the effective date of proposed Rule G–42 would continue until it otherwise would have terminated under Rule G–37(b)(i) as in effect prior to the effective date of proposed Rule G–42.

*Comment:* SIFMA said that the definition of “municipal advisor” in the Exchange Act does not cover private placement agents that solicit municipal entities to make investments in private equity funds, because such solicitations are not the “solicitation of investment advisory services.” Therefore, SIFMA said that the MSRB does not have jurisdiction to write rules for such private placement agents, including draft Rule G–42.

However, SIFMA said that the SEC pay to play rule for investment advisers prohibits investment advisers from paying intermediaries that solicit governmental entities on their behalf after September 13, 2011, unless they are subject to a pay to play rule at least as stringent as the SEC rule. Therefore, SIFMA said that the MSRB should work with the SEC to help ensure that such private placement agents may continue to be compensated after September 13, 2011, by adopting an interim final rule for such private placement agents, which would apply pending resolution of whether such private placement agents are municipal advisors or pending the adoption by FINRA of a pay to play rule for such private placement agents. SIFMA also previously commented to the SEC that private placement agents should be given the option to comply with a FINRA pay to play rule.

*MSRB Response:* The September 13, 2011 date referred to by SIFMA has been revised to June 13, 2012. The MSRB has jurisdiction to write rules concerning municipal advisors. Proposed Rule G–42 contains provisions that would apply to such private placements if they are determined by the SEC to be municipal advisors. It is the goal of the MSRB to have proposed Rule G–42 effective before June 13, 2012.

*Comment:* T. Rowe Price said that draft Rule G–42’s coverage of solicitations on behalf of affiliated investment advisers is premature, because the SEC has not yet resolved whether to treat such affiliates as “covered associates” of the investment

adviser and, therefore, not subject to the ban on payments to intermediaries.

*MSRB Response:* The MSRB has revised the definition of “third-party business” so that it does not apply to solicitations of business on behalf of affiliated firms.

#### First Amendment Considerations

*Comments:* Several commenters raised First Amendment concerns regarding draft Rule G–42. SIFMA argued that a number of the provisions of draft Rule G–42 to which it objected could violate the First Amendment: (1) The \$250 *de minimis* political contribution definition; (2) requiring reporting of all solicitations, whether or not successful; and (3) the definition of “supervisor.” Its rationale differed depending upon the provision. Although the \$250 limit in Rule G–37 was upheld by the D.C. Circuit in the *Blount* case, SIFMA argued that it is inconsistent with Supreme Court cases decided after *Blount*. SIFMA also stated that the MSRB could no longer rely on the *Blount* case to sustain the \$250 limit, although SIFMA stopped short of arguing that Rule G–37 is unconstitutional.

SIFMA referred to statements by the SEC when it adopted its pay to play rule, noting that the SEC pointed to inflation as the reason for using \$350, rather than the \$250 it originally proposed. It noted that the SEC also said that the \$150 limit for contributions to issuer officials for whom the investment adviser could not vote was justified because non-residents might have legitimate interests in those elections, such as a resident of a metropolitan area’s interests in the city in which the person worked. The required reporting of all solicitations to the MSRB, regardless of whether they are successful, was characterized by SIFMA as impinging upon commercial speech. SIFMA also argued that the provisions of draft Rule G–42 that would prohibit MAPs from soliciting others to make political contributions and prohibit indirect violations of the rule are sufficient to prevent abuse of the proposed \$150 limit.

Mr. Callcott said that, in order for draft Rule G–42 to survive a constitutional challenge, the MSRB would have to: (1) Adopt the SEC pay to play rule definition of *de minimis* political contribution; (2) allow contributions to political parties as long as such contributions are not earmarked for certain issuer officials; and (3) clarify that independent expenditures in support of issuer officials are permitted under draft Rule G–42. He argued that,

without such conforming changes, Rule G–37 would be at risk as well.

BMO expressed First Amendment concerns related to the reporting requirements of draft Rule G–42. BMO said, “Since we are dealing with first amendment considerations, we urge the MSRB to adopt the least intrusive program which will elicit relevant information.”

*MSRB Response:* The MSRB considers SIFMA’s and Mr. Callcott’s references to recent Supreme Court decisions to be misplaced, because those cases addressed substantially different facts. First, unlike the Vermont statute considered by the Court in *Randall v. Sorrell*,<sup>29</sup> proposed Rule G–42 would not apply to a group of individuals that is large enough for their contributions to influence the results of elections in any state. Therefore, the Court’s concern that limitations on political contributions would make it difficult for challengers to be elected is not applicable. Second, in *Citizens United v. FEC*,<sup>30</sup> the Supreme Court distinguished restrictions on “independent expenditures” from restrictions on “direct contributions” and left restrictions on direct contributions untouched while striking down a restriction on independent expenditures as unconstitutional.<sup>31</sup>

As stated above, the MSRB is concerned that defining the term “*de minimis*” as including contributions by municipal advisor professionals to issuer officials for whom they cannot vote will lead to the bundling of political contributions. Additionally, the change made by the MSRB to the types of supervisors who would be considered municipal advisor professionals has more narrowly tailored the proposed rule to those individuals who are most likely to benefit from business awarded as a result of political contributions.

The MSRB notes that, contrary to Mr. Callcott’s reading, proposed Rule G–42(c)(ii) would not prohibit payments to political parties. Instead, it would prohibit the solicitation of such payments from others. The MSRB also does not agree with Mr. Callcott that the definition of “contribution” in Rule G–37 and proposed Rule G–42 precludes the making of independent expenditures in support of issuer officials in violation of *Citizens United*.

*Comment:* SIFMA also said that the MSRB should clarify that recordkeeping

<sup>29</sup> 548 U.S. 230, 247 (2006).

<sup>30</sup> 130 S. Ct. 876 (2010).

<sup>31</sup> The MSRB notes that proposed Rule G–42 would not restrict political campaign contributions. Rather, it would limit certain business activities as a result of such contributions.

requirements of draft Rule G-42 are not retroactive. It said that only engagements obtained after the rule's operative date should be required to be reported.

*MSRB Response:* The recordkeeping provisions of proposed Rule G-42 would not become effective until the rest of the proposed rule change becomes effective and would not be retroactive.

#### Bond Ballot Campaign Contributions

*Comments:* Some commenters said that draft Rule G-42 should prohibit certain contributions to bond ballot campaigns by underwriters and municipal advisors. AGFS expressed support for draft Rule G-42<sup>32</sup> but said that bond ballot contributions by underwriters and municipal advisors, "distort the democratic process" and that "[m]unicipal advisors violate their fiduciary duty when they encourage, and participate with, their public entity clients and officials of the clients in actions that are undemocratic at best and illegal at worst."

NAIPFA said, "All too often, we see funds and/or campaign services being contributed to bond campaigns by underwriters [and] financial advisors \* \* \* who end up providing services for the bond transaction work once the election is successful." NAIPFA recommended that draft Rule G-42 should broaden the standards of ethical behavior to include a ban on municipal advisory business in the event of abusive bond ballot contributions. WM Financial Strategies also said that "bond ballot campaign contributions, when made outside of an individual's voting jurisdiction, are a form of [pay]-to-play that taint the integrity of the municipal market."

*MSRB Response:* The MSRB does not believe that a ban on business as a result of non-*de minimis* contributions to bond ballot campaigns is warranted at this time. As the MSRB said when it filed with the SEC a comparable amendment to Rule G-37 requiring the reporting of such contributions, "The MSRB believes, \* \* \* that the proposed amendments would create a uniform disclosure regime to track and make available to public scrutiny bond ballot campaign contributions by dealers in the municipal securities market, thereby increasing available information to municipal securities market participants and the general public. The MSRB does not believe that a ban on municipal securities business as a result of a contribution to a bond ballot campaign

is warranted at this time but notes that the disclosures provided for under the proposed rule change will assist in determining, in the future, whether it would be appropriate to consider further action in this area."<sup>33</sup> The MSRB notes that contributions made to bond ballot initiatives for which a municipal advisor professional cannot vote are not considered *de minimis* for purposes of the reporting requirements of Rule G-42(e).

#### Miscellaneous Comments

##### *Transition Expenses.*

*Comment:* Umbaugh said that draft Rule G-42 is not clear as to the types of transition expenses that might be considered contributions in violation of the rule.

*MSRB Response:* When it requested comment on draft Rule G-42, the MSRB said that it expected to propose interpretations of draft Rule G-42 similar to those applicable to Rule G-37 and that remains the MSRB's intent, subject to SEC approval. On November 29, 2001, the MSRB issued an interpretation of Rule G-37 concerning "Activities by Dealers and Municipal Finance Professionals During Transition Periods for Elected Issuer Officials." Municipal advisors may look to that interpretation for guidance under proposed Rule G-42.

##### *Definition of "Seeking to Engage".*

*Comment:* The PFM Group ("PFM") requested that the MSRB clarify when a municipal advisor will be considered to be "seeking to engage" in municipal advisory business. It suggested that draft Rule G-42(c)(i) and (ii) not apply to any activity occurring more than six months after the advisor's latest contact with the municipal entity looking toward an engagement or, in the case of an RFP response, between the time that the municipal entity has contracted with another party and the municipal advisor's next contact with the municipal entity.

*MSRB Response:* As under Rule G-37, whether a municipal advisor is seeking to engage in municipal advisory business is a facts and circumstances analysis, and the MSRB does not consider a bright line test appropriate.

##### *Payments to Political Parties.*

*Comment:* PFM requested clarification that the prohibitions on payments to political parties would only apply to the political party organization at the level of government with which the municipal advisor is engaged in business or is seeking to engage in business.

*MSRB Response:* Proposed Rule G-42(c)(ii) would not prohibit payments to political parties. It would prohibit the solicitation of such payments from others. As with Rule G-37, this prohibition under proposed Rule G-42 would apply to solicitations of payments to all political party organizations, state and local, operating within the jurisdiction in which the municipal advisor is engaging or seeking to engage in municipal advisory business or in which the municipal advisor is soliciting third-party business.

##### *Definition of "Payment."*

*Comment:* PFM suggested that the definition of "payment" be modified to include the concept of an amount in excess of the fair value of goods or services provided by the political party to make it clear that commercial transactions with a political party are not prohibited.

*MSRB Response:* As explained above, proposed Rule G-42 does not prohibit payments to political parties.

##### *Contributions by MAPs to Their Own Campaigns.*

*Comment:* Umbaugh requested clarification that a non-*de minimis* contribution by a MAP of money, property, or services to his or her own election campaign would not trigger a ban on business for compensation with the government to which the MAP is elected for a two-year period.

*MSRB Response:* When it requested comment on draft Rule G-42, the MSRB said that it expected to propose interpretations of Rule G-42 similar to those applicable to Rule G-37 and that remains the MSRB's intent, subject to SEC approval. Q&A II. 10 issued under Rule G-37 provides that an MFP who is an incumbent or candidate for office is not limited to contributing the *de minimis* amount to his or her own campaign and that such contributions by the candidate or incumbent will not trigger a ban on business. Municipal advisors may look to that Q&A, and other Rule G-37 Qs&As, for guidance under proposed Rule G-42.

##### *Rule G-38.*

*Comment:* In its request for comment on draft Rule G-42, the MSRB asked whether Rule G-38 (on solicitation of municipal securities business) should be revised or eliminated now that firms and individuals that solicit municipal securities business on behalf of dealers are regulated as municipal advisors. Both T. Rowe Price and PFM said that Rule G-38 should not be eliminated. PFM also noted other issues related to third-party business should Rule G-38 be eliminated.

<sup>32</sup> G.L. Hicks Financial LLC also expressed support for draft Rule G-42.

<sup>33</sup> See Securities Exchange Act Release No. 61381 (January 20, 2010); File No. SR-MSRB-2009-18 (December 4, 2010).

*MSRB Response:* The MSRB has determined not to propose that Rule G-38 be revised or eliminated at this time.

### 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 Exchange Act. An investment adviser subject to rule 206(4)-5 under the Investment Advisers Act of 1940 (the "Advisers Act") is prohibited from providing or agreeing to provide, directly or indirectly, payment to any third party to solicit a government entity for investment advisory services on behalf of such investment adviser unless that third party is a "regulated person" under the rule.<sup>34</sup> A regulated person may include a registered municipal advisor subject to pay to play rules that the Commission, by order, finds "impose substantially equivalent or more stringent restrictions on municipal advisors than [the Advisers Act rule] imposes on investment advisers and \* \* \* are consistent with the objectives of [the Advisers Act rule]."<sup>35</sup> We note that proposed rule G-42 differs from the Advisers Act pay to play rule in certain respects, and we request comment on the effect of those differences on the finding the Advisers Act rule requires.<sup>36</sup> Interested persons are also invited to submit views and arguments as to whether they can effectively comment on the proposed rule change prior to the date of final adoption of the Commission's permanent rules for the registration of municipal advisors.

<sup>34</sup> See 17 CFR 275.206(4)-5(a)(2)(i)(A).

<sup>35</sup> This provision will be codified at 17 CFR 275.206(4)-5(f)(9)(iii) (effective September 19, 2011). See Investment Advisers Act Release No. IA-3221 (June 22, 2011), 76 FR 42950 (July 19, 2011).

<sup>36</sup> See, e.g., proposed rule G-42(b), G-42(c)(ii), G-42(g)(iv) and G-42(g)(v).

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2011-12 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-MSRB-2011-12. This file number should be included on the subject line if e-mail 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 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 MSRB's offices. 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-MSRB-2011-12 and should be submitted on or before September 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**Elizabeth M. Murphy,**

Secretary.

[FR Doc. 2011-23046 Filed 9-8-11; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>37</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65259; File No. SR-ICC-2011-01]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change To Add Rules Related to the Clearing of Emerging Markets Sovereigns

September 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder<sup>2</sup> notice is hereby given that on August 30, 2011, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. 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 purpose of the proposed rule change is to adopt new rules that will provide the basis for ICC to clear additional credit default swap ("CDS") contracts. Specifically, ICC is proposing to amend Chapter 26 of its rules to add Sections 26D and 26E to provide for the clearance of Emerging Markets Standard Sovereign CDS ("Standard Emerging Sovereign Single Names" or "SES Contracts").

As discussed in more detail in Item II(A) below, Section 26D (Standard Emerging Sovereign Single Names) provides for the definitions and certain specific contract terms for cleared SES Contracts. Section 26E (CDS Restructuring Rules) provides the rules applicable to SES Contracts in the event of a restructuring credit event.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections (A), (B),

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

and (C) below, of the most significant aspects of these statements.<sup>3</sup>

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

ICC has identified SES Contracts as a product that has become increasingly important for market participants to manage risk and express views. ICC believes that clearance of SES Contracts will facilitate the prompt and accurate settlement of security-based swaps and contribute to the safeguarding of securities and funds associated with security-based swap transactions.<sup>4</sup> ICC is requesting approval for SES Contracts on four sovereign reference entities, the Federative Republic of Brazil, the United Mexican States, the Bolivian Republic of Venezuela and the Argentine Republic. If ICC determines to list additional SES Contracts, it will seek approval from the Commission for such contracts (or for a class of product including such contracts) by a subsequent filing.

SES Contracts have similar terms to the North American Corporate CDS ("Corporate Single Name CDS") contracts currently cleared by ICC and governed by Section 26B of the ICC rules. Accordingly, the proposed rules found in Section 26D largely mirror the ICC rules for Corporate Single Name CDS in Section 26B, with certain modifications that reflect differences in terms and market conventions between SES Contracts and Corporate Single Name CDS. In the event that a clearing participant is domiciled in a country that is the reference entity for an SES Contract, ICC will not permit the clearing participant to clear such SES Contract.

Rule 26D-102 (Definitions) sets forth the definitions used for the SES Contracts. An "Eligible SES Reference Entity" is defined as "each particular Reference Entity included from time to time in the List of Eligible Reference Entities," which is a list maintained, updated and published from time to time by ICC containing certain specified information with respect to each

reference entity.<sup>5</sup> The Eligible SES Reference Entities will at present be limited to the four Latin American sovereigns listed above. Certain substantive changes have also been made to the definition of "List of Eligible SES Reference Entities," due to the fact that certain terms and elections for Corporate Single Name CDS are not applicable to SES Contracts. These include (i) the need for an election as to whether "Restructuring" is an eligible "Credit Event" (it is by market convention applicable to all SES Contracts, whereas it is generally not applicable to Corporate Single Name CDS) and (ii) the applicability of certain International Swaps and Derivatives Association's ("ISDA's") supplements that may apply to Corporate Single Name CDS but do not apply to SES Contracts, including the 2005 Monoline Supplement, the ISDA Additional Provisions for a Secured Deliverable Obligation Characteristic and the ISDA Additional Provisions for Reference Entities with Delivery Restrictions. As set forth in the List of Eligible SES Reference Entities, SES Contracts will only be denominated in U.S. Dollars. The remaining definitions are substantially the same as the definitions found in ICC Section 26B, other than certain conforming changes.

Rules 26D-203 (Restriction on Activity), 26D-206 (Notices Required of Participants with respect to SES Contracts), 26D-303 (SES Contract Adjustments), 26D-309 (Acceptance of SES Contracts by ICE Trust), 26D-315 (Terms of the Cleared SES Contract), 26D-316 (Relevant Physical Settlement Matrix Updates), 26D-502 (Specified Actions), and 26D-616 (Contract Modification) reflect or incorporate the basic contract specifications for SES Contracts and are substantially the same as under ICC Section 26B for Corporate Single Name CDS. For the avoidance of doubt, ICC will not accept a trade for clearance and settlement if at the time of submission or acceptance of the trade or at the time of novation the CDS Participant submitting the trade is domiciled in the country of the Eligible SES Reference Entity for such SES Contract.

In addition to various non-substantive conforming changes, the proposed rules differ from the existing Corporate Single Name CDS rules in that the contract terms in Rule 26D-315 incorporate the relevant published ISDA physical settlement matrix terms for Standard

Latin American Sovereign transactions, rather than Standard North American Corporate transactions, and, as noted in the preceding paragraph, certain elections and supplements used for Corporate Single Name CDS that are not applicable to SES Contracts.

New Section 26E (CDS Restructuring Rules) provides rules applicable to cleared Contracts in the event of a restructuring credit event. Corporate Single Name CDS currently cleared by ICC are not subject to these restructuring rules. Unlike other credit events, following a restructuring credit event, parties to a cleared SES Contract must determine whether or not to trigger their credit protection. To facilitate this election while permitting ICC to maintain a matched book of cleared Contracts, Section 26E provides that protection buyers and protection sellers under a Restructuring CDS Contract (defined as a CDS Contract where a restructuring credit event has occurred) will be matched into pairs, called Matched Restructuring Pairs, by ICC for purposes of sending and receiving such triggering notices. Rule 26E-102 sets forth the definitions used throughout Section 26E in connection with a restructuring credit event.

The procedures for creation of Matched Restructuring Pairs are set forth in Rule 26E-103 (Allocation of Matched Restructuring Pairs). Following the announcement that a restructuring credit event has occurred with respect to an SES Contract, ICC will match each protection seller in that contract with one or more protection buyers in that contract, such that the notional amount of the contract of each protection seller is fully allocated to one or more protection buyers. In order to be matched, positions in an SES Contract must be of the same type (*i.e.*, having the same reference entity, tenor, reference obligation, fixed rate, and relevant physical settlement matrix).

The mechanics associated with the delivery and receipt of notices by clearing participants under Matched Restructuring Pairs are set forth in Rule 26E-104 (Matched Restructuring Pairs; Designations and Notices). This rule provides that once ICC has created the Matched Restructuring Pairs, ICC will be deemed to have designated the matched CDS buyer and matched CDS seller as its designee to receive and deliver credit event notices in relation to the Restructuring CDS Contract. The rule also contains a mechanism for notifying ICC of disputes with respect to such notices.

Finally, Rule 26E-105 (Separation of Matched Restructuring Pairs) addresses situations where an announcement of a

<sup>3</sup> The Commission has modified the text of the summaries prepared by ICC.

<sup>4</sup> ICC has performed a variety of empirical analyses related to clearing of SES Contracts on sovereign reference entities, including back tests and stress tests using actual clearing participant portfolios (with respect to the stress tests) combined with hypothetical positions in sovereign CDS contracts based on data retrieved from the Depository Trust Clearing Corporation's Trade Information Warehouse and through interaction with ICC's Trade Advisory Committee.

<sup>5</sup> Similar to the credit index CDS and Corporate Single Name CDS that ICC currently clears, ICC will accept for clearing sovereign CDS denominated in U.S. Dollars only.

restructuring credit event is followed by a determination that such event did not in fact occur.<sup>6</sup> The rule provides that if ICC has not matched buyers with sellers to form a Matched Restructuring Pair, then ICC will not do so. If ICC has matched sellers with buyers to form a Matched Restructuring Pair, but settlement (either auction settlement or fallback physical settlement) has not occurred, then ICC will reverse the matching. If fallback physical settlement is applicable, ICC will not reverse any matching to the extent that the matched CDS buyer or matched CDS seller has given notice to ICC that the parties have settled the relevant matched CDS contract within one Business Day following delivery of the matching reversal notice. If a CDS contract is reversed, ICC will recalculate the margin accordingly.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) As the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

<sup>6</sup>Determination of a credit event and a subsequent determination that a credit event did not occur are made by the ISDA relevant credit derivatives determinations committee ("DC"), or, in the event a request has been submitted to the relevant DC and ISDA has publicly announced that the relevant DC has resolved not to determine the answer, by the appropriate ICE Clear Credit Regional CDS Committee.

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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2011-01 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-ICC-2011-01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICC and on ICC's Web site at [https://www.theice.com/publicdocs/regulatory\\_filings/ICEClearCredit\\_082611.pdf](https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_082611.pdf). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2011-01 and should be submitted on or before September 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-65251; File No. SR-BX-2011-060]**

**Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Clarifying Amendment To Direct Connectivity Services**

September 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on August 31, 2011, NASDAQ OMX BX, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes a clarifying amendment to Exchange Rule 7051 regarding the Exchange's direct connectivity services. The text of the proposed rule change is available at <http://nasdaqomxbx.cchwallstreet.com/>, at the Exchange's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is amending Rule 7051 entitled "Direct Connectivity to BX" to clarify the Exchange's direct connectivity services. Currently, the Exchange assesses fees for direct 10Gb circuit connections, and fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange's datacenter.<sup>3</sup> The Exchange noted in SR-BX-2010-064 that it makes available to both co-located and non-co-located customers direct connections capable of supporting up to 1Gb, with per connection monthly fees of \$500 for co-located customers and \$1000 for non co-located customers.<sup>4</sup> Monthly fees are higher for non co-located customers because direct connection requires the Exchange to provide cabinet space and middleware for those customers' third-party vendors to connect to the datacenter and, ultimately, to the trading system.<sup>5</sup> The Exchange also assesses an optional installation fee of \$925 if the customer chooses to use an on-site router (collectively "Direct Connectivity Fees").<sup>6</sup> The Exchange provides direct connect services and assesses fees through NASDAQ Technology Services, LLC, as it does with similar co-location services.<sup>7</sup>

Subsequently, the Exchange amended these Direct Connectivity Fees to establish pricing for customers who are not co-located in the Exchange's data center, but require shared cabinet space and power for optional routers, switches, or modems to support their direct circuit connections. The Exchange assesses customers who are not co-located in the Exchange's data center monthly fees for space based on a height unit of approximately two inches high, commonly call a "U" space and a maximum power of 125 Watts per U space.<sup>8</sup>

The Exchange now seeks to add clarifying text to Exchange Rule 7051 to state that the direct connectivity services are provided by NASDAQ

Technology Services, LLC. The Exchange's proposal is the result of its desire to prominently place language in the Exchange Rule 7051 to make transparent that the connectivity services are provided by NASDAQ Technology Services, LLC. Such change will assist with easy identification of items not serviced, and billed, by the Exchange. This change merely codifies the practice of the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the proposed amendment to Exchange Rule 7051 makes transparent that the direct connectivity services are provided by NASDAQ Technology Services, LLC. The Exchange believes that this clarifying amendment will benefit all market participants by making transparent the source of the direct connectivity services.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act.<sup>11</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the

purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BX-2011-060 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2011-060. This file number should be included on the subject line if e-mail 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-BX-2011-060 and should be submitted on or before September 30, 2011.

<sup>3</sup> See Securities Exchange Act Release No. 62969 (September 22, 2010), 75 FR 59777 (September 28, 2010) (SR-BX-2010-064).

<sup>4</sup> *Id.* at page 4 and page 10.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See Exchange Rule 7034(b), Connectivity to BX.

<sup>8</sup> See Securities Exchange Act Release No. 64439 (May 9, 2011), 76 FR 28248 (May 16, 2011) (SR-BX-2011-023).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(a)(i).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011-23112 Filed 9-8-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65252; File No. SR-NASDAQ-2011-119]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Clarifying Amendment To Direct Connectivity Services

September 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on August 31, 2011, The NASDAQ Stock Market LLC (the “Exchange” or “NASDAQ”) 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a clarifying amendment to Exchange Rule 7051 regarding the Exchange’s direct connectivity services. The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at the Exchange’s principal office, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this rule filing is to amend Rule 7051 entitled “Direct Connectivity to Nasdaq” to clarify the Exchange’s direct connectivity services. Currently, the Exchange assesses fees for direct 10Gb circuit connections, and fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange’s datacenter.<sup>3</sup> The Exchange noted in SR-NASDAQ-2010-077 that it makes available to both co-located and non-co-located customers direct connections capable of supporting up to 1Gb, with per connection monthly fees of \$500 for co-located customers and \$1000 for non co-located customers.<sup>4</sup> Monthly fees are higher for non co-located customers because direct connection requires the Exchange to provide cabinet space and middleware for those customers’ third-party vendors to connect to the datacenter and, ultimately, to the trading system.<sup>5</sup> The Exchange also assesses an optional installation fee of \$925 if the customer chooses to use an on-site router (collectively “Direct Connectivity Fees”).<sup>6</sup> The Exchange provides direct connect services and assesses fees through NASDAQ Technology Services, LLC, as it does with similar co-location services.<sup>7</sup>

Subsequently, the Exchange amended these Direct Connectivity Fees to establish pricing for customers who are not co-located in the Exchange’s data center, but require shared cabinet space and power for optional routers, switches, or modems to support their direct circuit connections. The Exchange assesses customers who are not co-located in the Exchange’s data center monthly fees for space based on a height unit of approximately two inches high, commonly call a “U” space and a maximum power of 125 Watts per U space.<sup>8</sup>

The Exchange now seeks to add clarifying text to Exchange Rule 7051 to state that the direct connectivity services are provided by NASDAQ

<sup>3</sup> See Securities Exchange Act Release No. 62663 (August 9, 2010), 75 FR 49543 (August 13, 2010) (SR-NASDAQ-2010-077).

<sup>4</sup> *Id.* at page 5 and page 8.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See Exchange Rule 7034(b), Connectivity to Nasdaq.

<sup>8</sup> See Securities Exchange Act Release No. 64440 (May 9, 2011), 76 FR 28262 (May 16, 2011) (SR-NASDAQ-2011-061).

Technology Services, LLC. The Exchange’s proposal is the result of its desire to prominently place language in the Exchange Rule 7051 to make transparent that the connectivity services are provided by NASDAQ Technology Services, LLC. Such change will assist with easy identification of items not serviced, and billed, by the Exchange. This change merely codifies the practice of the Exchange.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the proposed amendment to Exchange Rule 7051 makes transparent that the direct connectivity services are provided by NASDAQ Technology Services, LLC. The Exchange believes that this clarifying amendment will benefit all market participants by making transparent the source of the direct connectivity services.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act.<sup>11</sup> 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

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(a)(i).

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2011-119 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2011-119. This file number should be included on the subject line if e-mail 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2011-119 and should be

submitted on or before September 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011-23113 Filed 9-8-11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65263; File No. SR-MSRB-2011-09]

### Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Consisting of Proposed Interpretive Notice Concerning the Application of MSRB Rule G-17, on Conduct of Municipal Securities and Municipal Advisory Activities, to Underwriters of Municipal Securities

September 6, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 22, 2011, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB is filing with the SEC a proposed rule change consisting of a proposed interpretive notice (the "Notice") concerning the application of MSRB Rule G-17 (on conduct of municipal securities and municipal advisory activities) to underwriters of municipal securities. The MSRB requests that the proposed rule change be made effective 90 days after approval by the Commission.

The text of the proposed rule change is available on the MSRB's Web site at <http://www.msrb.org/Rules-and-Interpretations/SEC-Filings/2011-Filings.aspx>, at the MSRB's principal office, and at the Commission's Public Reference Room.

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board 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

(a) With the passage of the Dodd-Frank Act, the MSRB was expressly directed by Congress to protect municipal entities. Accordingly, the MSRB is proposing to provide additional interpretive guidance that addresses how Rule G-17 applies to dealers in the municipal securities activities described below.

A more-detailed description of the provisions of the Notice follows:

*Representations to Issuers.* The Notice would provide that all representations made by underwriters to issuers of municipal securities in connection with municipal securities underwritings (e.g., issue price certificates and responses to requests for proposals), whether written or oral, must be truthful and accurate and may not misrepresent or omit material facts.

*Required Disclosures to Issuers.* The Notice would provide that an underwriter of a negotiated issue that recommends a complex municipal securities transaction or product (e.g., a variable rate demand obligation with a swap) to an issuer has an obligation under Rule G-17 to disclose all material risks (e.g., in the case of a swap, market, credit, operational, and liquidity risks), characteristics, incentives, and conflicts of interest (e.g., payments received from a swap provider) regarding the transaction or product. Such disclosure would be required to be sufficient to allow the issuer to assess the magnitude of its potential exposure as a result of the complex municipal securities financing. In the case of routine financing structures, underwriters would be required to disclose the material aspects of the structures if the issuers did not otherwise have knowledge or experience with respect to such structures.

The disclosures would be required to be made in writing to an official of the issuer whom the underwriter reasonably believed had the authority to bind the issuer by contract with the underwriter (i) In sufficient time before the execution of a contract with the underwriter to allow the official to evaluate the recommendation and (ii) in a manner designed to make clear to such official the subject matter of such disclosures and their implications for the issuer. If the underwriter did not reasonably believe that the official to whom the disclosures were addressed was capable of independently evaluating the disclosures, the underwriter would be required to make additional efforts reasonably designed to inform the official or its employees or agent.<sup>3</sup>

**Underwriter Duties in Connection with Issuer Disclosure Documents.** The Notice would provide that a dealer's duty to have a reasonable basis for the representations it makes, and other material information it provides, to an issuer and to ensure that such representations and information are accurate and not misleading, as described above, extends to representations and information provided by the underwriter in connection with the preparation by the issuer of its disclosure documents (e.g., cash flows).

**New Issue Pricing and Underwriter Compensation.** The Notice would provide that the duty of fair dealing under Rule G-17 includes an implied representation that the price an underwriter pays to an issuer is fair and reasonable, taking into consideration all relevant factors, including the best judgment of the underwriter as to the fair market value of the issue at the time it is priced. The Notice distinguishes the fair pricing duties of competitive underwriters (submission of *bona fide* bid based on dealer's best judgment of fair market value of securities) and negotiated underwriters (duty to negotiate in good faith). The Notice would provide that, in certain cases and depending upon the specific facts and circumstances of the offering, the underwriter's compensation for the new issue (including both direct compensation paid by the issuer and

other separate payments or credits received by the underwriter from the issuer or any other party in connection with the underwriting) may be so disproportionate to the nature of the underwriting and related services performed, as to constitute an unfair practice that is a violation of Rule G-17.

**Conflicts of Interest.** The Notice would require disclosure by an underwriter of potential conflicts of interest, including third-party payments, values, or credits made or received, profit-sharing arrangements with investors, and the issuance or purchase of credit default swaps for which the underlying reference is the issuer whose securities the dealer is underwriting or an obligation of that issuer.

**Retail Order Periods.** The Notice would remind underwriters not to disregard the issuers' rules for retail order periods by, among other things, accepting or placing orders that do not satisfy issuers' definitions of "retail."

**Dealer Payments to Issuers.** Finally, the Notice would remind underwriters that certain lavish gifts and entertainment, such as those made in conjunction with rating agency trips, might be a violation of Rule G-17, as well as Rule G-20.

(b) The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act, which provides that:

The Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act, provides that the rules of the MSRB shall: be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act because it will protect issuers of municipal securities from

fraudulent and manipulative acts and practices and promote just and equitable principles of trade, while still emphasizing the duty of fair dealing owed by underwriters to their customers. Rule G-17 has two components, one an anti-fraud prohibition, and the other a fair dealing requirement (which promotes just and equitable principles of trade). The Notice would address both components of the rule. The sections of the Notice entitled "Representations to Issuers," "Underwriter Duties in Connection with Issuer Disclosure Documents," "Excessive Compensation," "Payments to or from Third Parties," "Profit-Sharing with Investors," "Retail Order Periods," and "Dealer Payments to Issuer Personnel" primarily would provide guidance as to conduct required to comply with the anti-fraud component of the rule and, in some cases, conduct that would violate the anti-fraud component of the rule, depending on the facts and circumstances. The sections of the Notice entitled "Required Disclosures to Issuers," "Fair Pricing," and "Credit Default Swaps" primarily would provide guidance as to conduct required to comply with the fair dealing component of the rule.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, since it would apply equally to all underwriters of municipal securities.

#### *C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change Received From Members, Participants, or Others*

On February 14, 2011, the MSRB requested comment on the proposed rule change.<sup>4</sup> The MSRB received 5 comment letters. Comment letters were received from the American Federation of State, County and Municipal Employees ("AFSCME"); the Bond Dealers of America ("BDA"); Municipal Regulatory Consulting LLC ("MRC"); the National Association of Independent Public Finance Advisors ("NAIPFA"); and the Securities Industry and Financial Markets Association ("SIFMA"). The comments are summarized according to the subject headings of the Notice.

<sup>3</sup> Section 4s(h)(5) of the Commodity Exchange Act requires that a swap dealer with a special entity client (including states, local governments, and public pension funds) must have a reasonable basis to believe that the special entity has an independent representative that has sufficient knowledge to evaluate the transaction and its risks, as well as the pricing and appropriateness of the transaction. Section 15F(h)(5) of the Exchange Act imposes the same requirements with respect to security-based swaps.

<sup>4</sup> See MSRB Notice 2011-12 (February 14, 2011).

## Representations to Issuers

• *Comments: Reasonable Basis for Certificates.* SIFMA said that the MSRB should reconsider the requirement for an underwriter to have a reasonable basis for the representations and material information in certificates it provides, arguing that other regulatory requirements (e.g., IRC Section 6700 and wire fraud statutes) already govern such representations. It said that the MSRB should, at least, confirm that an underwriter would meet this obligation when it verifies the information in the certificate against the official books of the issuer and any other factual information within the underwriter's control.

*MSRB Response:* The MSRB has determined to make no change to this requirement of the Notice and notes that the "reasonable basis" requirement of the Notice in the context of certificates provided by an underwriter is consistent with the view of the Commission that the underwriter must have a reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in an offering of municipal securities. See endnote 10 to the Notice. It is also consistent with Internal Revenue Service interpretations of Section 6700 of the Internal Revenue Code, which address the application of the penalty to statements (including underwriter certificates) material to tax exemption that the maker knew or had "reason to know" were false or fraudulent, such as the one cited in note 9 to SIFMA's comment letter. Therefore, the Notice imposes no additional requirement upon underwriters. Review of the official books of the issuer and other factual information within the underwriter's control may assist the underwriter in forming a reasonable basis for its certificate. However, if the certificate relies on the representations of others or facts not within the underwriter's control, additional due diligence on the part of the underwriter may be required. The MSRB notes that a quote from the Internal Revenue Service publication cited in SIFMA's letter provides some useful guidance on the level of inquiry required: "Participants [in a bond financing] can rely on matters of fact or material provided by other participants necessary to make their own statements or draw their own conclusions, unless they have actual knowledge or a reason to know of its inaccuracy or the statement is not credible or reasonable on its face." The Internal Revenue Service summarized the legislative

history of Section 6700. See H. Conf. Rep. No. 101-247, 101st Cong., 1st Sess. 1397.

## Required Disclosures to Issuers

• *Comments: Complex Financings.*

SIFMA argued that more guidance is needed on the complex municipal securities financings requirements.

○ It said that a transaction should only be deemed complex if the municipal issuer informed the underwriter that the issuer had never engaged in the type of transaction before and therefore might not understand the transaction's material risks and characteristics.

○ It also said that the MSRB should provide more guidance and definition with regard to what types of transactions will be considered "complex," arguing that references to "external index not typically used in the municipal securities market" and "atypical or complex arrangements" were vague.

○ It also said that issuers that required an analysis of the risks and characteristics of a transaction should hire independent advisors or separately contract for this service with their underwriters.

*MSRB Response:* In response to SIFMA's first comment above, the MSRB has added the following language to the Notice: "The level of disclosure required may vary according to the issuer's knowledge or experience with the proposed financing structure or similar structures, capability of evaluating the risks of the recommended financing, and financial ability to bear the risks of the recommended financing, in each case based on the reasonable belief of the underwriter." This language is based on the suitability analysis required by the Financial Industry Regulatory Authority ("FINRA") of dealers selling complex products, such as options and securities futures,<sup>5</sup> although the Notice does not go so far as to impose a suitability requirement on underwriters of municipal securities with respect to issuers.<sup>6</sup> The MSRB notes that this language applies only to disclosures concerning material terms and

<sup>5</sup> FINRA Rules 2360 and 2370.

<sup>6</sup> The Notice does not address whether engaging in any of the activities described in the Notice would cause a dealer to be considered a "municipal advisor" under the Exchange Act and the rules promulgated thereunder and, therefore, subject to a fiduciary duty. The MSRB notes that dealers that recommend swaps or security-based swaps to municipal entities may also be subject to rules of the Commodity Futures Trading Commission or those of the SEC. See, e.g., *Federal Register* Vol. 75, No. 245 (December 22, 2010) and *Federal Register* Vol. 76, No. 137 (July 18, 2011).

characteristics of a complex municipal securities financing. The Notice also provides: "In all events, the underwriter must disclose any incentives for the underwriter to recommend the complex municipal securities financing and other associated conflicts of interest." The MSRB does not agree with SIFMA that an issuer should be required to exercise its supposed "bargaining power" in order to receive such disclosures.

In response to SIFMA's second comment above, the Notice does provide examples of complex municipal securities financings: "variable rate demand obligations ("VRDOs") and financings involving derivatives (such as swaps)." In response to SIFMA's comment, the Notice now also distinguishes those examples from: "The typical fixed rate offering." It also now provides that: "Even a financing in which the interest rate is benchmarked to an index that is commonly used in the municipal marketplace (e.g., LIBOR or SIFMA) may be complex to an issuer that does not understand the components of that index or its possible interaction with other indexes."

With regard to SIFMA's third comment, while the MSRB agrees that an issuer seeking an independent assessment of the risks and characteristics of a transaction recommended by an underwriter may wish to hire a separate municipal advisor for that purpose, at its own election, the MSRB is firmly of the view that basic principles of fair dealing require an underwriter to disclose the risks and characteristics of a complex municipal securities financing that it has itself determined to recommend to the issuer.

The MSRB notes that the Notice has been amended to provide that, in the case of routine financing structures, underwriters would be required to disclose the material aspects of the structures if the issuers did not otherwise have knowledge or experience with respect to such structures.

• *Comments: Recommendations.* NAIPFA argued that underwriters should also be required—in the same manner and to the same extent as advisors would be required—to have a reasonable basis for any recommendation they made and to disclose material risks about the course of conduct they recommend, along with the risks and potential benefits of reasonable alternatives then available in the market. SIFMA said that the MSRB should clarify whether a dealer's recommendation of a swap will subject it to a fiduciary duty. MRC said that the requirements for disclosures in the

context of complex municipal securities financings should be set forth in Rule G–19.

*MSRB Response:* The MSRB has determined not to impose a suitability duty in this context at this time. The Notice also does not address whether the provision of advice by underwriters will cause them to be considered municipal advisors under the Exchange Act and, accordingly, subject to a fiduciary duty. In the view of the MSRB, the duty of fair dealing is subsumed within a fiduciary duty, so additional duties may apply to the provision of advice by underwriters that the Commission considers to be municipal advisory activities. *See also* footnote 6 herein.

- *Comments: Recipients of Disclosures.* BDA and SIFMA said that an underwriter should only need to have a reasonable belief that it was making required disclosures to officials with the authority to bind the issuer, particularly if the official represented that he/she has such authority.

*MSRB Response:* The MSRB agrees with this comment and has revised the Notice accordingly.

- *Comments: Timing of Disclosures.* SIFMA said that the MSRB should clarify that disclosures should only be required once. It said that, as an example, a representation in a response to an RFP or otherwise before the underwriter is engaged should suffice.

*MSRB Response:* The Notice does not require disclosures to be made more than once per issue. An RFP response could be an appropriate place to make required disclosures as long as the proposed structure of the financing is adequately developed at that point to permit the disclosures required by the Notice.

#### Underwriter Duties in Connection With Issuer Disclosure Documents

- *Comments: Reasonable Basis for Official Statement Materials.* SIFMA argued that an underwriter should not be required to have a reasonable basis for the representations it makes, or other material information it provides in connection with the preparation by the issuer of its disclosure documents. Instead, SIFMA argued that the MSRB should permit an underwriter to agree with an issuer that the underwriter will only be responsible for materials furnished to an issuer if the underwriter has (i) Consented, in writing, to such materials being used in offering documents and (ii) agreed with the issuer that the underwriter and not the issuer will assume responsibility for the accuracy and proper presentation of such material. SIFMA said that an

underwriter should be able to limit its responsibility for information provided by disclosing to the issuer any limitations on the scope of its analysis and factual verification it performed. Furthermore, it argued that any duty should extend only to material information provided by the underwriter and not to all information and analysis, suggesting that an underwriter should not have to verify the assumptions and facts that underlie cash flows it prepared.

*MSRB Response:* The MSRB does not agree with this comment and reminds SIFMA of the view of the SEC as summarized in endnote 9 to the Notice: With respect to primary offerings of municipal securities, the SEC has noted, “By participating in an offering, an underwriter makes an implied recommendation about the securities.” *See* SEC Rel. No. 34–26100 (Sept. 22, 1988) (proposing Exchange Act Rule 15c2–12) at text following note 70 (the “1988 Proposing Release”). The SEC stated in the 1988 Proposing Release that “this recommendation itself implies that the underwriter has a reasonable basis for belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offerings.” It would seem a curious result, therefore, for the underwriter not to be required under Rule G–17 to have a reasonable basis for its own representations set forth in the official statement, as well as a reasonable basis for the material information it provides to the issuer in connection with the preparation of the official statement, including a reasonable belief in the truthfulness and completeness of any information provided by others that serves as a material basis for such underwriter’s information.

#### Underwriter Compensation and New Issue Pricing

- *Comments: Fair Pricing.* BDA said that the fair pricing obligation in the context of a new issue should employ a good faith standard. It said that there is no prevailing market price for new issues and that comparisons to secondary market trades are difficult because of the infrequency of trades and the differences among issuers. Similarly, SIFMA said that an underwriter should only be required to purchase securities at the price that it and the issuer negotiated and agreed to in good faith, without regard to a prevailing market price, which it said does not exist for new issue securities. It said that the MSRB’s proposal will encourage increased reliance on credit ratings, which it characterized as contrary to the

intent of Dodd-Frank and SEC policy guidance.

*MSRB Response:* In response to this comment, the MSRB has amended the Notice to remove references to prevailing market price. Consistent with SIFMA’s observation that many underwriters already make representations as to the fair market price of new issues in tax certificates to issuers, the Notice now reads: “The duty of fair dealing under Rule G–17 includes an implied representation that the price an underwriter pays to an issuer is fair and reasonable, taking into consideration all relevant factors, including the best judgment of the underwriter as to the fair market value of the issue at the time it is priced.”

#### Conflicts of Interest

- *Comments: Conflicts Disclosure.* NAIPFA argued that underwriters should be required to comply with all the rules regarding conflicts to which municipal advisors would be subject under Rule G–17. Specifically, NAIPFA said that underwriters should be required to disclose with respect to all issues that they:

- Are not acting as advisors but as underwriters;
- Are not fiduciaries to the issuer but rather counterparties dealing at arm’s-length;
- Have conflicts with issuers because they represent the interests of the investors or other counterparties, which may result in benefits to other transaction participants at direct cost to the issuer;
- Seek to maximize their profitability and such profitability may or may not be transparent or disclosed to the issuer; and
- Have no continuing obligation to the issuer following the closing of transactions.

On the other hand, SIFMA argued that the Notice would impose a “fiduciary-lite” duty on underwriters, citing as examples the disclosures required of underwriters recommending complex municipal securities financings and the required disclosures of business relationships and methods of doing business, including their financial incentives. It said that underwriters should not be required to make such disclosures as long as their failure to do so did not amount to false or fraudulent conduct.

*MSRB Response:* A number of NAIPFA’s suggested disclosures were presented to the MSRB in connection with the MSRB’s proposed amendments to Rule G–23 and were addressed by the

MSRB in its filing with the SEC.<sup>7</sup> The MSRB's interpretive notice regarding Rule G-23 contained in that filing provides that a dealer will be considered to be acting as an underwriter for purposes of Rule G-23(b) if, among other things, it provides written disclosure to the issuer from the earliest stages of its relationship with the issuer that it is an underwriter and not a financial advisor and does not engage in a course of conduct that is inconsistent with arm's-length relationship with the issuer. The writing must make clear that the primary role of an underwriter is to purchase, or arrange for the placement of, securities in an arm's-length commercial transaction between the issuer and the underwriter and that the underwriter has financial and other interests that differ from those of the issuer. Rule G-17 is appropriately applied differently to market participants with different roles in a financing. Thus, for example, Rule G-17 may appropriately be interpreted to apply different standards of conduct to municipal advisors, which function as trusted advisors to municipal entities and obligated persons, than it does to underwriters of municipal securities, which are arm's-length counterparties to issuers of municipal securities, and dealers who solicit municipal entities on behalf of third-party clients.

Consistent with this interpretation of Rule G-17, the disclosures required by the Notice do not amount to the imposition of a fiduciary duty, whether "lite" or otherwise, on underwriters of municipal securities. Simple principles of fair dealing require that underwriters have more than a *caveat emptor* relationship with their issuer clients.

- *Comments: Payments to and from Third Parties.* BDA said that the MSRB should clarify what types of third party payments it was interested in and that they should not include tender option bond programs and similar arrangements. Alternatively, BDA said that generic disclosure should suffice. It argued that a requirement to disclose retail distribution and selling group arrangements was unnecessary because such arrangements were typically disclosed in official statements. In addition, SIFMA said that the MSRB should clarify the details of required disclosures and confirm that issuer consent to disclosures regarding third-party payments is not required. It argued that payments or internal credits

among the underwriter and its affiliates should not be required to be disclosed. It made the same argument with respect to payments or other benefits received from collateral transactions, such as credit default swaps (CDS). While it argued that the proposed standard was inconsistent with SEC and FINRA requirements, it did not cite specific examples.

*MSRB Response:* The MSRB believes that issuers of municipal securities should be apprised of payments, values, or credits made to underwriters that might color the underwriter's judgment and cause it to recommend products, structures, and pricing levels to an issuer when it would not have done so absent such payments. For example, if a swap dealer affiliate of the underwriter were to make a payment to, or otherwise credit, the underwriter for the underwriter's successful recommendation that the issuer enter into a swap that is integrally related to a municipal securities issue, the Notice would require that such payment or credit be disclosed to the issuer. Generic disclosure would not suffice. However, only payments made in connection with the dealer's underwriting of a new issue would be required to be disclosed. Payments from purchasers of interests in tender option bond programs would not typically be made in connection with the underwriting and, therefore, would not typically be required to be disclosed. The MSRB considers it essential that an issuer be made aware of retail distribution and selling group arrangements that are integral to the underwriter's ability to provide the services that it has contracted with the issuer to provide. If such arrangements are already disclosed in official statements, this requirement of the Notice should not impose an additional burden on the underwriter.

- *Comments: Profit-Sharing with Investors.* SIFMA said that the MSRB should provide guidance on what is meant by profit-sharing with investors that, depending upon the facts and circumstances, could result in a Rule G-17 violation.

*MSRB Response:* The provisions of the Notice concerning profit-sharing with investors resulted in part from reports to the MSRB that underwriters of Build America Bonds sold such bonds to institutional investors that then resold the bonds to such underwriters shortly thereafter at prices above their initial purchase price but below rising secondary market prices. If these reports were accurate and reflected formal or informal arrangements between such underwriters and institutional investors,

these re-sales allowed the investors and the underwriters to share in the increase in value of the bonds. The MSRB has amended the Notice to note that "such arrangements could also constitute a violation of Rule G-25(c), which precludes a dealer from sharing, directly or indirectly, in the profits or losses of a transaction in municipal securities with or for a customer."

- *Comments: CDS Disclosures.* BDA said that general disclosures about trading in an issuer's CDS should suffice and that information barriers within firms might prevent more detailed knowledge by the dealer personnel underwriting an issuer's securities. SIFMA made the same arguments and additionally said that the proposal that underwriters disclose their CDS activity would be highly prejudicial because it would require underwriters to disclose their hedging and risk management activities and could potentially compromise counterparty arrangements. It argued that, if this requirement were maintained by the MSRB, it should exempt dealing in CDS that reference a basket of securities, including the issuer's.

*MSRB Response:* The MSRB is mindful that appropriate information barriers may prevent personnel of a dealer firm engaged in underwriting activities from knowing about hedging activities of other parts of the dealer. However, the Notice requires only that a dealer that engages in the issuance or purchase of a credit default swap for which the underlying reference is an issuer for which the dealer is serving as underwriter, or an obligation of that issuer, must disclose that to the issuer. The Notice does not require information about specific trades or confidential counterparty information. The MSRB has amended the Notice to provide that disclosures would not be required with regard to trading in CDS based on baskets or indexes including the issuer or its obligation(s) unless the issuer or its obligation(s) represented more than 2% of the total notional amount of the credit default swap or the underwriter otherwise caused the issuer or its obligation(s) to be included in the basket or index. The most commonly traded municipal CDS basket—Markit MCDX—currently imposes this 2% limit on the components of its basket.

#### Retail Order Periods

- *Comments: Retail Orders.* BDA said that the MSRB should clarify what reasonable measures underwriters must take to ensure that retail orders are *bona fide* and said that underwriters should be able to rely on representations of selling group members. SIFMA made

<sup>7</sup> See Amendment No. 1 to SR-MSRB-2011-03 (May 26, 2011). See also Exchange Act Release No. 64564 (May 27, 2011) (File No. SR-MSRB-2011-03).

similar arguments about reliance upon representations of co-managers made in agreements among underwriters.

*MSRB Response:* The MSRB is aware that, in many cases, orders are placed in retail order periods in a manner that is designed to “game” the retail order period requirements of the issuer. For example, in a retail order period in which the issuer has defined a retail order as one not exceeding \$1,000,000 in principal amount, a dealer may place a number of \$1,000,000 orders. Such a pattern of orders should cause a member of the underwriting syndicate to question whether such orders are *bona fide* retail orders. While it would be good practice for senior managing underwriters to require that co-managers and selling group members represent that orders represented to be retail orders in fact meet the issuer’s definition of “retail,” the MSRB would not consider such representations to be dispositive and would expect the senior manager to make appropriate inquiries when “red flags” such as described above could cause the senior manager to question the nature of the order. As an example of a “reasonable measure,” a senior managing underwriter might require the zip codes attributable to the retail orders. With regard to orders placed by retail dealers, the MSRB reiterates that it would not consider an order “for stock,” without “going away orders,” to be a customer order.<sup>8</sup>

#### Dealer Payments to Issuer Personnel

- *Comments: Rule G–20.* SIFMA requested that the MSRB clarify that its statements regarding Rule G–20 in the Notice were only reminders and that the MSRB did not intend to expand its previous guidance on Rule G–20 by means of the Notice.

*MSRB Response:* The provisions in the Notice regarding Rule G–20 are only reminders of existing MSRB guidance.

#### Miscellaneous

- *Comments: Coordinated Rulemaking.* AFSCME strongly supported the notice; however, it urged the MSRB to coordinate its rulemaking with the SEC and the CFTC. BDA said that the Notice should not create overlapping and potentially conflicting obligations with SEC and CFTC rules and that the Notice might be premature, given ongoing rulemaking by the SEC and the CFTC. SIFMA said that the MSRB should defer the imposition of disclosure requirements concerning swaps and security-based swaps

because these would be the subject of rulemaking by the SEC and CFTC.

*MSRB Response:* The MSRB is aware of ongoing rulemaking by the SEC and the CFTC and has taken care to ensure that any requirements of the Notice are consistent with such rulemaking. For example, the provisions of the Notice concerning the disclosures associated with complex municipal securities financings are appropriately consistent with the CFTC’s proposed business conduct rule for swap dealers and major swap participants<sup>9</sup> and the SEC’s proposed business conduct rule for security-based swap dealers and major security-based swap participants.<sup>10</sup> The MSRB may undertake additional rulemaking as necessary to ensure such consistency in the future. In addition, dealers are reminded that they may be subject to other regulatory requirements.

- *Comments: Effective Date.* SIFMA argued that many of the Notice’s requirements would require the development of compliance systems and that the Notice should not become effective for at least one year after its approval by the SEC.

*MSRB Response:* The MSRB agrees that some delay in the effective date of the proposed rule change is appropriate, because the MSRB has not previously articulated an interpretation of Rule G–17 that would require many of the specific disclosures required by the Notice. However, the MSRB considers a delay of one year to be too long. The MSRB has requested that the proposed rule change be made effective 90 days after approval by the Commission.

### 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 Exchange Act. Interested persons are also invited to submit views and arguments as to whether underwriters should be required to disclose to municipal entities the conflicts of interest associated with their compensation arrangements in a manner similar to what the MSRB has proposed for municipal advisors. 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–MSRB–2011–09 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–MSRB–2011–09. This file number should be included on the subject line if e-mail 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 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 MSRB’s offices. 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–MSRB–2011–09 and should be submitted on or before September 30, 2011.

<sup>8</sup> See Exchange Act Release No. 62715 (August 13, 2010) (File No. SR–MSRB–2009–17).

<sup>9</sup> See **Federal Register** Vol. 75, No. 245 (December 22, 2010).

<sup>10</sup> See **Federal Register** Vol. 76, No. 137 (July 18, 2011).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011-23103 Filed 9-8-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65253; File No. SR-Phlx-2011-121]

### Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Clarifying Amendments to Direct Connectivity Services

September 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on August 31, 2011, NASDAQ OMX PHLX LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 clarifying amendments to the Exchange’s Fee Schedule regarding the Exchange’s direct connectivity services. The text of the proposed rule change is available on the Exchange’s Web site at <http://nasdaqomxphlx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this rule filing is to relocate certain text in the Exchange’s Fee Schedule for ease of reference and to clarify the Fee Schedule regarding direct connectivity to the Exchange. The direct connectivity fees are currently located in Section VI, entitled “Access Service, Cancellation, Membership, Regulatory and Other Fees.” The Exchange proposes to relocate the fees to a new Section XI and title that section “Direct Connectivity to Phlx.” The Exchange’s proposal is the result of its desire to prominently place language in the Exchange’s Fee Schedule to make transparent that the connectivity services are provided by NASDAQ Technology Services, LLC and to group similar fees together. Such changes will assist with easy identification of items not serviced, and billed, by the Exchange.

Currently, the Exchange assesses fees for direct 10Gb circuit connections, and fees for direct circuit connections capable of supporting up to 1Gb, for customers who are not co-located at the Exchange’s datacenter.<sup>3</sup> The Exchange noted in SR-Phlx-2010-89 that it makes available to both co-located and non-co-located customers direct connections capable of supporting up to 1Gb, with per connection monthly fees of \$500 for co-located customers and \$1000 for non co-located customers.<sup>4</sup> Monthly fees are higher for non co-located customers because direct connection requires Phlx to provide cabinet space and middleware for those customers’ third-party vendors to connect to the datacenter and, ultimately, to the trading system.<sup>5</sup> The Exchange also assesses an optional installation fee of \$925 if the customer chooses to use an on-site router (collectively “Direct Connectivity Fees”).<sup>6</sup> The Exchange provides direct connectivity services and assesses fees through NASDAQ Technology Services, LLC, as it does with similar co-location services.<sup>7</sup>

Subsequently, the Exchange amended these Direct Connectivity Fees to

establish pricing for customers who are not co-located in the Exchange’s data center, but require shared cabinet space and power for optional routers, switches, or modems to support their direct circuit connections. The Exchange assesses customers who are not co-located in the Exchange’s data center monthly fees for space based on a height unit of approximately two inches high, commonly call a “U” space and a maximum power of 125 Watts per U space.<sup>8</sup>

The Exchange now seeks to relocate the direct connectivity fees, which are provided by NASDAQ Technology Services, LLC, within the Fee Schedule. The Exchange proposes to remove the direct connectivity fees from Section VI of the Exchange’s Fee Schedule and relocate the direct connectivity fees in a new section—Section XI—of the Fee Schedule. This administrative change allows the grouping of all services provided by NASDAQ Technology Services, LLC to be in one location for the convenience to the customers.

The Exchange also proposes to add clarifying text to the new Section XI to state that the direct connectivity services are provided by NASDAQ Technology Services, LLC. This change merely codifies the practice of the Exchange.

##### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that amending the Exchange Fee Schedule to relocate the fees for ease of reference within the Fee Schedule as proposed will benefit all market participants by codifying and making transparent the source of the direct connectivity services and grouping the direct connectivity services with similar services on the Exchange’s Fee Schedule.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not

<sup>3</sup> See Securities Exchange Act Release No. 62639 (August 4, 2010), 75 FR 48391 (August 10, 2010) (SR-Phlx-2010-89).

<sup>4</sup> *Id.* at page 4 and page 8.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> See Exchange Fee Schedule, Section X(b), Connectivity.

<sup>8</sup> See Securities Exchange Act Release No. 64441 (May 9, 2011), 76 FR 28251 (May 16, 2011) (SR-Phlx-2011-60).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act.<sup>11</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-121 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2011-121. This file number should be included on the subject line if e-mail 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-Phlx-2011-121 and should be submitted on or before September 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-23114 Filed 9-8-11; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-65257; File No. SR-Phlx-2011-123]

**Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to the Quarterly Trading Requirements Applicable to Registered Options Traders**

September 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on August 24, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange, pursuant to Section 19(b)(1) of the Act<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> proposes to amend Commentary .01 of Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, to change the quarterly trading requirements applicable to Registered Options Traders, as described below.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

**1. Purpose**

The purpose of the proposed rule change is to strengthen the Exchange's quarterly trading requirement to encourage liquidity-providing activity by market makers on the Exchange. The general term "market makers" on the Exchange includes specialists and ROTs. ROTs can be either Streaming Quote Traders ("SQTs"), Remote SQTs ("RSQTs") or non-SQT ROTs. The quarterly trading requirements apply to two types of ROTs: SQTs and non-SQT ROTs. Specialists and RSQTs are subject to different requirements. By definition, non-SQT ROTs do not "stream" quotes, meaning send quotes electronically to the Exchange; instead, pursuant to Commentary .18 of Rule 1014, they submit limit orders electronically and respond to Floor Brokers verbally.

Currently, Rule 1014 contains two quarterly trading requirements—in person and in assigned. First,

<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 17 CFR 240.19b-4.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(i).

Commentary .01 requires that in order for an ROT (other than an RSQT or a Remote Specialist) to receive specialist margin treatment for off-floor orders in any calendar quarter, the ROT must execute the greater of 1,000 contracts or 80% of his total contracts that quarter in person (not through the use of orders) and 75% of his total contracts that quarter in assigned options.

Second, the “in assigned” quarterly trading requirement in Commentary .03 requires that, except for unusual circumstances, at least 50% of the trading activity in any quarter (measured in terms of contract volume) of an ROT (other than an RSQT) shall ordinarily be in classes of options to which he is assigned. Temporarily undertaking the obligations of paragraph (c) at the request of a member of the Exchange in non assigned classes of options shall not be deemed trading in non assigned option contracts.

Furthermore, Commentary .13 further provides that, within each quarter, an ROT must execute in person, and not through the use of orders, a specified number of contracts, such number to be determined from time to time by the Exchange. Options Floor Procedure Advice (“Advice”) B-3, Trading Requirements, establishes a quarterly requirement to trade the greater of 1,000 contracts or 50% of contract volume in person; pursuant to the Exchange’s minor rule violation and enforcement plan, it establishes a fine schedule for violations thereof, as well as for violations of the quarterly trading requirement in assigned options contained in Commentary .03. These are not changing.

The Exchange proposes to amend Commentary .01 to adopt a new quarterly requirement such that an ROT (other than an RSQT or a Remote Specialist) is required to trade 1,000 contracts and 300 transactions on the Exchange each quarter. Transactions executed in the trading crowd where the contra-side is an ROT are not included. This requirement is a pure trading requirement, not limited, like the existing trading requirements, to assigned options<sup>5</sup> and in person trading.<sup>6</sup> Accordingly, the new trading requirement can be fulfilled with trades and contracts that are not in assigned options and not executed in person, although, of course, the existing trading requirements respecting “in assigned” options and in person trading must still be met. The new trading requirement is comprised of both a 1,000 contract requirement similar to the existing

trading requirement in Commentary .01, as well as a 300 transaction requirement. Both requirements must be met each quarter. The Exchange believes that a requirement to execute 300 transactions per quarter is more likely to result in regular market-making activity, rather than just fulfilling a contract-based requirement, which can be achieved in one or two trades. For instance, during the course of 62 trading days in the first quarter of 2011, an ROT would have been required to, if the proposed new trading requirement were in effect, execute around five transactions per day in order to comply with the proposed 300 transaction requirement in that quarter. Accordingly, the Exchange believes that this new trading requirement should increase the likelihood that an ROT is actively providing liquidity in a given quarter.

The Exchange proposes to exclude from the contracts and transactions required by the new trading requirement, in each quarter, any transactions executed in the trading crowd where the contra-side is an ROT in order to focus market making efforts on providing the sort of liquidity that will attract customers (including broker-dealers and professionals) to the Exchange. Specifically, the Exchange believes that this new requirement will encourage the regular posting of liquidity. Of course, ROTs will continue to be able to participate in crowd trades as well, and those crowd trades will count towards the new trading requirement, unless the contra-side is another ROT. ROT-to-ROT trades in the crowd are certainly permissible on the Exchange, but the Exchange seeks to better target liquidity and attract order flow by casting the new trading requirement in these terms. For example, ROTs participating in “strategy” trades<sup>7</sup> could continue to participate in these, of course, but they would not, if involving an ROT as the contra-side and occurring on the trading floor, count toward the new trading requirement. The new trading requirement would include electronic transactions where the contra-side is another ROT, because ROTs cannot predict whether their electronic orders will trade against other ROTs, such that they would be unable to determine in

advance whether the quarterly requirement would be met.

The Exchange is also proposing to amend the in person trading requirement in Commentary .01 in two ways. First, the Exchange proposes to exclude transactions executed in the trading crowd where the contra-side is an ROT from the existing in person trading requirement for the same reasons as discussed above. The Exchange believes that having another trading requirement (this “in person” requirement, in addition to the new trading requirement discussed above) that focuses on activity other than in crowd ROT-to-ROT transactions should encourage the providing of liquidity. By excluding ROT-to-ROT crowd trades, including those involving dividend, merger and short interest strategies, the Exchange believes that ROTs will be encouraged to better focus their market making, similar to the new trading requirement.

Secondly, the current in person trading requirement in Commentary .01 uses the term “not through the use of orders” when describing the in person trading requirement. At this time, the Exchange proposes to permit non-SQT ROTs to use orders entered in person to meet the in person trading requirement. The only other way to participate in trades other than through the use of orders is by quoting; while SQTs quote electronically by “streaming” quotations into the Exchange, non-SQT ROTs quote verbally in response to floor brokers representing orders in the trading crowd verbally. The limitation on the use of orders with respect to non-SQT ROTs is obsolete, as, over time, following the movement toward a more electronic trading platform in options, it has become difficult for such ROTs to comply with the trading requirement without using orders. In order to comply with their quarterly trading requirements, non-SQT ROTs have to proactively enter orders that provide or take liquidity. Some time ago, ROTs were able to place their liquidity on the book by verbally informing the specialist; this is no longer the case, so non-SQT ROTs can only meet the in person requirement by participating in crowd trades, which they cannot control, in terms of frequency.

Under this proposal, SQTs would continue to be subject to an in person trading requirement that cannot be met using orders. The Exchange believes that this is reasonable and appropriate because SQTs, by definition, stream (or electronically submit) quotations to the Exchange to provide liquidity and comply with their market making obligations. The Exchange does not

<sup>7</sup> For example, these include transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed immediately prior to the date on which the underlying stock goes ex-dividend. See Securities Exchange Act Release No. 63957 (February 24, 2011, 76 FR 11551 (March 2, 2011) (SR-Phlx-2011-20).

<sup>5</sup> See Rule 1014.03.

<sup>6</sup> See Rule 1014.01.

believe that loosening the “in person” trading requirement to permit the use of orders by SQTs is necessary.

The Exchange believes that the proposed new trading requirement coupled with the proposed changes to the existing “in person” trading requirement should encourage a more regular presence and thus result in more active market making. Similarly, excluding transactions where the contra-side is another ROT should encourage more regular and active market making. For example, a non-SQT ROT would not be able to include transactions involving dividend, merger and short interest strategies where the contra-side is another ROT, which is often the case; accordingly, these large transactions would not alleviate the ROT’s in person quarterly trading requirement and would encourage active market making to reach that number.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>9</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by (i) Adopting a new trading requirement, which should, in turn, strengthen the quarterly trading requirements for ROTs, and (ii) updating the in person trading requirement to permit non-SQT ROTs to use in person orders due to changes in electronic trading over time.

### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Exchange consents, the Commission shall: (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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2011-123 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2011-123. This file number should be included on the subject line if e-mail 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-Phlx-2011-123 and should be submitted on or before September 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-23102 Filed 9-8-11; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65250; File No. SR-CBOE-2011-084]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete Obsolete Language From the CBOE Stock Exchange Fees Schedule

September 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 31, 2011, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete obsolete language from the CBOE Stock Exchange (“CBSX”) Fees Schedule. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary, and at the Commission.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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

CBSX normally applies the CBOE Trading Permit Holder Application Fees (the "Fees") to any applicant that applies to be a CBSX Trading Permit Holder. For the month of August 2011 only, CBSX held a "pricing special," waiving such Fees and not charging any fees for applications to become a CBSX Trading Permit Holder (the "Fee Waiver").<sup>3</sup> The Fees Schedule was amended to state that the Fees would be waived for the month of August, 2011. However, once the month of August, 2011 is over, the reference in the CBSX Fees Schedule to the Fee Waiver will be obsolete. As such, the Exchange proposes to delete such reference, with such proposed deletion to take effect September 1, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5)<sup>5</sup> of the Act in particular. By removing an obsolete reference in the CBSX Fees Schedule, the proposed rule change alleviates any potential confusion, thereby perfecting the mechanism of a free and open market and national system, and, in general, protecting investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

<sup>3</sup> See Securities Exchange Act Release No. 34-65057 (August 8, 2011), 76 FR 50518 (August 15, 2011) (SR-CBOE-2011-070).

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and subparagraph (f)(2) of Rule 19b-4<sup>7</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2011-084 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2011-084. This file number should be included on the subject line if e-mail 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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(2).

printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2011-084 and should be submitted on or before September 30, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011-23036 Filed 9-8-11; 8:45 am]

**BILLING CODE 8011-01-P**

**SOCIAL SECURITY ADMINISTRATION**

**Agency Information Collection Activities: Proposed Request and Comment Request**

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104-13, the Paperwork Reduction Act (PRA) of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections and an information collection in use without an OMB number.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

**(OMB)**

Office of Management and Budget, Attn: Desk Officer for SSA. Fax: 202-395-6974. E-mail address: [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov).

<sup>8</sup> 17 CFR 200.30-3(a)(12).

**(SSA)**

Social Security Administration, DCBFM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410-965-6400. E-mail address: OPLM.RCO@ssa.gov.

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than November 8, 2011. Individuals can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410-965-8783 or by writing to the above e-mail address.

1. *Application for Access to SSA Systems—20 CFR 401.45—0960-NEW.* SSA uses Form SSA-120 to allow authorized users to apply for access to SSA's information systems. SSA requires supervisory approval and local or component Security Officer review prior to granting access. The respondents are SSA employees and non-Federal employees (contractors) who require access to SSA systems to fulfill their jobs. Note: Because SSA employees are Federal workers exempt from the requirements of the PRA, the burden below is only for SSA contractors.

*Type of Request:* Information collection in use without an OMB number.

*Number of Respondents:* 4,313.  
*Frequency of Response:* 1.

*Average Burden per Response:* 2 minutes.  
*Estimated Annual Burden:* 144 hours.  
*2. Marital Relationship Questionnaire—20 CFR 416.1826—0960-0460.* SSA uses Form SSA-4178 to determine if unrelated individuals of the opposite sex who live together are misrepresenting themselves as husband and wife. SSA needs this information to determine whether we are making correct payments to couples and individuals applying for or currently receiving Supplemental Security Income (SSI) payments. The respondents are applicants for and recipients of SSI payments.

*Type of Request:* Revision of an OMB-approved information collection.  
*Number of Respondents:* 5,100.  
*Frequency of Response:* 1.  
*Average Burden per Response:* 5 minutes.  
*Estimated Annual Burden:* 425 hours.  
*3. General Request for Social Security Records—eFOIA—20 CFR 402.130—0960-0716.* Interested members of the public use this electronic request to ask SSA for information under the Freedom of Information Act (FOIA). SSA also uses this information to track the number and type of requests, fees charged, payment amounts, and whether SSA responded to public requests within the required 20 days. Respondents are members of the public including individuals, institutions, or agencies requesting information or documents under FOIA.

*Type of Request:* Revision of an OMB-approved information collection.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 5,000.  
*Frequency of Response:* 1.  
*Average Burden per Response:* 3 minutes.  
*Estimated Annual Burden:* 250 hours.

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them within 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than October 11, 2011. Individuals can obtain copies of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410-965-8783 or by writing to the above e-mail address.

1. *Application for Benefits under a U.S. International Social Security Agreement—20 CFR 404.1925—0960-0448.* Section 233(a) of the Social Security Act authorizes the President to broker international Social Security agreements (totalization agreements) between the United States and foreign countries. SSA collects information using Form SSA-2490-BK to determine entitlement to Social Security benefits from the United States, or from a country that enters into a totalization agreement with the United States. The respondents are individuals applying for Old Age, Survivors, and Disability Insurance benefits from the United States or from a totalization agreement country.

*Type of Request:* Revision of an OMB-approved information collection.

Form No.	Number of respondents	Frequency of response	Average burden per response (minutes)	Total annual burden (hours)
SSA-2490-BK (Modernized Claims System) .....	14,000	1	30	7,000
SSA-2490-BK (paper) .....	2,000	1	30	1,000
Totals .....	16,000	.....	.....	8,000

2. *Plan for Achieving Self-Support (PASS)—20 CFR 416.110(e), 416.1180-1182, 416.1225-1227—0960-0559.* The SSI program encourages recipients to return to work. One of the program objectives is to provide incentives and opportunities that help recipients to do this. The PASS provision allows individuals to use available income and resources (such as business equipment, education, and specialized training) to enter (or re-enter) the workforce and become self-supporting. In turn, SSA does not count the income or resources recipients use to fund a PASS when determining an individual's SSI eligibility and payment amount. An SSI

recipient who wants to use available income and resources to obtain education or training to become self-supporting completes the SSA-545. SSA uses the information from the SSA-545 to evaluate the recipient's PASS and to determine eligibility under the provisions of the SSI program. The respondents are SSI recipients who are blind or disabled and want to develop a plan to work.

**Note:** This is a correction notice. SSA published this information collection as an extension on June 15, 2011 at 76 FR 35067. Since we are revising the Privacy Act Statement, this is now a revision of an OMB-approved information collection.

*Type of Request:* Revision of an OMB-approved information collection.

*Number of Respondents:* 7,000.  
*Frequency of Response:* 1.  
*Average Burden per Response:* 2 hours.  
*Estimated Annual Burden:* 14,000 hours.

3. *Medical Permit Parking Application—41 CFR 101-20.104-2—0960-0624.* SSA employees and contractors with a qualifying medical condition who park at SSA-owned and leased facilities may receive a medical parking permit. SSA uses three forms for this program: (1) SSA-3192, the Physician's Report (the applicant's

physician completes this to verify the medical condition); (2) SSA-3193, the Application and Statement (the person seeking the permit completes this when first applying for the medical parking space); and (3) SSA-3194, Renewal Certification (medical parking permit

holders complete this to verify their continued need for the permit). The respondents are SSA employees and contractors seeking medical parking permits and their physicians. Note: Because SSA employees are Federal workers exempt from the requirements

of the Paperwork Reduction Act, the burden below is only for SSA contractors and physicians (of both SSA employees and contractors).

*Type of Request:* Revision to an OMB-approved information collection.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA-3192 .....	75	1	90	113
SSA-3193 .....	400	1	30	200
SSA-3194 .....	500	1	5	42
Totals .....	975	.....	.....	355

Dated: September 6, 2011.

**Faye Lipsky,**

*Reports Clearance Officer, Center for Reports Clearance, Social Security Administration.*

[FR Doc. 2011-23061 Filed 9-8-11; 8:45 am]

**BILLING CODE 4191-02-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals**

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

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In July 2011, there were two applications approved. This notice also includes information on two applications, approved in June 2011, inadvertently left off the June 2011 notice. Additionally, three approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

*Public Agency:* Dubuque Regional Airport Commission, Dubuque, Iowa.

*Application Number:* 11-11-C-00-DBQ.

*Application Type:* Impose and use a PFC.

*PFC Level:* \$4.50.

*Total PFC Revenue Approved in this Decision:* \$5,307,445.

*Earliest Charge Effective Date:* August 1, 2011.

*Estimated Charge Expiration Date:* February 1, 2033.

*Class of Air Carriers Not Required To Collect PFC's:* None.

*Brief Description of Projects Approved for Collection and Use:*

- Construct terminal—design.
- Construct terminal—construct.
- Construct terminal—utility improvements.
- Construct terminal—passenger terminal building.
- Construct terminal—aircraft apron.
- Construct terminal—landside facilities.
- Construct terminal—airport service road.

*Brief Description of Disapproved Project:*

Runway 13/31 parallel taxiway.

*Determination:* The FAA's records showed that this project had previously been approved for collection of PFC revenue in decision 06-08-C-00-DBQ and for use of PFC revenue in decision 09-10-U-00-DBQ.

*Decision Date:* June 17, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Mark Schenkelberg, Central Region Airports Division, (816) 329-2645.

*Public Agency:* Burbank-Glendale-Pasadena Airport Authority, Burbank, California.

*Application Number:* 11-11-C-00-BUR.

*Application Type:* Impose and use a PFC.

*PFC Level:* \$3.00.

*Total PFC Revenue Approved in This Decision:* \$19,931,292.

*Earliest Charge Effective Date:* April 1, 2016.

*Estimated Charge Expiration Date:* November 1, 2018.

*Class of Air Carriers Not Required To Collect PFC's:* Nonscheduled/on demand air carriers filing FAA Form 1800-31.

*Determination:* Approved. Based on information contained in the public

agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Bob Hope Airport.

*Brief Description of Project Partially Approved for Collection and Use:* Regional intermodal transportation center.

*Determination:* Partially approved. The FAA determined that Attachment B project information submitted in the PFC application did not include a discussion of design costs for the project. Therefore, design costs were not included in the approved amount. The FAA also notes that the public agency withdrew two proposed project components from the project by letter dated June 21, 2011.

*Decision Date:* June 27, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Darlene Williams, Los Angeles Airports District Office, (310) 725-3625.

*Public Agency:* Burbank-Glendale-Pasadena Airport Authority, Burbank, California.

*Application Number:* 11-12-C-00-BUR.

*Application Type:* Impose and use a PFC.

*PFC Level:* \$4.50.

*Total PFC Revenue Approved in This Decision:* \$3,917,000.

*Earliest Charge Effective Date:* November 1, 2018.

*Estimated Charge Expiration Date:* April 1, 2019.

*Class of Air Carriers Not Required To Collect PFC's:* Nonscheduled/on demand air carriers filing FAA Form 1800-31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Bob Hope Airport.

*Brief Description of Projects Approved for Collection and Use at a \$4.50 PFC Level:*

Runway 8/26 runway end identifier lights conduit installation.  
 Acquisition of lighted portable runway closure crosses.  
 Infrastructure improvements to support security systems.  
 Terminal B improvements—public space.  
 Runway 33 safety area improvements.  
 Runway shoulder rehabilitation.  
 Runway 15 safety area improvements.  
 Fiber optic cable installation.  
 Airfield signage relocation.

*Brief Description of Projects Approved for Collection and Use at a \$3.00 PFC Level:*

Public information display kiosks.  
 Wildlife hazard assessment study.  
 Interactive employee training module.  
 Blast fence extension—taxiway D.  
 Aircraft rescue and firefighting station rehabilitation.

*Brief Description of Disapproved Projects:*

Automatic external defibrillator equipment.

Relocation of airfield trash receptacle.  
 Triturator relocation.

*Determination:* The FAA determined that these projects did not meet a PFC objective under § 158.15(a). In addition, these projects do not meet the requirements of § 158.15(b).

*Decision Date:* July 15, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Darlene Williams, Los Angeles Airports District Office, (310) 725-3625.

*Public Agency:* Western Reserve Port Authority, Vienna, Ohio.

*Application Number:* 11-06-C-00-YNG.

*Application Type:* Impose and use a PFC.

*PFC Level:* \$4.50.

*Total PFC Revenue Approved in This Decision:* \$2,181,189.

*Earliest Charge Effective Date:*

February 1, 2013.

*Estimated Charge Expiration Date:*

February 1, 2030.

*Class of Air Carriers Not Required To Collect PFCs:* Nonscheduled/on demand air carriers filing FAA Form 1800-31.

*Determination:* Approved. Based on information contained in the public agency's application, the FAA has

determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Youngstown-Warren Regional Airport.

*Brief Description of Projects Approved for Collection and Use:*

PFC program administration.  
 Terminal security improvements.  
 Construction of winter material storage facility.  
 Rehabilitation of passenger boarding bridge.  
 Replacement and expansion of baggage delivery conveyor system.  
 Replacement of terminal boiler heating system.  
 Replacement of 10 inoperable/under capacity terminal air conditioning units.  
 Rehabilitation of terminal sanitary sewer system.  
 Replacement of terminal water line system.

*Decision Date:* July 18, 2011.

**FOR FURTHER INFORMATION CONTACT:** Alex Erskine, Detroit Airports District Office, (734) 229-2927.

**AMENDMENTS TO PFC APPROVALS**

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
07-10-C-03-DSM Des Moines, IA .....	06/29/11	\$9,175,000	\$9,547,773	08/01/17	08/01/17
01-04-C-01-MBS Freeland, MI .....	07/11/11	1,999,052	566,875	07/01/06	07/01/06
06-09-C-02-JAX Jacksonville, FL .....	07/20/11	231,806,084	234,003,597	10/01/23	02/01/24

Issued in Washington, DC on August 30, 2011.

**Joe Hebert,**

*Manager, Financial Analysis and Passenger Facility Charge Branch.*

[FR Doc. 2011-22891 Filed 9-8-11; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

[Docket Number FRA-2010-0182]

**Petition for Waiver of Compliance**

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Henry G. Peterson, a private individual, seeks a waiver of compliance from the requirements of 49 CFR part 223, Safety Glazing Standards, 49 CFR 223.15, *Requirements for existing passenger cars*. Specifically, Mr. Peterson has petitioned for one lightweight passenger car built in 1950 for the Southern Pacific Railroad as their 10409, now RPCX 8322. Mr. Peterson operates this car on approximately 130 miles of track owned by the Genesee & Wyoming Railroad. This car was purchased by Mr. Peterson in 1993 from Amtrak. There have been no accidents/incidents attributed directly or indirectly to window glazing failures in this equipment while under current ownership. The maximum authorized speed for this train is 45 mph, mostly rural in nature. The car operates in excursion service on two weekends in December with two round trips on Fridays and four round trips on Saturdays and Sundays (20 Polar Express Trips, annual mileage is approximately 800).

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12-140, Washington, DC 20590, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 24, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at <http://www.regulations.gov>.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on September 6, 2011.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2011–23126 Filed 9–8–11; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period was published on April 15, 2011 (76 FR 21422–21423).

**DATES:** Comments must be submitted on or before October 11, 2011.

**ADDRESSES:** Send comments, within 30 days, to the Office of Information and

Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:**

Jessica Cicchino, PhD, Contracting Officer's Technical Representative, Office of Behavioral Safety Research (NTI–131), National Highway Traffic Safety Administration, 1200 New Jersey Ave., SE., W46–491, Washington, DC 20590. Dr. Cicchino's phone number is 202–366–2752 and her e-mail address is [jessica.cicchino@dot.gov](mailto:jessica.cicchino@dot.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Evaluation of Impaired Riding Interventions.

*Type of Request:* New information collection request.

*Abstract:* The heavy toll that impaired driving exacts on the Nation in fatalities, injuries, and economic costs is well documented. Impaired motorcycle riding has also been an increasing concern on our Nation's roads. Motorcycle fatalities in the US decreased in 2009 for the first time after steadily increasing for 11 years; however, even with this decline, the number of motorcycle fatalities in 2009 was nearly double that from a decade earlier. Alcohol impairment is a factor that contributes to a substantial proportion of fatal motorcycle crashes. In 2009, 30% of motorcycle riders fatally injured in crashes had a blood alcohol concentration (BAC) at or above .08 g/dL, which is *per se* evidence of impaired riding in all States. Forty-two percent of riders who died in single-vehicle crashes in 2009, and 63% of riders who died in single-vehicle crashes on weekend nights, had a BAC of .08 g/dL or higher.

In 2012, NHTSA anticipates sponsoring demonstration projects in multiple locations to conduct interventions with the purpose of reducing impaired motorcycle riding. NHTSA plans to evaluate these interventions to determine their effectiveness. A key component of this evaluation effort will use brief interviews to assess motorcycle riders' knowledge of the intervention, self-reported drinking and riding behavior, and belief that alcohol-impaired driving laws are enforced for all motorists, including motorcycle riders in the areas in which the interventions will occur.

In-person interviews will be conducted with motorcycle riders in up to 4 program locations, and in up to 3 comparison locations not carrying out an intervention. Motorcycle riders will be interviewed at sites within the program and comparison locations where riders congregate. Interview

length will average 5 minutes and will collect information on attitudes, awareness, knowledge, and behavior related to the intervention.

The interviews will follow a pre-post design where they are administered prior to the implementation of the intervention and after its conclusion. For interventions where a pre-post design would not be possible (*i.e.*, interventions that are conducted in conjunction with an infrequently-occurring event), the interviews will follow a test-comparison design where they are administered during the intervention in the program location, and in a comparison location that did not experience an intervention. The proposed interviews will be anonymous. Participation by respondents will be voluntary.

*Affected Public:* NHTSA plans to recruit up to 500 riders per interview administration. Up to 2 waves of program activity are planned in each program location, and thus interviews will be administered a maximum of 4 times (before and after each wave of program activity) in each of the 7 study locations (4 program locations and 3 comparison locations). Thus, a total maximum of 14,000 motorcycle riders will be interviewed.

*Estimated Total Burden:* Estimated time for each interview is 5 minutes. Hence, the total estimated burden is 1,166.67 hours. Respondents would not incur any recordkeeping burden or recordkeeping cost from the information collection.

Comments are invited on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed information collection;

(iii) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

**Authority:** 44 U.S.C. Section 3506(c)(2)(A)

**Jeff Michael,**

*Associate Administrator, Research and Program Development.*

[FR Doc. 2011–23075 Filed 9–8–11; 8:45 am]

**BILLING CODE 4910–59–P**

**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****[Docket No. AB 55 (Sub-No. 717X)]****CSX Transportation, Inc.—  
Abandonment Exemption—in Miami-  
Dade County, FL**

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon its freight rail easement over an approximately 0.95-mile rail line on its Southern Region, Jacksonville Division, Miami Subdivision, extending between milepost SX 1036.8 and the end of the track at milepost SX 1037.5, including approximately 1,300 feet of connecting track beginning 150 feet from the point of switch near milepost SXH 37.0 in Miami, Miami-Dade County, Fla. (the Line). The Line traverses United States Postal Service Zip Code 33142 and includes no stations.<sup>1</sup>

CSXT has certified that: (1) No local traffic has moved over the Line for at least 2 years; (2) there is no overhead traffic to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this

<sup>1</sup> CSXT states that it previously sold the right-of-way and track and materials to the Florida Department of Transportation (FDOT) and retained a permanent freight easement to continue to provide exclusive rail freight service on the Line. CSXT explains that FDOT, as owner of the underlying right-of-way and track and materials, has now advised that it intends to use the Line to construct the East Concourse Project as part of the last phase of the Miami Intermodal Center Program.

exemption will be effective on October 11, 2011, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),<sup>3</sup> and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 19, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 29, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by September 16, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423-0001) or by calling OEA at (202) 245-0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1-800-877-8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by September 9, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

<sup>2</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>3</sup> Each OFA must be accompanied by the filing fee, which is currently set at \$1,500. See 49 CFR 1002.2(f)(25).

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: September 2, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Raina S. White,**  
*Clearance Clerk.*

[FR Doc. 2011-23071 Filed 9-8-11; 8:45 am]

**BILLING CODE 4915-01-P**

**DEPARTMENT OF TRANSPORTATION****Surface Transportation Board****[Docket No. FD 35540]****Mannheim Armitage Railway, LLC—  
Acquisition and Operation  
Exemption—Certain Trackage Rights  
of J. Emil Anderson & Son, Inc. in  
Melrose Park, Cook County, IL**

Mannheim Armitage Railway, LLC (Mannheim), a noncarrier, has filed a verified notice of exemption<sup>1</sup> under 49 CFR 1150.31 to acquire from J. Emil Anderson & Son, Inc. (Anderson) and operate 1.006 miles, including 431 feet of siding, of private terminal trackage in Melrose Park, Cook County, Ill.<sup>2</sup>

According to Mannheim, there are no mileposts associated with the track, which is located in the city of Melrose Park, Cook County. Mannheim states that Anderson is its corporate parent and that the track is currently being used by Indiana Harbor Belt Railroad (IHBR) to serve 2 active shippers. Anderson originally anticipated that the track would be conveyed to IHBR, but IHBR has been unwilling to accept responsibility for the track. Mannheim states that it will be the operator of the property and will establish suitable interchange arrangements with IHBR at the junction of the track and expects to discuss the possibility of using IHBR's locomotives (as well as IHBR crews) to provide service over the track.

The transaction may not be consummated until September 23, 2011 (30 days after the notice of exemption was filed).

Mannheim certifies that its projected annual revenues as a result of this transaction will not exceed levels that will qualify it as a Class III rail carrier.

<sup>1</sup> On September 1, 2011, Mannheim supplemented its notice of exemption stating that the proposed transaction does not require environmental documentation under 49 CFR 1105.6(c)(2) nor a historic report under 49 CFR 1105.8(b)(1).

<sup>2</sup> Mannheim states that the agreement with Anderson initially grants Mannheim an exclusive easement to conduct common carrier operations. Anderson will convey its entire right, title, and interest in and to the track after Mannheim has commenced serving shippers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than September 16, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35540, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on Donald G. Avery, 1224 17th St., NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: September 6, 2011.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Andrea Pope-Matheson,**  
Clearance Clerk.

[FR Doc. 2011-23116 Filed 9-8-11; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### FEDERAL RESERVE SYSTEM

#### List of Office of Thrift Supervision Information Collections Transferred to the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board).

**ACTION:** Joint notice.

**SUMMARY:** On July 21, 2010, President Barack Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). As part of the comprehensive package of financial regulatory reform measures enacted, Title III of the Dodd-Frank Act transfers the powers, authorities, rights and duties of the Office of Thrift Supervision (OTS) to other banking agencies, including the OCC and the Board on the "transfer date." The transfer date is one year after the date of enactment of the Dodd-Frank Act, July 21, 2011. The Dodd-Frank Act also abolishes the OTS ninety days after the transfer date. As a result of the Dodd-Frank Act, OTS transferred all of its information collections to either the OCC or the Board, as appropriate.

#### FOR FURTHER INFORMATION CONTACT:

OCC: Mary H. Gottlieb or Ira L. Mills, OCC Clearance Officers, (202) 874-5090 or (202) 874-6055, Legislative and

Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*Board:* Cynthia Ayouch, Federal Reserve Board Clearance Officer, (202) 452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** This joint notice sets out the list of the OTS's information collections that were transferred to either the OCC or the Board, as appropriate. The tables below indicate the former OTS OMB control numbers for each information collection and the new OMB control numbers for each related OCC or Board information collection.<sup>1</sup> For additional details on any of these information collections, please refer to the following *Web site*: <http://www.reginfo.gov/public/do/PRAMain>. Also, the reporting forms applicable to savings and loan holding companies are available on the Board's public Web site at: <http://www.federalreserve.gov/reportforms/slhc/otsforms.cfm>. Finally, the Dodd-Frank Act also provides that on the designated transfer date, July 21, 2011, rulemaking and certain other authorities relating to Federal consumer financial law transferred to the Consumer Financial Protection Bureau (CFPB). In connection with this transfer of authorities, certain information collections held by OCC and the Board will be transferred to the CFPB. A separate notice will be published identifying the collections transferring to the CFPB.

#### OTS INFORMATION COLLECTIONS THAT WERE TRANSFERRED TO THE OCC

OTS control No.	Title	Interim control No.	Final control No.
1550-0003	Suspicious Activity Report	1557-0270	1557-0180.
1550-0004	Deposit and Savings Account by Office	Discontinued	Discontinued.
1550-0005	Interagency Charter and Federal Deposit Insurance Application	1557-0269	1557-0014.
1550-0006	Branch Office	1557-0268	1557-0014.
1550-0007	Application for Conversion	1557-0267	1557-0014.
1550-0011	General Reporting and Recordkeeping by Savings Assocs.	1557-0266	1557-0176. 1557-0266.
1550-0012	Community Reinvestment Act	1557-0265	1557-0160.
1550-0013	Request for Service Corporation Activity	1557-0264	1557-0014.
1550-0016	Merger Application	1557-0274	1557-0014.
1550-0017	Amendment of a Savings Association's Bylaws	1557-0277	1557-0014.
1550-0018	Amendment of a Savings Association's Charter	1557-0306	1557-0014.
1550-0019	1934 Act Disclosures	1557-0258	1557-0106.
1550-0021	Loan Application Register	1557-0256	1557-0176.
1550-0023	Thrift Financial Report	1557-0255	1557-0081.
1550-0025	Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities	1557-0254	1557-0014.

<sup>1</sup> The interim control numbers reflect the numbers assigned when the collections were initially transferred from OTS to the OCC or Board.

The final control numbers that differ from the interim control numbers reflect the existing OCC or

Board collection with which the collections will ultimately be merged.

## OTS INFORMATION COLLECTIONS THAT WERE TRANSFERRED TO THE OCC—Continued

OTS control No.	Title	Interim control No.	Final control No.
1550-0030	Application For Issuance of Subordinated Debt Securities/Notice of Issuance of Subordinated Debt or Mandatorily Redeemable Preferred Stock.	1557-0276	1557-0014.
1550-0032	Interagency Notice of Change in Control	1557-0272	1557-0014.
1550-0035	Securities Offering Disclosures	1557-0273	1557-0120.
1550-0037	Fiduciary Powers of Savings Associations	1557-0262	1557-0140.
1550-0041	Procedures for Monitoring Bank Secrecy Act	1557-0263	1557-0180.
1550-0047	Notice of Hiring or Indemnifying Senior Executive Officers or Directors.	1557-0261	1557-0014.
1550-0051	Management Officials Interlocks	1557-0260	1557-0014.
1550-0053	Application Processing Fees	1557-0253	1557-0014.
1550-0056	Application Filing Requirements	1550-0308	1557-0014.
1550-0059	Capital Distributions	New Collection to be Added that is identical to that Transferred to the FRB.	New Collection to be Added that is identical to that Transferred to the FRB.
1550-0062	Minimum Security Devices and Procedures	1557-0259	1557-0180.
1550-0066	Voluntary Dissolution	1557-0271	1557-0014.
1550-0077	Operating Subsidiary	1557-0275	1557-0014.
1550-0078	Lending and Investment	1557-0278	1557-0190.
1550-0081	Release of Non-Public Information	1557-0279	1557-0200.
1550-0087	Annual Thrift Satisfaction Survey	1557-0280	1557-0014.
1550-0088	Loans in Areas Having Special Flood Hazards	1557-0281	1557-0202.
1550-0092	Deposits	1557-0282	1557-0176.
1550-0094	Financial Management Policies-Interest Rate Risk	1557-0299	1557-0299.
1550-0095	Electronic Operations	1557-0301	1557-0301.
1550-0096	Minority Thrift Certification Form	Discontinued	Discontinued.
1550-0103	Privacy of Consumer Financial Information	1557-0302	1557-0216.
1550-0104	Interagency Guidance on Asset Securitization Activities	1557-0303	1557-0217.
1550-0105	CRA Sunshine	1557-0284	1557-0219.
1550-0106	Consumer Protection for Depository Institution Sales of Insurance	1557-0283	1557-0220.
1550-0109	Recordkeeping and Confirmation Requirements for Securities Transactions.	1557-0304	1557-0142.
1550-0110	Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice.	1557-0295	1557-0227.
1550-0111	Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities.	1557-0300	1557-0229.
1550-0112	Fair Credit Reporting Affiliate Marketing Regulations	1557-0297	1557-0230.
1550-0113	Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003.	1557-0305	1557-0237.
1550-0115	Risk-Based Capital Standards: Advanced Capital Adequacy Framework.	1557-0288	1557-0234.
1550-0118	Transfer Agency Registration and Amendment Form	1557-0298	1557-0124.
1550-0119	Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies under Section 312 of the FACTA.	1557-0296	1557-0238.
1550-0120	Advanced Capital Adequacy Framework Regulatory Reporting Requirements.	1557-0294	1557-0239.
1550-0121	Survey of Information Sharing Practices with Affiliates	Discontinued	Discontinued.
1550-0122	Unfair or Deceptive Acts or Practices Disclosures	1557-0293	1557-0293.
1550-0123	Application and Termination Notice for Municipal Securities Dealer Principal or Representatives.	1557-0307	1557-0184.
1550-0125	Supervisory Guidance: Supervisory Review of Capital Adequacy (Pillar 2) Related to the Implementation of the Basel II Advanced Capital Framework.	1557-0292	1557-0242.
1550-0126	Consumer Complaint Form	1557-0291	1557-0232.
1550-0127	Registration of Mortgage Loan Originators	1557-0290	1557-0243.
1550-0128	Funding and Liquidity Risk Management	1557-0289	1557-0244.
1550-0129	Incentive Compensation Guidance	1557-0287	1557-0245.
1550-0130	Reverse Mortgage Products-Guidance for Managing Compliance and Reputation Risks.	1557-0285	1557-0246.

## OTS INFORMATION COLLECTIONS THAT WERE TRANSFERRED TO THE BOARD

OTS control No.	Title	Interim control No.	Final control No.
1550-0014	Mutual to Stock Conversion Application	7100-0335	7100-0335
1550-0015	Savings Associations Holding Company Application	7100-0336	7100-0336
1550-0020	Savings and Loan Holding Company Registration Statement—H—(b)10	7100-0337	7100-0337
1550-0059	Capital Distribution	7100-0339	7100-0339

## OTS INFORMATION COLLECTIONS THAT WERE TRANSFERRED TO THE BOARD—Continued

OTS control No.	Title	Interim control No.	Final control No.
1550-0060 .....	Savings Association Holding Company Report H-(b)11 .....	7100-0334	7100-0334
1550-0072 .....	Mutual Holding Company .....	7100-0340	7100-0340
1550-0117 .....	Prohibited Service at Savings and Loan Holding Companies .....	7100-0338	7100-0338

Dated: August 17, 2011.

**Michele Meyer,**

*Assistant Director, Legislative & Regulatory  
Activities Division, Office of the Comptroller  
of the Currency.*

By order of the Board of Governors of the  
Federal Reserve System, under delegated  
authority, September 2, 2011.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 2011-23124 Filed 9-8-11; 8:45 am]

**BILLING CODE 4810-33-P; 6210-01-P**



# FEDERAL REGISTER

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Part II

## Environmental Protection Agency

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40 CFR Part 98

Mandatory Reporting of Greenhouse Gases: Technical Revisions to the Electronics Manufacturing and the Petroleum and Natural Gas Systems Categories of the Greenhouse Gas Reporting Rule; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 98**

[EPA-HQ-OAR-2011-0512; FRL-9456-4]

RIN 2060-AR09

**Mandatory Reporting of Greenhouse Gases: Technical Revisions to the Electronics Manufacturing and the Petroleum and Natural Gas Systems Categories of the Greenhouse Gas Reporting Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** This action proposes technical revisions to the electronics manufacturing and the petroleum and natural gas systems source categories of the greenhouse gas reporting rule. Proposed changes include providing clarification on existing requirements, increasing flexibility for certain calculation methods, amending data reporting requirements clarifying terms and definitions, and technical corrections. In addition, the Environmental Protection Agency is proposing to amend the definition of heat transfer fluids in subpart I to include more fluorocarbons used as heat transfer fluids in the electronics manufacturing industry.

**DATES:** *Comments.* Comments must be received on or before October 11, 2011, unless a public hearing is held, in which case comments must be received on or before October 24, 2011.

*Public Hearing.* A public hearing will be held if requested. To request a hearing, please contact the person listed in the following **FOR FURTHER INFORMATION CONTACT** section by September 16, 2011. If requested, the hearing will be conducted on September 26, 2011, in the Washington, DC area. EPA will publish further information about the hearing in the **Federal Register** if a hearing is requested.

**ADDRESSES:** You may submit your comments, identified by Docket ID No. EPA-HQ-OAR-2011-0512 by any of the following methods:

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

- *E-mail:* [GHG\\_Reporting\\_Rule\\_Oil\\_And\\_Natural\\_Gas@epa.gov](mailto:GHG_Reporting_Rule_Oil_And_Natural_Gas@epa.gov). Include Docket ID No. EPA-HQ-OAR-2011-0512 in the subject line of the message.

- *Fax:* (202) 566-9744.

- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Mail Code 28221T, Attention Docket ID

No. EPA-HQ-OAR-2011-0512, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

- *Hand/Courier Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, Attention Docket ID No. EPA-HQ-OAR-2011-0512, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OAR-2011-0512, Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available for viewing at the EPA Docket Center. Publicly available docket materials are available either electronically in [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:**

Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC-6207), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343-9263; *fax number:* (202) 343-2342; *e-mail address:* [GHGReportingRule@epa.gov](mailto:GHGReportingRule@epa.gov). For technical questions, please see the Greenhouse Gas Reporting Program Web site <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>. To submit a question, select *Rule Help Center*, followed by *Contact Us*. To obtain information about the public hearing or to register to speak at the public hearing, please go to <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>. Alternatively, you may contact Carole Cook at 202-343-9263.

**SUPPLEMENTARY INFORMATION:**

*Worldwide Web (WWW).* In addition to being available in the docket, an electronic copy of today's proposal will also be available through the WWW. Following the Administrator's signature, a copy of this action will be posted on EPA's greenhouse gas reporting rule Web site at <http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>.

*Additional information on submitting comments.* To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Carole Cook, U.S. EPA, Office of Atmospheric Programs, Climate Change Division, Mail Code 6207-J, Washington, DC 20460, telephone (202) 343-9263, *e-mail address:* [GHGReportingRule@epa.gov](mailto:GHGReportingRule@epa.gov).

*Regulated Entities.* The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). If finalized, these amended regulations could affect owners or operators of petroleum and natural gas systems and certain electronic manufacturers. Regulated categories and entities may include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Source category	NAICS	Examples of affected facilities
Petroleum and Natural Gas Systems .....	486210 221210 211 211112	Pipeline transportation of natural gas. Natural gas distribution facilities. Extractors of crude petroleum and natural gas. Natural gas liquid extraction facilities.
Electronics Manufacturing .....	334111 334413 334419 334419	Microcomputers manufacturing facilities. Semiconductor, photovoltaic (solid-state) device manufacturing facilities. Liquid Crystal Display (LCD) unit screens manufacturing facilities. Micro-electro-mechanical systems (MEMS) manufacturing facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Although Table 1 of this preamble lists the types of facilities of which EPA is aware that could be potentially affected by this action, other types of facilities not listed in the table could also be affected. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98 subpart A, 40 CFR part 98 subpart I and 40 CFR part 98 subpart W. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Acronyms and Abbreviations.** The following acronyms and abbreviations are used in this document.

- AGA American Gas Association
- API American Petroleum Institute
- AXPC American Exploration and Production Council
- BAMM Best Available Monitoring Methods
- BOEMRE Bureau of Ocean Energy Management, Regulation and Enforcement
- CAA Clean Air Act
- CBI confidential business information
- CEC Chesapeake Energy Corporation
- CEMS continuous emission monitoring systems
- cfm cubic feet per day
- CFR Code of Federal Regulations
- CH<sub>4</sub> methane
- CO<sub>2</sub> carbon dioxide
- CO<sub>2</sub>e CO<sub>2</sub>-equivalent
- COR certificate of representation
- e-GGRT electronic greenhouse gas reporting tool
- EIA Economic Impact Analysis
- EOB enhanced oil recovery
- EPA U.S. Environmental Protection Agency
- FCML Field Code Master List
- FERC Federal Energy Regulatory Commission
- FR **Federal Register**
- GHG greenhouse gas
- GPA Gas Processors Association
- GOR gas to oil ratio
- GRI Gas Research Institute
- Hp horsepower
- GWP global warming potential
- HHV high heat value
- HTF heat transfer fluid

- IBR incorporation by reference
- ICR information collection request
- LDC Local Distribution Company
- ISO International Organization for Standardization
- kg kilograms
- LDCs local natural gas distribution companies
- LNG liquefied natural gas
- M&R meters and regulators
- mmbtu million British thermal units
- mmHg millimeters of Mercury
- MMscfd million standard cubic feet per day
- mTCo<sub>2</sub>e million metric tons carbon dioxide equivalent
- MRR mandatory GHG reporting rule
- N<sub>2</sub>O nitrous oxide
- NAICS North American Industry Classification System
- NF<sub>3</sub> nitrogen trifluoride
- NGLs natural gas liquids
- NPS nominal pipe size
- NTTAA National Technology Transfer and Advancement Act
- OAQPS Office of Air Quality, Planning and Standards
- OMB Office of Management and Budget
- PHMSA Pipeline and Hazardous Material Safety Administration
- QA/QC quality assurance/quality control
- RFA Regulatory Flexibility Act
- SBA Small Business Administration
- SBREFA Small Business Regulatory Enforcement and Fairness Act
- SF<sub>6</sub> sulfur hexafluoride
- T-D Transmission Distribution
- TSD technical support document
- U.S. United States
- UMRA Unfunded Mandates Reform Act of 1995
- USC United States Code

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**I. Background**

*A. How is this preamble organized?*

The first section of this preamble contains the basic background information about the origin of these proposed rule amendments and request for public comment. This section also discusses EPA's use of legal authority under the CAA to collect data on GHGs.

The second section of this preamble describes in detail the changes that are being proposed to correct technical errors or to address implementation issues identified by EPA and others. This section also presents EPA's rationale for the proposed changes and identifies issues on which EPA is particularly interested in receiving public comments.

Finally, the last (third) section discusses the various statutory and executive order requirements applicable to this proposed rulemaking.

*B. Background on the Proposed Action*

EPA published subpart I: Electronics Manufacturing of the Greenhouse Gas Reporting Program (GHGRP) on December 1, 2010 (75 FR 74774) subpart I of the GHGRP requires monitoring and reporting of GHG emissions from electronics manufacturing. Electronics manufacturing facilities covered by subpart I are those that have emissions equal to or greater than 25,000 mtCO<sub>2</sub>e.

Following the publication of subpart I in the **Federal Register**, 3M Company

(3M) sought reconsideration of the final rule requirements for reporting fluorinated heat transfer fluids (HTFs). In this action EPA, is proposing amendments to the provisions in subpart I related to calculating and reporting fluorinated HTFs to reflect the Agency's intent to cover all fluorocarbons (except for ozone depleting substances regulated under EPA's Stratospheric Protection Regulations at 40 CFR part 82) that can enter the atmosphere under the conditions in which HTFs are used in the electronics manufacturing industry.

*EPA published Subpart W: Petroleum and Natural Gas Systems of the Greenhouse Gas Reporting Rule on November 30, 2010(75 FR 74458).*

Subpart W of the GHGRP, which applies to facilities in specific segments of the petroleum and natural gas industry that emit GHGs greater than or equal to 25,000 mtCO<sub>2</sub>e per year, covers approximately 85 percent of GHG emissions—including vented, equipment leak, and combustion emissions—from facilities in specific segments of the petroleum and natural gas industry.

Following the publication of subpart W in the **Federal Register**, several industry groups requested reconsideration of several provisions in the final rule. Part of the proposed amendments in this action are in response to those requests for reconsideration. Today we are granting

reconsideration of, and requesting comment on, those issues raised in the petitions listed in Table 2 where indicated in such Table that the issue is addressed in this action. While we do not necessarily agree that each of those identified issues meet the criteria for reconsideration, we nonetheless believe that they do raise important implementation issues and are thus granting reconsideration of those issues and proposing concomitant revisions to the rule. At this time we are not granting reconsideration of other issues raised in those petitions where indicated in the following table that they are not being addressed in this action but will consider those issues at a later time.

TABLE 2—PETITIONS FOR RECONSIDERATION

Petitioner and date of letter	Issue raised for reconsideration	Is this issue addressed in this action?
American Gas Association by letter dated March 2, 2011.	Non custody transfer city gate station terminology. AGA asserted that “[s]everal provisions in the Subpart W rule and preamble seem to imply that a ‘non-custody-transfer city gate station’ will always have a meter”.	Yes.
	Custody transfer city gate station terminology. AGA asserted that the term “custody transfer city gate station” in subpart W was unclear and needed clarification.	Yes.
	Use of GTI emission factors. AGA requested reconsideration of the emissions factors for Local Distribution Companies in the final rule.	Partially.
	New emission factor formulas are confusing or contain math errors that vastly inflate emission estimates. AGA asserted that the “[t]he new emissions factor equations W-30, W-31 and W-32 in the final rule are confusing. Since these formulas were not included in the proposed rule, AGA did not have an opportunity to comment on them”.	Yes.
	New electronic reporting form is not yet available for comment or testing. AGA asserted that “[s]takeholders should be given the opportunity to comment and to have access to the reporting software to perform trial runs.	No. This is being addressed in a separate package.
	EPA should exclude small internal combustion sources, not just external combustion. AGA asserted that “EPA should revise the final rule to provide a de minimis exemption for small internal and external combustion sources at underground storage facilities.” Also “AGA request reconsideration of this new exclusion for small combustion sources and revision to include both small internal and external combustion sources * * *”.	Yes.
	AGA asserted that “[t]he rule contains conflicting provisions regarding whether emissions from dehydrator units at underground storage facilities should or should not be reported”.	No.

TABLE 2—PETITIONS FOR RECONSIDERATION—Continued

Petitioner and date of letter	Issue raised for reconsideration	Is this issue addressed in this action?
	AGA asserted that “EPA did not provide rational explanation for using outdated inaccurate emission factors rather than modern updated emission factors”.	Yes.
	AGA asserted that “[d]efinition of ‘facility’ is overbroad and confusing.” The facility definition referred to here is found in 40 CFR 98.238.	No.
	AGA asserted that “It was arbitrary and capricious for EPA to create a subpart W reporting regulation for a null set—LNG storage facilities will not exceed the 25,000 ton per year threshold”.	No.
	AGA asserted that “It was arbitrary and capricious for EPA to create a subpart W reporting regulation for LNG import and export facilities—which have only minimal methane leaks”.	No.
Chesapeake Energy/American Exploration and Production Council by Letter Dated January 31, 2011.	Measurement of Emissions. CEC/AXPC asserted that “EPA proposed to require costly measurement and reporting of emissions from hundreds of thousands of sources. Commenters asked EPA to adopt a reasonable threshold for measurement, so that emissions could still be accounted for, but in a cost-effective way. Commenters recommended using the API Compendium for that purpose”.	No.
	De minimis emissions from portable equipment. CEC/AXPC asserted that “[t]he final rule likewise fails to adequately support requiring the reporting of de minimis emissions from portable equipment as EPA proposed EPA asserts a truism that all emissions contribute to sector emissions overall”.	Yes.
	Designated Representative. CEC/AXPC requested reconsideration of the designated representative provisions in the final rule.	Yes.
	Dump Valves. CEC/AXPC asserts that “[t]he requirement to measure and report emissions from dump valves associated with on-shore production storage tanks * * * is a new and unreasonable ongoing monitoring and record keeping burden * * *”.	No.
	Best Available Monitoring Methods.	No. This is being addressed in a separate action (76 FR 37300).
	Emissions Manifolds to Common Vents. CEC/AXPC asserted that the final provisions for centrifugal compressor monitoring “[n]ot only expands the rule to cover equipment that was not identified in the proposed rule, but it is also inconsistent and creates ambiguity for covered sources regarding what is required”.	No.
	Compressor Monitoring. CEC/AXPC asserts that “[t]he final rule imposes a new obligation to monitor and report that would require major piping modifications and that would unduly threaten worker safety”.	No.

TABLE 2—PETITIONS FOR RECONSIDERATION—Continued

Petitioner and date of letter	Issue raised for reconsideration	Is this issue addressed in this action?
	Excluding Boosting Stations. CEC/AXPC asserted that “[t]he final rule fails to distinguish between a boosting station, which is exempt, and an ‘onshore natural gas transmission compression facility’ which must report under the rule”.	Yes.
	Onshore Natural Gas Transmission Compression Industry Segment Definition. CEC/AXPC asserted that “[a]s presently drafted, the unclear and inconsistent final provisions render the rule arbitrary and capricious and contrary to law.” And “The term ‘onshore natural gas transmission compression’ means a stationary combination of compressors that move natural gas at elevated pressure from production fields or natural gas processing facilities in transmission pipelines or into storage. 40 CFR § 98.230(a)(4). A transmission compressor station can include equipment to separate liquids or dehydrate natural gas <i>id.</i> However, according to the final rule this source category does not include gathering lines and boosting stations”.	Yes.
	Onshore Natural Gas Processing Industry Segment Definition. CEC/AXPC asserted that “[a]s presently drafted, the unclear and inconsistent final provisions render the rule arbitrary and capricious and contrary to law.” CEC/AXPC further stated concerns with the definition for onshore natural gas processing industry segment definition and where the segment differs from onshore natural gas transmission industry segment, and from gathering lines and boosting stations.	Yes.
	Gathering Lines and Boosting Stations. CEC/AXPC asserted that “EPA noted that the ‘final rule does not require reporting of emissions from [the] gathering and boosting segment of the industry.’ This is not helpful and gives industry no clarity regarding which compressor stations are required to report”.	Yes.
	Mapping Wells to Fields. CEC/AXPC asserted that “EPA has not clarified how reporting entities are supposed to map wells to a particular ‘field.’” Also, CEC/AXPC asserted that “[w]ithout sufficient clarity regarding what wells are in a particular field, it is difficult for covered sources to know with certainty what gas composition is considered representative for each well”.	Yes.
	Definition of Facility for Onshore Petroleum and Natural Gas Production. CEC/AXPC asserted that the “EPA has not provided a reasoned explanation for why a term other than ‘facility’ cannot be adopted for Subpart w (such as ‘Reporting Area’) in order to avoid unintended confusion and inaccuracies in reporting”.	No.
	Pipeline Quality Natural Gas. CEC/AXPC asserted that “[t]here is not a clear and unambiguous definition in the final rule for ‘pipeline quality’ natural gas”.	Yes.

TABLE 2—PETITIONS FOR RECONSIDERATION—Continued

Petitioner and date of letter	Issue raised for reconsideration	Is this issue addressed in this action?
	Producing Horizon/formation definition. CEC/AXPC asserted that “[t]here is not a clear and unambiguous definition provided in the final rule for the term ‘producing horizon/formation’”.	Yes.
	Well testing venting and flaring clarification. CEC/AXPC asserted that “[t]he final rule is unclear regarding the requirement to report emissions from well testing venting and flaring”.	Yes.
	Associated Gas Venting and Flaring. CEC/AXPC asserted that “40 CFR 98.233(m) imposes a requirement to report emissions from associated gas venting and flaring not in conjunction with well testing. While this regulation references 40 CFR 98.233(l), that definition is unclear. Therefore industry is left without clarity regarding what emissions are included in ‘associated gas venting and flaring not in conjunction with well testing’”.	No.
	Pneumatic Devices. CEC/AXPC asserted that “EPA has not given sufficient consideration to the burden imposed by requiring that the bleed rate of each device be determined in order to count and classify the devices”.	Yes.
	Blowdown Vent Stacks. CEC/AXPC asserted that “[t]he sources that are required to report emissions from blowdown vent stacks are not clear”.	Yes.
American Petroleum Institute by Letter Dated January 31, 2011.	Best Available Monitoring Methods .....	No. This is being addressed in a separate action (76 FR 37300).
	Exclusion for ‘small’ internal combustion sources is needed. API asserted that “EPA should extend the exclusion for small external combustion sources to small internal combustion sources”.	Yes.
	Stuck dump valves to separators/tanks in onshore production operations. API asserted that “[t]he new requirement to report emissions from stuck dump valves requires reporters to check all dump valves on a well site * * * These requirements represent an administrative burden for reports that was not contemplated in the proposed rule”.	No.
	Reporting requirements for centrifugal and reciprocating compressor venting at onshore natural gas processing facilities. API requested EPA to reconsider an asserted expansion of reporting requirements for centrifugal and reciprocating compressor venting at onshore natural gas processing facilities.	No.

TABLE 2—PETITIONS FOR RECONSIDERATION—Continued

Petitioner and date of letter	Issue raised for reconsideration	Is this issue addressed in this action?
	Requirements for flare stack emission associated with onshore oil and gas production. API asserted that “[e]missions from flare stacks associated with onshore oil and gas production were not included in the Petroleum and Natural Gas production industry segment in the proposed rule * * * the inclusion of emissions from flare stacks associated with onshore oil and gas production is duplicative, burdensome, and a potential source of reporting inaccuracies”.	Yes.
	Reporting requirements for all venting and flaring activities in the production source category. API asserts that “EPA’s expansion of the reporting obligations in 98.233(m) to include upset or maintenance gas from producing wells imposes additional and extensive burdens on regulated parties which was not included in the proposal”.	No.
	Use of gas composition based on available sample analysis for reporters without continuous gas composition analyzer. API asserts that “EPA should resolve the ambiguity created by the current language”.	Yes.
	Portable combustion equipment that cannot move on roadways under its own power and drive train that is stationed at a wellhead for less than 30 days in a reporting year. API asserts that “[t]he final rule requires reporters to account for this equipment, despite the fact that it is on site for an extremely short period of time * * * it is unrealistic to expect reporters to measure emissions from every piece of portable combustion equipment that is only onsite for a matter of days”.	Yes.
	Separate calculations for subsonic and supersonic flow when both happen during a single completion. API asserted that “[t]he proposed rule did not include a requirement that well completions have separate calculations for subsonic and supersonic flow when both occur during a single completion. The final rule adds this requirement, which is not technically possible”.	Yes.
	Flow meter requirements. API asserts that “[t]he final rule adds a requirement at 40 CFR 98.234(b) that all flow meters, composition analyzers and pressure gauges be operated and calibrated according to the procedures in Section 98.3(i) of the MRR * * * API is concerned about the potential unintended consequence following the addition of stationary source combustion equipment at a well pad at new 40 CFR 98.232(C)(22), which required compliance with 40 CFR 98.233(z)(2)(1)”.	Yes.

TABLE 2—PETITIONS FOR RECONSIDERATION—Continued

Petitioner and date of letter	Issue raised for reconsideration	Is this issue addressed in this action?
	Emission factors for continuous high-bleed, continuous low-bleed, and intermittent bleed pneumatic devices. API asserted that “[a]lthough EPA has provided emission factors in Table W–1A that apply to continuous high-bleed, continuous low-bleed, and intermittent bleed pneumatic devices, EPA has not provided guidance on how to classify pneumatic devices according to these three categories”.	Yes.
	Definitions to Industry Categories. API asserted that the “[a]ltered final rule creates ambiguity as to whether certain facilities are included in the production category, excluded as gathering or booster stations, or included under the gas processing category”.	Yes.
	Number of plunger lifts and average casing diameter in inches. API asserted that “[t]he final rule adds 40 CFR 98.236(c)(5) requirements to report the number of plunger lifts and average casing diameter in inches by field. The difficulty with these additions is not with the requirement for counting plunger lifts and noting casing diameter, but that reporting must take place at the field level”.	Yes.
	Floating Production Storage and Offloading Equipment. API asserted that “[t]he proposed rule did not include floating production storage and offloading equipment in the definition of offshore petroleum and natural gas production. API questions the need for this addition at 40 CFR 98.230(a)(1)”.	No.
	Basin level reporting for onshore petroleum and natural gas production. API asserted that “[t]his broad definition of onshore production facility is impractical. Subpart W imposes reporting requirements on over 22,000 entities operating hundreds of thousands of wells and millions of pieces of equipment scattered over hundreds of thousands of square miles”.	Yes.
	Field level reporting for onshore petroleum and natural gas production. API asserts that “[t]his level of reporting is problematic when applied to new requirements of the final rule. For the same reasons, it remains problematic when applied to those requirements in the proposed rule that remain in the final rule”.	Yes.
	Designated Representative of Subpart W Facility. API asserted that “[t]he new basin-level facility definition for onshore petroleum and natural gas production systems adopted in Subpart W adds unreasonable complexity to several of the existing administrative requirements for the designated representative set forth in 40 CFR 98.4”.	Yes.

TABLE 2—PETITIONS FOR RECONSIDERATION—Continued

Petitioner and date of letter	Issue raised for reconsideration	Is this issue addressed in this action?
	<p>Reporting of GHG emissions from leased, rented, or contracted activities. API asserts that “[t]hese requirements create significant complications. A single well pad may be owned by one entity, operated by another entity, lease portable equipment from a third entity, and have that portable equipment operated by yet another entity. The rule places the burden of reporting entirely on the owner of the well or the holders of the operating permit and makes the designated representatives legally responsible for the accuracy of the emissions data provided by third parties”.</p>	<p>Partially.</p>
	<p>Threshold for “small” size units that are exempt from consideration. API asserts that “[t]he final rule’s threshold of 0.4 MMscf per day for dehydrator calculations using software and individual reporting is too low”.</p>	<p>No.</p>
<p>Gas Processors Association by Letter Dated February 11, 2011.</p>	<p>Best Available Monitoring Methods. GPA asserted that “[s]ubpart W’s best available monitoring method provisions do not provide reporting entities with adequate time to ensure compliance with the final rule”.</p> <p>Compressor venting monitoring requirements. GPA asserted that “[c]urrent compressor venting monitoring requirements are overly burdensome and present significant safety and operational process concerns to reporting entities”.</p>	<p>No. This is being addressed in a separate action (76 FR 37300).</p> <p>No.</p>
	<p>Use of the terms “gathering lines” and “booster stations” not being defined in final rule. GPA asserted that “[t]he terms ‘gathering lines’ and ‘booster stations’ are not defined in the final rule, nor is sufficient detail provided regarding the definition of ‘gas processing facility.’” GPA further asserted that “[a]bsent such definitions and clarifications, there will be substantial confusion as to which facilities are required to report emissions data”.</p>	<p>Yes.</p>
	<p>Facility definition for onshore petroleum and natural gas production. GPA asserted “[t]he definition of a facility in Subpart W differs from the definition of a facility provided in all other applicable regulations under the Clean Air Act. This inconsistency will create unnecessary confusion among related programs and is not necessary or justified”.</p>	<p>No.</p>
<p>Southwest Gas Corporation by Letter Dated January 31, 2011.</p>	<p>Terms in Subpart W. Southwest Gas Corporation asserted that “[t]he USEPA’s final rule fails to provide clear definitions that can be used uniformly throughout the natural gas distribution industry”.</p>	<p>Yes.</p>
	<p>Errors in Calculations. Southwest Gas Corporation asserted that the USEPA published errors in equations in 40 CFR 98.233, namely equation W–32.</p>	<p>Yes.</p>
<p>Interstate Natural Gas Association of America ..</p>	<p>Best Available Monitoring Methods .....</p>	<p>No. This is being addressed in a separate action (76 FR 37300).</p>

TABLE 2—PETITIONS FOR RECONSIDERATION—Continued

Petitioner and date of letter	Issue raised for reconsideration	Is this issue addressed in this action?
	Technical Provisions in Subpart W. INGAA asserted that “[n]umerous technical elements of Subpart W remain unclear, confusing, overly complicated or conflicting”.	Partially.
	INGAA petitioned EPA to reconsider the default gas compositions and requested the use of separate default gas compositions for methane and CO <sub>2</sub> for vented and fugitive emissions for the natural gas transmission compression and storage segments.	Yes.
	INGAA petitioned EPA to reconsider minor clarifications to 40 CFR 98.233(t), (u), and (v) for clarity.	Yes.
	INGAA requested EPA to reconsider the provisions in the final rule for determining the type of pneumatic device at a facility. INGAA requested EPA to consider the option of using engineering estimates to determine the type of pneumatic devices.	Yes.
	INGAA requested EPA to reconsider the provisions in the rule related to blowdown vent stacks and requested a reconsideration of those provisions.	Yes.
	INGAA requested EPA to reconsider the provisions in the rule for emissions from blowdown vent stacks and to include an additional equation to allow facilities who currently track emissions by equipment type to submit emission to EPA in that manner.	Yes.
	INGAA requested that EPA to reconsider provisions related to flaring.	Yes.
	INGAA requested that EPA reconsider provisions for monitoring emissions from centrifugal and reciprocating compressors and to consider including clarifications to rule text.	No.
	INGAA requested EPA to reconsider provisions related to monitoring and QA/QC requirements including provisions for the alternative work practice.	Yes.
	INGAA requested EPA to reconsider missing data provisions and broaden access.	No.
	INGAA requested EPA to reconsider provisions as stated in 40 CFR 98.236 and requested several clarifications to final text.	Partially.

The proposed amendments in this action include technical corrections and clarifications to ensure that the 2010 final rule is implemented as intended. Amendments to subparts I and W are also being proposed in other actions. Please see 76 FR 47392 (Herein referred to as the “technical corrections rule”) and 76 FR 37300. This proposal complements these proposed rules and is not intended to duplicate or replace those proposed amendments. In limited cases, an amendment to subpart W was

proposed in the technical corrections rule and we are proposing to amend it further in this action. Additional proposed amendments were determined to be necessary to address questions and issues raised by stakeholders since development of the proposal of the technical corrections rule. Where amendments have been made to the same paragraph in this action and in the technical corrections rule, the proposal below provides the complete proposed amendatory language for how EPA

proposes to amend the provision. We are seeking public comment only on the issues specifically identified in this proposal for the identified subparts. We will not respond to any comments addressing other aspects of part 98 or any other related rulemakings.

EPA promulgated confidentiality determinations for certain data elements required to be reported under part 98 and finalized amendments to the Special Rules Governing Certain Information Obtained Under the Clean

Air Act, which authorizes EPA to release or withhold as confidential reported data according to the confidentiality determinations for such data without taking further procedural steps (76 FR 30782, May 26, 2011 hereinafter referred to as the “May 26, 2011 Final CBI Rule”). That notice addressed reporting of data elements in 34 subparts that were determined not to be inputs to emission equations and therefore were not proposed to have their reporting deadline deferred. That rule did not make confidentiality determinations for eight subparts, including subpart W, for which reporting requirements were finalized after publication of the July 7, 2010 CBI proposal and July 20, 2010 supplemental CBI proposal.

EPA is planning to address the confidentiality determinations for the data elements in subpart W in a separate action. EPA plans to issue and finalize the confidentiality determinations for subpart W prior to the 2012 reporting deadline.

### C. Legal Authority

EPA is proposing these rule amendments under its existing CAA authority, specifically authorities provided in section 114 of the CAA.

As stated in the preamble to the 2009 Final Greenhouse Gas Reporting Rule (part 98) (74 FR 56260, October 30, 2009), CAA section 114 provides EPA broad authority to require the information proposed to be gathered by this rule because such data would inform and are relevant to EPA’s carrying out a wide variety of CAA provisions. As discussed in the preamble to the initial proposed rule (74 FR 16448, April 10, 2009), section 114(a)(1) of the CAA authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control or process equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. For further information about EPA’s legal authority, see the preambles to the proposed and 2009 final part 981.<sup>1</sup>

### D. How would these amendments apply to 2012 reports?

EPA is planning to address the comments on these proposed amendments and publish the final amendments before the end of 2011.

Therefore, for subpart W, reporters would be expected to calculate emissions and other relevant data for the reports that are submitted in 2012 using part 98, as amended by this rule, as finalized. We have determined that it is feasible for the sources to implement these changes for the 2011 reporting year since the proposed revisions primarily provide additional clarifications or flexibility regarding the existing regulatory requirements, generally do not affect the type of information that must be collected, and do not substantially affect how emissions are calculated.

For amendments being proposed today to subpart I, EPA is requesting comment on whether to require electronics manufacturing facilities to estimate and report 2011 emissions in 2012 for HTFs that would be newly included in the scope of subpart I if today’s proposed rule amendments were finalized.

For facilities subject to the provisions in 40 CFR part 98—subpart W, many proposed revisions simply provide additional information and clarity on existing requirements. For instance, we are proposing to amend 40 CFR 98.1(c)(1) to clarify that for onshore petroleum and natural gas facilities, the references in 40 CFR 98.4 that apply to owner(s) and operator(s) refer to the onshore petroleum and natural gas production owner or operator, as defined in 40 CFR 98.238. Therefore, we are proposing to explicitly make this clarification in 40 CFR 98.1 (Purpose and Scope). The proposed amendment does not change the burden of the 2010 final rule, and in fact, EPA believes that it alleviates concerns expressed by industry that the designated representative provisions are overly burdensome.

Some of the proposed amendments for subpart W provide greater flexibility or simplified calculation methods for certain facilities. For example, we are proposing to amend 40 CFR 98.233(i) to provide an additional option to calculate GHG emissions from blowdown vent stacks. Specifically, we are proposing to allow reporters the option of tracking blowdowns by each occurrence for the same blowdown volume, consistent with current practice at some facilities, whereas in the final rule, reporters were required to track total blowdown vent emissions from all occurrences for the same blowdown volume in a year.

Further, some proposed amendments for subpart W are to the data reporting requirements to provide additional clarity on which GHG emissions have to be reported and at which level of

aggregation. For example, in 40 CFR 98.236 EPA is proposing to clarify where “vented” emissions should be reported separately from “flared” emissions and that reporting of CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O emissions should be reported individually for each source type in CO<sub>2</sub>e. We have concluded that amendments such as these could be implemented for the reports submitted to EPA in 2012 because the proposed changes are, with one exception, consistent with the calculation methodologies already in part 98 and the owners or operators are not required to actually report until March 2012,<sup>2</sup> several months after we expect this proposal to be finalized.

The one exception where both the underlying calculation requirements and reporting requirements in subpart W are proposed to be changed is related to the requirements for field level reporting for four emissions sources in the onshore petroleum and natural gas production segment. As described further in Section II.C of this preamble, we are proposing to amend the calculation and reporting requirements for well completions and well workovers, well venting for liquids unloading, and storage tanks to require calculations and reporting to be undertaken at the county level and by geologic formation (by formation type).

EPA believes that the proposed amendments for subpart W can still be implemented for the 2011 reporting year for a couple of reasons. First, these amendments are being proposed based on industry concern about associating wells with a particular “field” given possible ambiguity surrounding EIA field designations. While EPA maintains its belief that reporting by the field is a viable and workable option, however, EPA does acknowledge that counties are readily identifiable, and provide clear geographic boundaries. As a result, implementation of this alternative method should be straightforward for facilities. Second, if facilities are concerned about their ability to implement these provisions for the 2011 reporting year, they may use best available monitoring methods (BAMM) pursuant to 40 CFR 98.234(f). In the event that facilities have already taken a measurement at the field level, they could still use those same measurements for the 2011 reporting year, but apply them to the sub-basin categories based on BAMM.

<sup>2</sup> EPA has proposed to extend the 2012 reporting deadline for source categories first required to begin data collection in 2011 from March 31, 2012 to September 28, 2012. Please see the technical corrections rule previously referenced.

<sup>1</sup> 74 FR 16448 (April 10, 2009) and 74 FR 56260 (October 30, 2009).

Other amendments to subpart W are proposed to address issues identified as a result of working with the affected facilities during rule implementation. These proposed revisions provide additional flexibility to the sources, or reduce the reporting burden. For example, the 2010 final rule required leak detection for emissions from dump valves in transportation storage tanks, and if a leak is detected, measurement of the quantity of emissions would be required. However, industry raised questions as to whether a facility could forgo leak detection and directly measure the emissions from leaking dump valves under the natural gas transmission industry segment. This action provides this additional flexibility, because it reduces burden without compromising the quality of the data reported to EPA.

We are also proposing corrections to terms and definitions in certain equations in subpart W. For example, we are proposing to amend the calculation for estimating CO<sub>2</sub> emissions from acid gas removal vents in Equation W-4. Although the existing equation is appropriate when the amount of CO<sub>2</sub> in gas is relatively low, such as 1 percent, the error rate in the estimate increases significantly as the amount of CO<sub>2</sub> in gas increases. Therefore, EPA is proposing a new equation, which uses the exact same input parameters and thus will not result in any additional burden to reporters, but will improve the quality of the information submitted to EPA. These clarifications do not result in additional requirements; therefore, we have concluded that reporters can follow part 98, as amended, in submitting their first reports to EPA in 2012.

Finally, we are proposing other technical corrections in subpart W that have no impact on a facility's data collection efforts in 2011. For example, we are proposing to correct cross references in equations and change incorrect use of the term "facility" in the definition of the source category.

In summary, these proposed amendments to subpart W generally would not require any additional monitoring or information collection above what is already included in part 98. Therefore, we expect that sources can use the same information that they have been collecting under the current version of part 98 to calculate and report GHG emissions for 2011 and submit reports in 2012 under Part 98, as amended by this action.

We seek comment on whether it is appropriate to implement these amendments and incorporate the requirements in the data reported to

EPA by March 31, 2012. Further, we seek comment on whether there are specific provisions in subpart W for which this timeline may not be feasible or appropriate due to the nature of the proposed changes or the way in which data have been collected thus far in 2011. We request that commenters provide specific examples of how the proposed implementation schedule would or would not work.

## II. Technical Corrections and Other Amendments

Following promulgation of the 2010 final subpart I and subpart W, EPA has identified errors in the regulatory language that we are now proposing to correct. These issues were identified as a result of working with affected industries to implement rules. We have also identified certain rule provisions that should be amended to provide greater clarity. For additional background information on the questions raised, please refer to the Technical Support Document for this proposed rulemaking available in the docket to this rulemaking (EPA-HQ-OAR-2011-0512).

The amendments we are now proposing include the following types of changes:

- Changes to correct cross references within the subparts.
- Additional information to allow reporters to better or more fully understand compliance obligations in a specific provision.
- Corrections to terms and definitions in certain equations.
- Corrections to data reporting requirements so that they more closely conform to the information used to perform emission calculations.
- Other amendments related to certain issues identified as a result of working with the affected sources during rule implementation and outreach.

We are seeking public comment only on the issues specifically identified in this notice for the identified subparts. We will not respond to any comments addressing other aspects of part 98 or any other related rulemakings.

### A. Subpart A—General Provisions

*Designated Representative.* Two industry associations raised concerns about the provisions related to determination of the designated representative in the context of how the subpart A definition would affect subpart W reporters. Through a letter dated January 31, 2011, the American Petroleum Institute (API) encouraged EPA to reconsider the implications on owners and operators in the onshore petroleum and natural gas production segment in the context of the provisions

in 40 CFR 98.4. Specifically, API was concerned that given the definition of "facility" for onshore petroleum and natural gas production, coupled with the relatively complex ownership structures in the industry (as compared to other subparts covered under part 98), EPA should modify several requirements in 40 CFR 98.4 (authorization and responsibilities of the designated representative). API encouraged EPA to eliminate the requirement of notifying co-owners of the designated representative selection (40 CFR 98.4(i)(4)(iv)), eliminate the requirement for listing of co-owners as part of the certificate of representation (40 CFR 98.4(i)(3)), and eliminate the requirement for new certificates of representation following ownership changes (40 CFR 98.4(h)).

Similar concerns were expressed in a letter from Chesapeake Energy Corporation (CEC) and the American Exploration & Production Council (AXPC) dated January 31, 2011. CEC/AXPC was also concerned that the current operational reality in the onshore petroleum and natural gas industry would make it difficult for a designated representative to make the certifications required in 40 CFR 98.4(i)(4). Specifically, CEC/AXPC was concerned about attesting to the fact that the designated representative was selected by an agreement binding on the owners and operators of the facility, that all owners and operators are fully bound by representations of the designated representative, that the owners and operators of the facility would be bound by any order issued to the designated representative by the administrator or a court, and that the designated representative has given written notice of their selection and of the agreement by which the designated was selected by the owner and operator of the facility.

EPA maintains, as described in the October 2009 final rule (74 FR 56357), that the high level of public interest in the data collected under this rule, as well as its importance to future policy, warrants establishment, by rule pursuant to CAA sections 114, 208, and 301(a)(1), of a high standard for data quality and consistency and a high level of accountability for reported data, which will help ensure that the data quality and consistency standard is met. The designated representative is the primary point of contact between the owner or operator and the EPA. Therefore, it is important that EPA knows who the designated representative is, and that the designated representative has made the necessary certification statements.

EPA recognizes that the onshore petroleum and natural gas industry has a different organizational structure and operational realities than other industries subject to part 98. As such, in the 2010 final rule for subpart W (75 FR 74512), EPA specifically defined who is an onshore petroleum and natural gas production owner or operator. Under 40 CFR 98.238, onshore petroleum and natural gas production owner or operator means “the person or entity who holds the permit to operate petroleum and natural gas wells on the drilling permit or an operating permit where no drilling permit is issued, which operates an onshore petroleum and/or natural gas production facility (as described in 40 CFR 98.230(a)(2)). Where petroleum and natural gas wells operate without a drilling or operating permit, the person or entity that pays the state or federal business income taxes is considered the owner or operator.” It was EPA’s intent that this definition of owner and operator apply not only in subpart W, but also in subpart A for the obligations of Subpart W “owners and operators” (e.g., those related to identifying the designated representative and requirement for who must be included on the Certificate of Representation (COR)).

EPA acknowledges that the final subpart W rule is not clear, and it could be interpreted that all “owners” and all “operators”, as defined in 40 CFR 98.6, are required to identify the designated representative for the facility and be held accountable for all requirements under 40 CFR 98.4. EPA never intended that 4,000 owners and operators, e.g., would have to be listed on the COR, an example provided by API in their Petition for Reconsideration. Rather, EPA intended that for onshore petroleum and natural gas facilities, the references in 40 CFR 98.4 that apply to owner(s) and operator(s) refer to the onshore petroleum and natural gas production operator, as defined in 40 CFR 98.238. Therefore, we are proposing to explicitly make this clarification in 40 CFR 98.1 (Purpose and Scope).

**Definitions:** We are proposing amendments to the definition of continuous bleed pneumatic device in 40 CFR 98.6 to clarify that continuous bleed devices supply gas to process control devices; these are not necessarily measurement devices, as suggested by the 2010 final rule.

Similarly, we are proposing to amend the definition of an intermittent bleed pneumatic device to clarify that these devices automatically maintain the process conditions and that the devices

discharge all or a portion of the full volume of the actuator intermittently.

**Incorporation by Reference (IBR).** Finally we are also proposing to amend 40 CFR 98.7 (What standardized methods are incorporated by reference into this part?) to remove paragraph 40 CFR 98.7(q). As elaborated further below, we are proposing to change the calculation and reporting requirements for specific equipment in the onshore petroleum and natural gas production segment from a “field” level, to a sub-basin category. Consistent with this proposed amendment, there is no longer a need to incorporate the Energy Information Administration (EIA) Oil and Gas Field Code Master List, 2008.

#### B. Subpart I—Electronics Manufacturing

In this action, EPA is proposing to amend the provisions contained within subpart I to calculate and report emissions from fluorinated GHGs used as HTFs. First, EPA is proposing to amend the definition of HTFs in 40 CFR 98.98, to include all fluorocarbons used as HTFs in the electronics manufacturing industry. The definition of HTFs incorporates the term “fluorinated GHGs” as defined in the general provisions of the greenhouse gas reporting rule (subpart A) at 40 CFR 98.6. The definition of “fluorinated greenhouse gas” in subpart A excludes “substances with vapor pressures of less than 1 mm of Hg absolute at 25 degrees C.” EPA is proposing to specify that the vapor pressure cutoff clause in the subpart A definition of fluorinated GHGs does not apply to fluorinated HTFs in subpart I. As a result, emissions of fluorinated HTFs with vapor pressures of less than 1 mm of Hg absolute at 25 degrees C would no longer be excluded from reporting under subpart I. Second, also in the definition of HTFs, EPA is proposing to add the phrase “but not limited to” before listing examples of fluorinated HTFs to ensure that potential future alternatives are covered. Third, EPA is proposing to remove the last sentence in the definition (“Electronics manufacturers may also use these same fluorinated chemicals to clean substrate surfaces or other parts”) and move the concept of using HTFs to clean substrate surfaces or other parts to the first sentence. Fourth, EPA is proposing minor revisions throughout the subpart I regulatory text to clarify the use of the terms fluorinated GHGs and fluorinated HTFs (e.g., referring to fluorinated HTFs rather than fluorinated GHGs used as HTFs). And last, in 40 CFR 98.92(a)(5), under GHGs to report, EPA is proposing to revise the clause “fluorinated GHG emitted from heat transfer use” to read

“emissions of fluorinated heat transfer fluids.”

**EPA published Subpart I:** Electronics Manufacturing of part 98 on December 1, 2010 (75 FR 74774). This subpart requires monitoring and reporting of GHG emissions from electronics manufacturing. Included in the December 1, 2010 final rule are provisions that require electronics manufacturing facilities to calculate and report emissions from the use of fluorinated HTFs. Pursuant to 40 CFR 98.93(h), electronics manufacturing facilities must calculate HTF emissions using a mass balance approach based on: the beginning and end of year inventories; acquisitions and disbursements of HTFs; and the nameplate capacities of newly installed and removed equipment containing HTFs. For purposes of subpart I, HTFs are defined as the following: “fluorinated GHGs used for temperature control, device testing, and soldering in certain types of electronic manufacturing production processes. HTFs used in the electronics sector include perfluoropolyethers, perfluoroalkanes, perfluoroethers, tertiary perfluoroamines, and perfluorocyclic ethers. Electronics manufacturers may also use these same fluorinated chemicals to clean substrate surfaces and other parts” (40 CFR 98.98).

The definition of HTFs in subpart I includes the term “fluorinated greenhouse gases” (fluorinated GHGs), which is defined in subpart A: General Provisions (40 CFR 98.6). EPA initially proposed a definition of fluorinated GHGs in the April 2009 proposed rule for part 98 (74 FR 16448) as follows: “Fluorinated GHG means sulfur hexafluoride (SF6), nitrogen trifluoride (NF3), and any fluorocarbon except for controlled substances as defined at 40 CFR part 82, subpart A. In addition to (SF6) and NF3, “fluorinated GHG” includes but is not limited to any hydrofluorocarbon, any perfluorocarbon, any fully fluorinated linear, branched or cyclic alkane, ether, tertiary amine or aminoether, any perfluoropolyether, and any hydrofluoropolyether.”

EPA received numerous comments on the definition, particularly in regards to Subpart OO—Suppliers of Industrial GHGs. For example, some commenters argued that the proposed definition of fluorinated GHGs was too broad because it would include nonvolatile materials that could not be emitted to the atmosphere. More specifically, one commenter suggested establishing a lower vapor pressure limit for fluorinated GHGs (heat transfer fluids)

of 400 Pa (0.004 bar, or three mm Hg absolute) at 25 °C.<sup>3</sup>

In response to comments, in the 2009 final part 98 (74 FR 56260), EPA finalized the following definition of fluorinated GHG: “Fluorinated GHG means sulfur hexafluoride (SF<sub>6</sub>), nitrogen trifluoride (NF<sub>3</sub>), and any fluorocarbon except for controlled substances as defined at 40 CFR part 82, subpart A and substances with vapor pressures of less than 1 mm of Hg absolute at 25 degrees C. With these exceptions, “fluorinated GHG” includes but is not limited to any hydrofluorocarbon, any perfluorocarbon, any fully fluorinated linear, branched or cyclic alkane, ether, tertiary amine or aminoether, any perfluoropolyether, and any hydrofluoropolyether.” As EPA stated in the preamble to the final rule, “This modification ensures that non-volatile fluorocarbons such as fluoropolymers are excluded from reporting requirements, while requiring reporting of fluorocarbons (as well as SF<sub>6</sub> and NF<sub>3</sub>) that could reasonably be expected to be emitted to the atmosphere” (74 FR 56348, October 30, 2009).

EPA proposed the subpart I definition for HTFs, which included the term “fluorinated GHG,” in an April 12, 2010 **Federal Register** notice (75 FR 18652). In a December 1, 2010 final rule “Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinated GHGs” (75 FR 74775), EPA finalized a definition for HTFs that was substantially similar to the definition in the April 2010 proposed rule.

Following publication of the final rule, 3M Company (3M) sought reconsideration of the reporting requirements for fluorinated GHGs used as HTFs under subpart I. Specifically, in its Petition for Reconsideration dated January 28, 2011 (available in docket EPA-HQ-OAR-2009-0927), 3M stated that “\* \* \* as currently written the reporting requirements for heat transfer fluids will exclude a significant portion of fluorinated GHGs used as heat transfer fluids. Thus, the GHG emissions associated with heat transfer fluids will not be accurately reported under the rule.” Further, 3M stated, “By tying the reporting requirements for heat transfer fluids to the definition of a fluorinated GHG under § 98.6 in Subpart A, the scope of Subpart I’s reporting

requirements are limited to those heat transfer fluids that have vapor pressures of > 1 mmHg at 25 degrees C. Although 3M understands the reasons behind the vapor pressure threshold in the general definition of a fluorinated GHG, the same rationale should not apply to heat transfer fluids. Heat transfer fluids are used at elevated temperatures and pressures, and as a result the vapor pressure of these materials at 1 mm Hg absolute T 25 degrees C is not predicative of emissions. Heat transfer fluids are used through a broad range of boiling points and are routinely lost from systems primarily through mechanical leaks but also from evaporative loss. Once emitted from a system, the fate of heat transfer fluids is primarily the atmosphere.”

In addition to the concern that the rule will result in “dramatic under reporting of heat transfer fluid use and emissions,” 3M also raised the concern that “although all the heat transfer fluids that have relatively low global warming potentials will be required to be reported as GHGs, a substantial percentage of heat transfer fluids that have global warming potentials in the range of 10,000 times that of CO<sub>2</sub> will be exempt from reporting requirements.” Consequently, 3M argued, “the rule will likely lead to a migration toward use of exempt compounds and an increase in GHG emissions from the sector.”

To address the problem, 3M suggested that subpart I should be amended to specify that for reporting requirements under subpart I, the vapor pressure cutoff in the general definition of fluorinated GHG does not apply to HTFs.

In finalizing the HTF provisions in subpart I, EPA did not intend to exclude a significant portion of fluorocarbon HTFs that can enter the atmosphere; any such exclusion was inadvertent. Given the high temperatures in which HTFs may be used, EPA believes that such fluids are able to enter the atmosphere even when their vapor pressures at 25 degrees C (77 degrees F) are low. This is because the vapor pressures of substances increase as their temperatures increase, and HTFs with low vapor pressures are likely to be used in high-temperature applications.<sup>4</sup>

<sup>4</sup> HTFs are selected for particular applications based on their viscosities within operating temperature ranges and/or their boiling points. For example, for liquid phase applications (e.g., some cooling applications) HTFs are selected that have boiling points above the operating temperature range and low viscosities at the lower operating temperatures. As temperature decreases, viscosity increases. Low viscosities are more desirable because they will provide good heat transfer and will be easily pumped. For higher temperature

(Vapor pressure is an indicator of the rapidity with which a substance evaporates.) For example, an HTF with a vapor pressure of about 0.2 mm Hg at 25 degrees C might be used at a temperature of 140 degrees C for heat transfer applications, where it may have a vapor pressure of over 80 mm Hg. Similarly, an HTF with a vapor pressure of about 0.1 mm Hg at 25 degrees C might be used for vapor phase soldering at a temperature above its boiling point. Under these conditions, all of the material is in the vapor phase. Supporting technical information is available in the docket (EPA-HQ-OAR-2011-0512).

EPA understands that at any particular temperature, an HTF with a low vapor pressure at 25 degrees C is likely to evaporate more slowly than an HTF with a higher vapor pressure at 25 degrees C. Nevertheless, if the temperature is high, evaporation will occur.

EPA views data on emissions of HTFs as an important component in improving future efforts to characterize GHG emissions from the electronics manufacturing sector. EPA believes that the changes being proposed today will ensure that all fluorinated HTFs used in electronics manufacturing are appropriately monitored and reported under subpart I.

In this action, EPA is proposing that the definition of HTFs in subpart I be revised to read as follows: “Fluorinated heat transfer fluids means fluorinated GHGs used for temperature control, device testing, cleaning substrate surfaces and other parts, and soldering in certain types of electronics manufacturing production processes. For fluorinated heat transfer fluids under this subpart I, the lower vapor pressure limit of 1 mm of Hg in absolute at 25 degrees C in the definition of “fluorinated greenhouse gas” in 40 CFR 98.6 shall not apply. Fluorinated heat transfer fluids used in the electronics manufacturing sector include, but are not limited to, perfluoropolyethers, perfluoroalkanes, perfluoroethers, tertiary perfluoroamines, and perfluorocyclic ethers.”

The effect of making the vapor pressure cut-off portion of the definition of fluorinated GHGs inapplicable to fluorinated HTFs under subpart I would be to subject emissions from fluorinated HTFs that have vapor pressures less than one mm of Hg absolute at 25

applications, such as vapor phase soldering, HTFs with low vapor pressures—at room temperature (high boiling points) are generally selected. (See, e.g., “Fluorochemicals in Heat Transfer Applications: Frequently Asked Questions,” 3M, available in the docket for this rulemaking.)

<sup>3</sup> For more information on comments and responses, please see the preamble to the final rule Mandatory Reporting of Greenhouse Gases (74 FR 56348), and the Response to Public Comment on subpart OO (“Mandatory Greenhouse Gas Reporting Rule: EPA’s Response to Public Comments, subpart OO: Suppliers of Industrial GHGs” available in docket, EPA-HQ-OAR-2008-0508.)

degrees C to the reporting requirements. Consequently, EPA would receive valuable emissions information on the full range of volatile fluorinated HTFs used in electronics manufacturing.

The purpose of the Mandatory Reporting Rule is to collect accurate facility-specific GHG emissions data for use in developing future GHG policies and programs. For this reason, EPA believes that the definition of HTFs being proposed today is prudent and appropriate because it will provide EPA with comprehensive information on emissions of fluorinated HTFs.

Considering the simple mass balance methodology required for reporting emissions of fluorinated HTFs in subpart I, the potential value of this information justifies a comprehensive definition. If some HTFs (or HTFs in some currently included applications) are found to have very low emission rates, this information will itself be valuable for informing future GHG policies. However, given that HTFs are capable of entering the atmosphere at the temperatures where they are used, any conclusion that the emissions of some HTFs are low must be supported by actual measurements.

EPA considered including a modified vapor pressure limit in the proposed definition of HTF. One approach we considered was to adopt a vapor pressure limit associated with a particular temperature higher than 25 degrees C. The goal of such a limit would be to require reporting of those HTFs that may readily enter the vapor phase in their current and potential future applications. However, we believe that today's proposed, application-based definition achieves this goal more simply and effectively than would a definition that includes a vapor pressure limit associated with a particular temperature higher than 25 degrees C. First, given the breadth of conditions under which HTFs are used currently in the electronics industry, as well as the rapidity of technological change within this industry, it would be difficult to specify an appropriate upper-limit temperature to which to link the vapor pressure. Some applications occur at very high temperatures, and those temperatures could conceivably rise in the future. Second, such a limit, if not linked to particular HTF applications, could include fluorinated chemicals that are used exclusively in low-temperature applications where they would not quickly enter the atmosphere if released, such as certain lubricants or oils. Third, the major application of HTFs is for process cooling. In this application, as discussed above, HTFs with lower vapor

pressures at a particular temperature are likely to be used at higher temperatures. This is a systematic relationship that almost guarantees that the HTF will be capable of volatilizing at the temperature of use. Similar relationships are likely to hold in other applications where viscosity or boiling point is a concern, *e.g.*, thermal shock testing. Finally, other applications, such as substrate cleaning or vapor phase soldering, occur when the material is in the vapor phase. Any upper-bound temperature linked to a vapor pressure would have to fall above the temperatures where vapor phase soldering occurs. The proposed definition achieves the same goal much more directly by including the applications "soldering," "temperature control," "device testing," and "cleaning substrate surfaces."

Another approach we considered was to require reporting only of HTFs that achieve a particular vapor pressure (*e.g.*, 1 mm Hg absolute) at their maximum temperature of use, where the maximum temperature of use could vary from facility to facility or even application to application within a facility. This approach would explicitly focus monitoring and reporting on those HTFs and applications where volatilization could occur. However, because the coverage of particular chemicals would depend on their maximum temperature of use within a particular facility or application, this approach would be significantly more difficult to implement and enforce than the proposed, application-based definition. Facilities would be required to investigate the temperatures at which each HTF is used and to distinguish between low- and high-temperature applications of the same HTF in developing emissions estimates. The proposed approach, in contrast, would clearly define the applicability of the rule and would enable facilities (and EPA) to rely on facility-wide mass-balances to estimate emissions of particular chemicals.

EPA does not intend for its definition of HTFs to include greases or lubricants such as those used in vacuum pump applications because such applications do not typically occur at temperatures at which the lubricants would volatilize. EPA does not believe that the current or proposed definitions include such lubricants. However, EPA requests comment on whether the definition should be amended to explicitly exclude lubrication or other applications. To address situations in which a particular chemical may be used in both HTF and non-HTF applications, EPA also requests

comment on whether we should give reporters flexibility to report under 40 CFR 98.93(h) either a chemical's emissions from all applications or its emissions from only the applications included in the HTF definition. This would give facilities the option to avoid maintaining a separate supply of the chemical for purposes of tracking HTF emissions, as would otherwise be required for the mass-balance calculation. Emissions from the non-HTF applications would presumably make up a small fraction of the total.

The narrow exception to the vapor pressure cutoff would only apply to fluorinated HTFs used in the electronics manufacturing industry; EPA continues to believe that the vapor pressure cutoff is appropriate to maintain in the definition of fluorinated GHG in 40 CFR 82 subpart A (*e.g.*, for purposes of the industrial gas supply provisions at subpart OO). EPA is not aware of other fluorocarbon applications in which the vapor pressure of the fluorocarbon falls below 1 millimeter of Hg at 25 degrees C but typically rises significantly above it at the temperature of use.

In addition, EPA is also proposing four other minor amendments to the regulatory text related to fluorinated HTFs. First, in the definition of HTF (40 CFR 98.98), EPA is proposing to add the phrase "but not limited to" before listing examples of fluorinated HTFs. Electronics manufacturing is an innovative and quickly evolving industry in which new chemicals are frequently adopted. EPA is proposing this change to ensure that potential future alternatives are covered. Second, also in the definition of HTFs (40 CFR 98.98), EPA is proposing to delete the last sentence ("Electronics manufacturers may also use these same fluorinated chemicals to clean substrate surfaces or other parts") and move the concept of cleaning substrates surfaces or other parts to the first sentence. EPA is proposing this change to improve readability of the definition. Third, EPA is proposing minor revisions throughout the subpart I regulatory text to clarify the use of the terms fluorinated GHGs and fluorinated HTFs (*e.g.*, referring to fluorinated HTFs rather than fluorinated GHGs used as HTFs). For example, in instances where EPA used the term "fluorinated GHG used as heat transfer fluids," EPA is proposing to use "fluorinated heat transfer fluids." Where EPA refers to HTFs, EPA does not intend the full definition of fluorinated GHGs (as defined in subpart A) to apply. And last, in 40 CFR 98.92(a)(5), under GHGs to report, EPA is proposing to revise the clause "fluorinated GHG emitted from heat

transfer use” to read “emissions of fluorinated heat transfer fluids.” EPA is proposing this change to clarify that emissions of fluorinated HTFs, not just fluorinated GHGs, are required to be reported under subpart I. In addition, EPA is proposing the change to clarify the Agency’s intention that emissions from HTFs can occur through all phases of the equipment’s lifetime, including installation, use, servicing, and disposal. Under subpart I, all of those emissions of HTFs should be calculated and reported.

EPA does not anticipate an increase in burden resulting from these proposed changes because this action is clarifying the intent of the requirements finalized in subpart I. In finalizing the reporting requirements for fluorinated HTFs, EPA did not intend to exclude fluorocarbons that can enter the atmosphere under the conditions in which HTFs are used in the electronics manufacturing industry. EPA’s burden estimates were based on reporting of all fluorinated HTFs; therefore, the clarification of intent does not impose additional burden on reporters.

EPA requests comment on the proposed amendments to the HTF provisions of subpart I. In particular, EPA requests comment whether the proposed definition effectively captures fluorinated HTFs used in electronics manufacturing (*i.e.*, whether any type of fluorinated HTFs other than those included in the proposed definition are currently being used or are anticipated to be used in the future for electronics manufacturing). EPA also requests comment on whether any other conforming changes need to be made.

EPA plans to address the comments on these proposed amendments and publish the final amendments to subpart I before the end of 2011. Therefore, EPA requests comment on whether to require electronics manufacturing facilities to estimate and report 2011 emissions in 2012 of the HTFs that would be newly included in the scope of subpart I if today’s proposed rule were finalized. Specifically, EPA requests comment on whether information collected as part of routine business practices, such as records of HTF stocks, disbursements, and acquisitions, could be used to estimate 2011 emissions to be reported in 2012. If it is not feasible to estimate HTF emissions in 2011 for substances that are currently excluded from reporting using information collected as part of routine business practices, EPA requests detailed information illustrating why it is not feasible.

### *C. Subpart W—Petroleum and Natural Gas Systems*

EPA is proposing several technical clarifications and amendments to subpart W to address issues raised during the first year of promulgation of the rule in response to petitions submitted to EPA for reconsideration, as well as clarifications to specified provisions in the rule to ensure consistency with subpart W, and across all subparts, where appropriate. In addition, several technical corrections are proposed to clarify provisions that were either erroneous or unclear to reporters.

The following section describes EPA’s proposed amendments. We first discuss the proposed amendments related to field-level reporting in the onshore petroleum and natural gas production section, since this proposed amendment affects multiple emissions sources (well completions, well workovers, well venting for liquids unloading, and onshore storage tanks) and also affects many sections of the rule (*e.g.*, calculation, monitoring and quality assurance/quality control (QA/QC), and the data reporting requirements). Following the discussion for onshore production, we discuss the proposed amendments to the Definition of the Source Category (40 CFR 98.230), GHG’s to Report (40 CFR 98.232), Calculating GHG Emissions (40 CFR 98.233), Monitoring and QA/QC Requirements (40 CFR 98.234), Data Reporting Requirements (40 CFR 98.236) and Records to be Retained (40 CFR 98.237) under subpart W.

*Sub-Basin Category for Onshore Petroleum and Natural Gas Production.* EPA has received several requests to reconsider the use of a field-level measurement plan for emission sources (mainly monitoring of GHGs from well unloading, well completions, and well workovers) that require one measurement per field as designated by the U.S. Energy Information Administration (EIA) Field Code Master List (FCML). Onshore petroleum and natural gas production reporters have expressed concerns over the use of this field designation and proposed that a sub-basin category be assigned instead of a field designation to take measurements. Specifically, petitioners indicated that EPA has not clarified how reporting entities are supposed to map wells to a particular field. They contested that there are no coordinates provided in the EIA FCML 2008. They also suggested there is no formal way to designate appropriate field names and the rule does not have a mechanism to deal with wells that are not in a

recognized field in the EIA Master List. Mapping wells to the proper field is central to compliance with the rule, they assert, because the rule requires aggregation of information by field for the different emissions sources. To address these concerns, industry petitioned EPA to replace the field-level approach with a “sub-basin category” approach.

In general, EPA continues to believe that the field-level designation is workable, although perhaps not the only means of obtaining representative emissions estimates. EPA has determined that the EIA field codes are developed using field names that operators provide and agree on with States, which is finally provided by the States to the EIA. Therefore, EPA believes that operators can determine the EIA field they are in using the EIA field codes. EPA also agrees that the 2010 final rule did not state a clear mechanism to address wells in fields that were not included in the EIA FCML. However, EPA has determined that this is not an acute problem. EPA has analyzed the EIA FCML for several years and found that the changes in the database from year to year are not significant. For example, there were only 30 changes in field definitions between 2007 and 2008 of the total 64,454 fields in the database. Similar numbers result from comparing 2006 with 2007 (170 changes in field definition of a total 63,873 fields in the database) and comparing 2006 with 2005 (44 changes in field definition of a total 63,356 fields in the database). The changes include both the revision of some field names as well as new additions.

In this action we are proposing an alternative approach to replace “field-level” with “sub-basin categories.” EPA considered, but is not proposing at this time modifications to the current field level reporting method that would address the outstanding concerns raised by industry. Specifically, EPA considered an amendment that would allow reporters to use a temporary field name when submitting reports to EPA in instances where a well does not fall within a designated EIA field code. This alternative approach would include a provision for reporters to report a preliminary field name where a field has not been formally designated by the State and as such may not yet be included in the EIA FCML. These preliminary fields entered by the reporter would be annotated in the final report to EPA and would be flagged in the data system for further follow up to determine the final field name designated by the State. Because States

operate on different schedules for which final determinations are made on field designation requests, reporters would be required to certify with official documentation submitted to EPA upon each reporting period on the status of their field designation request. Under this alternate approach, for field designations that are made prior to the next reporting date, reporters should confirm the field designation with official documentation during the next submission of their emission report to EPA. This proposed method would address concerns raised by industry about fields not yet included in the EIA FCML.

In addition, EPA is considering but did not propose a provision that would delineate how reporters would determine appropriate field names for wells for which the designated field is unknown due to unclear location or coordinates of the well. Under such a provision, reporters would determine the EIA FCML field for a given well by determining the well coordinates and follow the procedures outlined in the 2008 EIA FCML or most approximate year's documentation that accompanies the EIA FCML field list which outlines the method for matching up well coordinates with field names. Although EPA is proposing an alternative means to calculate and report emissions based on a sub-basin category, we are seeking comment on this approach to modify the current field-level calculation and reporting requirements for utilizing the EIA FCML for sampling. Although EPA maintains that the current field level calculation and reporting requirements are feasible and provide representative emissions estimates (with an amendment to clarify how to address non-designated fields), EPA is proposing an alternative sub-basin approach that we believe also achieves an appropriate level of representativeness. Please see Economic Impact Analysis Memorandum in Docket ID EPA-HQ-OAR-2001-0512. This proposed sub-basin category classification would provide similar quality data as the EIA FCML designation but believes will also address some of the questions and concerns regarding current implementation of the field-level approach.

The foundation of the proposed sub-basin approach is defining a sub-basin category through the use of a county level designation and the distinction of the type of hydrocarbon formation. The various hydrocarbon formations can be grouped into four categories: conventional, coal bed methane, tight formations, and shale. For example,

wells producing coal bed methane from formation "X" with wellhead coordinates within county "A" would be one sub-basin category. Further, wells producing from tight formation "Y" with wellhead coordinates within county "A" would be a second sub-basin category. In the event that a specific county includes more than one formation (e.g., coal bed methane and tight sands), then the reporter would use the most specific designation (e.g., coal bed methane).

With this basic formulation of sub-basin category, EPA has determined that it is necessary to provide a second level of classification to get a representative emissions profile of emissions sources. For example, the emissions from well completions or hydraulic fracturing can vary by several multiples within the same producing formation because of different fracture zones and fracture extent. Similarly, well liquids unloading emissions can vary widely because of different well dimensions and liquid accumulation. EPA further notes that the activity of emissions sources are highly concentrated within certain counties and formation types. For example, of the 3,143 counties in the United States, there are only 54 counties that had any form of well completion in year 2010. In such a case, where 25,000 well completions are concentrated in 54 counties, a single measurement from a sub-basin category, may not be sufficiently representative.

Therefore, to obtain a sufficient number of data points to be able to characterize the variability in the emissions profile, EPA is proposing a measurement plan that uses some operational criteria to generate more than one sample per sub-basin category for specific emissions sources. Specifically, EPA is proposing the use of pressure ranges for liquids unloading measurements, because the volume of gas released during an unloading is related to the wellhead pressure. For example, reporters would take one measurement per pressure range within a sub-basin category. An example of pressure ranges is 0–25 psig, > 25–60 psig, > 60–110 psig, > 110–200 psig, and 200 psig and above. These pressure ranges were developed based on an analysis that reviewed well data from the HPDI<sup>®</sup> database which determined the optimal pressure ranges that also minimize variability of a single data point as a representation of that pressure range. For more information on this analysis, please see the Technical Support Document for this proposed rulemaking in the docket.

The rationale for applying these pressure ranges is that wells generally

have more liquids unloading problems when they are flowing at low pressures and lower velocities. Hence, it is reasonable to provide more ranges in the lower pressure spectrum. EPA expects to see few wells over 200 psig that necessitate liquids unloading to atmospheric pressure. For well completions and workovers, EPA is proposing to divide the population of wells between vertical and horizontal wells, as defined in proposed amended 40 CFR 98.238, and then using a graduated number of measurements per number of wells completed or worked over in these categories. For example, one measurement per 25 wells with hydraulic fracture, two measurements per 50 wells with hydraulic fracture, three measurements per 100 wells with hydraulic fracture, and four measurements per 200 or more wells with hydraulic fracture. EPA understands that there are many operational factors that impact the magnitude of emissions from well hydraulic fracture completions and workovers and therefore is proposing more than one measurement where there is a larger number of wells in the sub-basin category.

*Source Category Definitions.* In general, we are proposing several amendments to the source category definitions to clarify the boundaries between the different industry segments. The proposed amendments below seek merely to clarify coverage in the rule and were not intended to change who is required to report within and across the industry segments.

*Onshore Petroleum and Natural Gas Production.* We are proposing several amendments to the definition for the onshore petroleum and natural gas production (also referred to as onshore production) industry segment in 40 CFR 98.230(a)(2). EPA received feedback from reporters on the finalized definition for the onshore production industry segment on November 30, 2010 (see 75 FR 74489) requesting clarification on the term "associated with a well-pad." Specifically, reporters requested clarification on what the term "associated with a well-pad" meant in the context of the boundaries of the onshore production industry segment. Reporters stated that there is unclear demarcation between equipment that are considered part of the onshore production industry segment and equipment that are considered part of the onshore natural gas processing industry segment.

To address concerns on the meaning of "associated with a well-pad", EPA is first proposing to revise the term itself to state that the onshore production

industry segment includes that equipment that is “on a single well-pad or associated with a *single* well-pad.” EPA has determined that equipment located on a *single* well-pad is considered part of the onshore production industry segment irrespective of the hydrocarbon streams that it is handling. For example, a separator located on a well-pad that handles hydrocarbon streams from multiple well-pads would be considered to be part of the onshore production industry segment, i.e. equipment that is not located on a well-pad would be considered to be associated with a well-pad. Also, hydrocarbon streams from multiple wellheads located on a single well-pad is considered to be a single hydrocarbon stream from that well-pad.

In addition, EPA is proposing to clarify in the onshore production industry segment definition that dehydrators that are on a single well-pad or associated with a single well-pad are included as types of equipment that is considered part of this segment. Following promulgation of subpart W in November 2010, EPA received several questions from the reporting community requesting clarification on whether or not dehydrators associated with a single well-pad would be a part of the industry segment. It was EPA’s intent that these dehydrators that are on a well-pad or associated with a single well-pad be considered part of the onshore production industry segment. EPA also received similar requests for clarification on whether or not storage vessels, not necessarily the entire storage facility, were also considered part of the onshore production industry segment. To address these concerns, EPA is proposing to clarify in the definition that both dehydrators and storage vessels are included in the equipment list that are considered part of the onshore production industry segment. Finally, EPA proposes to clarify that Enhanced Oil Recovery (EOR) that use either CO<sub>2</sub> or natural gas are a part of the source category. The equipment located on a well-pad is part of the onshore production industry segment irrespective of the hydrocarbon streams located on a well-pad.

*Onshore Natural Gas Processing.* EPA is proposing several clarifications to the onshore natural gas processing industry segment definition in 40 CFR 98.230(a)(3). By letter dated January 31, 2011, the Gas Processors Association (GPA), CEC/AXPC, and API, all expressed concerns with overlap between the onshore production, onshore natural gas processing, and onshore natural gas transmission industry segments. API stated that “The

definitions of the industry categories ‘onshore oil and gas production’ and ‘natural gas processing’ do not provide a clear line between onshore oil and gas production, gas gathering/collection and booster stations, and natural gas processing facilities.” The letter stated “API is particularly concerned that the final rule could be interpreted to include gathering and boosting stations in the processing sector, despite EPA’s stated intent to exclude gathering and boosting stations from coverage at this time.” Industry raised concerns that boosting stations would be covered under the finalized natural gas processing industry segment definition because they typically have processes that require removal of liquids for operation of specific equipment that boost gas pressure. For example, scrubbers are used upstream of compressors to take out any liquids for optimal operation of the compression equipment. However, the presence of scrubbers in and of itself should not result in the facility being defined as a processing facility.

To address the concerns with boundaries between industry segments, we are proposing several revisions to clarify our intent. First we are proposing to strike the term “and recovers” from the first sentence in order to more clearly characterize the unique activities performed at the processing plant. Processing plants extract heavy hydrocarbons and non hydrocarbon gases from the gaseous phase of an inlet feed to the plant. By inclusion of the term “recovers” in the industry segment definition, the natural gas processing plant definition may have been incorrectly interpreted to bring in other types of processes that were not intended to be covered.

We are also proposing to clarify that this industry segment includes one or a combination of the following three processes: Separation of natural gas liquids (NGLs) from natural gas, separation of non-methane gases from produced natural gas, or separation of NGLs into one or more component mixtures. This proposed revision would clarify that the natural gas processing industry segment differs from what typically happens at boosting stations in that natural gas processing plants typically perform one or more of these processes, whereas boosting stations do not.

We are also proposing a clarification on what separation means by stating that separation means one or more of the following processes: Forced extraction of natural gas liquids, sulfur and carbon dioxide removal,

fractionation of NGLs, or the capture of CO<sub>2</sub> separated from natural gas streams.

We are proposing to strike the term “this industry segment does not include reporting of emissions from gathering lines and boosting stations” because the edits proposed above clarify what “onshore natural gas processing” means, and therefore it is unnecessary to discuss that which is excluded. Further, if we had decided to maintain the “gathering lines and boosting” stations in the rule, EPA would have to propose and finalize a definition of the term “gathering line and boosting” station, which EPA has previously noted we intend to consider in a future rulemaking (75 FR 74468).

Finally we are proposing to strike the term “facility” and replace it with the term “plant” as “facility” has a specific definition in 40 CFR 98.6 that was not intended here. A natural gas processing plant may be located at a facility that also contains other source categories covered by 40 CFR part 98.

*Onshore Natural Gas Transmission Compression.* EPA is proposing several clarifications to the onshore natural gas transmission compression industry segment definition in 40 CFR 98.230(a)(4). As noted earlier, by letter dated January 31, 2011, API, CEC/AXPC, and GPA raised their concerns that the boundaries between the onshore production, onshore natural gas processing, and onshore natural gas transmission compression industry segment boundaries were unclear based on the provisions in the November 30, 2010 final rule.

First, we are proposing to strike the term “at elevated pressure” because it was not clear what “elevated pressure” meant. For example, elevated with respect to what baseline? Based on questions received on the definition for transmission compressor stations, we have proposed to clearly define transmission pipelines using a widely accepted designation for what is a transmission pipeline, avoiding the need to retain the language of “elevated pressure.” We are proposing to define in 40 CFR 98.238 that a *transmission pipeline* means a Federal Energy Regulatory Commission (FERC) rate-regulated interstate pipeline, a state rate-regulated intrastate pipeline, or a pipeline that falls under the “Hinshaw Exemption” as referenced in the Natural Gas Act.

Next, we are proposing to clarify the end points between which a natural gas transmission compression facility would move natural gas. Specifically, we are proposing to explicitly state that natural gas transmission compression facilities not only move natural gas from

production fields or gas processing plants, but also move natural gas coming from other transmission compressors. In addition, we are proposing to explicitly state that natural gas transmission compression facilities may move natural gas into not only distribution pipelines, but also into liquefied natural gas storage or into underground storage.

We are also proposing to strike the term “natural gas dehydration” from the industry segment definition because this term does not represent a unique characteristic to facilities with natural gas transmission compression. We believe that deleting this term from the definition of the natural gas transmission compression industry segment, will result in this industry segment definition being more representative and accurate. Finally, as described above under onshore natural gas processing, we are proposing to strike the reference to “gathering lines and boosting stations” and “facility.”

*Natural Gas Distribution.* EPA is proposing several amendments to the natural gas distribution industry segment definition to further clarify its intent. First, we are proposing in 40 CFR 98.230(a)(8) to eliminate the term “city gate station” and add the term “meter-regulating station.” The term “city gate,” was used in the 2010 final rule because it was believed to be widely used throughout the natural gas distribution industry. However, since publication, we have learned that the term can have several meanings and the interpretation of what is a “city gate” station may vary among potential reporters. By letter dated March 2, 2011 from the American Gas Association, it was stated that “[t]he term ‘city gate’ is widely used in the industry, but unfortunately it means different things to different companies. It can mean the place where an LDC takes custody of natural gas from the upstream supplier (either directly from a producer or from an interstate pipeline company). The term ‘city gate’ is also used by some to refer to the place where natural gas is conveyed into a lower pressure distribution system for a town or city—either directly from the upstream supplier (producer or interstate pipeline) or from the LDC’s own intrastate high pressure transmission pipelines. Some companies do not use the term ‘city gate’ to refer to the situation where natural gas goes from the company’s own transmission pipes to one of its distribution systems. Instead, these companies may use other terms such as ‘district regulator’ or ‘metering and regulating stations,’ or

‘M&R’ equipment, and these terms also can have varying meanings.”

Further, subpart A provides a definition for “city gate,” which was intended to apply to subpart NN and is based on financial custody transfer. Whereas the connotation of the term city gate as defined in subpart A works sufficiently for subpart NN, it has created confusion for subpart W and does not clearly identify the types of facilities EPA intended to cover. The amendments that EPA is proposing are designed to more clearly portray EPA’s intent using language readily understandable to industry.

First, we are proposing to strike the parenthetical term “(not interstate transmission pipelines or intrastate transmission pipelines).” The parenthetical was deemed unnecessary because EPA is proposing to add a definition for “distribution pipeline” in 40 CFR 98.238 that clarifies that “distribution pipelines” are only those designated as such by the Pipeline and Hazardous Material Safety Administration (PHMSA). Next, we are proposing to replace the term “city gate” with “meter-regulating” station. Because of the wide range of views in industry on the meaning of the term “city gate” EPA is proposing to remove the term “city gate” from subpart W and replace it with a term that reflects the types of activities occurring at the stations of interest. Specifically, we are proposing to add a definition for the term “meter-regulating station” in 40 CFR 98.238 to mean, “An above ground station that meters the flow rate, regulates the pressure, or both, of natural gas in a natural gas distribution facility. This does not include customer meters, customer regulators, or farm taps.” With this change, EPA intends to clarify a key concept in the natural gas distribution segment definition, but does not intend to change who is actually covered by the rule’s requirements.

EPA is proposing to strike the terms “excluding customer meters” and “physically deliver natural gas to end users” because the proposed definition for “meter-regulator” stations already addresses this exclusion.

Finally, we are proposing to clarify in the industry segment definition that we are only seeking for LDCs that are within a single state, consistent with the definition for LDCs in subpart NN.

*Greenhouse Gases to Report.* We are proposing several amendments to the subpart W provisions on the greenhouse gases that must be reported.

We are proposing to amend 40 CFR 98.232(c) to clarify that the equipment listed in 98.232(c)(1) thru (22) are for

equipment on a single well-pad or associated with a single well-pad in order to make the language consistent with the proposed changes to the onshore production industry segment definition in 40 CFR 98.230(a)(2) described above.

We are proposing to amend 40 CFR 98.232(i) by replacing the term “custody transfer city gate station” with the term “transmission-distribution transfer station” and replacing the term “non-custody transfer station” with the term “metering-regulating station.” EPA is proposing this amendment to clarify that the sources covered be consistent with the proposed terms for the natural gas distribution industry segment in 40 CFR 98.230(a)(8). We are also proposing to amend the source types by removing the text “Customer meters are excluded.” The exclusion is already covered in both the industry segment definition and in the definition of “metering-regulating station” provided in 40 CFR 98.238 and does not provide added clarity in this context. Next, we are proposing to strike 40 CFR 98.232(j) in order to address concerns raised that the inclusion of this provision resulted in confusion amongst reporters as they were unsure how this provision aligned with the flare emissions that are captured under the applicable emissions source calculations throughout 40 CFR 98.233. In addition to the proposal to strike 40 CFR 98.232(j), we are proposing to revise the introductory sentences to 40 CFR 98.232(e), (f), (g), (h), and (i) to clarify that N<sub>2</sub>O emissions, which are the primary GHG emission from flaring, are also required to be reported under these industry segments. This proposed amendment also clarifies that flare emissions must only be calculated where “flare stacks” are either specifically identified in a specific industry segment (e.g., onshore natural gas processing) or where an emissions source that is covered in an industry segment is routed to a flare (e.g., centrifugal compressors under onshore natural gas transmission).

Finally, we are proposing to further clarify in 40 CFR 98.232(k) that the onshore production and natural gas distribution industry segments are to report their combustion emissions under subpart W, while the remaining industry segments are to report their combustion emissions under subpart C of part 98.

*Calculating Greenhouse Gas Emissions.* We are proposing several clarifications, corrections, and amendments throughout 40 CFR 98.233.

*Natural Gas Pneumatic Device Venting.* EPA is proposing to revise Equation W-1 in 40 CFR 98.233(a) by

adding 40 CFR 98.233(a)(3) that allows the type of pneumatic devices to be determined using engineering estimation based on best available information. The proposed amendment for pneumatic devices was in response to questions received about how to determine whether a pneumatic device is high bleed or low bleed and the unanticipated burden for industry if they would have to measure the bleed rate of all pneumatic devices in order to determine how to characterize each pneumatic device.

EPA is also proposing to amend Equation W-1, to include a parameter "T" that estimates the total number of hours the devices were operational. Previously, this equation assumed that all natural gas pneumatic devices were operational all year, which would overestimate the emissions where the pneumatic devices operate less than a full year. Overall, we are proposing these amendments to Equation W-1 to more accurately reflect operating conditions for natural gas pneumatic device venting. Furthermore, EPA is clarifying in the definition for "GHG<sub>i</sub>" that compositions in 40 CFR 98.233(u) may be used for the onshore petroleum and natural gas production, onshore natural gas transmission compression, and underground natural gas storage industry segments.

In addition, with respect to the pneumatic device venting category, we are proposing in 40 CFR 98.236(c)(1)(iv) to clarify that emissions should be reported collectively for all high bleed pneumatic devices, then separately for all intermittent bleed pneumatic devices, and separately for all low bleed pneumatic devices. The 2010 final rule stated merely "report emissions collectively." The proposed amendment is consistent with how data are collected and emissions calculated.

*Natural Gas Driven Pneumatic Pump Venting.* We are proposing to amend Equation W-2 in 40 CFR 98.233(c), which is used for calculating GHG emissions from natural gas pneumatic pump venting, to include a parameter "T" that estimates the total amount of hours the pumps were operational. Previously, this equation assumed that all natural gas pneumatic pumps were operational all year, which would overestimate the emissions where the pneumatic devices operate less than a full year. We are proposing this amendment to Equation W-2 to more accurately reflect operating conditions for natural gas pneumatic pump venting.

*Acid Gas Removal Vents.* We are proposing to amend the calculation for estimating CO<sub>2</sub> emissions from acid gas

removal vents in Equation W-4 in 40 CFR 98.233(d). EPA notes that the equation in the 2010 final rule is an approximation and works well when the amount of CO<sub>2</sub> in gas is relatively low, such as 1 percent. However, the error rate in the estimate increases significantly as the amount of CO<sub>2</sub> in gas increases. Therefore, EPA is proposing a new equation, which uses the exact same input parameters and thus will not result in any additional burden to reporters, but will improve the quality of the information submitted to EPA.

We are also proposing to amend 40 CFR 98.233(d)(1) to specify that the use of CEMS is required if a CO<sub>2</sub> concentration monitor and volumetric flow rate monitor are installed. This amendment was made to clarify what conditions must be met to satisfy the subpart C: Stationary Combustion Tier 4 calculation requirement for Acid Gas Removal vents and to make the requirements consistent in subpart W where use of CEMS is required.

In 40 CFR 98.236(c)(3) we are proposing to clarify that reporting of CO<sub>2</sub> content should reflect the annual average of the measurements undertaken in 40 CFR 98.233(d). The 2010 final rule was not clear on whether or not to aggregate the measurements, and if so, how.

*Dehydrator Vents.* EPA is proposing several amendments to the provisions in 40 CFR 98.233(e) for calculating GHGs from dehydrator vents. First, we are proposing to clarify that gases other than natural gas, such as nitrogen, flash gas from the flash tanks, or dry gas from the absorber, that are used as stripping gases satisfy the requirements stated in 40 CFR 98.233(e)(1) introductory language. The final rule explicitly stated that natural gas was the gas considered to be the stripping gas. We are proposing this amendment to more accurately reflect operating conditions for glycol dehydrators in which gases other than natural gas are used as stripping gases.

We are also proposing to amend 40 CFR 98.233(e)(6) to clarify that GHG mass emissions from glycol dehydrators are to be calculated from volumetric GHG emissions using calculations in 40 CFR 98.233(v). In addition, we are proposing to clarify that only for dehydrators that use desiccant should GHG volumetric and mass emissions be calculated using paragraphs 40 CFR 98.233(u) and 98.233(v). We are proposing this amendment to account for calculation methodology 1 and 2, 40 CFR 98.233(e)(1)-(e)(3), that calculates total GHG<sub>i</sub> volumetric emissions in standard cubic feet and will only need

conversion to GHG mass emissions using 40 CFR 98.233(v).

With respect to the data reporting requirements, we are proposing to clarify the requirement to report vented and flared emissions individually. In the 2010 final rule, EPA intended that vented emissions be reported as one value, and flared emissions as a separate value. However, because these were entered in the same sub-paragraph, 40 CFR 98.236(c)(4)(i)(J), there was some ambiguity as to the aggregation for reporting. Therefore, EPA is proposing to create separate reporting requirements for vented and flared emissions. A similar amendment is proposed for 40 CFR 98.236(c)(4)(ii)(D).

Also for dehydrators, EPA is proposing to clarify that in specifying whether any vent gas controls have been used, the owners or operators should report which vent gas controls were used.

*Well Venting for Liquids Unloadings.* First, we are proposing to revise 40 CFR 98.233(f) methodology 1, methodology 2, and methodology 3 such that sampling would be done in a sub-basin category as opposed to the field level as described earlier in Section II.C. of this preamble (Sub-basin Category for Onshore Petroleum and Natural Gas Production).

In the technical corrections rule, EPA proposed several technical corrections to the provisions in 40 CFR 98.233(f) including corrections to Equation W-8, W-9, and their respective definitions. In today's action, we are proposing additional revisions to Equations W-8 and W-9 and their respective definitions. Because both proposed actions affect the same paragraph of the rule, for clarity the part 98 amendatory language at the end of this preamble contain the full set of revisions from both proposed actions. The changes proposed today are explained below in this preamble.

First we are proposing to revise Equation W-8 by correcting the definition for parameter  $E_{a,n}$  to be  $E_{s,n}$  to accurately reflect that the calculated emissions should be in standard conditions and not actual conditions. The proposed revision from actual conditions to standard conditions was made to be more uniform in approach to calculate emissions. The parameters in Equation W-8 have been made applicable to each venting instance, q, and for each well, p, in a pressure grouping and sub-basin category. These changes are notational amendments that correct the summation operation. Next, we are proposing to amend the definition for "SFR" which is the average sales flowrate to state that the

average sales flow rate of gas is to be obtained at standard conditions, and also that Equation W-33 may be used to convert the sales flow rate from actual to standard conditions. In addition, the definition for parameter  $WD_{wp}$  has been clarified to mean the distance between the lowest packer to the bottom of the well. We are also proposing to remove 40 CFR 98.233(f)(2)(i) to remove redundancy with 40 CFR 98.233(f)(4). As stated previously, we are proposing to amend Equation W-9 in the same manner as Equation W-8: By revising the definition for “ $E_{a,n}$ ” to accurately state that the definition should result in standard conditions, thus “ $E_{s,n}$ ”, and by revising the definition for SFR to state that the average sales flow rate is to be calculated at standard conditions using Equation W-33; and the parameters, where applicable, have been made applicable to each venting event,  $q$  for each well,  $p$ , in a pressure grouping and sub-basin category to correct the summation. Finally, we are proposing to amend Equation W-8 and W-9 to account for a change in aggregation from field level to sub-basin category for reporting.

For Calculation Method 1, where a representative measurement is taken from one well unloading and then applied to all other wells of a similar type, EPA is defining the categorization of “similar types” by five pressure ranges and three tubing diameters. The pressure ranges were optimized using HPDI well counts in 5 psig pressure increments from zero gauge pressure to 200 psig. The fifth “unbounded” pressure range is “greater than 200 psig,” which EPA believes will have very few well liquids unloading venting to the atmosphere. The three tubing diameter ranges, equal or less than 1 inch, greater than 1 inch and equal or less than 2 inch, and greater than 2 inch, were derived from gas well tubing suppliers’ specifications. The relevancy of these pressure ranges and tubing diameter ranges is that liquids unloading venting is dependent on both the shut-in pressure of the reservoir (shut-in by liquids accumulation) and velocity of gas pushing liquids up the tubing, which is a function of tubing diameter.

Finally, in the data reporting requirements in 40 CFR 98.236(c)(5), we are proposing to make a harmonizing change, consistent with the amendments described above in (Sub-basin Category for Onshore Petroleum and Natural Gas Production), that reporting should be for each well tubing diameter grouping and pressure grouping within each sub-basin category.

*Gas Well Venting During Completions and Workovers From Hydraulic Fracturing.* We are proposing several amendments to 40 CFR 98.233(g) to account for the proposed change in aggregation from field level to sub-basin category for taking measurements. For example, we are replacing the term “field” with “sub-basin and well type combination” in the definitions and clarifying that the GHG emissions are determined for each sub-basin and well type combination. For further discussion on the proposed changes from field level calculations and reporting to sub-basin category, please refer to Section II.C of this preamble (Sub-basin Category for Onshore Petroleum and Natural Gas Production).

We are also proposing to revise equation W-10 by including a provision to account for the time period in which we believe normal production of a well would be established. In this action, we are revising equation W-10 by defining a parameter, FRM, which would represent the ratio of emissions ( $FR_p$ ) to the average 30 day production from the well immediately following hydraulic fracturing ( $PR_p$ ). The emissions,  $FR_p$ , which in the final rule as the average flow rate in cubic feet per hour converted to standard conditions, are calculated using W-11A and W-11B. FRM is calculated using the newly assigned Equation W-12. We believe that this proposed revision will more accurately represent the production flow from a well immediately following a well or completion using hydraulic fracturing and will more accurately represent when a completion or workover ends and when normal production begins. Finally, in Equation W-10, EPA is proposing to add the parameter  $W$ , which is the number of wells completed or worked over using hydraulic fracturing in a sub-basin and well type combination, and, where appropriate, made the parameters applicable to each well  $p$ . This amendment corrects the summation operator to make it mathematically accurate.

EPA also added Equation W-11C, which allows reporters to determine whether the well flow rate of gas during venting to the atmosphere or a flare (*i.e.*,  $FRW_p$ ), is sonic or sub-sonic flow. Thus, reporters can determine whether to use Equation W-11A, which is for sub-sonic flow, or Equation W-11B, which is for sonic flow.

We are also proposing several minor edits to 40 CFR 98.233(g)(3) and 40 CFR 98.233(g)(5) to clarify that all requirements in 40 CFR 98.233(g) apply to gas well venting during completions and workovers from hydraulic

fracturing, consistent with the emission source name of “Gas well venting during completions and workovers from hydraulic fracturing”.

In 40 CFR 98.233(g)(3) we are also proposing to delete the reference to how to calculate the volume of recovered completion or workover gas. The first sentence in that paragraph is already clear that company records may be used, therefore the second sentence does not provide any additional information and is duplicative.

We are proposing several harmonizing changes to the data reporting requirements for this emissions source. We are proposing to indicate that reporting is required for each “sub-basin category” and well type (horizontal or vertical). We are also proposing to clarify that reporting of reduced emissions completions for both well completions and workovers is required. Although this information is required to be collected for both well completions and well workovers, EPA inadvertently omitted the reporting requirement for reduced emissions completions for well workovers.

Also in 40 CFR 98.236, we are proposing to clarify that reporters are only required to count the number of workovers that flare or vent gas to the atmosphere. There is no reporting requirement for workovers that do not flare or vent gas.

*Gas Well Venting During Completions and Workovers Without Hydraulic Fracturing.* In this section we are proposing to strike the term “well workovers not involving hydraulic fracturing” from the introductory text in paragraph (h) because it was repetitive.

Second we are proposing to replace the term “field” used in the definition for the parameter “ $N_{wo}$ ” and “ $f$ ” for the same reasons stated in Section II.C. of this preamble (Sub-basin Category for Onshore Petroleum and Natural Gas Production).

Finally, EPA is proposing to amend the summation operator in Equation W-13 to make it mathematically accurate. This includes making specific parameters in Equation W-13 applicable to each well completion,  $p$ .

*Blowdown Vent Stacks.* In a previous action we proposed amendments to the introductory sentences to 40 CFR 98.233(i). In this action, based on additional questions received during implementation of subpart W, we are proposing to further clarify the types of blowdowns that EPA intended to cover. First, we are proposing to delete “to atmosphere” because not every blowdown will result in the blowdown chamber being brought to atmospheric pressure. Operators often release only

part of the gas in the blowdown chamber and maintain it at low pressure. It was always EPA's intent to cover these types of "blowdowns" and thus we are proposing to delete "to atmosphere". Further we are clarifying that we only intend to cover the types of blowdowns typically tracked by operators for planned maintenance or emergency shutdowns. EPA had earlier proposed to exclude emergency shutdowns in a previous action. However, EPA has since been informed that operators track emergency shutdowns already. Therefore, EPA is proposing to require emergency shutdowns to be reported. In addition, we did not intend to capture blowdowns that are not typically tracked by operators, such as pressure release valve releases designed to keep equipment under safe operating mode.

EPA has also considered other factors that could impact emissions from blowdowns, for example compressibility. We have considered accounting for gas compressibility but have not proposed this because we believe that the effort in adjusting for a compressibility factor outweighs the benefits in terms of increased accuracy. EPA seeks comments on why such an allowance should be provided and how to standardize this option so that those who choose to use it all do so in the same way.

Also in this action, we are proposing to revise the numbering of Equation W-14b and include an additional Equation, W-14b that will take into account that a chamber may not be blown down to atmospheric pressure, and will allow facilities the option of tracking blowdowns by each occurrence by blowdown volume. It has come to EPA's attention that some facilities may log blowdowns at a facility by individual blowdown occurrence. To enable facilities to retain their current tracking system, we are proposing to add an option for calculating blowdown emissions by equipment type. This option for tracking blowdowns would not impact data quality. Harmonizing changes in 40 CFR 98.236(c)(7) are being proposed to account for these amendments.

Lastly, we are proposing to include a default composition for the natural gas transmission industry segment, and for the LNG storage and underground storage segments. EPA received feedback from industry that a default composition of 95 percent methane and 1 percent CO<sub>2</sub> was a representative breakdown of the gas composition at these types of facilities while limiting burden and should be acceptable. EPA agrees that a default composition of 95

percent methane and 1 percent CO<sub>2</sub> is appropriate because the composition of natural gas is monitored by transmission compression companies and regulated by FERC.

*Onshore Production Storage Tanks.* EPA is proposing to replace the term "field" in 40 CFR 98.233(j)(1)(vii)(B), 40 CFR 98.233(j)(1)(vii)(C), and 40 CFR 98.233(j)(3)(i) with "sub-basin category" consistent with the proposed amendments described in Section II.C, (Sub-basin Category for Onshore Petroleum and Natural Gas Production), of this preamble. We are also proposing to clarify this level of reporting in the data reporting requirements in 40 CFR 98.236(c)(8).

Also in the data reporting requirements, we are proposing to clarify the reporting requirement in 40 CFR 98.236(c)(8)(i), 98.236(c)(8)(ii) and 98.236(c)(8)(iii) that reporters must report vented, flared, and recovered emissions individually for Calculation Methodology 1 and 2. This is consistent with the calculation requirements.

*Transmission Storage Tanks.* We are proposing to revise 40 CFR 98.233(k) to include an additional provision such that reporters would now have the option of directly measuring the transmission storage tanks while bypassing an initial screening with the optical gas imaging instrument. EPA received feedback from industry that some owners and operators would prefer to simply measure the tank annually without having to be required to screen the tank vapors with a camera first. We agree that allowing facilities to directly measure the emissions, without first requiring leak detection, does not compromise data quality, but could enable facilities to meet the requirements of the rule with lower burden. Therefore, in this action, EPA is proposing to allow operators to either screen their tanks first by using the optical gas imaging instrument for 5 continuous minutes and if a leak is detected, measure the leak according to the provisions in 40 CFR 98.234 consistent with the 2010 final rule, or measure the tank vent vapors for 5 minutes using either a flow meter, calibrated bag, or high volume sampler according to the provisions outlined in 40 CFR 98.234.

Finally, with respect to the data reporting requirements in 40 CFR 98.236(c)(9), as described further above, we are proposing to clarify the separate reporting requirements for vented and flared emissions.

*Well Testing Venting and Flaring.* EPA is proposing In amendments to the data reporting requirements in 40 CFR 98.236(c)(10). Specifically, we are

proposing to add a reporting requirement for the emissions of the flaring gas collectively. This is consistent with other proposed clarifications to report flared emissions separately.

EPA is considering, and has not proposed, using the production rate to estimate volume of emission from gas wells that produce dry gas. EPA is soliciting comments on this suggested provision for gas wells.

EPA has received several requests to exclude the well testing venting and flaring emissions source from the rule. Industry has informed EPA that this source has very little, if any, emissions because the well testing is almost exclusively performed in a closed system using a "test separator," which industry has stated would result in zero emissions.

EPA has reviewed this request and in general, EPA continues to believe that well testing venting and flaring is a relevant source in the onshore petroleum and natural gas production industry segment. In addition, EPA has determined that during well testing, some states allow companies to flare sour gas for a maximum of 72 or 144 hours. EPA has concluded that this approach would result in emissions from this source that should be reported under this rule. If, however, for some reason reporters do not have any emissions from this source (for *e.g.*, states do not allow venting or flaring from well testing), they would report zero emissions.

Thus, EPA is retaining well testing venting and flaring in the rule. However, EPA is seeking comment on how to reduce or eliminate burden in cases where companies verify that zero emissions are associated with this potential source, such as when a closed loop system is employed.

*Associated Gas Venting and Flaring.* EPA is proposing to revise 40 CFR 98.233(m) to replace the term "field" with the term "sub-basin category" for the same reasons outlined in Section II.C. (Sub-basin Category for Onshore Petroleum and Natural Gas Production) of this preamble.

*Flare Stack Emissions.* We are proposing two amendments in 40 CFR 98.233(n)(2) to clarify how to determine gas compositions for hydrocarbon streams going to flare. First, we are proposing to amend 40 CFR 98.233(n)(2)(i) to clarify that reporters must use the GHG mole percent in feed natural gas for all streams for onshore natural gas processing plants that solely fractionate a liquid stream. EPA is proposing this amendment to address lack of clarity in the final provisions

which did not explicitly state how natural gas processing plants which only fractionate liquid streams would determine their gas compositions. We are also proposing to clarify in 40 CFR 98.233(n)(2)(iii) that methane, in addition to ethane, propane, butane, pentane-plus and mixed light hydrocarbons, should be accounted for when the stream going to the flare is a hydrocarbon product stream. This proposed technical correction, to add methane, ensures that paragraph 40 CFR 98.233(n)(2)(iii) is consistent with the equation.

In addition, we are proposing to clarify the summation operator in W-21 to make it mathematically correct. We are also clarifying that source types in 40 CFR 98.233 that send emissions to a flare must determine volumetric flow rate, parameter "Va", in Equation W-19 through W-20, at actual conditions.

We are also proposing to clarify that the volume of gas sent to the flare should be calculated in actual conditions. This is consistent with other proposed changes throughout this revision that clarify the use of actual versus standard conditions.

In addition, we are proposing to allow facilities the option to use a continuous emissions monitoring system (CEMS) to estimate GHG emissions from flares. EPA received questions as to why CEMS were allowed for use for AGR vents, for example, but not for flares. We did not intend to unnecessarily limit the measurement options for flares, and therefore are proposing to add the option to use CEMS.

The proposed text clarifies that the use of CEMS is required if a CO<sub>2</sub> concentration monitor and volumetric flow rate monitor are installed and that optionally a user may install a CO<sub>2</sub> concentration monitor and volumetric flow rate monitor to be eligible to use the Tier 4 methodology. When CEMS are used to calculate emissions for flare stacks the use of equations W-19 to W-21 would no longer apply. With the relatively high quantity of unburned methane in the emissions from flares, EPA has identified that it is not appropriate to use the CH<sub>4</sub> calculation methodology in subpart C as most flared gases will not be fuels listed in Table C-1 of subpart C. EPA is seeking comment on what form an equation should take that would calculate CH<sub>4</sub> and N<sub>2</sub>O for flares that are monitored by CEMS. One option is to calculate the CH<sub>4</sub> by multiplying the concentration of CO<sub>2</sub> measured by the CEMS by the fraction of CH<sub>4</sub> that was not combusted as determined by flare efficiency.

In the data reporting requirements in 40 CFR 98.236(c)(12) we are proposing

to add reporting requirements consistent with the calculation requirements in Equations W-19 through W-21. Specifically, we are proposing to add reporting of uncombusted CH<sub>4</sub>, combusted and uncombusted CO<sub>2</sub> and combustion-related N<sub>2</sub>O emissions. The proposed amendments ensure consistency across the calculation, monitoring and reporting requirements.

**Centrifugal Compressor Venting.** Consistent with other clarifications throughout this proposed rule, we are proposing to clarify in the definition for the term MTm in Equation W-24 that flow measurements should be determined in standard cubic feet per hour.

**Leak Detection and Leaker Emission Factors.**

We are proposing to revise 40 CFR 98.233(q)(8) to remove the term "city gate stations at custody transfer" and replace with "transmission-distribution transfer stations" for the reasons described earlier in Section II.C of this preamble. We are also proposing to remove the term "meters and regulators" and replace with above ground "metering-regulating stations". The term "meter-regulating" is a term that we are proposing to define in this action, as described earlier in Section II.C of this preamble.

The revisions to terminology for natural gas distribution facilities have been proposed to clearly identify who is covered under the distribution segment of subpart W, and the sources for which leak detection and measurement are required and those sources for which an emission factor can be used. Based on feedback received from industry, there may be concerns that the emission factors developed at the transmission-distribution transfer stations are not representative of emissions at other above ground metering-regulating stations. Although we are not proposing changes to the approach for applying emission factors to above ground metering-regulating stations in this action, we are seeking comment on alternative approaches, or data that may be used, for determining emissions factors for above ground metering-regulating stations. Based on comments received, EPA may consider future amendments to the rule.

In a separate action, (76 FR 37300) EPA is proposing to expand the final BAMM provisions to cover all facilities subject to subpart W, and allow reporters the option to use best available monitoring methods (BAMM) for all of 2011 without being required to submit a request for approval to the Administrator. For natural gas distribution facilities at transmission-

distribution transfer stations, this would allow facilities to estimate the number of equipment leaks and the equipment sources themselves using BAMM as provided in the rule, along with the total time the component was found leaking and operational, as outlined in Equation W-30. This emission factor could then be used for other above ground metering-regulating stations within the facility boundary.

EPA is proposing to clarify the summation operator in W-30 to make it mathematically correct. This clarification includes amending x to be the total number of each equipment leak source and adding T<sub>p</sub>, which is the total time the component p was found leaking and operational. We are proposing to revise the parameter GHG<sub>i</sub>. For industry segments listed in 98.230 (a)(4) and (a)(5), GHG<sub>i</sub> has been revised to 0.974 for CH<sub>4</sub> and 1.0 × 10<sup>-2</sup> for CO<sub>2</sub>. For industry segments listed in (a)(6) and (a)(7), GHG<sub>i</sub> equals 1 for CH<sub>4</sub> and 0 for CO<sub>2</sub>. For industry segments listed in (a)(8), GHG<sub>i</sub> equals 1 for CH<sub>4</sub> and 1.1 × 10<sup>-2</sup> CO<sub>2</sub> (See Technical Support Document Memo (TSD) in Docket ID EPA-HQ-OAR-2011-0512 for further details).

Next we are proposing two amendments in 40 CFR 98.236(c)(15). We are proposing to amend the reporting requirements in 40 CFR 98.236(c)(15)(i)(C) to clarify that owners or operators must report CH<sub>4</sub> emissions collectively by equipment type and CO<sub>2</sub> emissions collectively by equipment type. The calculation methodologies in 40 CFR 98.233(q), as finalized in the rule, require reporters to calculate CH<sub>4</sub> emissions and CO<sub>2</sub> emissions separately per source with equipment leaks. We are proposing this amendment to clarify that applicable reporters must report the CH<sub>4</sub> emissions collectively by equipment type and CO<sub>2</sub> emissions collectively by equipment type. We are also proposing to correct the reporting requirement in 40 CFR 98.236(c)(15)(ii)(A) to not include onshore natural gas processing. This source category is not required to use population emission factors. This amendment is associated with the amendment to Equation W-31 in 40 CFR 98.233(r) discussed in Calculating Greenhouse Gas Emissions.

**Population Count and Emission Factors.** We are proposing several amendments in 40 CFR 98.233(r). First we are proposing to amend the population emission factor definition in equation W-31 by replacing the term "non-custody transfer city-gate" with above grade "metering-regulating station" for the reason stated above in this preamble. We are also clarifying

that the count in equation W-31 applies to the number of “meter/regulator runs” at all “metering-regulating stations” combined.

We are also proposing to amend the term “count” in W-31 as follows to elaborate and clarify how each industry segment should count the total number of equipment/components. In that same equation, we are also proposing to revise the definition for  $GHG_i$  by referring to 40 CFR 98.233(u) and deleting the composition specified for each industry segment.

Next, EPA is proposing to amend 40 CFR 98.233(r)(2)(i) to explicitly state how meters and piping are to be counted. Table 1-B of the 2010 final rule was developed using activity data from the 1996 EPA/Gas Research Institute Study (1996 EPA/GRI Study), Methane Emissions from the U.S. Natural Gas Industry. For all major equipment that are not specifically listed, the 1996 EPA/GRI Study categorized all components at a well-pad under the meters/piping category. Therefore, owners or operators should use one count of meters/piping per well-pad.

Further, consistent with proposed amendments described above, EPA is proposing to amend 40 CFR 98.233(r)(6)(ii) by referring to “metering-regulating stations” in place of “city gate” and to clarify that the emission factor for meter/regulator runs at all metering-regulating stations in equation W-32 is based on leak detection performed at “transmission-distribution transfer stations”. EPA is also amending 40 CFR 98.233(r)(6)(i) to clarify that below grade meters and regulators apply to below grade “metering-regulation stations”.

Lastly, we are proposing revisions to equation W-32 that include revisions to the definitions for EF,  $E_{s,i}$ , and “Count” again to clarify the terminology change away from “custody transfer” to above ground “metering-regulating” stations. We are also proposing the inclusion of a conversion factor to convert to hourly emissions. Consequently, we are proposing to amend the conversion in Equation W-32 in 40 CFR 98.233(r) so that the equation yields an EF in cubic feet per meter per hour to be used in Equation W-31 for above ground metering-regulating stations. Finally, the summation operator has been removed in Equation W-32 because  $E_{s,i}$  represents annual volumetric  $GHG_i$  emissions at all T-D transfer stations, making the summation operator redundant.

In addition to the proposed calculation amendments described above, we are also proposing to replace

the term “field” with “sub-basin category” in the reporting for onshore production, consistent with the proposed change to sub-basin calculation and reporting.

*Volumetric Emissions.* We are proposing to amend 40 CFR 98.233(t) to clarify that reporters should use actual temperature and pressure and adjust to standard conditions. The phrase “by converting actual temperature and pressure of natural gas emissions to standard temperature and pressure of natural gas” was deleted because it is redundant.

*GHG Volumetric Emissions.* We are proposing to amend 40 CFR 98.233(u) to include 95 percent methane/1 percent  $CO_2$  default gas composition for the natural gas transmissions industry segment, along with the LNG storage and underground storage industry segments. Again, as described above, EPA agrees that a default composition of 95 percent methane and 1 percent  $CO_2$  is appropriate because the composition of natural gas is monitored consistently and regulated by FERC.

We are also proposing to strike the reference to the term “field” in 40 CFR 98.233(u) and replace with “sub-basin category” for the reasons outlined in Section II.C. of this preamble (*Sub-Basin Category Reporting for Onshore Petroleum and Natural Gas Production*).

We are also proposing to clarify that the GHG mole fraction that is determined without using a continuous gas analyzer may be determined using an annual average instead of the most recent gas composition based on available analysis in a sub-basin entity.

*GHG Mass Emissions.* We are proposing to clarify in the definitions to equation W-36 that the equation applies to  $N_2O$  emissions as well.  $N_2O$  emissions are calculated from stationary combustion and flares, and the proposed edit is necessary to convert the mass emissions of  $N_2O$  to carbon dioxide equivalents of gas. EOR injection pump blowdown. We are proposing to clarify in the equation that only  $CO_2$  emissions are calculated. The variables  $Mass_{c,i}$  has been changed to  $Mass_c$ ,  $CO_2$ , and  $GHG_i$  has been changed to  $GHG_{CO_2}$ .

*Onshore Production and Distribution Combustion Emissions.* In a previous action, EPA proposed several revisions to 40 CFR 98.233(z) including corrections to Equations W-39 and 40. In this action, we are proposing additional amendments to clarify when owners or operators of onshore production and distribution facilities must use the methods in 40 CFR subpart C to calculate combustion-related emissions and when they must use the

methods in 40 CFR 98.233(z) to calculate combustion-related emissions. We are proposing to clarify that facilities using subpart C to calculate emissions are not limited to the use of tier 1, but rather may use any tier. Regardless of the tier used, the facility must follow the corresponding calculation, monitoring and reporting requirements of that tier.

We are also proposing to amend the requirements for units combusting field gas or process vent gas. The 2010 final rule required the use of a continuous flow meter, if present. Use of a continuous flow meter would have necessitated calibration requirements per 40 CFR 98.3(i). These calibration requirements were disproportionately burdensome for these relatively small disperse units, particularly given that facilities that currently do not have a flow meter in place could use company records. In this action, we are proposing to amend the requirements to allow the use of company records for this equipment.

*Onshore Production and Distribution Equipment Threshold for Internal Combustion Equipment.* In letters dating January 31, 2011 and March 5, 2011 from API and AGA, respectively, EPA received petitions to reconsider an exemption for internal combustion engines similar to that which was in the final subpart W rule (75 FR 74458, November 30, 2010) for external combustion engines. These requests from the onshore petroleum and natural gas production and natural gas distribution reporters were to provide respite for reporting of emissions from internal combustion equipment that are brought in temporarily for maintenance and construction. Some reporters have requested complete exemption such that combustion equipment that fall below a specific threshold would be exempt from reporting.

EPA considered, but decided not to propose an exemption for reporting for internal combustion engines. EPA decided not to propose amendments because data currently are not available to sufficiently characterize these upstream emissions. For example, the volume of fuel consumed, especially at wellhead natural gas compressors, is not being monitored and only limited data, voluntarily reported, are available through the Energy Information Administration.

Although EPA has decided not to propose a threshold due to lack of availability of a comprehensive data source from which to develop policy, we acknowledge that there is potentially small internal combustion equipment outside of compressors. In considering a

potential equipment threshold for non-compressor internal combustion engines, EPA collected and reviewed data on the size ranges of small, portable internal combustion engines that may be brought to a wellhead for periodic maintenance and construction. Such equipment would include, for example, electric generators for arc welding, electric generators powering portable flood-lighting, and electrical generators or gasoline engines powering air compressors (for sand blasting or pneumatic tools). For lighting, the industrial generators were almost exclusively below 12 horsepower (hp), with the highest found being 13.9 hp. For welding machines, we assumed that they would use standard portable generators, since specific information on these types of machines was scarce. Most portable industrial generators are rated between 15–40 hp, with the largest one found being 67 hp. EPA determined that 130 horsepower (double the largest size found) would exclude virtually all small portable or stationary internal combustion engines, but is much smaller than the 5 mmBtu/hour exclusion for external combustion sources and equates to about 1 mmBtu/hour. EPA is seeking comments on whether a 1 mmBtu/hour equipment threshold for internal combustion engines that are not driven by natural gas is reasonable. We also seek comment on EPA's position that combustion-related emissions at compressors should not be excluded from reporting, regardless of size and where EPA can find reliable estimates of natural gas consumption.

EPA is proposing to clarify the summation operator in Equation W–39 to make it mathematically correct. In addition, EPA is proposing to clarify in Equation W–40 that N<sub>2</sub>O mass emissions are calculated by changing the parameter N<sub>2</sub>O to Mass<sub>s</sub>, N<sub>2</sub>O.

In specific, EPA is soliciting comments as to why emissions from specific internal combustion related equipment should not be reported including the size of the equipment that should be excluded along with supporting data.

**Monitoring and QA/QC Requirements.** We are proposing several amendments to the monitoring and QA/QC requirements in 40 CFR 98.234.

First, we are proposing to amend the language in 40 CFR 98.234(a)(1) by first removing and reserving the text in 40 CFR 98.234(a)(4) and combining it with 40 CFR 98.234(a)(1), thus resulting in one consolidated paragraph. We are also proposing to state explicitly that video recordings are not required under subpart W. As noted in the Response to

Comments to the 2010 final rule,<sup>5</sup> EPA did not intend to require retention of a video recording of the leak detection using optical gas imaging instruments for reporting to EPA under subpart W of the greenhouse gas reporting rule.

However, some of the references to the Alternate Work Practice suggested that EPA intended that facilities retain these records onsite.

Next, we are proposing to amend the language in 40 CFR 98.234(a)(2) to state that Method 21 compliant instruments may be used to monitor inaccessible emissions sources. This amendment increases flexibility in monitoring requirements and reduces the burden on the industry, without compromising data quality.

Further, based on questions raised by industry, we are proposing to amend 40 CFR 98.234(a)(5) by revising the acoustic leak detection device provisions to use a different model of acoustic detector, one that does not have a through-valve leakage correlation, thereby allowing leakage to be measured by other methods if a leak is found. However, EPA is proposing to clarify that not all types of acoustic detectors are allowed. In particular the “gun” type instrument that is aimed at the equipment from a distance to detect the acoustic signal of leakage is not an allowable instrument. This type cannot distinguish between external leakage to the atmosphere from internal, through-valve leakage, which is the objective for specifying this device. EPA is proposing to further specify that the “stethoscope” type acoustic detector that senses through valve leakage when put in contact with the valve body, but does not have the leakage estimating correlations, may be used.

We are also proposing editorial revisions in 40 CFR 98.234(c) for calibrated bagging to specify that those using the calibrated bag for sampling, must ensure that the emissions must be at a temperature below that which the bag manufacturer specifies for safe handling.

**Data Reporting Requirements.** We are proposing several amendments and clarifications throughout 40 CFR 98.236 in order to address questions received about how data should be reported. Many of the data reporting requirements were lacking clarity with respect to the level of reporting. Based on the questions received, as well as EPA's experience gained in developing the electronic GHG reporting tool (e-GGRT),

which provided EPA a better understanding of the clarity necessary in the data reporting requirements, EPA is proposing the following changes.

In cases where technical amendments were already proposed for individual emissions sources above, EPA has described the corresponding proposed amendments to the reporting requirements along with the technical amendments. This section outlines any remaining proposed amendments to the data reporting requirements not already described above.

First we are proposing to clarify the data reporting requirements for offshore petroleum and natural gas production facilities in 40 CFR 98.236(b). Specifically, the 2010 final rule was not clear in terms of which gases were required to be reported and the data elements for reporting. Consistent with the calculation requirements, we are proposing to clarify that facilities containing the offshore petroleum and natural gas production segment would be required to report emissions of CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O as applicable to the source type (in metric tons CO<sub>2</sub>e per year at standard conditions) individually for all the emissions source types listed in the most recent BOEMRE study.

Next, in the introductory paragraph for 40 CFR 98.236(c) we are proposing to clarify that vented emissions should be reported separately from flared emissions. We have specified which source types require separate calculation of flared emissions, but EPA is taking comment on whether any source types that have process gas routed to flares were excluded from having specific reporting requirements established for flares.

We are proposing to make changes to the data reporting requirements for local distribution companies, consistent with the proposed amendments to 40 CFR 98.230(a)(8). Specifically, we are proposing to replace “custody transfer” with “transmission-distribution transfer” station and replace “non-custody transfer” with “above ground metering-regulating station.” In addition, we are proposing to require the reporting of counts and emissions of both above grade and below grade stations for each of metering-regulating stations and “transmission-distribution transfer stations.”

Finally, EPA seeks some basic information on average API gravity of the hydrocarbon liquids produced, gas to oil ratio, and low pressure separator pressure per sub-basin entity. It is EPA's understanding that this information is already known to reporters. EPA will use these facility sub-basin

<sup>5</sup> Response to Comments Document: Subpart W—Petroleum and Natural Gas Systems, part 2, page 28. Comment Number: EPA-HQ-OAR-2009-0923-1039-23.

characteristics to characterize other emissions sources across different sub-basins.”

*Records that must be retained.* EPA is proposing to add the following recordkeeping requirement: “The records required under § 98.3(g)(2)(i) shall include an explanation of how company records, engineering estimation, or best available information are used to calculate each applicable parameter under this subpart.” While EPA believes this requirement is already included in 40 CFR 98.3(g)(2)(i) where the records for “The GHG emissions calculations and methods used” requirement is made, EPA believes that adding this statement to the recordkeeping requirements in subpart W will provide facilities with further clarity on the records they are required to keep. This clarification is intended to make clear that stating company records, engineering estimation, or best available information were used is not enough to satisfy the requirement in 40 CFR 98.3(g)(2)(i). This requirement is intended to parallel a similar requirement for subpart C specified in 40 CFR 98.34(f) and referenced in 40 CFR 98.37.

*Definitions.* We are proposing to amend, and in some cases, add definitions to 40 CFR 98.238 to further clarify rule requirements.

*Associated With a Single Well-Pad.* We are proposing to add a definition for “associated with a single well-pad” to clearly demarcate the boundary of onshore production. EPA proposes that the association be defined by the hydrocarbon stream from a single well-pad. The association with a single well-pad ends where the stream from a single well-pad is combined with streams from one or more additional single well-pads, where the point of combination is located off that single well-pad. In addition, we are stating that this definition does not include storage and condensate tanks that are located downstream of the point of combination. For gas contained in crude oil or condensate flowing under pressure off a single well-pad to a gas-liquid separator or tank, or comingled with flow from other well-pads, 40 CFR 98.233(j) requires reporting of the gas content that may be released from the oil or condensate in an atmospheric pressure fixed roof storage tank. We have determined that the conditions of the pressurized oil or condensate (*i.e.*, gravity, pressure, temperature, flow rate) are commonly known by the well owner/operator, and the amount of gas that may be released from the oil or condensate with a pressure reduction

can be determined most appropriately by the well owner/operator.

*Distribution Pipeline.* EPA is proposing to include a definition for distribution pipelines to add clarity on its intent on coverage for the natural gas distribution industry segment. We are proposing to use a widely accepted definition for distribution pipelines, specifically, those designated as such by the Pipeline and Hazardous Material Safety Administration (PHMSA).

*Facility With Respect to Natural Gas Distribution.* EPA is proposing to revise the definition for natural gas distribution by replacing the term “metering stations, and regulating;” with the term “metering-regulating.” EPA is proposing to include a definition for the term above ground “metering-regulating station” to clarify where leak detection and monitoring is required in the 2010 final rule.

*Farm Taps.* EPA is proposing to revise the definition for farm taps in 40 CFR 98.238 by striking the unnecessary phrase “The gas may or may not be metered, but always does not pass through a city gate station.”

*Flare.* We are proposing to add a definition of flare specific for subpart W to address questions received during implementation about what constitutes a flare. The proposed definition clarifies that a flare may be either at ground level or elevated and uses an open or enclosed flame to combust waste gases without energy recovery. This definition for subpart W is intended to be inclusive of devices that combust waste gases without energy recovery. This broad, all-inclusive definition for subpart W is necessitated by the wide variety of waste gas combustion devices that are or may be used in the different segments of subpart W, all for the same purpose and having the same effect of combustion emissions of hydrocarbon gases.

*Forced Extraction of Natural Gas Liquids.* We are proposing to add a definition for forced extraction to restrict it to specific processes. EPA determined that it was necessary to develop this more precise definition because many industry questions pointed to the confusion between processing plants, gas gathering stations and wellheads, where similar equipment and processes are conducted as at some, but not all, processing plants that EPA determined should be subject to this rule. Those similar processes. These processes in and of themselves do not make a facility a “processing plant.” Furthermore, the Oil & Gas Journal annual survey of gas processing plants is primarily focused on those that fractionate, leaving out known, large gas

plants that separate NGLs or condition gas, but do not fractionate, and are clearly not gathering booster stations. The key principle that EPA is attempting to clarify through this definition is the separation of heavier hydrocarbons in the vapor phase of natural gas delivered to a plant, excluding the simple gravity separation of liquids entrained in the gas. This principle is “forced extraction,” as defined here.

*Horizontal Well.* With the change from field level reporting to sub-basin category, EPA is proposing to add a distinction for calculating emissions from horizontal wells and vertical wells. We are proposing to define horizontal well to mean a well bore that has a planned deviation from primarily vertical to a primarily horizontal inclination or declination tracking in parallel with and through the target formation.

*Sub-Basin Category.* With the change from field level reporting to sub-basin category, EPA is proposing to add a definition for sub-basin category to mean a subdivision of a basin into the unique combination of wells with the surface coordinates within the boundaries of an individual county and subsurface completion in one or more of each of the following four formation types: Conventional with > 0.1 millidarcy permeability, and unconventional with ≤ 0.1 millidarcy permeability shale, coal seam, and other tight reservoir rock, all of which are unconventional with ≤ 0.1 millidarcy permeability. Unconventional wells producing from formations categorized in two or more types are considered shale for a combination of “shale and coal”, “shale and other tight”, or “shale, coal and other tight”; and are considered as coal for combinations of “coal and other tight”.

*Transmission-Distribution (TD) transfer station.* EPA is proposing to add a definition for Transmission Distribution (TD) transfer station to define what was previously termed “custody transfer” in the final rule. It was not EPA’s intent for the term “custody transfer” to be defined in the context of ownership of gas transfer. EPA believes the new definition may be universally applied to designate which “metering-regulating stations” are classified as “transmission-distribution transfer stations.” All covered stations in the distribution segment will be collectively referred to as “metering-regulation stations” but the subset that require leak detection are “transmission-distribution transfer stations.” EPA was notified of concerns from industry that defining a

transmission distribution transfer station without a threshold would include numerous small TD transfer stations that would otherwise not have been required to perform leak surveys. EPA has not included any thresholds in the proposal but we are taking comment on what an appropriate threshold would be to exclude these smaller transfer stations. Such a threshold should exempt stations with low throughputs or low emissions. Any threshold should be readily verifiable and be readily applied to all stations. Potential options for a threshold include using the inlet pressure, the design or actual flow rate of the station, or other parameters directly related to the emissions from the station. Any suggested changes should include a discussion of how many stations would be exempted from leak detection and how many would still require leak detection. Such an exemption would not preclude a station from reporting, it would only mean that leak detection is not required at that station. The stations that fall below the select threshold would still be included for evaluation against the 25,000mtCO<sub>2</sub>e threshold through the application of an emissions factor. Natural gas distribution facilities that do not have any TD transfer stations above the threshold, would use a factor to determine their emissions and compare those emissions against the 25,000 mtCO<sub>2</sub>e threshold.

**Transmission Pipeline.** We are proposing to add a definition for transmission pipeline. Transmission pipelines are clearly designated as such by the Federal Energy Regulatory Commission for interstate transmission pipelines, individual States for intrastate transmission pipelines, and the Hinshaw exemption under the Natural Gas Act for Hinshaw transmission pipelines. We propose to use this existing mechanism to clearly demarcate transmission pipelines from distribution and gathering pipelines. Finally, we believe that equipment located on designated transmission pipelines that are subject to monitoring under subpart W are easily identifiable by facility owners or operators.

**Tubing Systems.** Based on a question received in the early phases of implementation, we are proposing to clarify that the exclusion for piping equal to or less than one half inch diameter applies to the nominal pipe size (NPS).

**Vertical Well.** With the change from field level reporting to sub-basin category, EPA is proposing to add a distinction for calculating emissions from horizontal wells and vertical wells. EPA proposes that a vertical well means

a well bore that is primarily vertical but has some unintentional deviation or one or more intentional deviations to enter one or more subsurface targets that are off-set horizontally from the surface location, intercepting the targets either vertically or at an angle.

**Well Testing Venting and Flaring.** We are proposing to clarify that well testing venting and flaring means venting and/or flaring of natural gas at the time the production rate of a well is determined (*i.e.*, the well testing) through a choke (an orifice restriction). If well testing is conducted immediately after well completion or workover we are proposing to clarify that it is considered part of the well completion or workover.

### III. Statutory and Executive Order Review

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

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

#### B. Paperwork Reduction Act

This action proposes to simplify the existing reporting methodologies in subpart W and clarify monitoring methodologies and data reporting requirements. In many cases, the proposed amendments to the reporting requirements could potentially reduce the reporting burden by making the reporting requirements conform more closely to current industry practices. In addition, while the proposed modification to one of the monitoring methodologies is not expected to increase compliance cost, it would require the reporting of information not contained in the information collection requirements to 40 CFR 98 subpart W. Therefore, the proposed amendments to the information collection requirements have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document has been assigned EPA ICR number 2376.03.

The proposed amendments to subpart I would carry out the Agency’s intent to require reporting of emissions of all fluorocarbons used as heat transfer fluids in the electronics manufacturing industry. This was the intent of the subpart I reporting requirements for HTFs finalized in December 2010 (75 FR

74774), and this intent was reflected in the Information Collection Request (ICR) prepared during that rulemaking. Thus, the proposed amendments will not increase EPA or industry burden beyond that estimated in the ICR.

The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR 98 subpart W (75 FR 74458), and 40 CFR part 98 subpart I (75 FR 74774), under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0651 and 2060–0650, respectively. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today’s proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives “which minimize any significant economic impact of the rule on small entities” 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive

economic effect on all of the small entities subject to the rule.

This action includes proposed amendments to provisions in those rules that could result in reduced burden on reporters. In some cases, EPA is proposing to increase flexibility in the selection of methods use for calculating GHG's, and is also proposing to revise certain methods that may result in greater conformance to current industry practices. In addition, in this action, EPA is proposing to revise specific provisions to provide clarity on what is to be reported. Further, in this action, EPA is also proposing amendments to clarify the Agency's intent. These proposed revisions could overall reduce burden on reporters while maintaining the data quality of the information being reported to EPA. As part of the process of finalization of the subpart W and subpart I rules, EPA undertook specific steps to evaluate the effect of those final rules on small entities. Based on the proposed amendments to the subpart W and subpart I provisions, burden will stay the same or decrease, therefore EPA's determination finding of no significant economic impact on a substantial number of small entities has not changed.

#### *D. Unfunded Mandates Reform Act (UMRA)*

The proposed rule amendments do not contain a Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the proposed rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Further, the proposed amendments will not impose any new requirements that are not currently required for 40 CFR part 98, and the rule amendments would not unfairly apply to small governments.

#### *E. Executive Order 13132: Federalism*

This action 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.

Few, if any, State or local government facilities would be affected by the provisions in this proposed rule. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). During the finalization of subpart W and subpart I, EPA undertook the necessary steps to determine the impact of those rules on tribal entities and provided supporting documentation demonstrating the results of the Agency's analyses. The proposed rule amendments in this action do not impose any significant changes to the current reporting requirements contained in 40 CFR part 98 subpart W and 40 CFR part 98 subpart I. And in several cases, the proposed amendments to the reporting requirements would potentially reduce the reporting burden. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, EPA consulted tribal officials during the development of the original actions. A summary of the concerns raised during the consultation and EPA's response to those concerns is provided in Sections VIII.E and VIII.F of the preamble to the 2009 final rule and Section IV.F of the preamble to the 2010 final rule for subpart W (75 FR 74485). EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard

intended to mitigate health or safety risks.

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

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

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

**List of Subjects in 40 CFR Part 98**

Environmental protection, Administrative practice and procedure, Greenhouse gases, Incorporation by reference, Suppliers, Reporting and recordkeeping requirements.

Dated: August 19, 2011.

**Lisa P. Jackson,**  
Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

**PART 98—[AMENDED]**

1. The authority citation for part 98 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

**Subpart A—[Amended]**

2. Section 98.1 is amended by adding paragraph (c) to read as follows:

**§ 98.1 Purpose and scope.**

\* \* \* \* \*

(c) For facilities required to report under onshore petroleum and natural gas production under subpart W of this part, the terms *Owner* and *Operator* used in subpart A have the same definition as *Onshore petroleum and natural gas production owner or operator*, as defined in § 98.238 of this part.

3. Section 98.6 is amended by revising the definitions for “Continuous bleed” and “Intermittent bleed pneumatic devices” to read as follows:

**§ 98.6 Definitions.**

\* \* \* \* \*

*Continuous bleed* means a continuous flow of pneumatic supply gas to the process control device (e.g., level control, temperature control, pressure control) where the supply gas pressure is modulated by the process condition, and then flows to the valve controller where the signal is compared with the process set-point to adjust gas pressure in the valve actuator.

\* \* \* \* \*

*Intermittent bleed pneumatic devices* mean automated flow control devices powered by pressurized natural gas and used for automatically maintaining a process condition such as liquid level, pressure, delta-pressure, and

temperature. These are snap-acting or throttling devices that discharge all or a portion of the full volume of the actuator intermittently when control action is necessary, but do not bleed continuously.

\* \* \* \* \*

4. Section 98.7 is amended by removing paragraph (q).

**Subpart I—[Amended]**

5. Section 98.90 is amended by revising paragraph (a)(5) to read as follows:

**§ 98.90 Definition of the source category.**

(a) \* \* \*

(5) Any electronics manufacturing production process in which fluorinated heat transfer fluids are used to cool process equipment, to control temperature during device testing, to clean substrate surfaces and other parts, and for soldering (e.g., vapor phase reflow).

6. Section 98.92 is amended by revising paragraph (a) introductory text and paragraph (a)(5) to read as follows:

**§ 98.92 GHGs to report.**

(a) You must report emissions of fluorinated GHGs (as defined in § 98.6), N<sub>2</sub>O, and fluorinated heat transfer fluids (as defined in § 98.98). The fluorinated GHGs and fluorinated heat transfer fluids that are emitted from electronics manufacturing production processes include, but are not limited to, those listed in Table I–2 to this subpart. You must individually report, as appropriate:

\* \* \* \* \*

(5) Emissions of fluorinated heat transfer fluids.

\* \* \* \* \*

7. Section 98.93 is amended by revising paragraph (h) introductory text and the definition of “EH<sub>i</sub>” in Equation I–16 to read as follows.

**§ 98.93 Calculating GHG Emissions.**

\* \* \* \* \*

(h) If you use fluorinated heat transfer fluids, you must report the annual emissions of fluorinated heat transfer fluids using the mass balance approach described in Equation I–16 of this subpart.

\* \* \* \* \*

EH<sub>i</sub> = Emissions of fluorinated heat transfer fluids i, (metric tons/year).

\* \* \* \* \*

8. Section 98.94 is amended by revising paragraph (h) introductory text to read as follows:

**§ 98.94 Monitoring and QA/QC requirements.**

\* \* \* \* \*

(h) You must adhere to the QA/QC procedures of this paragraph (h) when calculating annual gas consumption for each fluorinated GHG and N<sub>2</sub>O used at your facility and emissions from the use of fluorinated heat transfer fluids.

\* \* \* \* \*

9. Section 98.96 is amended by revising paragraph (r) to read as follows:

**§ 98.96 Data Reporting requirements.**

\* \* \* \* \*

(r) For heat transfer fluid emissions, inputs to the heat transfer fluid mass balance equation, Equation I–16 of this subpart, for each fluorinated heat transfer fluid used.

\* \* \* \* \*

10. Section 98.98 by removing the definition of “Heat transfer fluids” and adding the definition of “Fluorinated heat transfer fluids” in alphabetical order to read as follows:

**§ 98.98 Definitions.**

\* \* \* \* \*

*Fluorinated heat transfer fluids* means fluorinated GHGs used for temperature control, device testing, cleaning substrate surfaces and other parts, and soldering in certain types of electronics manufacturing production processes. For fluorinated heat transfer fluids under this subpart I, the lower vapor pressure limit of 1 mm of Hg in absolute at 25 degrees C in the definition of *Fluorinated greenhouse gas* in 40 CFR 98.6 shall not apply. Fluorinated heat transfer fluids used in the electronics manufacturing sector include, but are not limited to, perfluoropolyethers, perfluoroalkanes, perfluoroethers, tertiary perfluoroamines, and perfluorocyclic ethers.

\* \* \* \* \*

11. Table I–2 to Subpart I is amended by revising the title and the second column heading to read as follows:

**TABLE I–2 TO SUBPART I OF PART 98—EXAMPLES OF FLUORINATED GHGs AND FLUORINATED HEAT TRANSFER FLUIDS USED BY THE ELECTRONICS INDUSTRY**

Product type	Fluorinated GHGs and fluorinated heat transfer fluids used during manufacture
Electronics .....	CF <sub>4</sub> , C <sub>2</sub> F <sub>6</sub> , C <sub>3</sub> F <sub>8</sub> , c-C <sub>4</sub> F <sub>8</sub> , c-C <sub>4</sub> F <sub>8</sub> O, C <sub>4</sub> F <sub>6</sub> , C <sub>5</sub> F <sub>8</sub> , CHF <sub>3</sub> , CH <sub>2</sub> F <sub>2</sub> , NF <sub>3</sub> , SF <sub>6</sub> , and HTFs (CF <sub>3</sub> -(O-CF(CF <sub>3</sub> )-CF <sub>2</sub> ) <sub>n</sub> -(O-CF <sub>2</sub> ) <sub>m</sub> -O-CF <sub>3</sub> , C <sub>n</sub> F <sub>2n+2</sub> , C <sub>n</sub> F <sub>2n+1</sub> (O)C <sub>m</sub> F <sub>2m+1</sub> , C <sub>n</sub> F <sub>2n</sub> O, (C <sub>n</sub> F <sub>2n+1</sub> ) <sub>3</sub> N).

**Subpart W—[Amended]**

12. Section 98.230 is amended by revising paragraphs (a)(2) through (a)(4), and (a)(8) to read as follows:

**§ 98.230 Definition of the source category.**

(a) \* \* \*

(2) *Onshore petroleum and natural gas production.* Onshore petroleum and natural gas production means all equipment on a single well-pad or associated with a single well-pad (including but not limited to compressors, generators, dehydrators, storage vessels, and portable non-self-propelled equipment which includes well drilling and completion equipment, workover equipment, gravity separation equipment, auxiliary non-transportation-related equipment, and leased, rented or contracted equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum and/or natural gas (including condensate). This equipment also includes associated storage or measurement vessels and all enhanced oil recovery (EOR) operations using CO<sub>2</sub> or natural gas injection, and all petroleum and natural gas production equipment located on islands, artificial islands, or structures connected by a causeway to land, an island, or an artificial island.

(3) *Onshore natural gas processing.* Natural gas processing means the separation of natural gas liquids (NGLs) or non-methane gases from produced natural gas, or the separation of NGLs into one or more component mixtures. Separation includes one or more of the following: Forced extraction of natural gas liquids, sulfur and carbon dioxide removal, fractionation of NGLs, or the capture of CO<sub>2</sub> separated from natural gas streams. This segment also includes all residue gas compression equipment owned or operated by the natural gas processing plant. This industry segment includes processing plants that fractionate gas liquids, and processing plants that do not fractionate gas liquids but have an annual average throughput of 25 MMscf per day or greater.

(4) *Onshore natural gas transmission compression.* Onshore natural gas transmission compression means any stationary combination of compressors that move natural gas from production fields, natural gas processing plants, or other transmission compressors through transmission pipelines to natural gas distribution pipelines, LNG storage facilities, or into underground storage. In addition, a transmission compressor station includes equipment for liquids separation, and tanks for the storage of

water and hydrocarbon liquids. Residue (sales) gas compression that is part of onshore natural gas processing plants are included in the onshore natural gas processing segment and are excluded from this segment.

\* \* \* \* \*

(8) *Natural gas distribution.* Natural gas distribution means the distribution pipelines and metering and regulating equipment at metering-regulating stations that are operated by a Local Distribution Company (LDC) within a single state that is regulated as a separate operating company by a public utility commission or that is operated as an independent municipally-owned distribution system. This segment also excludes customer meters and regulators, infrastructure, and pipelines (both interstate and intrastate) delivering natural gas directly to major industrial users and farm taps upstream of the local distribution company inlet.

\* \* \* \* \*

13. Section 98.232 is amended by:

- a. Revising paragraph (c) introductory text and paragraph (c)(22).
- b. Revising paragraph (e) introductory text.
- c. Revising paragraph (f) introductory text.
- d. Revising paragraph (g) introductory text.
- e. Revising paragraph (h) introductory text.
- f. Revising paragraph (i) introductory text and paragraph (i)(1).
- g. Redesignating paragraphs (i)(2) through (i)(6) as paragraphs (i)(3) through (i)(7), respectively.
- h. Revising newly designated paragraphs (i)(3) and (i)(4).
- i. Adding new paragraph (i)(2).
- j. Removing and reserving paragraph (j).
- k. Revising paragraph (k).

The revisions read as follows:

**§ 98.232 GHGs to report.**

\* \* \* \* \*

(c) For an onshore petroleum and natural gas production facility, report CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from only the following source types on a single well-pad or associated with a single well-pad:

\* \* \* \* \*

(22) You must use the methods in § 98.233(z) and report under this subpart the emissions of CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O from stationary or portable fuel combustion equipment that cannot move on roadways under its own power and drive train, and that is located at an onshore petroleum and natural gas production facility as defined in § 98.238. Stationary or portable

equipment are the following equipment, which are integral to the extraction, processing, or movement of oil or natural gas: well drilling and completion equipment, workover equipment, natural gas dehydrators, natural gas compressors, electrical generators, steam boilers, and process heaters.

\* \* \* \* \*

(e) For onshore natural gas transmission compression, report CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from the following sources:

\* \* \* \* \*

(f) For underground natural gas storage, report CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from the following sources:

\* \* \* \* \*

(g) For LNG storage, report CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from the following sources:

\* \* \* \* \*

(h) LNG import and export equipment, report CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from the following sources:

\* \* \* \* \*

(i) For natural gas distribution, report CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from the following sources:

(1) Meters, regulators, and associated equipment at above grade transmission-distribution transfer stations, including equipment leaks from connectors, block valves, control valves, pressure relief valves, orifice meters, regulators, and open ended lines.

(2) Equipment leaks from vaults at below grade transmission-distribution transfer stations.

(3) Meters, regulators, and associated equipment at above grade metering-regulating station.

(4) Equipment leaks from vaults at below grade metering-regulating stations.

\* \* \* \* \*

(j) [Reserved].

(k) Report under subpart C of this part (General Stationary Fuel Combustion Sources) the emissions of CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O from each stationary fuel combustion unit by following the requirements of subpart C except for facilities under onshore petroleum and natural gas production and natural gas distribution. Onshore petroleum and natural gas production facilities must report stationary and portable combustion emissions as specified in paragraph (c) of this section. Natural gas distribution facilities must report stationary combustion emissions as specified in paragraph (i) of this section.

14. Section 98.233 is amended by:

- a. In paragraph (a), revising Equation W-1 and the definitions of “Count” and

“GHG<sub>i</sub>” in Equation W–1; and adding the definition of “T” in Equation W–1.

b. Adding paragraph (a)(3).

c. In paragraph (c), revising Equation W–2 and the definition of “GHG<sub>i</sub>”; and adding the definition of “T” in Equation W–2.

d. Revising paragraphs (d) introductory text and (d)(1).

e. In paragraph (d)(3), revising Equation W–4 and removing the definition of “α” in Equation W–4.

f. Revising paragraph (e)(1)(vii).

g. Revising the definition of “1000” in Equation W–5 of paragraph (e)(2).

h. Revising paragraph (e)(6).

i. Revising paragraphs (f) introductory text, (f)(1) introductory text, and the definitions of Equation W–7 in paragraph (f)(1).

j. Revising paragraphs (f)(1)(i)(A) through (f)(1)(i)(C).

k. In paragraph (f)(2), revising Equation W–8 and the definitions of Equation W–8.

l. Removing paragraphs (f)(2)(i) and (f)(2)(ii).

m. In paragraph (f)(3), revising Equation W–9 and the definitions of Equation W–9.

n. Removing paragraphs (f)(3)(i) and (f)(3)(ii).

o. In paragraph (g), revising Equation W–10 and the definitions of Equation W–10.

p. Revising introductory texts for paragraphs (g)(1) and (g)(1)(i).

q. Removing paragraphs (g)(1)(i)(A) through (g)(1)(i)(D).

r. In paragraph (g)(1)(ii), revising paragraph (g)(1)(ii) introductory text; redesignating Equation W–11 as Equation W–11A and Equation W–12 as Equation W–11B respectively; and adding Equation W–11C.

s. Redesignating paragraphs (g)(1)(ii)(A) through (g)(1)(ii)(B) as paragraphs (g)(1)(iii) through (g)(1)(v) and revising new paragraphs (g)(1)(iii) through (g)(1)(v).

t. Removing paragraph (g)(1)(ii)(D).

u. Revising introductory texts for paragraphs (g)(3) and (g)(5).

v. In paragraph (h), revising paragraph (h) introductory text and the definitions of “N<sub>wo</sub>”, “F”, “V<sub>p</sub>” and “T<sub>p</sub>” in Equation W–13.

w. Revising paragraph (i) introductory text and paragraphs (i)(1) and (i)(2).

x. In paragraph (i)(3), revising paragraph (i)(3) introductory text; redesignating Equation W–14 as Equation W–14A; revising the definition of “N” in newly redesignated Equation W–14A; and adding Equation W–14B.

y. Revising paragraph (i)(5).

z. Revising paragraph (j)(1)(vii)(B), (j)(1)(vii)(C), and (j)(3)(i).

aa. Revising paragraphs (k)(1) and (k)(2)(i).

bb. Revising paragraph (m)(1).

cc. Revising paragraph (n)(2)(ii) and (n)(2)(iii), and in paragraph (n)(4), revising equation W–21 and the definition for “Y<sub>j</sub>”.

dd. Redesignating paragraph (n)(9) as paragraph (n)(10) and adding new paragraphs (n)(9) and (n)(11).

ee. In paragraph (o)(6), revising the definition of “MT<sub>m</sub>” in Equation W–24.

ff. In paragraph (p)(7)(i), revising the definition of “MT<sub>m</sub>” in Equation W–28.

gg. In paragraph (q), revising equation W–30 and the definitions for “x”, “EF”, “GHG<sub>i</sub>”, “T<sub>p</sub>”, and revising paragraph (q)(8).

hh. In paragraph (r), revising the definitions of “Count<sub>s</sub>”, “EF<sub>s</sub>”, and “GHG<sub>i</sub>” in Equation W–31.

ii. Revising paragraphs (r)(2)(i)(A), (r)(6)(i), (r)(6)(ii) introductory text, Equation W–32, and the definitions of Equation W–32.

jj. Revising introductory texts for paragraphs (t), (t)(1), and (t)(2).

kk. Revising paragraph (u) introductory text and paragraph (u)(2).

ll. In paragraph (v), revising paragraph (v) introductory text and the definitions of “Mass<sub>s,i</sub>”, “E<sub>s,i</sub>”, and “ρ<sub>i</sub>” in Equation W–36.

mm. Revising introductory texts for paragraphs (z), (z)(1), (z)(2), (z)(2)(i), and (z)(2)(ii).

nn. Adding paragraphs (z)(1)(i) and (z)(1)(ii).

The revisions read as follows:

**§ 98.233 Calculating GHG emissions.**

(a) \* \* \*

$$Mass_{s,i} = Count * EF * GHG_i * Conv_i * T$$

(Eq. W-1)

\* \* \* \* \*  
Count = Total number of continuous high bleed, continuous low bleed, or intermittent bleed natural gas pneumatic devices of each type as determined in paragraph (a)(1) and (a)(2) of this section.  
\* \* \* \* \*

underground natural gas storage, concentration of GHG<sub>i</sub>, CH<sub>4</sub>, or CO<sub>2</sub>, in natural gas as defined in paragraph (u)(2)(i) of this section.  
\* \* \* \* \*

GHG<sub>i</sub> = For onshore petroleum and natural gas production facilities, onshore natural gas transmission compression, and

T = Total number of hours in the operating year the devices were operational.  
\* \* \* \* \*

$$Mass_{s,i} = Count * EF * GHG_i * Conv_i * T$$

(Eq. W-2)

\* \* \* \* \*  
GHG<sub>i</sub> = Concentration of GHG<sub>i</sub>, CH<sub>4</sub>, or CO<sub>2</sub>, in produced natural gas as defined in paragraph (u)(2)(i) of this section.  
\* \* \* \* \*

T = Total number of hours in the operating year the pumps were operational.  
\* \* \* \* \*

calculate emissions for CO<sub>2</sub> only (not CH<sub>4</sub>) vented directly to the atmosphere or through a flare, engine (e.g., permeate from a membrane or de-adsorbed gas from a pressure swing adsorber used as fuel supplement), or sulfur recovery plant using any of the calculation methodologies described in paragraph (d) of this section, as applicable.  
\* \* \* \* \*

(1) *Calculation Methodology 1.* If you operate and maintain a CEMS that has

(3) For all industry segments, determine the type of pneumatic device using engineering estimates based on best available information.  
\* \* \* \* \*

(c) \* \* \*

both a CO<sub>2</sub> concentration monitor and volumetric flow rate monitor, you must calculate CO<sub>2</sub> emissions under this subpart by following the Tier 4 Calculation Methodology and all associated calculation, quality assurance, reporting, and recordkeeping requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources). If a CO<sub>2</sub> concentration monitor and volumetric flow rate monitor are not available, you

(d) *Acid gas removal (AGR) vents.* For AGR vent (including processes such as amine, membrane, molecular sieve or other absorbents and adsorbents),

may elect to install a CO<sub>2</sub> concentration monitor and a volumetric flow rate monitor that comply with all of the requirements specified for the Tier 4

Calculation Methodology in subpart C of this part (General Stationary Fuel Combustion). The calculation and reporting of CH<sub>4</sub> and N<sub>2</sub>O emissions is

not required as part of the Tier 4 requirements for AGRs.

\* \* \* \* \*  
(3) \* \* \*

$$E_{a,CO_2} = \left[ \frac{V}{1 - (Vol_i - Vol_o)} \right] * (Vol_i - Vol_o) \quad (\text{Eq. W-4})$$

\* \* \* \* \*

(e) \* \* \*  
(1) \* \* \*

(vii) Use of stripping gas.

\* \* \* \* \*

(2)

\* \* \* \* \*

1000 = Conversion of EF<sub>i</sub> in thousand standard cubic feet to cubic feet.

\* \* \* \* \*

(6) For glycol dehydrators, both CH<sub>4</sub> and CO<sub>2</sub> mass emissions shall be calculated from volumetric GHG<sub>i</sub> emissions using calculations in paragraph (v) of this section. For dehydrators that use desiccant, both CH<sub>4</sub> and CO<sub>2</sub> volumetric and mass emissions shall be calculated from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

\* \* \* \* \*

(f) *Well venting for liquids unloadings.* Calculate CO<sub>2</sub> and CH<sub>4</sub> emissions from well venting for liquids unloading using one of the calculation methodologies described in paragraphs (f)(1), (f)(2), or (f)(3) of this section.

(1) *Calculation Methodology 1.* For one well of each unique well tubing diameter grouping and pressure grouping in each sub-basin category (see § 98.238 for the definitions of tubing diameter grouping, pressure grouping, and sub-basin category), where gas wells are vented to the atmosphere to expel liquids accumulated in the tubing, a recording flow meter shall be installed on the vent line used to vent gas from the well (e.g., on the vent line off the wellhead separator or atmospheric storage tank) according to methods set forth in § 98.234(b). Calculate emissions from well venting for liquids unloading using Equation W-7 of this section.

\* \* \* \* \*  
E<sub>a,n</sub> = Annual natural gas emissions for wells of the same tubing diameter grouping and pressure grouping at actual conditions in cubic feet.

T<sub>n,t</sub> = Cumulative amount of time in hours of venting from all wells of the same tubing diameter grouping p and pressure grouping q during the year.

FR<sub>n,t</sub> = Average flow rate in cubic feet per hour of a measured well venting for the duration of the liquids unloading, under actual conditions as determined in paragraph (f)(1)(i) of this section.

h = Total number of different tubing diameter groupings.

p = Tubing diameter grouping 1 through h.

t = Total number of pressure groupings.

q = Pressure grouping 1 through t.

\* \* \* \* \*

(i) \* \* \*

(A) The average flow rate per hour of venting is calculated for each unique tubing diameter grouping and pressure grouping in each sub-basin category by dividing the recorded total flow by the recorded time (in hours) for a single liquid unloading with venting to the atmosphere.

(B) This average flow rate per hour is applied to all wells in the same pressure grouping that have the same tubing diameter grouping, for the number of hours of venting these wells.

(C) A new average flow rate is calculated every other calendar year for each reporting sub-basin category starting the first calendar year of data collection. For a new producing sub-basin category, an average flow rate is calculated beginning in the first year of production.

(2) \* \* \*

$$E_{s,n} = \sum_{p=1}^W \left[ V_p \times \left( (0.37 \times 10^{-3}) \times CD_p^2 \times WD_p \times SP_p \right) + \sum_{q=1}^{V_p} \left( SFR_q \times (HR_{q,p} - 1.0) \times Z_{q,p} \right) \right] \quad (\text{Eq. W-8})$$

Where:

E<sub>s,n</sub> = Annual natural gas emissions at standard conditions, in cubic feet/year.  
W = Total number of wells with well venting for liquids unloading at the facility.  
0.37×10<sup>-3</sup> = {3.14 (pi)/4}/{14.7\*144} (psia converted to pounds per square feet).  
CD<sub>p</sub> = Casing diameter for each well, p, in inches.

WD<sub>p</sub> = Well depth from the lowest packer to the bottom of the well, in feet.

SP<sub>p</sub> = Shut-in pressure for each well, p, in pounds per square inch atmosphere (psia).

V<sub>p</sub> = Number of vents per year per well, p.  
SFR<sub>p</sub> = Average sales flow rate of gas well, p, at standard conditions in cubic feet per hour. Use Equation W-33 to calculate the sales flow rate at standard conditions.

HR<sub>Q,P</sub> = Hours that each well, p, was left open to the atmosphere during unloading, q.

1.0 = Hours for average well to blowdown casing volume at shut-in pressure.

Z<sub>Q,P</sub> = If HR<sub>Q,P</sub> is less than 1.0 then Z<sub>Q,P</sub> is equal to 0. If HR<sub>Q,P</sub> is greater than or equal to 1.0 then Z<sub>Q,P</sub> is equal to 1.

(3) \* \* \*

$$E_{s,n} = \sum_{p=1}^W \left[ V_p \times \left( (0.37 \times 10^{-3}) \times TD_p^2 \times WD_p \times SP_p \right) + \sum_{q=1}^{V_p} \left( SFR_q \times (HR_{q,p} - 0.5) \times Z_{q,p} \right) \right] \quad (\text{Eq. W-9})$$

Where:

E<sub>s,n</sub> = Annual natural gas emissions at standard conditions, in cubic feet/year.

W = Total number of wells with well venting for liquids unloading at the facility.

0.37×10<sup>-3</sup> = {3.14 (pi)/4}/{14.7\*144} (psia converted to pounds per square feet).

TD<sub>P</sub> = Tubing diameter for each well, p, in inches.  
 WD<sub>P</sub> = Tubing depth to plunger bumper for each well, p, in feet.  
 SP<sub>P</sub> = Sales line pressure for each well, p, in pounds per square inch atmospheric (psia).  
 V<sub>P</sub> = Number of vents per year for each well, p.

SFR<sub>P</sub> = Average sales flow rate of each gas well, p, at standard conditions in cubic feet per hour. Use Equation W-33 to calculate the sales flow rate at standard conditions.  
 HR<sub>Q,P</sub> = Hours that each well, p, was left open to the atmosphere during each unloading, q.

0.5 = Hours for average well to blowdown tubing volume at sales line pressure.  
 Z<sub>Q,P</sub> = If HR<sub>Q,P</sub> is less than 0.5 then Z<sub>Q,P</sub> is equal to 0. If HR<sub>Q,P</sub> is greater than or equal to 0.5 then Z<sub>Q,P</sub> is equal to 1.  
 \* \* \* \* \*  
 (g) \* \* \*

$$E_{s,n} = \sum_{p=1}^W [T_p \times FRM \times PR_p - EnF_p - SG_p] \quad (\text{Eq. W-10})$$

Where:

E<sub>s,n</sub> = Annual volumetric total gas emissions in cubic feet at standard conditions from gas well venting during completions or workovers following hydraulic fracturing for each sub-basin and well type combination.  
 T<sub>p</sub> = Cumulative amount of time in hours of each well (p) completion or workover venting in a sub-basin and well type combination during the reporting year.  
 FRM = Venting to 30-day production ratio from Equation W-12.  
 PR<sub>p</sub> = First 30-day average production flow rate in standard cubic feet per hour of each well (p), under actual conditions, converted to standard conditions, as required in paragraph (g)(1) of this section.  
 EnF<sub>p</sub> = Volume of CO<sub>2</sub> or N<sub>2</sub> injected gas in cubic feet at standard conditions that was injected into the reservoir during an energized fracture job for each well (p). If the fracture process did not inject gas into the reservoir, then EnF is 0. If injected gas is CO<sub>2</sub>, then EnF is 0.  
 SG<sub>p</sub> = Volume of natural gas in cubic feet at standard conditions that was recovered into a sales pipeline for well p as per paragraph (g)(3) of this section. If no gas was recovered for sales, SG is 0.

W = Total number of wells completed or worked over using hydraulic fracturing in a sub-basin and well type combination.

(1) The average flow rate for gas well venting to the atmosphere or to a flare during well completions and workovers from hydraulic fracturing shall be determined using measurement(s) from either of the calculation methodologies described in this paragraph (g)(1) of this section. The number of measurements shall be determined as follows: One measurement for less than or equal to 25 completions/workovers; two measurements for 26 to 50 completions/workovers; three measurements for 51 to 100 completions/workovers; four measurements for 101 to 250 completions/workovers; and five measurements for greater than 250 completions/workovers.

(i) *Calculation Methodology 1.* For well completion(s) in each gas producing sub-basin category and well type (horizontal or vertical) combination and for one well workover(s) in each gas producing sub-basin category and well type (horizontal or vertical)

combination, a recording flow meter (digital or analog) shall be installed on the vent line, ahead of a flare if used, to measure the backflow venting according to methods set forth in § 98.234(b).

(ii) *Calculation Methodology 2.* For one horizontal well completion and one vertical well completion in each gas producing sub-basin category and for one well horizontal workover and one vertical well workover in each gas producing sub-basin category, record the well flowing pressure upstream (and downstream in subsonic flow) of a well choke according to methods set forth in § 98.234(b) to calculate the intermittent well flow rate of gas during venting to the atmosphere or a flare. Calculate emissions using Equation W-11A of this section for subsonic flow or Equation W-11B of this section for sonic flow. Use Equation W-11C of this section to determine whether flow is sonic or subsonic. If the value of R in Equation W-11C is greater than or equal to 2, then flow is sonic; otherwise, flow is subsonic:

$$FR = 1.27 * 10^5 * A * \sqrt{3430 * T_u * \left[ \left( \frac{P_2}{P_1} \right)^{1.515} - \left( \frac{P_2}{P_1} \right)^{1.758} \right]} \quad (\text{Eq. W-11A})$$

Where:

FR = Average flow rate in cubic feet per hour, under subsonic flow conditions.

A = Cross sectional area of orifice (m<sub>2</sub>).  
 P<sub>1</sub> = Upstream pressure (psia).  
 T<sub>u</sub> = Upstream temperature (degrees Kelvin).  
 P<sub>2</sub> = Downstream pressure (psia).

3430 = Constant with units of m<sub>2</sub>/(sec<sup>2</sup> \* K).  
 1.27\*10<sup>5</sup> = Conversion from m<sub>3</sub>/second to ft<sub>3</sub>/hour.

$$FR = 1.27 * 10^5 * A * \sqrt{187.08 * T_u} \quad (\text{Eq. W-11B})$$

Where:

FR = Average flow rate in cubic feet per hour, under sonic flow conditions.

A = Cross sectional area of orifice (m<sub>2</sub>).  
 T<sub>u</sub> = Upstream temperature (degrees Kelvin).  
 187.08 = Constant with units of m<sub>2</sub>/(sec<sup>2</sup> \* K).

1.27\*10<sup>5</sup> = Conversion from m<sub>3</sub>/second to ft<sub>3</sub>/hour.

$$R = \frac{P1}{P2} \quad (\text{Eq. W-11C})$$

Where:

R = Pressure ratio  
 P<sub>1</sub> = Pressure upstream of the restriction orifice in pounds per square inch absolute.

P<sub>2</sub> = Pressure downstream of the restriction orifice in pounds per square inch absolute.

(iii) The emissions to 30-day production ratio is calculated using Equation W-12 of this section.

$$FRM = \frac{\sum_{p=1}^W FR_p}{\sum_{p=1}^W PR_p} \quad (\text{Eq. W-12})$$

Where:

FRM = Emissions to 30-day production ratio.  
 FR<sub>p</sub> = Measured flow rate from Calculation Methodology 1 or estimated flow rate from Calculation Methodology 2 in standard cubic feet per hour for well(s) p for each sub-basin and well type (horizontal or vertical) combination.  
 PR<sub>p</sub> = First 30-day production rate in standard cubic feet per hour for each well p that was measured in the sub-basin and well type combination.  
 W = Number of wells completed or worked over using hydraulic fracturing in a sub-basin and well type formation.

(3) The volume of recovered completion or workover gas sent to a sales line will be measured using existing company records. If data does not exist on sales gas, then an appropriate meter as described in § 98.234(b) may be used.

the current and following calendar years shall be used.

T<sub>p</sub> = Time each well completion without hydraulic fracturing, p, was venting in hours during the year.

\* \* \* \* \*

(iv) The flow rates for horizontal and vertical wells are applied to all horizontal and vertical well completions in the gas producing sub-basin and well type combination and to all horizontal and vertical well workovers, respectively, in the gas producing sub-basin and well type combination for the total number of hours of venting of each of these wells.

(5) Determine if the well completion or workover from hydraulic fracturing recovered gas with purpose designed equipment that separates saleable gas from the backflow, and sent this gas to a sales line (e.g., reduced emissions completions or workovers).

(i) *Blowdown vent stacks.* Calculate CO<sub>2</sub> and CH<sub>4</sub> blowdown vent stack emissions from depressurizing equipment to reduce system pressure for planned or emergency shutdowns or to take equipment out of service for maintenance (excluding depressurizing to a flare, over-pressure relief, operating pressure control venting and blowdown of non-GHG gases; desiccant dehydrator blowdown venting before reloading is covered in paragraph (e)(5) of this section) as follows:

(v) New flow rates for horizontal and vertical gas well completions and horizontal and vertical gas well workovers in each sub-basin category shall be calculated once every two years starting in the first calendar year of data collection.

(h) *Gas well venting during completions and workovers without hydraulic fracturing.* Calculate CH<sub>4</sub>, CO<sub>2</sub> and N<sub>2</sub>O (when flared) emissions from each gas well venting during well completions and workovers not involving hydraulic fracturing using Equation W-13 of this section:

(1) Calculate the total physical volume (including pipelines, compressor case or cylinders, manifolds, suction bottles, discharge bottles, and vessels) between isolation valves determined by engineering estimates based on best available data.

(2) The volume of CO<sub>2</sub> or N<sub>2</sub> injected into the well reservoir during energized hydraulic fractures will be measured using an appropriate meter as described in § 98.234(b) or using receipts of gas purchases that are used for the energized fracture job.

N<sub>wo</sub> = Number of workovers per sub-basin not involving hydraulic fracturing in the reporting year.

f = Total number of well completions without hydraulic fracturing in a sub-basin category.

V<sub>p</sub> = Average daily gas production rate in cubic feet per hour for each well completion without hydraulic fracturing, p. This is the total annual gas production volume divided by total number of hours the wells produced to the sales line. For completed wells that have not established a production rate, you may use the average flow rate from the first 30 days of production. In the event that the well is completed less than 30 days from the end of the calendar year, the first 30 days of the production straddling

(2) If the total physical volume between isolation valves is greater than or equal to 50 cubic feet, retain logs of the number of blowdowns for each unique physical volume type (including but not limited to compressors, vessels, pipelines, headers, fractionators, and tanks). Physical volumes smaller than 50 standard cubic feet are exempt from reporting under paragraph (i) of this section.

(i) Calculate gas volume at standard conditions using calculations in paragraph (t) of this section.

(ii) [Reserved].

(3) Calculate the total annual venting emissions for each equipment type using either Equation W-14A or W-14B of this section.

$$E_{s,n} = N * \left( V_v \left( \frac{(459.67 + T_s) P_a}{(459.67 + T_a) P_s} \right) - V_v * C \right) \quad (\text{Eq. W-14A})$$

Where:

\* \* \* \* \*

V<sub>v</sub> = Total volume of blowdown equipment chambers (including pipelines,

compressors and vessels) between isolation valves in cubic feet.

\* \* \* \* \*

$$E_{s,n} = \sum_{p=1}^N \left[ V_v \left( \frac{(459.67 + T_s)(P_{a,s,p} - P_{a,e,p})}{(459.67 + T_a)P_s} \right) \right] \quad (\text{Eq. W-14B})$$

Where:

$E_{s,n}$  = Annual natural gas venting emissions at standard conditions from blowdowns in cubic feet.

$N$  = Number of repetitive blowdowns for each unique volume in calendar year.

$V_v$  = Total volume of blowdown equipment chamber (including pipelines, compressors and vessels) between isolation valves in cubic feet for each blowdown "i."

$C$  = Purge factor that is 1 if the equipment is not purged or zero if the equipment is purged using non-GHG gases.

$T_s$  = Temperature at standard conditions (°F).

$T_a$  = Temperature at actual conditions in the blowdown equipment chamber (°F) for each blowdown "i".

$P_s$  = Absolute pressure at standard conditions (psia).

$P_{a,s,p}$  = Absolute pressure at actual conditions in the blowdown equipment chamber (psia) at the start of the blowdown "p".

$P_{a,e,p}$  = Absolute pressure at actual conditions in the blowdown equipment chamber (psia) at the end of the blowdown "p"; 0 if blowdown volume is purged using non-GHG gases.

\* \* \* \* \*

(5) Calculate total annual venting emissions for all blowdown vent stacks by adding all standard volumetric and mass emissions determined using Equations W-14A or W-14B and paragraph (i)(4) of this section.

(j) \* \* \*

(1) \* \* \*

(vii) \* \* \*

(B) If separator oil composition and Reid vapor pressure data are available through your previous analysis, select the latest available analysis that is representative of produced crude oil or condensate from the sub-basin category.

(C) Analyze a representative sample of separator oil in each sub-basin category

for oil composition and Reid vapor pressure using an appropriate standard method published by a consensus-based standards organization.

\* \* \* \* \*

(3) \* \* \*

(i) If well production oil and gas compositions are available through your previous analysis, select the latest available analysis that is representative of produced oil and gas from the sub-basin category and assume all of the CH<sub>4</sub> and CO<sub>2</sub> in both oil and gas are emitted from the tank.

\* \* \* \* \*

(k) \* \* \*

(1) Monitor the tank vapor vent stack annually for emissions using an optical gas imaging instrument according to methods set forth in § 98.234(a)(1) or by directly measuring the tank vent using a flow meter, calibrated bag, or high volume sampler according to methods in § 98.234(b) through (d) for a duration of 5 minutes. Or you may annually monitor leakage through compressor scrubber dump valve(s) into the tank using an acoustic leak detection device according to methods set forth in § 98.234(a)(5).

(2) \* \* \*

(i) Use a meter, such as a turbine meter, calibrated bag, or high flow sampler to estimate tank vapor volumes according to methods set forth in § 98.234(b) through (d). If you do not have a continuous flow measurement device, you may install a flow measuring device on the tank vapor vent stack. If the vent is directly measured for five minutes under paragraph § 98.233(k)(1) of this section to detect

continuous leakage, this serves as the measurement.

(m) \* \* \*

(1) Determine the GOR of the hydrocarbon production from each well whose associated natural gas is vented or flared. If GOR from each well is not available, the GOR from a cluster of wells in the same sub-basin category shall be used.

\* \* \* \* \*

(n) \* \* \*

(2) \* \* \*

(ii) For onshore natural gas processing, when the stream going to flare is natural gas, use the GHG mole percent in feed natural gas for all streams upstream of the de-methanizer or dew point control, and GHG mole percent in facility specific residue gas to transmission pipeline systems for all emissions sources downstream of the de-methanizer overhead or dew point control for onshore natural gas processing facilities. For onshore natural gas processing plants that solely fractionate a liquid stream, use the GHG mole percent in feed natural gas liquid for all streams.

(iii) For any applicable industry segment, when the stream going to the flare is a hydrocarbon product stream, such as methane, ethane, propane, butane, pentane-plus and mixed light hydrocarbons, then you may use a representative composition from the source for the stream determined by engineering calculation based on process knowledge and best available data.

\* \* \* \* \*

(n) \* \* \*

$$E_{a,CO_2} (combusted) = \sum_{j=1}^5 (\eta * V_a * Y_j * R_j) \quad (\text{Eq. W-21})$$

\* \* \* \* \*

$Y_j$  = Mole fraction of gas hydrocarbon constituents j (such as methane, ethane, propane, butane, and pentanes-plus)

\* \* \* \* \*

(9) If you operate and maintain a CEMS that has both a CO<sub>2</sub> concentration monitor and volumetric flow rate monitor, you must calculate CO<sub>2</sub> emissions for the flare by following the Tier 4 Calculation Methodology and all associated calculation, quality assurance, reporting, and recordkeeping

requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources). If a CEMS is used to calculate flare stack emissions, the requirements specified in paragraphs (n)(1) through (n)(7) are not required. If a CO<sub>2</sub> concentration monitor and volumetric flow rate monitor are not available, you may elect to install a CO<sub>2</sub> concentration monitor and a volumetric flow rate monitor that comply with all of the requirements specified for the Tier 4 Calculation Methodology in

subpart C of this part (General Stationary Fuel Combustion).

(10) The flare emissions determined under paragraph (n) of this section must be corrected for flare emissions calculated and reported under other paragraphs of this section to avoid double counting of these emissions.

(11) If source types in § 98.233 use Equations W-19 through W-21 of this section, use estimate of emissions under actual conditions for the parameter,  $V_a$ , in these equations.

(o) \* \* \*  
 (6) \* \* \*  
 \* \* \* \* \*  
 MT<sub>m</sub> = Flow Measurements from all centrifugal compressor vents in each

mode in (o)(1)(i) through (o)(1)(iii) of this section in standard cubic feet per hour.  
 \* \* \* \* \*  
 (p) \* \* \*  
 (7) \* \* \*  
 (i) \* \* \*  
 \* \* \* \* \*

MT<sub>m</sub> = Meter readings from all reciprocating compressor vents in each and mode, m, in standard cubic feet per hour.  
 \* \* \* \* \*  
 (q) \* \* \*  
 \* \* \* \* \*

$$E_{s,i} = GHG_i * \sum_{p=1}^x (EF * T_p) \quad (\text{Eq. W-30})$$

\* \* \* \* \*  
 x = Total number of each equipment leak source.  
 \* \* \* \* \*  
 GHG<sub>i</sub> = For onshore natural gas processing facilities, concentration of GHG<sub>i</sub>, CH<sub>4</sub> or CO<sub>2</sub>, in the total hydrocarbon of the feed natural gas; 98.230(a)(4) and (a)(5), GHG<sub>i</sub> equals 0.974 for CH<sub>4</sub> and 1.0 × 10<sup>-2</sup> for CO<sub>2</sub>; for facilities listed in § 98.230(a)(6) and (a)(7), GHG<sub>i</sub> equals 1 for CH<sub>4</sub> and 0 for CO<sub>2</sub>; and for facilities listed in § 98.230(a)(8), GHG<sub>i</sub> equals 1 for CH<sub>4</sub> and 1.1 × 10<sup>-2</sup> CO<sub>2</sub>.  
 T<sub>p</sub> = The total time the component, p, was found leaking and operational, in hours. If one leak detection survey is conducted, assume the component was leaking for the entire calendar year. If multiple leak detection surveys are conducted, assume that the component found to be leaking has been leaking since the previous survey or the beginning of the calendar year. For the last leak detection survey in the calendar year, assume that all leaking components continue to leak until the end of the calendar year.  
 \* \* \* \* \*

(8) Natural gas distribution facilities for above grade transmission-distribution transfer stations, shall use the appropriate default leaker emission factors listed in Table W-7 of this subpart for equipment leak detected from connectors, block valves, control valves, pressure relief valves, orifice meters, regulators, and open ended lines. Leak detection at natural gas distribution facilities is only required at above grade stations that qualify as transmission-distribution transfer

stations. Below grade transmission-distribution transfer stations and metering-regulating stations that do not meet the definition of transmission-distribution transfer stations are not required to perform component leak detection under this section.

(r) \* \* \*  
 \* \* \* \* \*  
 Count<sub>s</sub> = Total number of this type of emission source at the facility. For onshore petroleum and natural gas production, average component counts are provided by major equipment piece in Tables W-1B and Table W-1C of this subpart. Use average component counts as appropriate for operations in Eastern and Western U.S., according to Table W-1D of this subpart. Underground natural gas storage shall count the components listed for population emission factors in Table W-4. LNG Storage shall count the number of vapor recovery compressors. LNG import and export shall count the number of vapor recovery compressors. Natural gas distribution shall count the respective component for each emission factor as described in paragraph (r)(6) of this section.

EF<sub>s</sub> = Population emission factor for the specific source, as listed in Table W-1A and Tables W-3 through Table W-7 of this subpart. Use appropriate population emission factor for operations in Eastern and Western U.S., according to Table W-1D of this subpart. EF for meter/regulator runs at above grade metering-regulating stations is determined in Equation W-32 of this section.

GHG<sub>i</sub> = For onshore petroleum and natural gas production facilities, concentration of GHG<sub>i</sub>, CH<sub>4</sub> or CO<sub>2</sub>, in produced natural gas; for other facilities listed in § 98.230(a)(4) and (a)(5), GHG<sub>i</sub> equals 0.952 for CH<sub>4</sub> and 1.0 ×

10<sup>-2</sup> for CO<sub>2</sub>; for facilities listed in § 98.230(a)(6) and (a)(7), GHG<sub>i</sub> equals 1 for CH<sub>4</sub> and 0 for CO<sub>2</sub>; and for facilities listed in § 98.230(a)(8), GHG<sub>i</sub> equals 1 for CH<sub>4</sub> and 1.1 × 10<sup>-2</sup> CO<sub>2</sub>.  
 \* \* \* \* \*

(2) \* \* \*  
 (i) \* \* \*  
 (A) Count all major equipment listed in Table W-1B and Table W-1C of this subpart. For meters/piping, use one meters/piping per well-pad.  
 \* \* \* \* \*

(6) \* \* \*  
 (i) Below grade metering-regulating stations (including below grade T-D transfer stations); distribution mains; and distribution services, shall use the appropriate default population emission factors listed in Table W-7 of this subpart.

(ii) Emissions from all above grade metering-regulating stations (including above grade TD transfer stations) shall be calculated by applying the emission factor calculated in Equation W-32 and the total count of meter/regulator runs at all above grade metering-regulating stations (inclusive of TD transfer stations) to Equation W-31. The facility wide emission factor in Equation W-32 will be calculated by using the total volumetric GHG emissions at standard conditions for all equipment leak sources calculated in paragraph (q)(8) of this section and the count of meter/regulator runs located at above grade transmission-distribution transfer stations.

$$EF = \sum \frac{E_{s,i} \div 8760}{Count} \quad (\text{Eq. W-32})$$

Where:  
 EF<sub>i</sub> = Facility emission factor for a meter/regulator run at above grade metering-regulating for GHG<sub>i</sub> in cubic feet per meter/regulator run per hour.  
 E<sub>s,i</sub> = Annual volumetric GHG i emissions, CO<sub>2</sub> or CH<sub>4</sub> at standard condition from all equipment leak sources at all above

grade TD transfer stations, from paragraph (q) of this section.  
 Count = Total number of meter/regulator runs at all TD transfer stations.  
 8760 = Conversion to hourly emissions  
 \* \* \* \* \*

(t) *Volumetric emissions.* Calculate volumetric emissions at standard

conditions as specified in paragraphs (t)(1) or (2) of this section, with actual pressure and temperature determined by engineering estimates based on best available data unless otherwise specified.

(1) Calculate natural gas volumetric emissions at standard conditions using

actual natural gas emission temperature and pressure, and Equation W-33 of this section.

\* \* \* \* \*

(2) Calculate GHG volumetric emissions at standard conditions using actual GHG emissions temperature and pressure, and Equation W-34 of this section.

\* \* \* \* \*

(u) *GHG volumetric emissions.* Calculate GHG volumetric emissions at standard conditions as specified in paragraphs (u)(1) and (2) of this section, with mole fraction of GHGs in the natural gas determined by engineering estimate based on best available data unless otherwise specified.

\* \* \* \* \*

(2) For Equation W-35 of this section, the mole fraction,  $M_i$ , shall be the annual average mole fraction for each sub-basin category or facility, as specified in paragraphs (u)(2)(i) through (vii) of this section.

(i) GHG mole fraction in produced natural gas for onshore petroleum and natural gas production facilities. If you have a continuous gas composition analyzer for produced natural gas, you must use an annual average of these values for determining the mole fraction. If you do not have a continuous gas composition analyzer, then you must use an annual average gas composition based on available analyses in each of the sub-basin categories.

(ii) GHG mole fraction in feed natural gas for all emissions sources upstream of the de-methanizer or dew point control and GHG mole fraction in facility specific residue gas to transmission pipeline systems for all emissions sources downstream of the de-methanizer overhead or dew point control for onshore natural gas processing facilities. For onshore natural gas processing plants that solely fractionate a liquid stream, use the GHG mole percent in feed natural gas liquid for all streams. If you have a continuous gas composition analyzer on feed natural gas, you must use these values for determining the mole fraction. If you do not have a continuous gas composition analyzer, then annual samples must be taken according to methods set forth in § 98.234(b).

(iii) GHG mole fraction in transmission pipeline natural gas that passes through the facility for onshore natural gas transmission compression facilities. You may use a default 95 percent methane and 1 percent carbon dioxide fraction for GHG mole fraction in natural gas.

(iv) GHG mole fraction in natural gas stored in underground natural gas

storage facilities. You may use a default 95 percent methane and 1 percent carbon dioxide fraction for GHG mole fraction in natural gas.

(v) GHG mole fraction in natural gas stored in LNG storage facilities. You may use a default 95 percent methane and 1 percent carbon dioxide fraction for GHG mole fraction in natural gas.

(vi) GHG mole fraction in natural gas stored in LNG import and export facilities. For export facilities that receive gas from transmission pipelines, you may use a default 95 percent methane and 1 percent carbon dioxide fraction for GHG mole fraction in natural gas.

(vii) GHG mole fraction in local distribution pipeline natural gas that passes through the facility for natural gas distribution facilities. You may use a default 95 percent methane and 1 percent carbon dioxide fraction for GHG mole fraction in natural gas.

(v) *GHG mass emissions.* Calculate GHG mass emissions in carbon dioxide equivalent at standard conditions by converting the GHG volumetric emissions at standard conditions into mass emissions using Equation W-36 of this section.

\* \* \* \* \*

$Mass_{s,i}$  = GHG  $i$  (either CH<sub>4</sub>, CO<sub>2</sub>, or N<sub>2</sub>O) mass emissions at standard conditions in metric tons CO<sub>2</sub>e.

$E_{s,i}$  = GHG  $i$  (either CH<sub>4</sub>, CO<sub>2</sub>, or N<sub>2</sub>O) volumetric emissions at standard conditions, in cubic feet.

$\rho_i$  = Density of GHG  $i$ . Use 0.0520 kg/ft<sup>3</sup> for CO<sub>2</sub> and N<sub>2</sub>O, and 0.0190 kg/ft<sup>3</sup> for CH<sub>4</sub> at 68 °F and 14.7 psia or 0.0530 kg/ft<sup>3</sup> for CO<sub>2</sub> and N<sub>2</sub>O, and 0.0193 kg/ft<sup>3</sup> for CH<sub>4</sub> at 60 °F and 14.7 psia.

\* \* \* \* \*

(z) *Onshore petroleum and natural gas production and natural gas distribution combustion emissions.*

Calculate CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O combustion-related emissions from stationary or portable equipment, except as specified in paragraph (z)(3) of this section, as follows:

(1) If a fuel combusted in the stationary or portable equipment is listed in Table C-1 of subpart C of this part, or is a blend containing one or more fuels listed in Table C-1, calculate emissions according to (z)(1)(i). If the fuel is natural gas and is of pipeline quality specification and has a minimum high heat value of 950 Btu per standard cubic foot, use the calculation methodology described in (z)(1)(i) and you may use the emission factor provided for natural gas as listed in Table C-1. If the fuel is natural gas, and is not pipeline quality or has a high heat value of less than 950 Btu per standard cubic foot, calculate emissions

according to (z)(2). If the fuel is field gas, process vent gas, or a blend containing field gas or process vent gas, calculate emissions according to (z)(2).

(i) For fuels listed in Table C-1 or a blend containing one more fuels listed in Table C-1, calculate CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions according to any Tier listed in subpart C of this part. You must follow all applicable calculation requirements for that tier listed in 98.33, any monitoring or QA/QC requirements listed for that tier in 98.34, any missing data procedures specified in 98.35, and any recordkeeping requirements specified in 98.37.

(ii) Emissions from fuel combusted in stationary or portable equipment at onshore natural gas and petroleum production facilities and at natural gas distribution facilities will be reported according to the requirements specified in 98.236(c)(19) and not according to the reporting requirements specified in subpart C of this part.

(2) For fuel combustion units that combust field gas, process vent gas, a blend containing field gas or process vent gas, or natural gas that is not of pipeline quality or that has a high heat value of less than 950 Btu per standard cubic feet, calculate combustion emissions as follows:

(i) You may use company records to determine the volume of fuel combusted in the unit during the reporting year.

(ii) If you have a continuous gas composition analyzer on fuel to the combustion unit, you must use these compositions for determining the concentration of gas hydrocarbon constituent in the flow of gas to the unit.

If you do not have a continuous gas composition analyzer on gas to the combustion unit, you must use the appropriate gas compositions for each stream of hydrocarbons going to the combustion unit as specified in paragraph (u)(2)(i) of this section.

15. Section 98.234 is amended by:

- a. Revising paragraphs (a)(1), (a)(2), and (a)(5).
- b. Removing and reserving paragraph (a)(4).
- c. Revising paragraph (c) introductory text and paragraph (d)(3).

**§ 98.234 Monitoring and QA/QC requirements.**

(a) \* \* \*

(1) *Optical gas imaging instrument.* Use an optical gas imaging instrument for equipment leak detection in accordance with 40 CFR part 60, subpart A, § 60.18 of the *Alternative work practice for monitoring equipment leaks*, § 60.18(i)(1)(i); § 60.18(i)(2)(i) except that the monitoring frequency shall be annual using the detection

sensitivity level of 60 grams per hour as stated in 40 CFR part 60, subpart A, Table 1: *Detection Sensitivity Levels*; § 60.18(i)(2)(ii) and (iii) except the gas chosen shall be methane, and § 60.18(i)(2)(iv) and (v); § 60.18(i)(3); § 60.18(i)(4)(i) and (v); including the requirements for daily instrument checks and distances, and excluding requirements for video records. Any emissions detected by the optical gas imaging instrument is a leak unless screened with Method 21 (40 CFR part 60, appendix A-7) monitoring, in which case 10,000 ppm or greater is designated a leak. In addition, you must operate the optical gas imaging instrument to image the source types required by this subpart in accordance with the instrument manufacturer's operating parameters. An optical gas imaging instrument must be used for all source types that are inaccessible and cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(2) *Method 21*. Use the equipment leak detection methods in 40 CFR part 60, appendix A-7, Method 21. If using Method 21 monitoring, if an instrument reading of 10,000 ppm or greater is measured, a leak is detected. Inaccessible emissions sources, as defined in 40 CFR part 60, are not exempt from this subpart. Owners or operators must use alternative leak detection devices as described in paragraph (a)(1) or (a)(2) of this section to monitor inaccessible equipment leaks or vented emissions.

\* \* \* \* \*

(5) *Acoustic leak detection device*. Use the acoustic leak detection device to detect through-valve leakage. When using the acoustic leak detection device to quantify the through-valve leakage, you must use the instrument manufacturer's calculation methods to quantify the through-valve leak. When using the acoustic leak detection device, if a leak of 3.1 scf per hour or greater is calculated, a leak is detected. In addition, you must operate the acoustic leak detection device to monitor the source valves required by this subpart in accordance with the instrument manufacturer's operating parameters. Acoustic stethoscope type devices designed to detect through valve leakage when put in contact with the valve body and that provide an audible leak signal but do not calculate a leak rate can be used to identify non-leakers with subsequent measurement required to calculate the rate if through-valve leakage is identified. Leaks are reported

if a leak rate of 3.1 scf per hour or greater is measured.

\* \* \* \* \*

(c) Use calibrated bags (also known as vent bags) only where the emissions are at near-atmospheric pressures and below the maximum temperature specified by the vent bag manufacturer such that the bag is safe to handle. The bag must be of sufficient size that the entire emissions volume can be encompassed for measurement.

\* \* \* \* \*

(d) \* \* \*

(3) Estimate natural gas volumetric emissions at standard conditions using calculations in § 98.233(t). Estimate CH<sub>4</sub> and CO<sub>2</sub> volumetric and mass emissions from volumetric natural gas emissions using the calculations in § 98.233(u) and (v).

16. Section 98.236 is amended by:

a. Revising paragraphs (a) introductory text and (a)(8).

b. Revising paragraph (b).

c. Revising paragraphs (c) introductory text, (c)(1)(iv), (c)(2)(ii), and (c)(3)(ii) through (c)(3)(v); and adding paragraphs (c)(3)(vi) and (vii).

d. Revising paragraphs (c)(4)(i)(H) and (C)(4)(i)(J); and adding paragraphs (c)(4)(i)(K) and (c)(4)(i)(L).

e. Revising paragraphs (c)(4)(ii)(B) and (c)(4)(ii)(C); and adding paragraph (c)(4)(ii)(D).

f. Revising paragraph (c)(4)(iii)(B).

g. Revising paragraphs (c)(5) introductory text, (c)(5)(iii), and (c)(5)(vi); and adding paragraph (c)(5)(vii).

h. Revising paragraphs (c)(6) introductory text, (c)(6)(i) introductory text, (c)(6)(i)(B), (c)(6)(i)(D), (c)(6)(i)(G), and (c)(6)(i)(H); and adding paragraph (c)(6)(ii)(I).

i. Revising paragraphs (c)(6)(ii)(B) and (c)(6)(ii)(D); and adding paragraph (c)(6)(ii)(E).

j. Revising paragraphs (c)(7)(i) and (c)(7)(ii); and adding paragraph (c)(7)(iii).

k. Revising paragraphs (c)(8)(i) introductory text and (c)(8)(i)(J); and adding paragraphs (c)(8)(i)(K) through (c)(8)(i)(M).

l. Revising paragraphs (c)(8)(ii) introductory text, (c)(8)(ii)(D), and (c)(8)(ii)(G); and adding paragraphs (c)(8)(ii)(H) and (c)(8)(ii)(I).

m. Revising paragraphs (c)(8)(iii) introductory text and (c)(8)(iii)(F); and adding paragraphs (c)(8)(iii)(G) and (c)(8)(iii)(H).

n. Adding paragraph (c)(8)(iv)(B).

o. Revising paragraphs (c)(9)(i) and (c)(9)(ii); and adding paragraph (c)(9)(iii).

p. Revising paragraphs (c)(10) introductory text and (c)(10)(iv); and adding paragraph (c)(10)(v).

q. Revising paragraph (c)(11) introductory text and (c)(11)(iii); and adding paragraph (c)(11)(iv).

r. Revising paragraph (c)(12)(vi) and adding paragraphs (c)(12)(vii) through (c)(12)(xi).

s. Revising paragraphs (c)(15)(i)(B) and (c)(15)(i)(C).

t. Revising paragraphs (c)(15)(ii)(A) through (c)(15)(ii)(C).

u. Revising paragraphs (c)(16)(i) through (c)(16)(iv), (c)(16)(vi), and (c)(16)(xv).

v. Removing and reserving paragraph (c)(16)(v).

w. Adding paragraphs (c)(16)(xvi) through (c)(16)(xx).

x. Revising paragraph (c)(17)(v) and adding paragraph (c)(17)(vi).

y. Revising paragraph (c)(18) introductory text and paragraph (c)(18)(iii).

z. Revising paragraph (c)(19)(iii) and (c)(19)(vi).

aa. Adding paragraph (e).

The revisions read as follows:

#### § 98.236 Data Reporting Requirements.

\* \* \* \* \*

(a) Report annual emissions separately for each of the industry segments listed in paragraphs (a)(1) through (8) of this section.

\* \* \* \* \*

(8) Natural gas distribution.

(b) For offshore petroleum and natural gas production, report emissions of CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O as applicable to the source type (in metric tons CO<sub>2</sub>e per year at standard conditions) individually for all the emissions source types listed in the most recent BOEMRE study.

(c) Report the information listed in this paragraph for each applicable source type. If a facility operates under more than one industry segment, each piece of equipment should be reported under its respective majority use segment. When a source type listed under this paragraph routes gas to flare, separately report the emissions that were vented directly to the atmosphere without flaring, and the emissions that resulted from flaring the gas. Both the vented and flared emissions will be reported under the respective source type and not under the flare source type.

(1) \* \* \*

(iv) Report annual CO<sub>2</sub> and CH<sub>4</sub> emissions at the facility level, expressed in metric tons CO<sub>2</sub>e for each gas, for each of the following pieces of equipment: high bleed pneumatic devices; intermittent bleed pneumatic devices; low bleed pneumatic devices.

(2) \* \* \*  
(ii) Report annual CO<sub>2</sub> and CH<sub>4</sub> emissions at the facility level, expressed in metric tons CO<sub>2</sub>e for each gas, for all natural gas driven pneumatic pumps combined.

(3) \* \* \*  
(ii) For Calculation Methodology 1 and Calculation Methodology 2 of § 98.233(d), annual average fraction of CO<sub>2</sub> content in the vent from the acid gas removal unit (refer to § 98.233(d)(6)).

(iii) For Calculation Methodology 3 of § 98.233(d), annual average volume fraction of CO<sub>2</sub> content of natural gas into and out of the acid gas removal unit (refer to § 98.233(d)(7) and (d)(8)).

(iv) Report the annual quantity of CO<sub>2</sub>, expressed in metric tons CO<sub>2</sub>e, that was recovered from the AGR unit and transferred outside the facility.

(v) Report annual CO<sub>2</sub> emissions for the AGR unit, expressed in metric tons CO<sub>2</sub>e.

(vi) A unique name or ID number for the AGR unit.

(vii) An indication of which calculation methodology was used for the AGR.

(4) \* \* \*  
(i) \* \* \*

(H) Concentration of CH<sub>4</sub> and CO<sub>2</sub> in wet natural gas.

\* \* \* \* \*

(J) For each glycol dehydrator, report annual CO<sub>2</sub> and CH<sub>4</sub> emissions that resulted from venting gas directly to the atmosphere, expressed in metric tons CO<sub>2</sub>e for each gas.

(K) For each glycol dehydrator, report annual CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions that resulted from flaring process gas from the dehydrator, expressed in metric tons CO<sub>2</sub>e for each gas.

(L) A unique name or ID number for the glycol dehydrator.

(ii) \* \* \*

(B) Which vent gas controls are used (refer to § 98.233(e)(3) and (e)(4)).

(C) Report annual CO<sub>2</sub> and CH<sub>4</sub> emissions at the facility level that resulted from venting gas directly to the atmosphere, expressed in metric tons CO<sub>2</sub>e for each gas, combined for all glycol dehydrators with a throughput of less than 0.4 MMscfd.

(D) Report annual CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions at the facility level that resulted from the flaring of process gas, expressed in metric tons CO<sub>2</sub>e for each gas, combined for all glycol dehydrators with a throughput of less than 0.4 MMscfd.

(iii) \* \* \*

(B) Report annual CO<sub>2</sub> and CH<sub>4</sub> emissions at the facility level, expressed in metric tons CO<sub>2</sub>e for each gas, for all absorbent desiccant dehydrators combined.

(5) For well venting for liquids unloading (refer to Equations W-7, W-8 and W-9 of § 98.233), report the following by each well tubing diameter grouping and pressure grouping within each sub-basin category:

\* \* \* \* \*

(iii) Cumulative number of unloadings vented to the atmosphere.

\* \* \* \* \*

(vi) Report annual CO<sub>2</sub> and CH<sub>4</sub> emissions, expressed in metric tons CO<sub>2</sub>e for each gas, for each tubing diameter and pressure grouping within each sub-basin category.

(vii) When using Calculation Methodology 1, casing diameter, depth and pressure of each well selected to represent emissions in that tubing size and pressure combination (refer to Equation W-7 of § 98.233).

(6) For well completions and workovers, report the following for each sub-basin category:

(i) For gas well completions and workovers with hydraulic fracturing by sub-basin and well type (horizontal or vertical) combination (refer to Equation W-10 of § 98.233):

\* \* \* \* \*

(B) Average flow rate of the measured well completion venting in cubic feet per hour (refer to Equation W-12 of § 98.233).

\* \* \* \* \*

(D) Average flow rate of the measured well workover venting in cubic feet per hour (refer to Equation W-12 of § 98.233).

\* \* \* \* \*

(G) Report number of completions and number of workovers employing reduced emissions completions and engineering estimate based on best available data of the amount of gas recovered to sales.

(H) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions that resulted from venting gas directly to the atmosphere, expressed in metric tons CO<sub>2</sub>e for each gas.

(I) Annual CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions that resulted from flares, expressed in metric tons CO<sub>2</sub>e for each gas.

\* \* \* \* \*

(B) Total count of workovers in calendar year that flare gas or vent gas to the atmosphere.

\* \* \* \* \*

(D) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions that resulted from venting gas directly to the atmosphere, expressed in metric tons CO<sub>2</sub>e for each gas.

(E) Annual CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions that resulted from flares, expressed in metric tons CO<sub>2</sub>e for each gas.

(7) \* \* \*

(i) Total number of blowdowns per unique volume type in calendar year.

(ii) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions, expressed in metric tons CO<sub>2</sub>e for each gas, for each unique volume type, at each blowdown stack.

(iii) A unique name or ID number for the blowdown vent stack.

(8) \* \* \*

(i) For wellhead gas-liquid separator with oil throughput greater than or equal to 10 barrels per day, using Calculation Methodology 1 and 2 of § 98.233(j), report the following by sub-basin category, unless otherwise specified:

\* \* \* \* \*

(J) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions that resulted from venting gas to the atmosphere, expressed in metric tons CO<sub>2</sub>e for each gas, for each wellhead gas-liquid separator or storage tank using Calculation Methodology 1 or 2 of § 98.233(j).

(K) Annual CO<sub>2</sub> and CH<sub>4</sub> gas quantities that were recovered, expressed in metric tons CO<sub>2</sub>e for each gas, for each wellhead gas-liquid separator or storage tank using Calculation Methodology 1 or 2 of § 98.233(j).

(L) Annual CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions that resulted from flaring gas, expressed in metric tons CO<sub>2</sub>e for each gas, for each wellhead gas-liquid separator or storage tank using Calculation Methodology 1 or 2 of § 98.233(j).

(M) A unique name or ID number for each wellhead gas liquid separator or storage tank.

(ii) For wells with oil production greater than or equal to 10 barrels per day, using Calculation Methodology 3 and 4 of § 98.233(j), report the following by sub-basin category:

\* \* \* \* \*

(D) Sales oil API gravity range for wells in (c)(8)(ii)(B) and (c)(8)(ii)(C) of this section, in degrees.

\* \* \* \* \*

(G) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions that resulted from venting gas to the atmosphere, expressed in metric tons CO<sub>2</sub>e for each gas, at the sub-basin level for Calculation Methodology 3 or 4 of § 98.233(j).

(H) Annual CO<sub>2</sub> and CH<sub>4</sub> gas quantities that were recovered, expressed in metric tons CO<sub>2</sub>e for each gas, at the sub-basin level for Calculation Methodology 3 or 4 of § 98.233(j).

(I) Annual CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions that resulted from flaring gas, expressed in metric tons CO<sub>2</sub>e for each gas, at the sub-basin level for

Calculation Methodology 3 and 4 of § 98.233(j).

(iii) For wellhead gas-liquid separators and wells with throughput less than 10 barrels per day, using Calculation Methodology 5 of § 98.233(j) Equation W-15 of § 98.233, report the following:

\* \* \* \* \*

(F) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions that resulted from venting gas to the atmosphere, expressed in metric tons CO<sub>2</sub>e for each gas, at the sub-basin level for Calculation Methodology 5 of § 98.233(j).

(G) Annual CO<sub>2</sub> and CH<sub>4</sub> gas quantities that were recovered, expressed in metric tons CO<sub>2</sub>e for each gas, at the sub-basin level for Calculation Methodology 5 of § 98.233(j).

(H) Annual CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions that resulted from flaring gas, expressed in metric tons CO<sub>2</sub>e for each gas, at the sub-basin level for Calculation Methodology 5 of § 98.233(j).

(iv) \* \* \*

(B) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions that resulted from venting gas to the atmosphere, expressed in metric tons CO<sub>2</sub>e for each gas, at the sub-basin level for improperly functioning dump valves.

(9) \* \* \*

(i) For each transmission storage tank, report annual CO<sub>2</sub> and CH<sub>4</sub> emissions that resulted from venting gas directly to the atmosphere, expressed in metric tons CO<sub>2</sub>e for each gas.

(ii) For each transmission storage tank, report annual CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions that resulted from flaring process gas from the transmission storage tank, expressed in metric tons CO<sub>2</sub>e for each gas.

(iii) A unique name or ID number for the transmission storage tank.

(10) For well testing venting and flaring (refer to Equation W-17 of § 98.233), report the following:

\* \* \* \* \*

(iv) Report annual CO<sub>2</sub> and CH<sub>4</sub> emissions at the facility level, expressed in metric tons CO<sub>2</sub>e for each gas, emissions from well testing venting.

(v) Report annual CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions at the facility level, expressed in metric tons CO<sub>2</sub>e for each gas, emissions from well testing flaring.

(11) For associated natural gas venting and flaring (refer to Equation W-18 of § 98.233), report the following for each basin:

\* \* \* \* \*

(iii) Report annual CO<sub>2</sub> and CH<sub>4</sub> emissions at the facility level, expressed in metric tons CO<sub>2</sub>e for each gas,

emissions from associated natural gas venting.

(iv) Report annual CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions at the facility level, expressed in metric tons CO<sub>2</sub>e for each gas, emissions from associated natural gas flaring.

(12) \* \* \*

(vi) Report uncombusted CH<sub>4</sub> emissions, in metric tons CO<sub>2</sub>e (refer to Equation W-19 of § 98.233).

(vii) Report uncombusted CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>e (refer to Equation W-20 of § 98.233).

(viii) Report combusted CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>e (refer to Equation W-21 of § 98.233).

(ix) Report N<sub>2</sub>O emissions, in metric tons CO<sub>2</sub>e.

(x) A unique name or ID number for the flare stack.

(xi) In the case that a CEMS is used to measure CO<sub>2</sub> emissions for the flare stack, indicate that a CEMS was used in the annual report and report the combusted CO<sub>2</sub> and uncombusted CO<sub>2</sub> as a combined number.

(15) \* \* \*

(i) \* \* \*

(B) For onshore natural gas processing, range of concentrations of CH<sub>4</sub> and CO<sub>2</sub> (refer to Equation W-30 of § 98.233).

(C) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions, in metric tons CO<sub>2</sub>e for each gas (refer to Equation W-30 of § 98.233), by equipment type.

(ii) \* \* \*

(A) For source categories § 98.230(a)(4), (a)(5), (a)(6), (a)(7), and (a)(8), total count for each type of leak source in Tables W-2, W-3, W-4, W-5, and W-6 of this subpart for which there is a population emission factor, listed by major heading and component type.

(B) For onshore production (refer to § 98.230 paragraph (a)(2)), total count for each type of major equipment in Table W-1B and Table W-1C of this subpart, by sub-basin category.

(C) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions, in metric tons CO<sub>2</sub>e for each gas (refer to Equation W-31 of § 98.233), by equipment type.

(16) \* \* \*

(i) Number of above grade T-D transfer stations.

(ii) Number of below grade T-D transfer stations.

(iii) Number of above grade metering-regulating stations (this count will include above grade T-D transfer stations).

(iv) Number of below grade metering-regulating stations (this count will include below grade T-D transfer stations).

(v) [Reserved].

(vi) Above grade metering-regulating station leak factor (refer to Equation W-32 of § 98.233).

\* \* \* \* \*

(xv) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions, in metric tons CO<sub>2</sub>e for each gas, from all above grade T-D transfer stations combined.

(xvi) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions, in metric tons CO<sub>2</sub>e for each gas, from all below grade T-D transfer stations combined.

(xvii) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions, in metric tons CO<sub>2</sub>e for each gas, from all above grade metering-regulating stations (including T-D transfer stations) combined.

(xviii) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions, in metric tons CO<sub>2</sub>e for each gas, from all below grade metering-regulating stations (including T-D transfer stations) combined.

(xix) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions, in metric tons CO<sub>2</sub>e for each gas, from all distribution mains combined.

(xx) Annual CO<sub>2</sub> and CH<sub>4</sub> emissions, in metric tons CO<sub>2</sub>e for each gas, from all distribution services combined.

(17) \* \* \*

(v) For each EOR pump, report annual CO<sub>2</sub> and CH<sub>4</sub> emissions, expressed in metric tons CO<sub>2</sub>e for each gas.

(vi) A unique name or ID for the EOR pump.

(18) For EOR hydrocarbon liquids dissolved CO<sub>2</sub> for each sub-basin category (refer to Equation W-38 of § 98.233), report the following:

\* \* \* \* \*

(iii) Report annual CO<sub>2</sub> emissions at the sub-basin level, expressed in metric tons CO<sub>2</sub>e.

(19) \* \* \*

(iii) Report annual CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from external fuel combustion units with a rated heat capacity larger than 5 mmBtu/hr, expressed in metric tons CO<sub>2</sub>e for each gas, by type of unit.

\* \* \* \* \*

(vi) Report annual CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from internal combustion units, expressed in metric tons CO<sub>2</sub>e for each gas, by type of unit.

\* \* \* \* \*

(e) For onshore petroleum and natural gas production, report the average API gravity, average gas to oil ratio, and average low pressure separator pressure for each sub-basin category.

17. Section 98.237 is amended by adding paragraph (e) to read as follows:

**§ 98.237 Records that must be retained.**

\* \* \* \* \*

(e) The records required under § 98.3(g)(2)(i) shall include an explanation of how company records,

engineering estimation, or best available information are used to calculate each applicable parameter under this subpart.

18. Section 98.238 is amended by:

a. Revising the definitions of "Facility with respect to natural gas distribution for purposes of this subpart and subpart A", "Facility with respect to onshore petroleum and natural gas production for purposes of this subpart and for subpart A", "Farm Taps", and "Transmission pipeline".

b. Adding definitions of "Associated with a single well-pad", "Distribution pipeline", "Flare", "Forced extraction", "Horizontal well", "Natural gas", "Metering-regulating station", "Pressure groupings", "Sub-basin category", "Transmission-distribution transfer station", "Tubing diameter groupings", "Tubing systems", "Vertical well", and "Well testing venting and flaring".

c. Removing the definition of "Field". The revisions read as follows:

**§ 98.238 Definitions.**

\* \* \* \* \*

*Associated with a single well-pad* means associated with the hydrocarbon stream as produced from one or more wells located on that single well-pad. The association ends where the stream from a single well-pad is combined with streams from one or more additional single well-pads, where the point of combination is located off that single well-pad. This does not include storage and condensate tanks that are located downstream of the point of combination.

\* \* \* \* \*

*Distribution pipeline* means a pipeline that is designated as such by the Pipeline and Hazardous Material Safety Administration (PHMSA) 49 CFR 192.3.

\* \* \* \* \*

*Facility with respect to natural gas distribution for purposes of reporting under this subpart and for the corresponding subpart A requirements* means the collection of all distribution pipelines and metering-regulating stations that are operated by a Local Distribution Company (LDC) within a single state that is regulated as a separate operating company by a public utility commission or that are operated as an independent municipally-owned distribution system.

*Facility with respect to onshore petroleum and natural gas production for purposes of reporting under this subpart and for the corresponding subpart A requirements* means all petroleum or natural gas equipment on a well-pad or associated with a well-pad and CO<sub>2</sub> EOR operations that are under common ownership or common control

including leased, rented, or contracted activities by an onshore petroleum and natural gas production owner or operator and that are located in a single hydrocarbon basin as defined in § 98.238. Where a person or entity owns or operates more than one well in a basin, then all onshore petroleum and natural gas production equipment associated with all wells that the person or entity owns or operates in the basin would be considered one facility.

*Farm Taps* are pressure regulation stations that deliver gas directly from transmission pipelines to generally rural customers. In some cases a nearby LDC may handle the billing of the gas to the customer(s).

\* \* \* \* \*

*Flare*, for the purposes of subpart W, means a combustion device, whether at ground level or elevated, that uses an open or closed flame to combust waste gases without energy recovery.

\* \* \* \* \*

*Forced extraction of natural gas liquids* means removal of ethane or higher carbon number hydrocarbons existing in the vapor phase in natural gas, by removing ethane or heavier hydrocarbons derived from natural gas into natural gas liquids by means of a forced extraction process. Forced extraction processes include but are not limited to refrigeration, absorption (lean oil), cryogenic expander, and combinations of these processes. Forced extraction does not include in and of itself; natural gas dehydration, or the collection or gravity separation of water or hydrocarbon liquids from natural gas at ambient temperature or heated above ambient temperatures, or the condensation of water or hydrocarbon liquids through passive reduction in pressure or temperature, or portable dewpoint suppression skids.

\* \* \* \* \*

*Horizontal well* means a well bore that has a planned deviation from primarily vertical to a primarily horizontal inclination or declination tracking in parallel with and through the target formation.

\* \* \* \* \*

*Natural gas* means a naturally occurring mixture or process derivative of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth's surface, of which its constituents include, but are not limited to, methane, heavier hydrocarbons and carbon dioxide. Natural gas may be field quality, pipeline quality, or process gas.

*Metering-regulating station* means a station that meters the flowrate, regulates the pressure, or both, of natural gas in a natural gas distribution

facility. This does not include customer meters, customer regulators, or farm taps.

\* \* \* \* \*

*Pressure groupings* are defined as follows: less than or equal to 25 psig; greater than 25 psig and less than or equal to 60 psig; greater than 60 psig and less than or equal to 110 psig; greater than 110 psig and less than or equal to 200 psig; and greater than 200 psig.

\* \* \* \* \*

*Sub-basin category, for onshore natural gas production*, means a subdivision of a basin into the unique combination of wells with the surface coordinates within the boundaries of an individual county and subsurface completion in one or more of each of the following four formation types as designated by 18 CFR 270.305: conventional with >0.1 millidarcy permeability, and unconventional with ≤0.1 millidarcy permeability.

Unconventional formation types are either shale, coal seam, or other tight reservoir rock. Wells producing from more than one unconventional formation type shall be classified into only one type based on the formation with the most contribution to production as determined by engineering knowledge. Unconventional wells producing in two or more formation types of "shale and coal seam", "shale and other tight", or "shale, coal seam, and other tight"; are considered shale. In addition, unconventional wells producing in "coal seam and other tight" formations are considered coal.

*Transmission-distribution (TD) transfer station* means a meter-regulating station where a local distribution company takes part or all of the natural gas from a transmission pipeline and puts it into a distribution pipeline.

*Transmission pipeline* means a Federal Energy Regulatory Commission rate-regulated Interstate pipeline, a state rate-regulated Intrastate pipeline, or a pipeline that falls under the "Hinshaw Exemption" as referenced in section 1(c) of the Natural Gas Act, 15 U.S.C. 717–717(w)(1994).

*Tubing diameter groupings* are defined as follows: less than or equal to 1 inch; greater than 1 inch and less than 2 inch; and greater than or equal to 2 inch.

*Tubing systems* means piping equal to or less than one half inch diameter as per nominal pipe size.

\* \* \* \* \*

*Vertical well* means a well bore that is primarily vertical but has some

unintentional deviation or one or more intentional deviations to enter one or more subsurface targets that are off-set horizontally from the surface location, intercepting the targets either vertically or at an angle.

*Well testing venting and flaring* means venting and/or flaring of natural gas at the time the production rate of a well is determined (*i.e.*, the well testing)

through a choke (an orifice restriction). If well testing is conducted immediately after well completion or workover, then it is considered part of well completion or workover.

19. Table W-7 to subpart W is amended by:

a. Revising the entries for “Leaker Emission Factors—Above Grade M&R at City Gate<sup>1</sup> Stations Components, Gas Service,” “Population Emission

Factors—Below Grade M&R<sup>2</sup> Components, Gas Service<sup>3</sup>,” “Population Emission Factors—Distribution Mains, Gas Service<sup>4</sup>,” and “Population Emission Factors—Distribution Services, Gas Service<sup>5</sup>.”

b. Removing Footnote 1.

c. Redesignating Footnotes 2, 3, 4, and 5 as Footnotes 1, 2, 3, and 4.

The revisions read as follows:

*	*	*	*	*	*	*	*
<b>Leaker Emission Factors—Transmission-distribution Transfer Station<sup>1</sup> Components, Gas Service</b>							
*	*	*	*	*	*	*	*
<b>Population Emission Factors—Below Grade Metering-Regulating station<sup>1</sup> Components, Gas Service<sup>2</sup></b>							
*	*	*	*	*	*	*	*
<b>Population Emission Factors—Distribution Mains, Gas Service<sup>3</sup></b>							
*	*	*	*	*	*	*	*
<b>Population Emission Factors—Distribution Services, Gas Service<sup>4</sup></b>							
*	*	*	*	*	*	*	*

<sup>1</sup> Excluding customer meters.

<sup>2</sup> Emission Factor is in units of “scf/hour/station.”

<sup>3</sup> Emission Factor is in units of “scf/hour/mile.”

<sup>4</sup> Emission Factor is in units of “scf/hour/number of services.”



# FEDERAL REGISTER

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Part III

Department of the Interior

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Fish and Wildlife Service

50 CFR Part 32

2011–2012 Refuge-Specific Hunting and Sport Fishing Regulations; Final Rule

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 32**

[Docket No. FWS-R9-NSR-2011-0038;  
93270-1265-0000-4A]

RIN 1018-AX54

**2011–2012 Refuge-Specific Hunting and Sport Fishing Regulations**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service adds one refuge to the list of areas open for hunting and/or sport fishing and increases the activities available at nine other refuges, along with adopting pertinent refuge-specific regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2011–2012 season.

**DATES:** This rule is effective September 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Leslie A. Marler, (703) 358–2397.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges in all States except Alaska to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System or our/we) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans. We also consider the role of facilitating hunting heritage in expanding hunting opportunities on national wildlife refuges consistent with the agency's mission.

We annually review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications. Changing environmental conditions, State and Federal regulations, and other factors affecting

fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality fish- and wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the Statutory Authority section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, seasons, bag or creel (container for carrying fish) limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also proposing to standardize and clarify the language of existing regulations.

**Statutory Authority**

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1997 [Improvement Act]) (Administration Act), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act, built upon the Administration Act in a manner that provides an “organic act” for the Refuge System, are similar to those that exist for other public Federal lands. The

Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus our Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible with the purpose for which the refuge was established and the mission of the Refuge System. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Improvement Act established six wildlife-dependent recreational uses as the priority general public uses of the Refuge System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport

fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

#### Response to Comments Received

In the July 5, 2011, **Federal Register** (76 FR 39186), we published a proposed rulemaking identifying changes pertaining to migratory game bird hunting, upland game bird hunting, big game hunting, and sport fishing to existing refuge-specific language on certain refuges for the 2011–2012 season. We received 251 comments on this proposed rule during a 30-day comment period; 226 of those comments were supportive of the rulemaking; 18 were opposed to the rulemaking; and the remainder expressed neither support nor opposition but had comments.

*Comment 1:* A commenter asked when we would notify the public of the opening of the various areas, when the applications would become available, and what fees we would require.

*Response 1:* With the publication of this final rule document, the changes become effective. We will be issuing press releases both locally in the affected areas and nationally from the Headquarters of the National Wildlife Refuge System and the U.S. Fish and Wildlife Service. Interested hunters should contact the particular refuge that they wish to visit for application and fee information. We maintain a list of all of the national wildlife refuges on our National Wildlife Refuge System homepage (*link: <http://www.fws.gov/refuges/>*). Look for the “Find Your Refuge” section on the first page and you can query the system by State, zip code, alphabetically by refuge or other means via the pull-down menu. Once you link to the refuge of interest, you will find their address, phone number, and a link to their individual Web sites.

*Comment 2:* We received six comments (from 4 different individuals) expressing concern regarding the Minnesota Valley National Wildlife Refuge’s proposed prohibition on falconry. They state we offered no explanation for this prohibition, and they contend that falconry is a legal means of hunting/take in the State of Minnesota as it is in 49 of the 50 States. They object strongly to what appears to be prejudicial and a “denied equitable public opportunity” on the refuge and request that we remove such a bias from the regulations by allowing falconry. One commenter goes on to say that “clear regulatory or policy guidance to permit falconry on all refuge properties would assist refuge managers and

personnel development refuge management plans.” This requestor also, “respectfully requests on all refuge properties where take is allowed by archery methods only, that falconry also be permitted.”

*Response 2:* Upon further examination of this condition, the refuge has decided to reverse their decision regarding falconry hunting as a means of take for migratory birds on Minnesota Valley National Wildlife Refuge and allow this opportunity. Due to the small number of hunters that practice falconry, the method used with this hunting technique, and the average success rate of this hunting method, we believe that this change will be insignificant in its direct, indirect, and cumulative impact. The factors considered in our analysis include the impact of this activity on overall migratory bird harvest, habitat conditions, interactions with other user groups, falconry hunter numbers, and economic gain or loss associated with this type of hunting.

As far as policy specific to falconry, Service policy 605 FW 2.7M Special Hunts stipulates, “We will address special types of hunts, such as falconry, in the hunt section of the visitor service plan (VSP).” In other words, each refuge manager when developing their step-down visitor service’s plan (which would include a hunt plan, if appropriate) from their Comprehensive Conservation Plan, must first determine if hunting is compatible. Assuming it is found to be compatible, the refuge manager would next determine the conduct of the hunt which might include the use of falconry. A refuge manager has discretion to prohibit hunting, and specifically falconry, in certain cases such as if endangered or threatened species are present; thus it is decided individually on a refuge-by-refuge basis.

*Comment 3:* A commenter supports the proposed rule to open Crane Meadows National Wildlife Refuge to deer and turkey hunting and to expand hunting at nine other refuges across the country and agrees that the rule meets the intent of the National Wildlife Refuge System Improvement Act to provide opportunities for wildlife-dependent activities, including hunting, when these activities are compatible with refuge purposes and with the mission and purposes of the National Wildlife Refuge System. The commenter wonders why in the **SUPPLEMENTARY INFORMATION** section of the proposed rule that Executive Order 13443 is not included along with other mentioned Executive Orders (E.O.) and urges us to add this E.O. to the list of others with

which we must comply and make this E.O. a standard part of any future proposed rule that opens or expands wildlife-dependent activities on national wildlife refuges.

*Response 3:* The very nature of this rule to open and expand hunting on national wildlife refuges is consistent with the purpose of Executive Order 13443 (Facilitation of Hunting Heritage and Wildlife Conservation). However, we are not including reference to the E.O. in the Required Determinations section of the rule because all of the E.O.s and Acts that are contained in that section of the rule require that a substantive determination be made as part of the regulatory process, whereas E.O. 13443 states that agencies should consider certain things in developing their policies but does not require that a specific determination be made in analyzing the substance of the E.O. as it might be impacted by the proposed regulation (emphasis added). We do consider the broad precepts of E.O. 13443 in developing the hunting regulations, but there is no affirmative obligation to assert that an agency has complied with that specific E.O.

As the commenter correctly observes, this proposed rule does meet the intent of the National Wildlife Refuge System Improvement Act to provide opportunities for wildlife-dependent activities, including hunting, when these activities are compatible with refuge purposes and with the mission and purposes of the National Wildlife Refuge System. They also correctly note that in the **SUPPLEMENTARY INFORMATION** section of the proposed rule we reference the Improvement Act and the fact that it established six wildlife-dependent recreation uses, including hunting, as priority general public uses.

We have added a sentence to the **SUPPLEMENTARY INFORMATION** section of this final rulemaking to indicate that we consider the role of facilitating hunting heritage in expanding hunting opportunities on national wildlife refuges consistent with the agency’s mission.

*Comment 4:* Seventeen commenters expressed objection to the concept of allowing any more hunting on national wildlife refuges. Their statements ranged from “\* \* \* too many people, too few animals” to “I think the fact that it is a National Wildlife ‘Refuge’ should mean just that.”

*Response 4:* The 1966 National Wildlife Refuge System Administration Act, which was amended by the 1997 National Wildlife Refuge System Improvement Act, stipulates that hunting (along with fishing, wildlife observation and photography, and

environmental education and interpretation), if found to be compatible, is a legitimate and priority general public use of a refuge and should be facilitated. The Administration Act authorizes the Secretary to allow use of any refuge area for any purpose as long as those uses are compatible. In the case of each refuge opening/expansion in this rule, the refuge managers went through the compatibility process (which allows for public comment), in addition to complying with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) (NEPA) (which also allows for public comment) to make the determination before opening the refuge to hunting or expanding the hunting opportunities on the refuge. We made no change to the regulations as a result of these comments.

*Comment 5:* A commenter expressed opposition to opening Arapaho National Wildlife Refuge in Colorado to elk hunting.

*Response 5:* Elk are found throughout the refuge and are the most numerous big game species on the refuge. The wintering elk population has continued to grow, from 200 to 300 elk in 1988 to approximately 1,500 to 1,800 elk on the refuge in recent years.

The primary objective of the elk hunt is to increase the dispersal of elk onto adjacent lands where they will be available to more hunters, and to harvest a small percentage of the population on the refuge thereby lessening the impacts to all native species, including migratory birds. The elk hunt will also provide a new, quality hunting opportunity for hunters with a focus on youth hunters and hunters with disabilities. Refuge managers determined that it is advisable to take management action before the elk population reaches the point where it does long-term damage to the environment and adversely affects other native flora and fauna species.

Without a reduction in elk numbers, sections of the Illinois River on the refuge will continue to be impacted by wintering elk. Elk can have a severe impact on establishment and long-term health of willow stands, making achievement of refuge habitat objectives unlikely. If the refuge elk population continues to grow, it will eventually exceed the carrying capacity of the available habitat. We will continue to monitor the population, coordinate with the Colorado Department of Wildlife, limit hunter participation, and establish bag limits to ensure the population will not be adversely affected by managed hunting.

We made no change to the regulations as a result of this comment.

*Comment 6:* A commenter from the State of Texas, although supportive of the rulemaking, felt it was important to require “\* \* \* those utilizing these great resources to take appropriate hunter and bowhunter education courses. This will make sure that all hunters have been exposed to safety and ethical issues that will insure a safer hunting environment.”

*Response 6:* We concur with the commenter. As discussed in the introductory paragraph of each hunting and/or sport fishing category for nearly every refuge under each State in 50 CFR part 32, we stipulate that we allow hunting and/or sport fishing activities in accordance with State regulations subject, in many cases, to conditions that follow in the refuge-specific regulations. Regulations allowing hunting of wildlife within the Refuge System must be, to the extent practicable, consistent with State fish and wildlife laws, regulations, and management plans; therefore, we do not reiterate those regulations in our regulations (see Fish and Wildlife Service policy 605 FW 2.3B).

In the case of Texas, State regulations require that big game hunters have a bowhunting/hunter education certificate in their possession when hunting. Although we do not specifically restate this in our Texas refuge-specific regulations, our refuges do comply with this State law, which would include requiring this certificate for big game hunters. Further, at each refuge, there are brochures available to the hunter that go into detail about this State and refuge requirement. We made no changes to the rule as a result of this comment.

*Comment 7:* A commenter indicated they would like to see deer and hog hunting allowed by archery means only on Bayou Sauvage National Wildlife Refuge (NWR) in the State of Louisiana.

*Response 7:* This urban refuge (within the city limits) is closed to big game hunting (the category of hunting under which one would find large species such as deer and hog); therefore this comment is not germane to this rulemaking. We made no change to the regulation as a result of this comment.

*Comment 8:* A commenter asked why we do not allow feral pig hunting at Merritt Island NWR in Florida as “they have a terrible feral pig problem” there. Also the same commenter questioned the need for a waterfowl hunt as wintering waterfowl numbers have dropped from 120,000 to under 18,000 in the past 10 years.

*Response 8:* Merritt Island National Wildlife Refuge is an overlay of the Kennedy Space Center (KSC) and the Service manages NASA’s lands through an agreement. Prior to NASA’s purchase of the lands for KSC, much of the area was owned by several large hunt clubs and when the property was sold, the prominent hunt club members desired retaining hunting privileges. When NASA entered into the agreement with the Service to establish the refuge, it specified waterfowl hunting would continue. Since 1963, the year we established the refuge, we have allowed waterfowl hunting in selected locations outside the restricted area of KSC.

The refuge hunt program has evolved over the years in response to changing waterfowl populations, waterfowl use patterns, habitat conditions, and changes in the public use program. The length of the season, days of the week open to hunting, number and size of hunt areas, and ways and means for issuing permits have changed frequently over the past 48 years. Presently 36,000 acres of the 140,000-acre Merritt Island NWR are open to waterfowl hunting and are subdivided into four hunt areas (Hunt Areas 1 through 4). The refuge has a concurrent season with the State of Florida, except the refuge is open to hunting 3 days per week (Wednesday, Saturday, and Sunday) from legal shooting time until 1 p.m. We require a refuge hunt permit (signed brochure), a State-approved hunter safety training certificate, and a quota permit (State permit) for Hunt Areas 1 and 4 for the months of November and December.

Waterfowl populations have declined on the refuge for at least 10 years. The refuge staff is concerned about the decline, but it is unclear if the cause is fewer birds migrating to Florida, a shift in the Florida wintering population to other parts of the State (the decline seems to coincide with new habitat being created for Everglades restoration), or excessive hunting pressure on the refuge. In March of this year, following the 2010–2011 Waterfowl Season, refuge personnel met with the Florida Fish and Wildlife Commission and waterfowl hunter stakeholders (representatives from Ducks Unlimited and United Waterfowlers), to discuss solutions to improve waterfowl hunting and address the decline in the refuge waterfowl populations. As a result of this meeting, the consensus was to attempt to improve the quality of the habitat conditions on the refuge but not make any immediate changes to the hunt program. The refuge will continue to monitor the waterfowl population but, at least for now, does not propose any

additional changes to the waterfowl regulations.

With respect to the issue of opening the refuge to feral hog hunting, the refuge has never been open to big game hunting. However in 2006, when they completed the Comprehensive Conservation Plan for the refuge, they made provisions to evaluate opening the northern quarter of the refuge to feral hog and deer hunting. The refuge currently uses hog trappers under permit to remove feral hogs, and those trappers remove between 2,500 to 3,000 animals annually through this program at no cost to the refuge. The feral hog removal program is fairly effective, and at this time we do not wish to introduce a public hunt into the mix. A public hunt may provide a short-term advantage of reducing the population quickly in the area of the hunt, but, in the long run, the constant pressure afforded by the hog trappers in all areas of the refuge may provide a more effective long-term control. However, the refuge plans to evaluate implementing a feral hog hunt when the feral hog permits expire. No changes were made to this final rule as a result of this comment.

*Comment 9:* A commenter asked how we would pay for supervision of hunting activity in these proposed areas given the budgetary constraints that currently exist and that are likely to become more stringent. Also, do we believe we can properly supervise the hunts under the circumstances?

*Response 9:* When developing the Comprehensive Conservation Plans and step-down hunting plans for each refuge, the refuge manager takes into account budgetary needs for increased hunting opportunities. Basically, the refuge would not be proposing the activity (or increased activity) if it did not anticipate that there was enough funding to ensure compatibility and to administer and to manage the hunts.

Typically, you can find this discussion under the "Staffing and Funds" section of each refuge's hunt plans, which were made publicly available when first issued, and remain available at each station's Web site. In some cases, an existing hunt program is in place and the refuge does not anticipate a drastic change in staffing or funding requirements. As refuge law enforcement can be a collateral duty for refuge staff, they may occasionally "borrow" law enforcement as needed from other refuges. For other refuges, non-law enforcement staff time does not increase greatly since generally all hunting seasons and permitting will be handled according to State regulations. Some refuges also see some budgetary

relief in user fees which they believe are sufficient to cover increased opportunities. Some refuges state that there would be some costs associated with a hunting program in the form of brochures, instructional sign needs, and law enforcement. These refuges expect that the costs should be minimal relative to total refuge operations and maintenance costs and would not diminish resources dedicated to other refuge management programs.

However, the refuges do acknowledge there will be some additional staff workload in order to administer new hunting opportunities and this factors into the decision to allow those opportunities. Finally, as discussed earlier in this **SUPPLEMENTARY INFORMATION** section, with the passage of the National Wildlife Refuge Improvement Act of 1997, Congress mandated that hunting was one of the six priority general public uses that refuge managers were to facilitate when compatible, so to the extent possible and practicable, we adhere to that directive.

We made no change to the regulations as a result of this comment.

*Comment 10:* A commenter, although supportive of the additional hunting opportunity in Iowa, wondered why we impose additional requirements such as "steel shot only" on all our public hunting areas. The commenter points out that steel is costly and does not believe that it has been proven that the steel shot requirement has had a positive effect on migratory birds.

*Response 10:* Waterfowl and migratory birds can get lead poisoning by ingesting lead shot when they feed (see <http://www.fws.gov/sacramento/ec/lead%20shot.htm>). In the November 21, 1986, **Federal Register** (51 FR 42103) we began the conversion to nontoxic shot nationwide for waterfowl hunting on refuges, which we implemented in the 1991–1992 hunting season. At that time, refuges were implementing the nontoxic shot requirement on a refuge-by-refuge basis, and multiple rules were published (an example would be the June 19, 1991, **Federal Register** (56 FR 28133)). The Service oversees the approval process for alternative shot types in the United States. We specifically identify the shot allowed in areas of the Refuge System by reference to the shot identified in 50 CFR 20.21(j). We sometimes grant new shot types conditional approvals until we complete all necessary studies. These conditional approvals may change yearly, and we add new shot types to our approved list as they meet our criteria. You can link to the following Web sites concerning

lead shot that contain more background information on this issue:

[http://www.lab.fws.gov/shotpellets\\_leadshot.php](http://www.lab.fws.gov/shotpellets_leadshot.php); <http://www.fws.gov/sacramento/ec/lead%20shot.htm>;

<http://www.fws.gov/contaminants/DisplayNews.cfm?NewsID=4DAA500C-3E21-4564-87AA714E9E301C9E>.

You can find many other Web sites concerning lead shot by conducting an Internet search.

We made no change to the regulations as a result of this comment.

*Comment 11:* We received a comment regarding the proposed youth hunt at Bayou Sauvage National Wildlife Refuge in Louisiana. The commenter notes that the proposed hunt would allow hunting within 500 feet of Venetian Isle, a dense population of waterfront homes within the New Orleans city limits, and believes that not only should we prohibit hunting within the city limits but that the hunting boundaries should be at least 1 mile from homes. Further, the commenter doesn't want to be awakened by gunfire on weekend mornings.

*Response 11:* The National Wildlife Refuge System Improvement Act of 1997 identifies hunting as a priority public use, and providing opportunities for fish and wildlife public uses in an urban setting is an established purpose of the refuge. Given this supporting legislation and the significant public support for hunting on Bayou Sauvage NWR, it is important that these opportunities are available to the public.

Our goal is to ensure that hunting is balanced with the other priority public uses of environmental education, wildlife observation, interpretation, fishing, and photography. Thus, we have designated the interior units (57 percent of the refuge) as closed to hunting to allow ample opportunities for the other five priority uses. Additionally, we allow hunting only 4 days per week until 12 (noon), and these units will be open to fishing and other activities during nonhunting times.

The youth hunt we are proposing is for migratory bird hunting, unlike comment 7 which dealt with big game hunting. The ammunition used for these two types of hunting is different. Bird shot has a different trajectory and much less mass than a rifled slug or bullet and would not travel as far as those ammunitions used in big game hunting. Under these circumstances, we feel the prohibition of hunting within 500 feet (150 m) of residences adequately provides for public safety. On two other Louisiana refuges, Big Branch Marsh and Bogue Chitto, we allow hunting

within 150 feet (45 m) of roads, trails, residences, and public facilities. In order to reduce potential noise associated with hunting activities near Venetian Isles, the areas located outside the hurricane protection levee, immediately west and south of Venetian Isles, between the former Bayou Sauvage channel and the railroad tracks will be posted closed to hunting. We made no changes to this regulation as a result of the comment.

*Comment 12:* A commenter questioned the “rigorous scientific research into the status of refuge wildlife populations” and whether we were using this information to guide refuge planning. The commenter went on to say that a determination must be made that “wildlife are surplus to a balanced conservation program on any wildlife area,” and that “unless the species is damaging or destroying federal property within a refuge, the species cannot be subject to live removal or lethal control, including through official animal control operations.” They believe that “refuges often fail to have refuge specific monitoring of harvest levels,” and discussed the concept of an “inviolable sanctuary.” Finally, the commenter believes that since “21 million people visit refuges for wildlife observation” and “only 1.4 million visit to hunt or trap” that nonconsumptive users should enjoy a higher priority when it comes to use of refuge lands.

*Response 12:* As discussed in the response to Comment 4, and as Comment 12 acknowledges, “the Refuge Improvement Act upgrades hunting and fishing to a priority use \* \* \*”. Each refuge manager gives the decision to allow hunting on a particular refuge rigorous examination. A Comprehensive Conservation Plan (CCP), a 15-year plan for the refuge, is generally the first step a refuge manager takes. Our policy for managing units of the Refuge System is that we will manage all refuges in accordance with an approved CCP which, when implemented, will achieve refuge purposes; help fulfill the Refuge System mission; maintain and, where appropriate, restore the ecological integrity of each refuge and the Refuge System; help achieve the goals of the National Wilderness Preservation System; and meet other mandates. The CCP will guide management decisions and set forth goals, objectives, and strategies to accomplish these ends. The next step for refuge managers is step-down plans, of which hunting would be one step-down plan. Part of the process for opening a refuge to hunting after completing the step-down plan would be appropriate compliance with the

National Environmental Policy Act (NEPA), typically an environmental assessment accompanied by the appropriate decision documentation (Record of Decision, Finding of No Significant Impact, or an Environmental Action Memorandum or Statement). The CCP, hunt plan, and NEPA all receive public comment as does the proposed rule, before the final rule is published in the **Federal Register**. After publication of the final rule, we allow hunting on a refuge.

In sum, this illustrates that the decision to allow hunting on a national wildlife refuge is not a quick or simple process. It is full of deliberation and discussion, including review of all available data to determine the relative health of a population before we allow it to be hunted. In the case of migratory game bird hunting, the Service annually prescribes frameworks for dates and times when migratory bird hunting may occur in the United States, and the number of birds that hunters may take and possess. We write these regulations after giving due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, and we update the information annually. Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), Congress authorized the Secretary of the Interior to determine when “hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any \* \* \* bird, or any part, nest, or egg” of migratory game birds can take place, and to adopt regulations for this purpose. The Secretary of the Interior delegated this responsibility to the Service as the lead Federal agency for managing and conserving migratory birds in the United States.

Because the Service is required to take abundance of migratory birds and other factors into consideration, we undertake a number of surveys throughout the year in conjunction with the Canadian Wildlife Service, State and Provincial wildlife management agencies, and others. To determine the appropriate frameworks for each species, we consider factors such as population size and trend, geographical distribution, annual breeding effort, the condition of breeding and wintering habitat, the number of hunters, and the anticipated harvest. After we establish frameworks for season lengths, bag limits, and areas for migratory bird hunting, migratory game bird management becomes a cooperative effort of State and Federal Governments. After Service establishment of final frameworks for hunting seasons, the States may select

season dates, bag limits, and other regulatory options for the hunting seasons.

As discussed in the Cumulative Impacts Report that we posted on <http://www.regulations.gov> under Docket No. FWS–R9–NSR–2011–0038, along with the proposed rule on the day of publication (July 5, 2011), we took a look at the cumulative impact that the 2011–2012 proposed rule would have on migratory birds, resident wildlife, nonhunted migratory and resident wildlife, threatened and endangered species, habitats and plant resources, other wildlife-dependent recreational uses, physical resources (air, water, soils), cultural resources, refuge facilities, solitude, and cumulative socioeconomic impacts.

This rule proposes to expand migratory bird hunting on five refuges. Collectively, we estimate that this proposed hunting action will result in the take of 2,450 ducks or .019 percent of the estimated national harvest and the take of 650 geese or .02 percent of the estimated national harvest. In short, we project that harvests of these species on the five refuges will constitute an extremely minor component of the national harvests.

We allow hunting of resident wildlife on national wildlife refuges only if such activity has been determined compatible with the established purpose(s) of the refuge and the mission of the Refuge System as required by the Administration Act. Hunting of resident wildlife on national wildlife refuges generally occurs consistent with State regulations, including seasons and bag limits. Refuge-specific hunting regulations can be more restrictive (but not more liberal) than State regulations and often are in order to help meet specific refuge objectives. These include resident wildlife population and habitat objectives, minimizing disturbance impacts to wildlife, maintaining high-quality opportunities for hunting and other wildlife-dependent recreation, eliminating or minimizing conflicts with other public uses and/or refuge management activities, and protecting public safety.

The proposed actions involving resident wildlife hunting include three refuges allowing this type of hunting for the first time and expanding this type of hunting on six refuges. Please consult the Cumulative Impacts Report at the site referenced above for more in-depth discussion, but in sum, none of the known, estimated or projected harvests of big game, small or upland game species resulting from the proposed hunting activities on refuges were determined or expected to have

significant adverse direct, indirect or cumulative impacts to any big game, small, or upland wildlife population.

The Migratory Bird Conservation Act of 1929 (16 U.S.C. 715 *et seq.*) authorizes acquisition of refuges as “inviolate sanctuaries” where the birds could rest and reproduce in total security. In 1949, this “inviolate sanctuary” concept was modified by an amendment to the Migratory Bird Hunting and Conservation Stamp Act which permitted hunting on up to 25 percent of each inviolate refuge. Another amendment to the Migratory Bird Hunting and Conservation Stamp Act in 1958 increased the total area of an inviolate refuge that could be opened for hunting to up to 40 percent.

Whether an area is an inviolate sanctuary is a function of the mechanism of its creation. If a refuge was acquired as an inviolate sanctuary, only 40 percent of the refuge area may be opened at one time for hunting of migratory game birds. However, if the refuge was not acquired as an inviolate sanctuary, 100 percent of the refuge area may be opened for hunting.

The Fish and Wildlife Improvement Act of 1978 amended section 6 of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd) to provide for the opening of all or any portion of an inviolate sanctuary to the taking of migratory birds if taking is determined to be beneficial to the species. Such opening of more than 40 percent of the inviolate sanctuary to hunting is determined by species. This amendment refers to inviolate sanctuaries created in the past or to be created in the future. It has no

application to areas acquired for other management purposes.

Most refuge hunt programs have established refuge-specific regulations to improve the quality of the hunting experience as well as provide for quality wildlife-dependent experiences for other users. Refuge visitor use programs are adjusted, as needed to eliminate or minimize conflicts between users. Virtually all of the refuges open to hunting and other wildlife-dependent recreational uses use time and space zoning as an effective method to reduce conflicts between hunting and other uses. Eliminating or restricting overlap between hunt areas and popular areas from other wildlife-dependent recreation allows opportunity for other users to safely enjoy the refuge in nonhunted areas during hunting seasons. Restrictions on the number of hunters and the time in which they could hunt are also frequently used to minimize conflicts between user groups. Public outreach accompanying the opening of hunting seasons is frequently used to make other wildlife-dependent recreational users aware of the seasons and minimize conflicts. We made no changes to the regulations as a result of this comment.

**Effective Date**

This rule is effective upon publication in the **Federal Register**. We have determined that any further delay in implementing these refuge-specific hunting and sport fishing regulations would not be in the public interest, in that a delay would hinder the effective planning and administration of the hunting and fishing programs. We provided a 30-day public comment

period for the July 5, 2011, proposed rule. An additional delay would jeopardize holding the hunting and/or fishing programs this year or shorten their duration and thereby lessen the management effectiveness of this regulation. This rule does not impact the public generally in terms of requiring lead time for compliance. Rather it relieves restrictions in that it allows activities on refuges that we would otherwise prohibit. Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon publication.

**Amendments to Existing Regulations**

This document codifies in the Code of Federal Regulations amendments to the Service’s hunting and/or sport fishing regulations that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We are doing this to better inform the general public of the regulations at each refuge, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR part 32, visitors to our refuges will usually find them reiterated in literature distributed by each refuge or posted on signs.

We have cross-referenced a number of existing regulations in 50 CFR parts 26, 27, 28, and 32 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs.

TABLE 1—CHANGES FOR 2011–2012 HUNTING/FISHING SEASON

National Wildlife Refuge	State	Migratory bird hunting	Upland game hunting	Big game hunting	Fishing
Arapaho .....	CO ....	Already open ..	Already open ..	D (elk) .....	Already open.
Bayou Sauvage .....	LA ....	B .....	Closed .....	Closed .....	Already open.
Coldwater River .....	MS ....	B .....	B .....	B .....	Already open.
Crane Meadows .....	MN ....	Closed .....	Closed .....	A (deer/turkey) ....	Closed.
Currituck .....	NC ....	Already open ..	Closed .....	B .....	Closed.
Minnesota Valley .....	MN ....	C .....	C .....	C .....	Already open.
Northern Tallgrass Prairie .....	MN/IA	C/D .....	C/D .....	C .....	Closed.
Ouray .....	UT ....	Already open ..	D (turkey) .....	D (elk) .....	Already open.
Sherburne .....	MN ....	C .....	Already open ..	D (turkey)/C .....	Already open.
Trinity River .....	TX ....	Already open ..	C .....	C .....	Already open.

A = New refuge opened.  
 B = New activity on a refuge previously opened to other activities.  
 C = Refuge already open to activity but added new land/waters which increased activity.  
 D = Refuge already open to activity but added new species to hunt.

We are making an administrative change that correctly reflects that Trempealeau National Wildlife Refuge in the State of Wisconsin is closed to

Upland Game Hunting. The refuge has never been open to that activity, and we are correcting the record with this change.

We are also adding Tishomingo Wildlife Management Unit in the State of Oklahoma to the list of refuges open to hunting and or fishing in 50 CFR part

32. We now correctly reflect how Tishomingo National Wildlife Refuge’s (an overlay refuge where the land is owned by the U.S. Army Corps of Engineers) hunting opportunities differ from those of the Tishomingo Wildlife Management Unit. The Tishomingo National Wildlife Refuge, managed by refuge staff, is open only to big game hunting and sport fishing. The Tishomingo Wildlife Management Unit, managed by the Oklahoma Wildlife Conservation Department under a 1957 agreement entered into between the U.S. Army Corps of Engineers and the Secretary of the Interior, is open to all three hunting opportunities (migratory game bird, upland game, and big game) and sport fishing.

The changes for the 2011–12 hunting/fishing season noted in the chart above are each based on a complete administrative record which, among other detailed documentation, also includes a hunt plan, a compatibility determination, and the appropriate National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) analysis, all of which were the subject of a public review and comment process. These documents are available upon request.

**Fish Advisory**

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the Internet at: <http://www.epa.gov/waterscience/fish/>.

**Plain Language Mandate**

In this rule we made some of the revisions to the individual refuge units

to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using “you” to refer to the reader and “we” to refer to the Refuge System, using the word “allow” instead of “permit” when we do not require the use of a permit for an activity, and using active voice (*i.e.*, “We restrict entry into the refuge” vs. “Entry into the refuge is restricted”).

**Regulatory Planning and Review**

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination on the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies’ actions.

(c) Whether the rule will materially affect entitlements, grants, use fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

**Regulatory Flexibility Act**

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public

comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for “significant impact” and a threshold for a “substantial number of small entities.” See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This rule adds one national wildlife refuge to the list of refuges open to hunting and increases hunting activities on nine national wildlife refuges. As a result, visitor use for wildlife-dependent recreation on these national wildlife refuges will change. If the refuges establishing new programs were a pure addition to the current supply of such activities, it would mean an estimated increase of 4,750 user days (one person per day participating in a recreational opportunity) (Table 2). Because the participation trend is flat in these activities since 1991, this increase in supply will most likely be offset by other sites losing participants. Therefore, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity.

TABLE 2—ESTIMATED CHANGE IN RECREATION OPPORTUNITIES IN 2011/2012

Refuge	Additional user days	Additional expenditures
Arapaho .....	40	\$4,337
Bayou Sauvage .....	672	72,865
Coldwater River .....	400	43,372
Crane Meadows .....	55	5,964
Currituck .....	400	43,372
Minnesota Valley .....	2,818	305,555
Northern Tallgrass Prairie .....	75	8,132
Ouray .....	100	10,843
Sherburne .....	50	5,421
Trinity River .....	140	15,180
Total .....	4,750	515,041

To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the

regional economy and benefit local businesses. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2006

National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other

incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation of the Refuge System yields approximately \$515,000 in recreation-related expenditures (Table 2). By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of these recreational activities. Using a national impact multiplier for hunting activities (2.67) derived from the report "Economic Importance of Hunting in America" yields a total economic impact of approximately \$1.4 million (2010 dollars) (Southwick Associates, Inc., 2007). Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in

developing local multipliers for each specific region.

Since we know that most of the fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending would be "new" money coming into a local economy; therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than \$1.4 million, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of about \$275,000 annually.

Small businesses within the retail trade industry (such as hotels, gas

stations, taxidermy shops, bait and tackle shops, *etc.*) may be impacted from some increased or decreased refuge visitation. A large percentage of these retail trade establishments in the local communities around national wildlife refuges qualify as small businesses (Table 3). We expect that the incremental recreational changes will be scattered, and so we do not expect that the rule will have a significant economic effect on a substantial number of small entities in any region or nationally. As noted previously, we expect approximately \$515,000 to be spent in total in the refuges' local economies. The maximum increase (\$1.4 million if all spending were new money) at most would be less than 1 percent for local retail trade spending.

TABLE 3—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2011/2012

[Thousands, 2010 dollars]

Refuge/county(ies)	Retail trade in 2007 (2010 \$ )	Estimated maximum addition from new activities	Addition as % of total	Establishments in 2008	Establ. with <10 emp in 2008
Arapaho					
Jackson, CO .....	\$23,099	\$4.3	0.019	13	10
Bayou Sauvage					
Orleans Parish, LA .....	3,241,340	72.9	0.002	1,201	983
Coldwater River					
Tallahatchie, MS .....	67,735	21.7	0.032	40	34
Quitman, MS .....	29,478	21.7	0.074	21	18
Crane Meadows					
Morrison, MN .....	430,771	6.0	0.001	135	94
Currituck					
Currituck, NC .....	314,767	43.4	0.014	142	118
Minnesota Valley					
Hennepin MN .....	26,568,279	76.4	0	4,295	2,670
Carver MN .....	962,544	76.4	0.008	223	143
Scott MN .....	1,394,907	76.4	0.005	349	234
Dakota MN .....	6,158,226	76.4	0.001	1,169	717
Northern Tallgrass Prairie					
Jasper, IA .....	326,707	1.2	0	120	79
Kossuth, IA .....	233,531	1.2	0	99	78
Lincoln, MN .....	63,331	1.2	0.002	37	27
Lyon, MN .....	451,824	1.2	0	134	96
Otter Tail, MN .....	840,187	1.2	0	277	204
Rock, MN .....	130,128	1.2	0.001	47	33
Stevens, MN .....	202,798	1.2	0.001	53	34
Ouray					
Unitah, UT .....	550,293	10.8	0.002	137	85
Sherburne					
Sherburne, MN .....	1,006,876	5.4	0.001	207	134
Trinity River					
Liberty, TX .....	778,776	15.2	0.002	200	143

With the small change in overall spending anticipated from this rule, it is unlikely that a substantial number of small entities will have more than a small impact from the spending change near the affected refuges. Therefore, we certify that this rule will not have a significant economic effect on a

substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial/final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

#### Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant

employment or small business effects. This rule:

a. Will not have an annual effect on the economy of \$100 million or more. The minimal impact will be scattered across the country and will most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule will have only a slight effect on the costs of hunting opportunities for Americans. If the substitute sites are farther from the participants' residences, then an increase in travel costs will occur. The Service does not have information to quantify this change in travel cost but assumes that, since most people travel less than 100 miles to hunt, the increased travel cost will be small. We do not expect this rule to affect the supply or demand for hunting opportunities in the United States and, therefore, it should not affect prices for hunting equipment and supplies, or the retailers that sell equipment.

c. Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This rule represents only a small proportion of recreational spending at national wildlife refuges. Therefore, this rule will have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of \$72 billion nationwide.

#### **Unfunded Mandates Reform Act**

Since this rule applies to public use of federally owned and managed refuges, it will not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule will 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.

#### **Takings (E.O. 12630)**

In accordance with E.O. 12630, this rule does not have significant takings implications. This regulation affects only visitors at national wildlife refuges and describes what they can do while they are on a refuge.

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

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above,

this rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement under E.O. 13132. In preparing this rule, we worked with State governments.

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

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation clarifies established regulations and will result in better understanding of the regulations by refuge visitors.

#### **Energy Supply, Distribution or Use (E.O. 13211)**

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule increases activities at nine refuges and opens one new refuge, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

#### **Consultation and Coordination With Indian Tribal Governments (E.O. 13175)**

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

#### **Paperwork Reduction Act**

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Numbers are 1018-0102 and 1018-0140). See 50 CFR 25.23 for information concerning that approval. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### **Endangered Species Act Section 7 Consultation**

We comply with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), when developing Comprehensive Conservation Plans (CCPs) and step-down management plans (which would include hunting and/or fishing plans) for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We have completed section 7 consultation on each of the affected refuges.

#### **National Environmental Policy Act**

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), 43 CFR part 46, and 516 Departmental Manual (DM) 8.

A categorical exclusion from NEPA documentation applies to publication of proposed amendments to refuge-specific hunting and fishing regulations since they are technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (43 CFR 46.210 and 516 DM 8). Concerning the actions that are the subject of this rulemaking, we have complied with NEPA at the project level when developing each proposal. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (516 DM 3.2A).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500-1508. We invite the affected public to participate in the review, development, and implementation of these plans. Copies of all plans and NEPA compliance are available from the refuges at the addresses provided below.

#### **Available Information for Specific Refuges**

Individual refuge headquarters have information about public use programs and conditions that apply to their

specific programs and maps of their respective areas. To find out how to contact a specific refuge, contact the appropriate Regional office listed below:

Region 1—Hawaii, Idaho, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 NE. 11th Avenue, Portland, OR 97232-4181; Telephone (503) 231-6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Box 1306, 500 Gold Avenue, Albuquerque, NM 87103; Telephone (505) 248-7419.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437; Telephone (612) 713-5401. Crane Meadows National Wildlife Refuge, 19502 Iris Road, Little Falls, MN 56345; Telephone (320) 632-1575.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, GA 30345; Telephone (404) 679-7166.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035-9589; Telephone (413) 253-8306.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, CO 80228; Telephone (303) 236-8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, AK 99503; Telephone (907) 786-3545.

Region 8—California and Nevada. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W-2606, Sacramento, CA 95825; Telephone (916) 414-6464.

### Primary Author

Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, National Wildlife Refuge System is the primary author of this rulemaking document.

### List of Subjects in 50 CFR Part 32

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we amend title 50, chapter I, subchapter C of the Code of Federal Regulations as follows:

### PART 32—[AMENDED]

■ 1. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd-668ee, and 715i.

■ 2. Amend § 32.7 “What refuge units are open to hunting and/or sport fishing?” by:

- a. Adding, in alphabetical order, “Crane Meadows National Wildlife Refuge” in the State of Minnesota;
- b. Removing the entry for “Coldwater National Wildlife Refuge” and adding in alphabetical order an entry for “Coldwater River National Wildlife Refuge” in the State of Mississippi;
- c. Adding, in alphabetical order, “Tishomingo Wildlife Management Unit” in the State of Oklahoma; and
- d. Removing the entry for “Pettaquamscutt Cove National Wildlife Refuge” and adding in alphabetical order an entry for “John H. Chafee National Wildlife Refuge” in the State of Rhode Island.

■ 3. Amend § 32.20 Alabama by:

- a. Revising paragraph B.8. under Choctaw National Wildlife Refuge; and
- b. Revising the entry for Eufaula National Wildlife Refuge.

The revisions read as follows:

#### § 32.20 Alabama.

\* \* \* \* \*

#### Choctaw National Wildlife Refuge

\* \* \* \* \*

##### *B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

8. A hunter may only possess approved nontoxic shot (see § 32.2(k)). We restrict hunting weapons to shotguns with shot size no larger than No. 6 or rifles no larger than .22 standard rimfire or legal archery equipment.

\* \* \* \* \*

#### Eufaula National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of mourning dove and

Eurasian-collared dove, duck, and goose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge hunt permit (signed brochure) when hunting.

2. You may possess only approved nontoxic shotshells when hunting (see § 32.2(k)).

3. All youth hunters (age 15 and under) must remain within sight and normal voice contact of a properly licensed hunting adult age 21 or older. Youth hunters must possess and carry verification of passing a State-approved hunter education course. One adult may supervise no more than two youth hunters.

4. We allow duck and goose hunting in the Bradley and Kennedy units only by special permit (Waterfowl Lottery Application, FWS Form 3-2355) on/ during selected days/times, during the State seasons. We close all other portions of the refuge to waterfowl hunting.

5. All waterfowl hunting opportunities are spaced-blind and assigned by lottery. Hunters wishing to participate in our waterfowl hunt must submit a Waterfowl Lottery Application (FWS Form 3-2355). Consult refuge brochure for details.

6. We limit the number of shotshells a hunter may possess to 25.

7. We prohibit damaging trees or other vegetation (see §§ 27.51 and 32.2(i) of this chapter).

8. Hunters must remove all stands/blinds at the end of each day's hunt (see § 27.93 of this chapter).

9. We allow access to the refuge for hunting from 1½ hours before legal sunrise to 1½ hours after legal sunset.

10. We prohibit hunting by aid of or distribution of any feed, salt, other mineral, or electronic device, including game cameras (see § 32.2(h) and § 27.93 of this chapter).

11. We prohibit participation in organized drives.

12. We prohibit the use of horses, mules, or other livestock.

13. We require tree stand users to use a safety belt.

14. We prohibit the use of motorized watercraft in all refuge waters not directly connected to Lake Eufaula.

15. We prohibit the use of all air-thrust boats, including aircraft.

*B. Upland Game Hunting.* We allow hunting of squirrel and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A3, and A6 through A15 apply.

2. We allow squirrel and rabbit hunting on selected areas and days during the State seasons.

3. We prohibit the use of dogs (see § 26.21(b) of this chapter).

4. We allow only shotguns.

5. We prohibit the mooring or storing of boats from 1½ hours after legal sunset to 1½ hours before legal sunrise (see § 27.93 of this chapter).

C. Big Game Hunting. We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A6 through A15, and B5 apply.

2. We allow youth (ages 10 through 15) gun deer hunting in the Bradley Unit only by special permit (information obtained from Big/Upland Game Hunt Application, FWS Form 3–2356) during selected days/times.

3. All youth gun hunting opportunities are spaced-blind and assigned by lottery. Hunters wishing to participate in our youth gun hunt must submit a Big/Upland Game Hunt Application (FWS Form 3–2356). Consult the refuge brochure for details.

4. All youth hunters must remain within sight and normal voice contact of a properly hunting-licensed adult age 21 or older. Youth hunters must possess and carry verification of passing a State-approved hunter education course. One adult may supervise no more than one youth hunter.

5. We allow both archery deer and archery feral hog hunting on selected areas and days during the State archery deer season.

6. We close those portions of the refuge between Bustahatchee and Rood Creeks to archery hunting until November 1.

D. Sport Fishing. We allow fishing, including bowfishing, in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A6, A15, and B5 apply.

2. We allow fishing on selected areas and days.

3. We allow shoreline access for fishing from ½ hour before legal sunrise to ½ hour after legal sunset.

4. We prohibit taking frog or turtle (see § 27.21 of this chapter) on all refuge lands and waters.

5. We adopt reciprocal license agreements between Alabama and Georgia for fishing in Lake Eufaula. Anglers fishing in waters not directly connected to Lake Eufaula must be properly licensed for the State in which they are fishing.

\* \* \* \* \*

■ 4. Amend § 32.22 Arizona by revising paragraph D.6.i. under Havasu National Wildlife Refuge to read as follows:

§ 32.22 Arizona.

\* \* \* \* \*

Havasu National Wildlife Refuge

\* \* \* \* \*

D. Sport Fishing. \* \* \*

\* \* \* \* \*

6. \* \* \*

i. We prohibit entry of all motorized watercraft in all three bays as indicated by signs or regulatory buoys.

\* \* \* \* \*

■ 5. Amend § 32.23 Arkansas by:

■ a. Revising paragraph A.22., adding paragraph A.23., revising paragraph B.1., adding paragraph B.12., and revising paragraphs C.1. and D.1. under Bald Knob National Wildlife Refuge;

■ b. Revising paragraph B.15., adding paragraphs B.17. and B.18., and revising paragraph C.1., the introductory text of paragraph D., and D.1. under Big Lake National Wildlife Refuge;

■ c. Adding paragraphs A.22. and A.23., revising paragraph B.1., adding paragraph B.12., and revising paragraphs C.1. and D.1. under Cache River National Wildlife Refuge;

■ d. Revising paragraphs B.4., C.5., C.6., and C.13. under Felsenthal National Wildlife Refuge;

■ e. Revising paragraph B.4. under Overflow National Wildlife Refuge;

■ f. Revising paragraph B.4. under Pond Creek National Wildlife Refuge;

■ g. Removing paragraph A.3., redesignating paragraphs A.4. through A.11. as paragraphs A.3. through A.10., revising newly redesignated paragraph A.10., adding new paragraph A.11., revising paragraph B.1., adding paragraph B.9, and revising paragraphs C.1. and D.1. under Wapanocca National Wildlife Refuge; and

■ h. Revising paragraph B.2., C.5., C.12., and C.19. under White River National Wildlife Refuge.

The additions and revisions read as follows:

§ 32.23 Arkansas.

\* \* \* \* \*

Bald Knob National Wildlife Refuge

A. Migratory Game Bird Hunting.

\* \* \*

\* \* \* \* \*

22. We prohibit the possession or use of alcoholic beverages while hunting (see § 32.2(j)) and open alcohol containers on refuge roads, ATV trails, boat ramps, and parking areas.

23. We prohibit loaded hunting firearms or muzzleloaders in or on a

vehicle, ATV, or boat while under power (see § 27.42(b) of this chapter). We define “loaded” as shells in the firearm or ignition device on the muzzleloader.

B. Upland Game Hunting. \* \* \*

1. Conditions A1, A5, A10 through A12, and A16 through A23 apply.

\* \* \* \* \*

12. We prohibit transportation, possession, or release of live hog on the refuge.

C. Big Game Hunting. \* \* \*

1. Conditions A1, A5, A10 through A12, A16 through A23, and B8 through B12 apply.

\* \* \* \* \*

D. Sport Fishing. \* \* \*

1. Conditions A10, A18 through A23, B11, and C16 apply.

\* \* \* \* \*

Big Lake National Wildlife Refuge

\* \* \* \* \*

B. Upland Game Hunting. \* \* \*

\* \* \* \* \*

15. We prohibit the possession or use of alcoholic beverages while hunting (see § 32.2(j)) or open alcohol containers on refuge roads, ATV trails, boat ramps, parking areas, and fishing piers/observation decks.

\* \* \* \* \*

17. We prohibit loaded hunting firearms or muzzleloaders in or on a vehicle, ATV, or boat while under power (see § 27.42(b) of this chapter). We define “loaded” as shells in the firearm or ignition device on the muzzleloader.

18. We prohibit transportation, possession, or release of live hog on the refuge.

C. Big Game Hunting. \* \* \*

1. Conditions B1, B3 through B5, and B9 through B18 apply.

\* \* \* \* \*

D. Sport Fishing. We allow fishing and frogging on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B9 and B11 through B17 apply.

\* \* \* \* \*

Cache River National Wildlife Refuge

A. Migratory Game Bird Hunting.

\* \* \*

\* \* \* \* \*

22. We prohibit the possession or use of alcoholic beverages while hunting (see § 32.2(j)) or open alcohol containers on refuge roads, ATV trails, boat ramps, and parking areas.

23. We prohibit loaded hunting firearms or muzzleloaders in or on a

vehicle, ATV, or boat while under power (see § 27.42(b) of this chapter). We define "loaded" as shells in the firearm or ignition device on the muzzleloader.

*B. Upland Game Hunting.* \* \* \*

1. Conditions A1, A5, A9 through A11, and A15 through A23 apply.

\* \* \* \* \*

12. We prohibit transportation, possession, or release of live hog on the refuge.

*C. Big Game Hunting.* \* \* \*

1. Conditions A1, A5, A9 through A11, A15 through A23, B6 through B9, B11, and B12 apply.

\* \* \* \* \*

*D. Sport Fishing.* \* \* \*

1. Conditions A9, A17, A19, A21 through A23, and B11 apply.

\* \* \* \* \*

**Felsenthal National Wildlife Refuge**

\* \* \* \* \*

*B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

4. We prohibit possession of lead ammunition except that you may possess rimfire rifle lead ammunition no larger than .22 caliber for upland game hunting. We prohibit possession of shot larger than that legal for waterfowl hunting. During the deer and turkey hunts, hunters may possess lead ammunition legal for taking deer and turkey. We prohibit buckshot for gun deer hunting.

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

5. We allow muzzleloader deer hunting during the October State Muzzleloader season for this deer management zone. The refuge will conduct one 4-day quota modern gun hunt for deer, typically in November. The refuge also may conduct one mobility-impaired hunt for deer typically in early November.

\* \* \* \* \*

6. The quota muzzleloader and modern gun deer hunt bag limit is two deer, one doe and one buck, or two does on each hunt, one antlered and one antlerless as defined by State law. See refuge brochure for specific bag limit information.

\* \* \* \* \*

13. The refuge will conduct no more than three quota permit spring turkey gun hunts and no more than two 3-day quota spring turkey hunts (typically in April). Specific hunt dates and application procedures will be available at the refuge office in January. We restrict hunt participants to those selected for a quota permit, except that

one nonhunting adult age 21 or older possessing a valid hunting license must accompany the youth hunter age 15 and younger.

\* \* \* \* \*

**Overflow National Wildlife Refuge**

\* \* \* \* \*

*B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

4. When upland game hunting, we prohibit possession of lead ammunition except that you may possess rimfire rifle lead ammunition no larger than .22 caliber. We prohibit possession of shot larger than that legal for waterfowl hunting. During the deer and turkey hunts, we allow possession of lead ammunition legal for taking deer and turkey. We prohibit buckshot for gun deer hunting.

\* \* \* \* \*

**Pond Creek National Wildlife Refuge**

\* \* \* \* \*

*B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

4. We prohibit possession of lead ammunition when hunting except that you may possess rimfire rifle lead ammunition no larger than .22 caliber for upland game hunting. We prohibit possession of shot larger than that legal for waterfowl hunting. During the deer and turkey hunts, we allow possession of lead ammunition legal for taking deer and turkey. We prohibit buckshot for gun deer hunting.

\* \* \* \* \*

**Wapanocca National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

10. We prohibit the possession or use of alcoholic beverages while hunting (see § 32.2(j)) and open alcohol containers on refuge roads, ATV trails, boat ramps, parking areas, and fishing piers/observation decks.

11. We prohibit loaded hunting firearms or muzzleloaders in or on a vehicle, ATV, or boat while under power (see § 27.42(b) of this chapter). We define "loaded" as shells in the firearm or ignition device on the muzzleloader.

*B. Upland Game Hunting.* \* \* \*

1. Conditions A1 through A11 apply.

\* \* \* \* \*

9. We prohibit transportation, possession, or release of live hog on the refuge.

*C. Big Game Hunting.* \* \* \*

1. Conditions A1 through A11, B4, and B6 through B9 apply.

\* \* \* \* \*

*D. Sport Fishing.* \* \* \*

1. Conditions A3, A5, A9 through A11, B6, and B7 apply. We allow fishing from March 1 through October 31 from ½ hour before legal sunrise to ½ hour after legal sunrise.

\* \* \* \* \*

**White River National Wildlife Refuge**

\* \* \* \* \*

*B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

2. We allow hunting of rabbit and squirrel on the North Unit from September 1 until February 28.

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

5. The gun deer hunt will begin in November and will continue for a period of 3 days of quota hunting in the North and South Units, and 4 days of nonquota hunting in the North and/or South Units with annual season dates, bag limits, and areas provided in the annual refuge user brochure/permit.

\* \* \* \* \*

12. We prohibit the placement or hunting with the aid of bait, salt, or ingestible attractant (see § 32.2(h)).

\* \* \* \* \*

19. We prohibit firearms deer hunting on the Kansas Lake Area after October 30 and all other types of hunting after November 30.

\* \* \* \* \*

■ 6. Amend § 32.25 Colorado by revising the entry for Arapaho National Wildlife Refuge to read as follows:

**§ 32.25 Colorado.**

\* \* \* \* \*

**Arapaho National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. All migratory bird hunting closes annually on December 31.

2. We prohibit use of, or hunting over, bait (see § 32.2(h)).

3. We allow use of only portable stands and blinds that the hunter must remove following each day's hunt (see § 27.93 of this chapter).

4. Hunters must retrieve spent shotgun shells.

5. We prohibit hunting 200 feet (60 m) from any public use road, designated parking area, or designated public use facility located within the hunt area.

*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

- 1. All upland game hunting closes annually on December 31.
- 2. You may possess only approved nontoxic shot while hunting (see § 32.2(k)).

3. Conditions A2, A4, and A5 apply.  
*C. Big Game Hunting.* We allow hunting of antelope and elk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

- 1. Conditions A2, A3, and A5 apply.
- 2. Hunters must use only firearms and ammunition allowed by State law for legal hunting of elk or antelope.
- 3. Hunters must follow State law for use of hunter orange.
- 4. Elk hunters:
  - i. Must possess a refuge-specific license (State license) to hunt elk.
  - ii. Must attend a scheduled prehunt information meeting prior to hunting.
  - iii. Youth hunters must be age 12 by the hunt date but not yet age 18 at the time of the hunt application.
  - iv. Disabled hunters must meet Colorado State Department of Wildlife (CDOW) criteria for, and be on the State's list of, hunters with disabilities.
  - v. We will make selections via the CDOW hunt selection process. Hunters holding valid tags (controlled by the State) for the unit the refuge is located within may write requesting a special tag to hunt within the refuge.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge on the Illinois River in accordance with State regulations subject to the following conditions:

- 1. We prohibit fishing between June 1 and July 31 each year.
- 2. We allow fishing only from legal sunrise to legal sunset.
- 3. We prohibit ice fishing on the refuge (there is no specific date, but when the river freezes over, fishing closes).

\* \* \* \* \*

■ 7. Amend § 32.28 Florida by:

- a. Revising paragraphs A.1. and A.4. through A.17., adding paragraph A.18., and revising paragraph D.8. under Arthur R. Marshall Loxahatchee National Wildlife Refuge;
- b. Revising paragraph A. and D.1., and adding paragraph D.17. under Merritt Island National Wildlife Refuge;
- c. Adding paragraph A.4. and revising paragraphs B.4. and D.10. under St. Marks National Wildlife Refuge;
- d. Revising paragraphs C.2. and C.8., removing paragraph C.9., redesignating paragraphs C.10. through C.22. as paragraphs C.9. through C.21., and revising newly redesignated paragraphs C.9. and C.15. under St. Vincent National Wildlife Refuge; and

- e. Revising paragraphs A.2., A.3., A.5., A.6., A.9., A.10., A.11., A.13., adding paragraph A.14., revising paragraphs D.1., D.3., D.4., and adding paragraphs D.6. and D.7. under Ten Thousand Islands National Wildlife Refuge.

The additions and revisions read as follows:

§ 32.28 Florida.

\* \* \* \* \*

**Arthur R. Marshall Loxahatchee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

- 1. You must possess and carry a signed refuge waterfowl hunt permit (signed brochure) while hunting. These brochures are available at the refuge visitor center and on the refuge's Web site (<http://www.fws.gov/loxahatchee>).
- 4. We prohibit the taking of any other wildlife (see § 27.21 of this chapter).
- 5. We do not open to hunting on Mondays, Tuesdays, and Christmas Day.
- 6. We allow hunting on the refuge from ½ hour before legal sunrise to 1 p.m. Hunters may enter the refuge no earlier than 4 a.m. and must be off the refuge by 3 p.m.

7. Hunters may only enter and leave the refuge at the Headquarters Area (Boynton Beach) and the Hillsboro Area (Boca Raton).

8. The possession and use of firearms shall be in accordance with all applicable Federal and State laws and regulations (see §§ 27.41 and 27.42 of this chapter).

9. We allow only temporary blinds of native vegetation. We prohibit the taking, removing, or destroying of refuge vegetation (see § 27.51 of this chapter).

10. Hunters must remove decoys and other personal property (see § 27.93 of this chapter) from the hunting area each day.

11. We encourage the use of dogs to retrieve dead or wounded waterfowl. Dogs must remain under the immediate control of the owner at all times (see § 26.21(b) of this chapter). We prohibit pets at all other times.

12. Hunters must complete a Migratory Bird Hunt Report (FWS Form 3-2361) and place it in an entrance fee canister each day prior to exiting the refuge.

13. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, who possesses a valid hunting license. Youth hunters must have completed a hunter education course.

14. We allow only boats equipped with factory-manufactured-water-cooled outboard motors, electric motors, and

nonmotorized boats. We prohibit boats with air-cooled engines, airboats, fan boats, hovercraft, and personal watercraft (Jet Skis, Jet Boats, Wave Runners, etc.).

15. There is a 35 mph speed limit in all waters of the refuge. A 500-foot (150-meter) Idle Speed Zone is at each of the refuge's three boat ramps.

16. We require all boats operating outside of the main perimeter canals (the L-40 Canal, L-39 Canal, L-7 Canal, and L-101 Canal) in interior areas of the refuge and within the hunt area, to fly a 12-inch by 12-inch (30-cm x 30-cm) orange flag 10 feet (3 m) above the vessel's waterline.

17. We prohibit motorized vehicles of any type on the levees and undesignated routes (see § 27.31 of this chapter).

18. For emergencies or to report violations, contact law enforcement personnel at 1-800-307-5789. Law enforcement officers may be monitoring VHF Channel 16.

\* \* \* \* \*

*D. Sport Fishing.*

\* \* \* \* \*

8. Conditions A4, A8, A14 through A17, and A19 apply.

\* \* \* \* \*

**Merritt Island National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of Federal, State, and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and part 32).

2. Hunters must possess and carry a current, signed Merritt Island National Wildlife Refuge hunt permit (signed brochure) at all times while hunting waterfowl on the refuge.

3. Hunters must possess and carry (or hunt within 30 yards [27 m] of a hunter who possesses) a valid refuge waterfowl hunting quota permit (State permit) while hunting in areas 1 or 4 from the beginning of the regular waterfowl season through December 31. No more than four hunters will hunt using a single valid refuge waterfowl hunting quota permit.

4. We allow hunting on Wednesdays, Saturdays, Sundays, and all Federal holidays, including Thanksgiving, Christmas, and New Year's Day, that fall within the State's waterfowl season.

5. We allow hunting in four designated areas of the refuge as delineated in the refuge hunting

regulations map. We prohibit hunters to enter the normal or expanded restricted areas of the Kennedy Space Center.

6. We allow hunting of only waterfowl on refuge-established hunt days from the legal shooting time (1/2 hour before legal sunrise) until 1 p.m.

7. We allow entrance to the refuge no earlier than 4 a.m. for the purpose of waterfowl hunting.

8. We require all hunters to successfully complete a State-approved hunter education course.

9. We require an adult, age 21 or older, to supervise hunters age 15 and younger.

10. We prohibit accessing a hunt area from Black Point Wildlife Drive. We prohibit leaving vehicles parked on Black Point Wildlife Drive, Playalinda Beach Road, or Scrub Ridge Trail (see § 27.31 of this chapter).

11. We prohibit construction of permanent blinds (see § 27.92 of this chapter) or digging into dikes.

12. We prohibit hunting or shooting within 15 feet (4.5 m) or shooting from any portion of a dike, dirt road, or railroad grade.

13. We prohibit hunting or shooting within 150 yards (135 m) of SR 402, SR 406, any paved road right-of-way, or any road open to vehicle traffic. We prohibit shooting over any dike or roadway.

14. All hunters must stop at posted refuge waterfowl check stations and report statistical hunt information on the Migratory Bird Hunt Report (FWS Form 3-2361) to refuge personnel.

15. Hunters may not possess more than 25 shells in one hunt day.

*D. Sport Fishing.* \* \* \*

1. Anglers must possess and carry a current, signed refuge fishing permit (signed brochure) at all times while fishing on the refuge.

\* \* \* \* \*

17. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of Federal, State, and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and part 32).

\* \* \* \* \*

**St. Marks National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \* \* \*

4. Hunters may access the hunt area by boat.

*B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

4. You must unload all hunting firearms for transport in vehicles (uncap muzzleloaders).

\* \* \* \* \*

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

10. The interior ponds and lakes on the Panacea Unit are open year-round for bank fishing. We open vehicle access to these areas from March 15 through May 15 each year. Ponds and lakes that anglers access from County Road 372 are open year-round for fishing and boating.

\* \* \* \* \*

**St. Vincent National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

2. We restrict hunting to three periods: Sambar deer, raccoon, and feral hog (primitive weapons); white-tailed deer, raccoon, feral hog (archery); and white-tailed deer, raccoon, and feral hog (primitive weapons). Contact the refuge office for specific dates. Hunters may check-in and set up camp sites and stands on the day prior to the scheduled hunt as specified in the brochure. Hunters must leave the island and remove all equipment by the date and time specified in the brochure.

\* \* \* \* \*

8. You may retrieve game from the closed areas only if accompanied by a refuge staff member or a refuge officer.

9. We limit hunting weapons to primitive weapons on the sambar deer hunt and the primitive weapons white-tailed deer hunt. We limit the archery hunt to bow and arrow. Weapons must meet all State regulations. We prohibit crossbows during refuge hunts except with State permit.

\* \* \* \* \*

15. Hunting weapons must have the caps removed from muzzleloaders and arrows quivered before and after legal shooting hours.

\* \* \* \* \*

**Ten Thousand Islands National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

2. We allow hunting only on Wednesdays, Saturdays, Sundays, and Federal holidays that fall within the State's waterfowl season, including: Thanksgiving, Christmas, and New Year's Day.

3. Hunters must possess and carry a valid, signed refuge permit (signed brochure) at all times while hunting on the refuge.

\* \* \* \* \*

5. Hunters may enter the refuge from the south side of U.S. 41. We allow hunting from 1/2 hour before legal

sunrise until 12 p.m. Hunters may enter the refuge no earlier than 4 a.m. and must remove all decoys, guns, blinds, and other related equipment (see § 27.93 of this chapter) by 1 p.m. daily.

6. We prohibit hunting within 100 yards (90 m) of the south edge of U.S. 41 and the area posted around Marsh Trail extending south from U.S. 41.

\* \* \* \* \*

9. Hunters may only take duck and coot with a shotgun (no larger than a 10 gauge). We prohibit target practice on the refuge (see § 27.42 of this chapter).

10. We prohibit air-thrust boats, hovercraft, personal watercraft (jet skis, jet boats, and wave runners), and off-road vehicles at all times. We limit vessels to a maximum of a 25 hp outboard motor.

11. We require all commercial guides to purchase, possess, and carry a refuge Special Use Permit (FWS Form 3-1383).

\* \* \* \* \*

13. We allow youth hunt days in accordance with State regulations. Hunters age 15 or younger may hunt only with a nonhunting adult age 18 or older. Youth hunters must remain within sight and sound of the nonhunting adult. Youth hunters must have completed a hunter education course.

14. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of Federal, State, and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and part 32).

\* \* \* \* \*

*D. Sport Fishing.* \* \* \*

1. We prohibit air-thrust boats, hovercraft, personal watercraft (jet skis, jet boats, and wave runners), and off-road vehicles in the freshwater and brackish marsh area south of U.S. 41. We limit vessels to a maximum of 25 hp outboard motor.

\* \* \* \* \*

3. We only allow crabbing for recreational use in the freshwater and brackish marsh area of the refuge. You may use a dip or landing net, drop net, or hook and line.

4. We prohibit commercial fishing and the taking of snake, turtle, frog, and other wildlife (see § 27.21 of this chapter) in the freshwater and brackish marsh area of the refuge.

\* \* \* \* \*

6. Anglers and crabbers must attend their lines at all times.

7. We require all commercial guides operating in the freshwater and brackish marsh area of the refuge to purchase,

possess, and carry a refuge Special Use Permit (FWS Form 3-1383).

\* \* \* \* \*

■ 8. Amend § 32.29 Georgia by:
■ a. Revising paragraphs C.1., C.9., C.11., and C.13., and adding paragraph C.20. under Blackbeard Island National Wildlife Refuge:

■ b. Revising paragraphs C.3., C.9., C.11., and C.12., and adding paragraph C.20. under Harris Neck National Wildlife Refuge;

■ c. Revising paragraphs C.5., C.7., C.10., C.11., and adding paragraph C.12. under Savannah National Wildlife Refuge; and

■ d. Revising paragraphs C.1., C.5., C.6., C.8., and C.9., and adding paragraph C.21. under Wassaw National Wildlife Refuge.

The additions and revisions read as follows:

§ 32.29 Georgia.

\* \* \* \* \*

Blackbeard Island National Wildlife Refuge

\* \* \* \* \*

C. Big Game Hunting.\* \* \*

1. Hunters must possess and carry a signed refuge hunting regulations brochure on their person at all times. They may obtain hunt information and refuge hunting brochures at the Savannah Coastal Refuges Complex headquarters.

\* \* \* \* \*

9. For hunting, we allow only bows in accordance with State regulations.

\* \* \* \* \*

11. You may take five deer (no more than two antlered), and we will issue State bonus tags for two of these. There is no bag limit on feral hog.

\* \* \* \* \*

13. Hunters must be on their stands from 1/2 hour before legal sunrise until 9 a.m. and from 2 hours before legal sunset until 1/2 hour after legal sunset.

\* \* \* \* \*

20. We prohibit the use of trail or game cameras.

\* \* \* \* \*

Harris Neck National Wildlife Refuge

\* \* \* \* \*

C. Big Game Hunting.\* \* \*

\* \* \* \* \*

3. Hunters must be on their stands from 1/2 hour before legal sunrise until 9 a.m. and from 2 hours before legal sunset until 1/2 hour after legal sunset.

\* \* \* \* \*

9. During the archery hunt, we allow only bows in accordance with State regulations.

\* \* \* \* \*

11. Hunters may take five deer (no more than two antlered), and we will issue State bonus tags for two of these. There is no bag limit for feral hog.

12. During the gun hunt, we allow only shotguns (20 gauge or larger; slugs only) and bows in accordance with State regulations.

\* \* \* \* \*

20. We prohibit the use of trail or game cameras.

\* \* \* \* \*

Savannah National Wildlife Refuge

\* \* \* \* \*

C. Big Game Hunting.\* \* \*

\* \* \* \* \*

5. We allow only shotguns (20 gauge or larger; slugs only), center-fire rifles (.22 caliber or larger), muzzleloaders, and bows for deer and hog hunting throughout the designated hunt area during the November gun hunt and the March hog hunt.

\* \* \* \* \*

7. Hunters may take five deer (no more than two antlered). There is no bag limit on feral hog.

\* \* \* \* \*

10. We allow turkey hunting during a special 3-week turkey hunt in April. Turkey hunters may harvest only three gobblers.

11. We allow shotguns with only #2 shot or smaller and bows, in accordance with State regulations, for turkey hunting. We prohibit the use of slugs or buckshot during turkey hunts.

12. We prohibit the use of trail or game cameras.

\* \* \* \* \*

Wassaw National Wildlife Refuge

\* \* \* \* \*

C. Big Game Hunting.\* \* \*

1. Hunters must possess and carry a signed refuge hunting regulations brochure on their person at all times. They may obtain hunt information and refuge hunting brochures at the Savannah Coastal Refuges Complex headquarters.

\* \* \* \* \*

5. Hunters may take five deer (no more than two antlered), and we will issue State bonus tags for two of these. There is no bag limit on feral hog.

6. Hunters must be on their stands from 1/2 hour before legal sunrise until 9 a.m. and from 2 hours before legal sunset until 1/2 hour after legal sunset.

\* \* \* \* \*

8. We allow only bows and muzzleloading rifles, in accordance with State regulations, during primitive weapons hunt.

9. When hunting, we allow only shotguns (20 gauge or larger; slug only),

center-fire rifles (.22 caliber or larger), bows, and primitive weapons, in accordance with State regulations, during the gun hunt.

\* \* \* \* \*

21. We prohibit the use of trail or game cameras.

\* \* \* \* \*

■ 9. Amend § 32.32 Illinois by:

■ a. Revising the entry for Crab Orchard National Wildlife Refuge; and

■ b. Revising paragraphs B.3. and D.3. under Port Louisa National Wildlife Refuge.

The revisions read as follows:

§ 32.32 Illinois.

\* \* \* \* \*

Crab Orchard National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of waterfowl on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a refuge hunt brochure permit that is available at the refuge office and in brochure dispensers at multiple locations throughout the refuge. You must carry this signed permit when hunting on the refuge.

2. We prohibit hunting in the restricted use area of Crab Orchard Lake and areas posted closed to hunting as described in the hunting brochure.

3. We prohibit hunting within 50 yards (45 m) of all designated public use facilities, including but not limited to: parking areas, picnic areas, campgrounds, marinas, boat ramps, public roads, and established hiking trails listed in the refuge trails brochure.

4. Hunters must remove all boats, decoys, blinds, blind materials, stands, platforms, and other personal equipment (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

5. We prohibit the construction or use of permanent blinds, stands, platforms, or scaffolds (see § 27.92 of this chapter).

6. Waterfowl hunting blinds must be a minimum of 200 yards (180 m) apart. Hunters must anchor boat blinds on the shore or anchor them a minimum of 200 yards (180 m) away from any shoreline.

7. An adult age 21 or older must supervise youth hunters under age 16, and youth hunters must remain in sight of and normal voice contact with the adult.

8. We prohibit the use of paint, flagging, reflectors, tacks, or other manmade materials to mark trails or hunting locations (see § 27.93 of this chapter).

9. We allow the use of hunting dogs during the hunting season, provided the

dogs are under the immediate control of the hunter at all times.

10. We allow waterfowl hunting on the eastern shoreline in Grassy Bay.

11. Waterfowl hunters may hunt in the "controlled waterfowl hunting area" up to 3 days prior to Canada goose season.

12. We allow waterfowl hunting in the "controlled waterfowl hunting area" (as displayed in the refuge hunting brochure) during the Canada goose season subject to the following conditions:

- i. Waterfowl hunters must attend a special drawing on the day of the hunt.
- ii. We allow hunting 1/2 hour before legal sunrise to posted closing times.
- iii. Hunters must hunt from assigned refuge blinds or markers. We allow water blind hunters to hunt from a boat immediately adjacent to their blind/ marker.
- iv. All hunters must report their harvest at the end of the day's hunt using the Waterfowl Harvest Report (FWS Form 3-2361).

**B. Upland Game Hunting.** We allow hunting of squirrel, rabbit, bobwhite quail, raccoon, opossum, red fox, grey fox, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A5 and A7 through A9 apply.

2. We prohibit upland game hunting in the "controlled waterfowl hunting area" during the Canada goose hunting season, except we allow furbearer hunting from legal sunset to legal sunrise.

3. We prohibit hunters using rifles or handguns with ammunition larger than .22 caliber rimfire, except they may use black powder firearms up to and including .40 caliber.

4. We allow the use of .22 and .17 caliber rimfire lead ammunition for the taking of small game and furbearers during open season.

5. We prohibit target practice or any nonhunting discharge of firearms (see § 27.42 of this chapter).

**C. Big Game Hunting.** We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A5 and A7, A8, and B4 apply.

2. We require all deer and turkey hunters using the "restricted use area" (as described in the hunting brochure) to check-in at the refuge visitor center prior to hunting.

3. We allow the use of legal-sized lead ammunition (see current Illinois hunting digest) for the taking of deer and turkey.

4. We prohibit the use of handguns for the taking of deer in the restricted use area.

5. We prohibit the use of "deer drives" for the taking or attempting to take deer. We define a "deer drive" as a hunter(s) moving through an area with the intent of displacing one or more deer in the direction of another hunter(s).

6. We allow deer hunting with archery equipment only in the following areas:

- i. In the "controlled waterfowl hunting area";
- ii. On all refuge lands north of Illinois State Route 13; and
- iii. In the area north of the Crab Orchard Lake emergency spillway and west of Crab Orchard Lake.

**D. Sport Fishing.** We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. On Crab Orchard Lake west of Wolf Creek Road:

i. Anglers may fish from boats all year.

ii. Anglers must remove all trotlines/ jugs from legal sunrise until legal sunset from the Friday immediately prior to Memorial Day through Labor Day.

2. On Crab Orchard Lake east of Wolf Creek Road:

i. Anglers may fish from boats March 15 through September 30.

ii. Anglers may fish all year at the Wolf Creek and Route 148 causeways.

3. Anglers must check and remove fish from all jugs and trotlines daily.

4. We prohibit using stakes to anchor any trotlines and anchoring trotlines from any object on the shoreline.

5. Anglers must tag all jugs and trotlines with their name and address.

6. We prohibit anglers using jugs or trotlines with any flotation device that has previously contained any petroleum-based material or toxic substances.

7. Anglers must attach a buoyed device that is visible on the water's surface to all trotlines.

8. Anglers may use all legal noncommercial fishing methods, except they may not use any underwater breathing apparatus.

9. On A-41, Bluegill, Managers, Honkers, and Vistors Ponds:

i. Anglers may fish only from legal sunrise to legal sunset March 15 through September 30.

ii. We prohibit anglers from using boats or flotation devices.

10. Anglers may not submerge any pots or similar object to take or locate any fish.

11. Organizers of all fishing events must possess a Special Use Permit (FWS Form 3-1383G or 3-1383C).

12. We prohibit anglers from fishing within 250 yards (225 m) of an occupied waterfowl hunting blind.

13. We restrict motorboats on all refuge waters to slow speeds leaving "no wake" within 150 feet (45 m) of any shoreline, swimming area, marina entrance, boat ramp, causeway tunnel, and any areas indicated on the lake zoning map in the refuge fishing brochure.

14. We prohibit the use of boat motors of more than "10 horse power" on Devils Kitchen and Little Grassy Lakes.

15. We prohibit the use of gas-powered motors in the southeastern section of Devils Kitchen Lake (consult lake zoning map in the refuge fishing brochure).

16. We prohibit the use of trotlines/ jugs on all refuge waters outside of Crab Orchard Lake.

17. Specific creel and size limits apply on various refuge waters as listed in the Crab Orchard Fishing Brochure and the annual Illinois fishing digest.

\* \* \* \* \*

#### Port Louisa National Wildlife Refuge

\* \* \* \* \*

**B. Upland Game Hunting.** \* \* \*

\* \* \* \* \*

3. We allow hunting in designated areas on the Horseshoe Bend Division from September 1 until September 15 and December 1 until February 28. We allow spring turkey hunting.

\* \* \* \* \*

**D. Sport Fishing.** \* \* \*

\* \* \* \* \*

3. We close the following Divisions to all public access: Louisa Division—September 15 until January 1; Horseshoe Bend Division—September 15 until December 1; Keithsburg Division—September 15 until January 1.

\* \* \* \* \*

■ 10. Amend § 32.33 Indiana by revising paragraphs B.2. and B.4., adding paragraphs B.6. and B.7., revising paragraphs C.2. and C.8., and adding paragraphs C.9. and D.5. under Muscatatuck National Wildlife Refuge, to read as follows:

#### § 32.33 Indiana.

\* \* \* \* \*

#### Muscatatuck National Wildlife Refuge

\* \* \* \* \*

**B. Upland Game Hunting.** \* \* \*

\* \* \* \* \*

2. We allow the use of hunting dogs only for hunting rabbit, quail, and squirrel provided the dogs are under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

\* \* \* \* \*

4. Hunters must use nontoxic shot in shotguns.

\* \* \* \* \*

6. We require all hunters except turkey hunters to wear hunter orange.

7. We require all hunters to display a game harvest report (FWS Form 3-2359), with name and date filled in, on their vehicle dashboard while hunting. Hunters may pick up reports at registration boxes, complete the reports, and leave them there before departing the refuge.

C. Big Game Hunting. \* \* \*

\* \* \* \* \*

2. You must possess and carry a State-issued refuge hunting permit to hunt deer during the State early archery season in October, the muzzleloader season, and the youth hunting weekend.

\* \* \* \* \*

8. We allow only spring turkey hunting on the refuge, and hunters must possess a State-issued hunting permit during the first 2 weeks of the season.

9. We allow archery deer hunting in November except during youth hunting weekend.

D. Sport Fishing. \* \* \*

\* \* \* \* \*

5. We prohibit lead sinkers. We allow sinkers made of nontoxic materials.

\* \* \* \* \*

■ 11. Amend § 32.34 Iowa by:

■ a. Revising paragraph C.6., adding paragraph C.12, revising the introductory text of paragraph D., and revising paragraphs D.1., D.2., and D.5. under DeSoto National Wildlife Refuge; and

■ b. Revising the entry for Northern Tallgrass Prairie National Wildlife Refuge.

The additions and revisions read as follows:

§ 32.34 Iowa.

\* \* \* \* \*

DeSoto National Wildlife Refuge

\* \* \* \* \*

C. Big Game Hunting. \* \* \*

\* \* \* \* \*

6. We prohibit the use of a crossbow as archery equipment unless the hunter has obtained a State-issued disability crossbow permit.

\* \* \* \* \*

12. We prohibit participation in organized deer drives.

D. Sport Fishing. We allow sport fishing in DeSoto National Wildlife Refuge in accordance with the States of Iowa and Nebraska regulations subject to the following conditions:

1. We allow ice fishing in DeSoto Lake from January 2 through the end of February.

2. We allow the use of pole and line or rod and reel fishing in DeSoto Lake from April 15 through October 14.

\* \* \* \* \*

5. We allow the use of portable ice fishing shelters on a daily basis from January 2 through the end of February.

\* \* \* \* \*

Northern Tallgrass Prairie National Wildlife Refuge

A. Migratory Game Bird Hunting.

Except for those units adjacent to Neal Smith National Wildlife Refuge, we allow hunting of duck, goose, merganser, coot, rail (Virginia and sora only), woodcock, and snipe on designated areas in accordance with State regulations subject to the following conditions:

1. Hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

2. Hunters may construct temporary blinds using manmade materials only. We prohibit bringing plants or their parts onto the refuge.

3. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see § 27.93 of this chapter).

4. We prohibit leaving boats, decoys, or other personal property unattended at any time.

5. Hunters must remove boats, decoys, portable or temporary blinds, materials brought onto the refuge, and other personal property at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

6. We allow the use of hunting dogs, provided that the dogs remain under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

7. We prohibit the use of motorized watercraft.

8. We prohibit camping.

B. Upland Game Hunting. Except for those units adjacent to Neal Smith National Wildlife Refuge, we allow the hunting of ring-necked pheasant, bobwhite quail, gray partridge, rabbit (cottontail and jack), squirrel (fox and gray), groundhog, raccoon, opossum, fox (red and gray), coyote, badger, striped skunk, and crow on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Shotgun hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

2. We allow the use of dogs for upland game bird hunting only, provided the dogs remain under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

3. We prohibit the use of dogs for hunting furbearers.

4. Conditions A7 and A8 apply.

C. Big Game Hunting. Except for those units adjacent to Neal Smith National Wildlife Refuge, we allow the hunting of deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow the use of temporary stands, blinds, platforms, or ladders. Hunters may construct blinds using manmade materials only. We prohibit bringing plants or their parts onto the refuge.

2. We prohibit the construction or use of permanent blinds, stands, scaffolds, or ladders (see § 27.93 of this chapter).

3. Conditions A5, A7, and A8 apply.

D. Sport Fishing. [Reserved]

\* \* \* \* \*

■ 12. Amend § 32.36 Kentucky by revising paragraphs A.11. and B.6. under Clarks River National Wildlife Refuge to read as follows:

§ 32.36 Kentucky.

\* \* \* \* \*

Clarks River National Wildlife Refuge

A. Migratory Game Bird Hunting.

\* \* \*

\* \* \* \* \*

11. We prohibit the use of any electronic call or other electronic device used for producing or projecting vocal sounds of any wildlife species with the exception of electronic calls used during the refuge coyote hunt starting at legal sunrise on the first Monday following the end of deer archery season and closing at legal sunset on the Friday 2 weeks prior to the beginning of youth turkey season.

\* \* \* \* \*

B. Upland Game Hunting. \* \* \*

\* \* \* \* \*

6. You may hunt coyote under Statewide regulations starting at legal sunrise on the first Monday following the end of deer archery season and closing at legal sunset on the Friday 2 weeks prior to the beginning of youth turkey season. Hunters may also take coyote during any daytime refuge hunt for other wildlife species with weapons, ammunition, and equipment legal for that species only.

\* \* \* \* \*

■ 13. Amend § 32.37 Louisiana by:

■ a. Revising paragraphs A.1., C.2., and C.12. under Bayou Cocodrie National Wildlife Refuge;

■ b. Revising paragraphs A., D.2., and D.6. through D.8., and removing paragraph D.10. under Bayou Sauvage National Wildlife Refuge;

- c. Revising the introductory text of paragraph A., revising paragraphs A.2., A.3., A.7., C.2., and C.3. under Bayou Teche National Wildlife Refuge;
- d. Revising the introductory text of paragraph A., revising paragraphs A.7., B.1., B.4., and D.6. under Big Branch Marsh National Wildlife Refuge;
- e. Revising paragraphs A.6. through A.8. and A10. through A.15., adding paragraphs A.16. and A.17., revising paragraphs B., C.1., C.3., C.8., and D.2. under Bogue Chitto National Wildlife Refuge;
- f. Revising paragraphs A.12., and C.2. through C.4., adding paragraphs C.5. and C.6. under Cameron Prairie National Wildlife Refuge;
- g. Revising paragraph A.11. under Delta National Wildlife Refuge;
- h. Revising paragraphs A.4. and B.2. under Grand Cote National Wildlife Refuge;
- i. Revising paragraphs A.14. and C.2. through C.8., adding paragraph C.9., revising paragraphs D.1. and D.10. through D.14., and adding paragraphs D.15. through D.18. under Lacassine National Wildlife Refuge;
- j. Revising paragraphs A.2. under Lake Ophelia National Wildlife Refuge;
- k. Revising the introductory text of paragraph A., revising paragraphs A.3., A.4., and A.6., adding paragraphs A.8. through A.12., revising paragraphs C.1. and C.4. through C.6., adding paragraphs C.7. and C.8., and revising paragraph D.5. under Mandalay National Wildlife Refuge;
- l. Revising paragraph A.10. under Red River National Wildlife Refuge; and
- m. Revising paragraph A.16. under Sabine National Wildlife Refuge.

The additions and revisions read as follows:

**§ 32.37 Louisiana.**  
\* \* \* \* \*

**Bayou Cocodrie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*  
\* \* \*

1. We require a \$15 annual Public Use Permit (signature required) for all hunters and anglers age 16 and older. We waive the fee for individuals age 60 and older. The user must sign and carry the permit.

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

2. The bag limit is one antlered or one antlerless deer per day. Hunters must check out each deer harvested according to the instructions posted at a designated check station prior to leaving

the refuge. The State season limit and tagging regulations apply.

\* \* \* \* \*

12. There is a \$5 application fee per person for the lottery gun hunt application.

\* \* \* \* \*

**Bayou Sauvage National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds (duck and goose) on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We consider all waterfowl and coot hunting to be youth hunts. Youths, age 15 or younger, must accompany an adult age 21 or older. The youth must be capable of and must actively participate in such hunt by the possession and/or firing of a legal weapon during such hunt for the express purpose of harvesting game.

2. Each adult may supervise no more than two youths, and no more than one adult may supervise each youth during the course of any hunt. Youth must remain within normal voice contact of the adult who is supervising them. Adults accompanying youth on refuge hunts may participate by hunting but may not harvest more than their own daily bag limit. Youth must harvest their own bag limits.

3. We allow waterfowl (ducks, geese) and coot hunting until 12 p.m. (noon) on Thursday, Friday, Saturday, and Sunday, including early teal season, youth waterfowl hunt season, or other such special seasons which may be promulgated by law or statute. We shall close the refuge to waterfowl and coot hunting during any segment of goose season that extends beyond the regular duck season.

4. Hunters may not enter the refuge prior to 4 a.m. on the day of the hunt and must exit the refuge with all equipment and materials (see § 27.93 of this chapter) no later than 1 p.m.

5. We only allow hunting on those portions of the refuge that lie outside of the confines of the hurricane protection levee system.

6. Specific State regulations apply during the State Youth Waterfowl Hunting Days (*i.e.*, adults may not hunt), except adults must be age 21 or older.

7. Hunters must possess and carry a valid refuge hunt permit (signed brochure).

8. We allow dogs only to locate, point, and retrieve while hunting.

9. We allow only nontoxic shot while hunting (see § 32.2(k)).

10. We prohibit hunting within 500 feet (150 m) of any residence or

structure adjacent to the refuge; and we prohibit hunting within 200 feet (60 m) of any road, railroad, levee, water control structure, designated public use trail, designated parking area, and other designated public use facilities.

11. We require hunters to comply with State regulations regarding the completion of a Hunter Safety Course.

12. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32).

13. We prohibit air-thrust boats, aircraft, mud boats, and air-cooled propulsion engines on the refuge.

14. We prohibit motorized vehicles on all levees.

15. We prohibit any person or group to act as a hunting/angling guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting/angling on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

16. We prohibit the use of open fires.

17. We prohibit camping.

18. We prohibit target shooting on the refuge.

19. We prohibit the use of any type of material used as flagging or trail markers, except bright eyes.

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

2. We allow sport fishing and shell fishing year-round on designated areas of the refuge and only after 12 p.m. in the waterfowl hunting areas during the State waterfowl hunting season. We close the remainder of the refuge from November 1 through January 31.

\* \* \* \* \*

6. We prohibit feeding of any wildlife within the refuge.

7. We prohibit all commercial finfishing and shell fishing.

8. Conditions A12 through A19 apply.

\* \* \* \* \*

**Bayou Teche National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds and waterfowl on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

2. We prohibit hunting in and/or shooting into or across any agricultural field, roadway, or canal.

3. An adult at least age 21 must supervise youth hunters age 15 and younger during all hunts. One adult may supervise two youths during small game hunts and migratory bird hunts but may supervise only one youth during big game hunts. Youth must remain within normal voice contact of the adult who is supervising them. Parents or adult guardians are responsible for ensuring that hunters under age 16 do not engage in conduct that would constitute a violation of refuge regulations.

\* \* \* \* \*

7. We prohibit parking, walking, or hunting within 150 feet (45 m) of any active oil well site, production facility, or equipment. We also prohibit hunting within 150 feet (45 m) of any public road, refuge road, building, residence, or designated public facility.

\* \* \* \* \*

C. Big Game Hunting. \* \* \*

\* \* \* \* \*

2. We allow archery deer hunting from the start of the State archery season until January 31. Hunters may take deer of either sex in accordance with State-approved archery equipment and regulations. The State season limits apply. The following units are open to archery deer hunting: Centerville, Bayou Sale, North Bend East, North Bend West, and Garden City. We close refuge archery hunting on those days that the refuge deer gun hunts occur.

3. We allow hunting only in the Centerville, Garden City, Bayou Sale, North Bend East, and North Bend West Units. We do not open the Bayou Sale Unit for all big game firearm hunts.

\* \* \* \* \*

Big Branch Marsh National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, coot, goose, snipe, rail, gallinule, and woodcock on designated areas of the refuge during the State season for those species in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

7. An adult age 21 or older must supervise youth hunters age 15 or younger during all hunts. One adult may supervise two youths during small game and migratory bird hunts but may supervise only one youth during big game hunts. Youth must remain within normal voice contact of the adult who is supervising them. Parents or adult guardians are responsible for ensuring that hunters under age 16 do not engage in conduct that would constitute a violation of refuge regulations.

\* \* \* \* \*

B. Upland Game Hunting. \* \* \*

1. We allow upland game hunting during the open State season using only approved nontoxic shot (see § 32.2(k)) size 4 or smaller or .17 or .22 caliber rimfire rifles.

\* \* \* \* \*

4. Conditions A5 through A10 and A12 through A17 apply.

\* \* \* \* \*

D. Sport Fishing. \* \* \*

\* \* \* \* \*

6. Conditions A6, A8, A9, and A13 (angling guides) through A17 apply.

\* \* \* \* \*

Bogue Chitto National Wildlife Refuge

A. Migratory Game Bird Hunting.

\* \* \*

\* \* \* \* \*

6. An adult at least age 21 must supervise youth hunters age 15 or younger during all hunts. One adult may supervise two youths during small game hunts and migratory bird hunts but may supervise only one youth during big game hunts. Youth must remain within normal voice contact of the adult who is supervising them. Parents or adult guardians are responsible for ensuring that hunters under age 16 do not engage in conduct that would constitute a violation of refuge regulations.

7. We prohibit hunting within 150 feet (45 m) from the centerline of any public road, refuge road, designated or maintained trail, building, residence, designated public facility, or from or across aboveground oil or gas or electric facilities. We prohibit hunting in refuge-designated closed areas, which we post on the refuge and identify in the refuge hunt permits (see § 27.31 of this chapter).

8. For the purpose of hunting, we prohibit possession of slugs, buckshot, rifle, or pistol ammunition unless otherwise specified.

\* \* \* \* \*

10. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly to indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

11. We prohibit horses, trail cameras, and ATVs.

12. You may possess only approved nontoxic shot while hunting on the refuge (see § 32.2(k)).

13. We prohibit the use of any type of material used as flagging or trail markers, except bright eyes.

14. We prohibit the use or possession of alcohol while hunting (see § 32.2(j)).

15. We prohibit possession or distribution of bait while in the field and hunting with the aid of bait, including any grain, salt, minerals, or any nonnaturally occurring food attractant, on the refuge (see § 32.2(h)).

16. We prohibit target shooting on the refuge.

17. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32).

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow use of dogs for rabbit, squirrel, raccoon, and opossum on specific dates listed in the refuge hunt brochure.

2. We will close the refuge to hunting (except waterfowl) and camping when the Pearl River reaches 15.5 feet (4.65 m) on the Pearl River Gauge at Pearl River, Louisiana.

3. We prohibit the take of feral hog during any upland game hunts.

4. All hunters (including archery hunters and small game hunters) except waterfowl hunters must wear and display 400 square inches (2,600 cm<sup>2</sup>) of unbroken hunter orange as the outermost layer of clothing on the chest and back and a hunter-orange cap during deer gun, primitive firearm, and special temporary hog gun seasons. We require hunters participating in dog season for squirrels and rabbits to wear a hunter-orange cap. All other hunters, including archers (while on the ground), except waterfowl hunters also must wear a hunter-orange cap during the dog season for squirrels and rabbits. Deer hunters hunting from concealed ground blinds must display a minimum of 400 square inches (2,600 cm<sup>2</sup>) of hunter orange above or around their blinds which is visible from 360 degrees.

5. Conditions A5 through A17 apply, except you may use .17- and .22-caliber rifles, and the nontoxic shot in your possession while hunting must be size 4 or smaller.

C. Big Game Hunting. \* \* \*

1. Conditions A5 through A11, A13 through A17, B2, B4, and B5 (except A12) apply.

\* \* \* \* \*

3. We allow archery deer and hog hunting during the open State deer

archery season. You may take deer of either sex in accordance with State-approved archery equipment and regulations. The State season limits apply.

\* \* \* \* \*

8. You may take hog as incidental game while participating in the refuge archery, primitive weapon, and general gun deer hunts except where specified otherwise. We list specific dates for the special hog hunts in January, February, and March in the refuge hunt brochure. During the special hog hunts in February you must use trained hog-hunting dogs to aid in the take of hog. During the special hog hunts you may take hog from 1/2 hour before legal sunrise until 1/2 hour after legal sunset, and you must use pistol or rifle ammunition not larger than .22 caliber rimfire or shotgun with nontoxic shot to take the hog after it has been caught by dogs. During the special temporary experimental hog hunt in March, you may use any legal firearm. A8 applies during special hog hunts in February.

\* \* \* \* \*

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

2. Conditions A9 and A11 apply.

\* \* \* \* \*

**Cameron Prairie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

12. An adult at least age 21 must supervise youth hunters age 15 or younger during all hunts. One adult may supervise two youths during migratory bird hunts but may supervise only one youth during big game hunts. Youth must remain within normal voice contact of the adult who is supervising them. Parents or adult guardians are responsible for ensuring that hunters under age 16 do not engage in conduct that would constitute a violation of refuge regulations.

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

2. We allow only portable deer stands. Hunters may place deer stands on the refuge 1 day before the white-tail deer archery season and must remove them from the refuge within 1 day after the season closes. Hunters may place only one deer stand on the refuge, and deer stands must have the owner's name, address, and phone number clearly printed on the stand. Hunters must place stands in a nonhunting position at ground level when not in use.

3. Conditions A3, A5 through A7, and A9 through A12 apply.

4. Each hunter must complete and turn in a Big Game Harvest Report (FWS Form 3-2359) available from a self-clearing check station after each hunt.

5. We prohibit entrance to the hunting area earlier than 4 a.m. Hunters must leave no later than 1 hour after legal sunset.

6. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or any nonnaturally occurring attractant on the refuge (see § 32.2(h)).

\* \* \* \* \*

**Delta National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

11. An adult at least age 21 must supervise youth hunters age 15 or younger during all hunts. One adult may supervise two youths during small game and migratory game bird hunts but may supervise only one youth during big game hunts. Youth must remain within normal voice contact of the adult who is supervising them. Parents or adult guardians are responsible for ensuring that hunters under age 16 do not engage in conduct that would constitute a violation of refuge regulations.

\* \* \* \* \*

**Grand Cote National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

4. Hunters may use shotguns and possess only approved nontoxic shot for hunting migratory game birds.

\* \* \* \* \*

*B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

2. We allow the use of only shotguns and rifles that are .22 magnum caliber rimfire or less for upland game hunting. You may possess only approved nontoxic shot in shotguns while hunting (see § 32.2(k)).

\* \* \* \* \*

**Lacassine National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

14. An adult at least age 21 must supervise youth hunters age 15 or younger during all hunts. One adult may supervise two youths during migratory game bird hunts but may supervise only one youth during big game hunts. Youth must remain within normal voice contact of the adult who is supervising them. Parents or adult

guardians are responsible for ensuring that hunters under age 16 do not engage in conduct that would constitute a violation of refuge regulations.

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

2. We allow only portable deer stands. Hunters may place deer stands on the refuge 1 day before the deer archery season and must remove them from the refuge within 1 day after the season closes. Hunters may place only one deer stand on the refuge, and deer stands must have the owner's name, address, and phone number clearly printed on the stand. Hunters must place stands in a nonhunting position at ground level when not in use.

3. Conditions A2 and A5 through A14 apply.

4. We prohibit entrance to the hunting area earlier than 4 a.m. Hunters must leave no later than 1 hour after legal sunset.

5. We prohibit hunting in the headquarters area along Nature Road and along the Lacassine Pool Wildlife Drive (see refuge map).

6. We allow boats of all motor types with 40 hp or less in Lacassine Pool.

7. We prohibit boats in Lacassine Pool and Unit D from October 16 through March 14. We prohibit boats in Units A and C.

8. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt minerals, or other feed or any nonnaturally occurring attractant on the refuge (see § 32.2(h)).

9. Each hunter must complete and turn in a Big Game Harvest Report (FWS Form 3-2359) available from a self-clearing check station, after each hunt.

*D. Sport Fishing.* \* \* \*

1. Conditions A6, A7, A10, A13 (fishing guide), C6, and C7 apply.

\* \* \* \* \*

10. We prohibit boat and bank fishing in Lacassine Pool, Unit D, Streeter's Area, and refuge waters from October 16 through March 14.

11. We prohibit all boat motors, excluding trolling motors, in refuge marshes outside Lacassine Pool. We prohibit air-thrust boats, ATVs, and UTVs (utility vehicle) on the refuge (see § 27.31(f) of this chapter) unless otherwise allowed.

12. We prohibit all mechanized equipment, including motorized boats, within the designated wilderness area.

13. We allow fishing only with rod and reel or pole and line in refuge waters. We prohibit possession of any other type of fishing gear, including limb lines, gill nets, jug lines, yo-yos, or trotlines.

14. We allow only recreational crabbing with cotton hand lines or drop nets up to 24 inches (60 cm) outside diameter. We prohibit using floats on crab lines.

15. The daily limit of crabs is 5 dozen (60) per boat or vehicle, regardless of the number of people thereon.

16. Anglers must attend all lines, nets, and bait and remove same from the refuge when through fishing (see § 27.93 of this chapter).

17. Anglers can travel the refuge by boat from 1 hour before legal sunrise until 1 hour after legal sunset in order to access fishing areas. We prohibit fishing activities before legal sunrise and after legal sunset.

18. We prohibit the taking of turtle (see § 27.21 of this chapter).

\* \* \* \* \*

**Lake Ophelia National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \* \* \*

2. Hunters may use shotguns and possess only approved nontoxic shot for hunting migratory game birds.

\* \* \* \* \*

**Mandalay National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, moorhen, gallinule, and coot in designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

3. An adult at least age 21 must supervise youth hunters age 15 or under during all hunts. One adult may supervise two youths during small game and migratory game bird hunts. An adult may supervise only one youth during big game hunts. Youth must remain within normal voice contact of the adult who is supervising them. Parents or adult guardians are responsible for ensuring that hunters under age 16 do not engage in conduct that would constitute a violation of refuge regulations.

4. All hunters must possess and carry a signed hunt brochure (on the front cover) while hunting on refuge. The brochure is free and available on at the refuge office or online at <http://www.fws.gov/boguechitto/>. All hunters must check-in and check out at a refuge self-clearing check station. Each hunter must list their name on the self-clearing check station form (Migratory Bird Hunt Report, FWS Form 3-2361) and deposit the form at a refuge self-clearing check station prior to hunting. Hunters must report all game taken on the refuge

when checking out by using the self-clearing check station form.

\* \* \* \* \*

6. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 26.42 of this chapter and specific refuge regulations in part 32). Hunters may only possess approved nontoxic shot while hunting on the refuge (see § 32.2(k)).

\* \* \* \* \*

8. We prohibit possession or distribution of bait while in the field and hunting with the aid of bait, including any grain, salt minerals, or any nonnaturally occurring food attractant on the refuge (see § 32.2(h)).

9. We prohibit target shooting on the refuge.

10. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

11. We prohibit horses and ATVs.

12. We prohibit the use of any type of material used as flagging or trail markers except bright eyes (see § 27.94 of this chapter).

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

1. We open the refuge to hunting of deer and hog only during the State archery season, except prior to 12 p.m. (noon) on Wednesdays and Saturdays during State waterfowl seasons when we close areas north of the Intracoastal Waterway to hunting of big game.

\* \* \* \* \*

4. We prohibit trail cameras.

5. We prohibit the use of deer decoys.

6. We only allow portable stands. Hunters may erect temporary deer stands 1 day prior to the start of deer archery season. Hunters must remove all deer stands within 1 day after the archery deer season closes. Hunters may place only one deer stand on a refuge. Deer stands must have the owner's name, address, and phone number clearly printed on the stand. Hunters must place stands in a nonhunting position when not in use (see § 27.93 and 27.94 of this chapter).

7. We prohibit dogs and driving deer.

8. Conditions A3, A4, and A6 through A12 apply.

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

5. Conditions A6, A7, and A9 apply.

\* \* \* \* \*

**Red River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \* \* \*

10. Hunters may possess only approved nontoxic shotgun ammunition for hunting on the refuge (see § 32.2(k)).

\* \* \* \* \*

**Sabine National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \* \* \*

16. An adult at least age 21 must supervise youth hunters under age 16 during all hunts. One adult may supervise two youths during migratory game bird hunts but may supervise two youths during migratory game bird hunts. Youth must remain within normal voice contact of the adult who is supervising them. Parents or adult guardians are responsible for ensuring that hunters under age 16 do not engage in conduct that would constitute a violation of refuge regulations.

\* \* \* \* \*

■ 14. Amend § 32.38 Maine by revising paragraphs A.1., A.2., and C.3. under Moosehorn National Wildlife Refuge to read as follows:

**§ 32.38 Maine.**

\* \* \* \* \*

**Moosehorn National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

1. We require every hunter to possess and carry a personally signed Migratory Bird Hunt Application (FWS Form 3-2357). Permits and regulations are available from the refuge in person during normal business hours (8 a.m. to 4:30 p.m. Monday through Friday; closed on holidays) or by contacting the Project Leader at (207) 454-7161 or by mail (Moosehorn National Wildlife Refuge, 103 Headquarters Road, Baring, Maine 04694).

2. You must annually complete a Migratory Bird Hunt Report (FWS Form 3-2361) and submit it by mail or in person at the refuge headquarters no later than 2 weeks after the close of the hunting season in March. If you do not comply with this requirement, we may suspend your future hunting privileges on Moosehorn National Wildlife Refuge.

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

3. We allow bear hunting during the State Prescribed Season.

\* \* \* \* \*

■ 15. Amend § 32.39 Maryland by revising paragraphs A.1., A.9., A.9.iii., A.9.v., A.10.i., and A.11. through A.13., removing paragraph A.14., revising paragraphs B.1. and B.3. through B.9., adding paragraph B.10., revising paragraphs C.1., C.6., and C.9. through C.15., adding paragraph C.16., revising paragraphs D.1. through D.6., D.9., removing paragraph D.12., redesignating paragraphs D.13. through D.19. as paragraphs D.12. through D.18., and revising newly redesignated paragraph D.17.iii. under Patuxent Research Refuge, to read as follows:

**§ 32.39 Maryland.**

\* \* \* \* \*

**Patuxent Research Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

1. We require a Refuge Hunt Application (PRR Hunt Form #1). We issue permits through our Cooperating Association, Meade Natural Heritage Association (MNHA), at the refuge Hunting Control Station (HCS). MNHA charges a fee for each permit. Contact refuge headquarters for more information.

\* \* \* \* \*

9. We prohibit hunting on or across any road (paved, gravel, dirt, opened and/or closed) within 50 yards (45 m) of a road (paved, gravel, dirt, opened and/or closed), within 150 yards (135 m) of any building or shed, and within 25 yards (22.5 m) from any designated “No Hunting” and “Safety Zone” areas, except:

\* \* \* \* \*

iii. You may hunt waterfowl (goose/duck) from any refuge permanent photo/hunt blind.

\* \* \* \* \*

v. You may hunt from the roadside for waterfowl in the designated posted portion of Wildlife Loop at Bailey Marsh.

\* \* \* \* \*

10. \* \* \*

i. You must wear a solid-colored-fluorescent-hunter orange that must be visible 360° while carrying-in and carrying-out equipment (e.g., portable blinds).

\* \* \* \* \*

11. We allow the taking of only Canada goose during the Canada goose early resident season and late Canada goose migratory Atlantic population seasons.

12. We prohibit hunting of goose, duck, and dove during the early deer muzzleloader seasons that occur in October and all deer firearms seasons

including the Youth Firearms Deer Hunts.

13. We require waterfowl hunters to use retrieving dogs while hunting duck and goose within 50 yards (45 m) of the following impounded waters: Blue Heron Pond, Lake Allen, New Marsh, and Wood Duck Pond.

i. We require dogs to be under the immediate control of their owner at all times (see § 26.21(b) of this chapter).

ii. Law enforcement officers may seize or dispatch dogs running loose or unattended (see § 28.43 of this chapter).

*B. Upland Game Hunting. \* \* \**

1. Conditions A1 through A10i apply.

\* \* \* \* \*

3. We prohibit hunting of upland game during the deer muzzleloader and firearms seasons, including the Youth Firearms Deer Hunts.

4. We prohibit the use of dogs to hunt upland game.

5. Spring turkey hunters are exempt from wearing the hunter orange.

6. We allow the use of a bow and arrow for turkey hunting.

7. We require turkey hunters to use #4, #5, or #6 nontoxic shot or vertical bows.

8. We select turkey hunters by a computerized lottery for youth, disabled, mobility impaired, and general public hunts. We require documentation for disabled and mobility-impaired hunters.

9. We require turkey hunters to show proof they have attended a turkey clinic sponsored by the National Wild Turkey Federation.

10. We require turkey hunters to pattern their weapons prior to hunting. Contact refuge headquarters for more information.

*C. Big Game Hunting. \* \* \**

1. Conditions A1 through A10i apply.

\* \* \* \* \*

6. We require bow hunters to wear a minimum of 250 square inches (1,625 cm<sup>2</sup>) of fluorescent orange when moving to and from the deer stand or their hunting spot and while tracking or dragging out their deer. We do not require bow hunters to wear solid-colored-fluorescent hunter orange when positioned to hunt except during the North Tract Youth Firearms Deer Hunts, the muzzleloader seasons, and the firearms seasons, when they must wear it at all times.

\* \* \* \* \*

9. You must use portable tree stands that are at least 10 feet (3 m) off the ground and equipped with a full-body safety harness while hunting at Schafer Farm, Central Tract, and South Tract. You must wear the full-body safety harness while in the tree stand. We will

make limited accommodations for disabled hunters for Central Tract lottery hunts.

10. We allow the use of ground blinds on North Tract only.

11. We prohibit the use of dogs to hunt or track wounded bear.

12. If you wish to track wounded deer beyond 1½ hours after legal sunset, you must gain consent from a refuge law enforcement officer. We prohibit tracking 2½ hours after legal sunset. You must make a reasonable effort to retrieve the wounded deer. This may include next-day tracking except Sundays and Federal holidays.

13. We prohibit deer drives or anyone taking part in any deer drive. We define a “deer drive” as an organized or planned effort to pursue, drive chase, or otherwise frighten or cause deer to move in the direction of any person or persons who are part of the organized or planned hunt and known to be waiting for the deer. We also prohibit organized deer drives without a standing hunter.

14. North Tract: We allow shotgun, muzzleloader, and bow hunting in accordance with the following: Conditions C1 through C13 apply.

15. Central Tract: Headquarters/MR Lottery Hunt: We only allow shotgun and bow hunting in accordance with the following: Conditions C1 through C13 apply (except C3i).

16. South Tract: We allow shotgun, muzzleloader, and bow hunting in accordance with the following:

i. Conditions C1 through C13 apply.

ii. You must access South Tract hunting areas A, B, and C off Springfield Road through the Old Beltsville Airport; and South Tract hunting area D from MD Rt. 197 through Gate #4. You must park in designated parking areas.

iii. We prohibit driving or parking along the entrance and exit roads to and from the National Wildlife Visitor Center, and parking in the visitor center parking lot when checked in to hunt any area.

*D. Sport Fishing. \* \* \**

1. We require all anglers, age 16 and older, to present their current Maryland State fishing license and complete the Fishing/Shrimping/Crabbing Application (FWS Form 3–2358). Anglers age 18 and older will receive a free Patuxent Research Refuge Fishing Vehicle Parking Pass. Organized groups must complete the Fishing/Shrimping/Crabbing Application (FWS Form 3–2358), and the group leader must stay with the group at all times while fishing.

2. We publish the Refuge Fishing Regulations, which includes the daily and yearly creel limits and fishing dates, in early January. We provide a copy of

the regulations with your free Fishing Vehicle Parking Pass, and we require you to know the specific fishing regulations.

3. Anglers must carry a copy of their Maryland State fishing license in the field.

4. Anglers must display a copy of the Fishing Vehicle Parking Pass in the vehicle windshield.

5. We require anglers, age 17 or younger, to have a parent or guardian cosign the Fishing/Shrimping/Crabbing Application (FWS Form 3-2358). We will not issue a Fishing Vehicle Parking Pass to anglers age 17 or younger.

6. An adult age 21 or older possessing a Fishing Vehicle Parking Pass must accompany anglers age 17 or younger, and they must maintain visual contact with each other within a 50-yard (45 m) distance.

\* \* \* \* \*

9. Anglers may take three youths, age 15 or younger, to fish under their Fishing Vehicle Parking Pass and in their presence and control.

\* \* \* \* \*

17. \* \* \*

\* \* \* \* \*

iii. Anglers age 18 and older must complete an Emergency Contact Information/warning/waiver form (North Tract Warning PRR Hunt Form #2) prior to receiving a free North Tract Vehicle Access Pass. Anglers must display the North Tract Vehicle Access Pass in the vehicle windshield at all times and return the Pass to the North Tract Visitor Contact Station at the end of each visit.

\* \* \* \* \*

- 16. Amend § 32.40 Massachusetts by:
  - a. Revising paragraphs A.2., A.4., A.8., and A.9., adding paragraphs A.12. and A.13., revising paragraph B., redesignating paragraphs C.4. through C.10. as paragraphs C.5. through C.11., adding a new paragraph C.4., revising newly redesignated paragraphs C.5. and C.10., removing newly redesignated paragraph C.11., revising paragraphs D.6. and D.7., and removing paragraph D.9. under Assabet River National Wildlife Refuge;
  - b. Revising paragraphs A.1., A.4., A.5., A.9., and A.10., adding paragraph A.13., and revising paragraphs C.3., C.4. and C.9. under Great Meadows National Wildlife Refuge; and
  - c. Revising paragraphs A.3., A.6., A.10., and A.11., adding paragraph A.14., revising paragraphs B.2., B.4., C.4., C.5., and C.10., removing paragraph C.11., and revising the introductory text of paragraph D. under Oxbow National Wildlife Refuge.

The additions and revisions read as follows:

**§ 32.40 Massachusetts.**  
\* \* \* \* \*

**Assabet River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*  
\* \* \*

\* \* \* \* \*

2. We require a Migratory Bird Hunt Application (FWS Form 3-2357). We limit the number of migratory game bird hunters allowed to hunt on the refuge. If the number of applications received is greater than the number of permits available, we will issue permits by random selection.

\* \* \* \* \*

4. We prohibit use of motorized vehicles on the refuge. The refuge will provide designated parking areas for hunters. Hunters must display issued hunter parking permits (generated from the Migratory Bird Hunt Application, FWS Form 3-2357) on their dashboards when parked in designated refuge parking areas.

\* \* \* \* \*

8. We prohibit marking any tree or other refuge feature with flagging, paint, or any other substance. Hunters may use reflective tacks, which we require hunters to remove by the end of their permitted season.

9. You may begin scouting hunting areas on Sundays only beginning 1 month prior to the opening day of your permitted season. We require possession of refuge permits (Migratory Bird Hunt Application, FWS Form 3-2357) while scouting.

\* \* \* \* \*

12. One nonhunting companion may accompany each permitted hunter. We prohibit nonhunting companions from hunting, but they may assist in other means. All companions must carry identification and stay close enough to the hunter to speak to them without raising their voice.

13. We prohibit construction or use of any permanent structure while hunting on the refuge. Hunters must remove all temporary blinds each day (see §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow shotgun hunting for ruffed grouse, cottontail rabbit, and gray squirrel within those portions of the refuge located north of Hudson Road, except those areas north of Hudson Road designated as “archery only” hunting on the current refuge hunting

map. These archery only hunting areas north of Hudson Road are those portions of the refuge that are external to Patrol Road from its southern intersection with White Pond Road, northwest and then east, to its intersection with Old Marlborough Road.

2. We require a Big/Upland Game Hunt Application (FWS Form 3-2356). We limit the number of upland game hunters allowed to hunt on the refuge. If the number of applications received is greater than the number of permits available, we will issue permits by random selection.

3. Conditions A3, A4, A6 through A13 apply.

4. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

5. During seasons when it is legal to hunt deer with a shotgun or muzzleloader, we require all hunters, including archers and small game hunters, to wear a minimum of 500 square inches (3,250 cm<sup>2</sup>) of solid-orange clothing or material in a conspicuous manner on their chest, back, and head. During all other times, if you are hunting ruffed grouse, squirrel, or cottontail rabbit on the refuge, you must wear a minimum of a solid-orange hat.

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

4. We require a Big/Upland Game Hunt Application (FWS Form 3-2356). We limit the number of big game hunters allowed to hunt on the refuge. If the number of applications received is greater than the number of permits available, we will issue permits by random selection.

5. Conditions A3, A4, A6 through A10, and A12 apply.

\* \* \* \* \*

10. You may use temporary tree stands and/or ground blinds while engaged in hunting deer during the applicable archery, shotgun, or muzzleloader deer seasons or while hunting turkey. We allow hunters to keep one tree stand or ground blind on each refuge during the permitted season. Hunters must mark ground blinds with the hunter’s permit number. Hunters must mark tree stands with the hunter’s permit number in such a fashion that all numbers are visible from the ground. Hunters must remove all temporary tree stands and ground blinds by the 15th day after the end of the hunter’s permitted season.

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

6. We allow fishing on Puffer Pond from legal sunrise to legal sunset.

7. We prohibit ice fishing on the refuge.

\* \* \* \* \*

### Great Meadows National Wildlife Refuge

#### A. Migratory Game Bird Hunting.

\* \* \*

1. We require refuge permits (information taken from OMB-approved form). We limit the number of waterfowl hunters allowed to hunt on the refuge. If the number of applications received to hunt waterfowl is greater than the number of permits available, we will issue permits by random selection.

\* \* \* \* \*

4. We prohibit construction or use of any permanent structure while hunting on the refuge. You must remove all temporary blinds each day (see §§ 27.93 and 27.94 of this chapter).

5. We prohibit use of motorized vehicles on the refuge. The refuge will provide designated parking areas for hunters. Hunters must display parking permits (information taken from OMB-approved forms) on the dashboard when parked in designated refuge parking areas.

\* \* \* \* \*

9. We prohibit marking any tree or other refuge feature with flagging, paint, or any other substance. Hunters may use reflective tacks which they must remove by the end of the hunter's permitted season (see § 27.93 of this chapter).

10. You may begin scouting hunting areas on Sundays only beginning 1 month prior to the opening day of your permitted season. We require possession of refuge permits (information taken from OMB-approved forms) while scouting. We prohibit the use of dogs during scouting.

\* \* \* \* \*

13. We allow one nonhunting companion to accompany each permitted hunter. We prohibit nonhunting companions from hunting, but they can assist in other means. All companions must carry identification and stay close enough to the hunter to speak to them without raising their voice.

\* \* \* \* \*

#### C. Big Game Hunting. \* \* \*

\* \* \* \* \*

3. We require refuge permits (information taken from OMB-approved forms). We limit the number of deer hunters allowed to hunt on the refuge. If the number of applications received to hunt deer on the refuge is greater than the number of permits available, we will issue permits by random selection.

4. Conditions A3, A5, A7 through A11, and A13 apply.

\* \* \* \* \*

9. You may use temporary tree stands and/or ground blinds while engaged in hunting deer during the applicable archery season. We allow hunters to keep one tree stand or ground blind on each refuge during the permitted season. Hunters must mark ground blinds with their permit number. Hunters must mark tree stands with their permit number in such a fashion that all numbers are visible from the ground. Hunters must remove all temporary tree stands and ground blinds by the 15th day after the end of the permitted deer season (see § 27.93 of this chapter).

\* \* \* \* \*

### Oxbow National Wildlife Refuge

#### A. Migratory Game Bird Hunting.

\* \* \*

\* \* \* \* \*

3. We require refuge permits (information taken from OMB-approved forms). We limit the number of waterfowl hunters allowed to hunt on the refuge. If the number of applications received to hunt waterfowl is greater than the number of permits available, we will issue permits by random selection.

\* \* \* \* \*

6. We prohibit use of motorized vehicles on the refuge. The refuge will provide designated parking areas for hunters. Hunters must display issued hunter parking permits (information taken from OMB-approved forms) on the dashboard when parked in designated refuge parking areas.

\* \* \* \* \*

10. We prohibit marking any tree or other refuge feature with flagging, paint, or any other substance. Hunters may use reflective tacks and must remove them by the end of the hunter's permitted season (see § 27.93 of this chapter).

11. You may begin scouting hunting areas on Sundays only beginning 1 month prior to the opening day of your permitted season. We require possession of refuge permits while scouting. We prohibit the use of dogs during scouting.

\* \* \* \* \*

14. One nonhunting companion may accompany each permitted hunter. We prohibit nonhunting companions from hunting, but they can assist in other means. All companions must carry identification and stay close enough to the hunter to speak to them without raising their voice.

#### B. Upland Game Hunting. \* \* \*

\* \* \* \* \*

2. We require a Big/Upland Game Hunt Application (FWS Form 3-2356).

We limit the number of upland game hunters allowed to hunt on the refuge. If the number of applications received to hunt upland game is greater than the number of permits available, we will issue permits by random selection.

\* \* \* \* \*

4. Conditions A4 through A6 and A8 through A14 apply.

\* \* \* \* \*

#### C. Big Game Hunting. \* \* \*

\* \* \* \* \*

4. We require refuge permits (information taken from OMB-approved form). We limit the number of deer and turkey hunters allowed to hunt on the refuge. If the number of applications received to hunt those species is greater than the number of permits available, we will issue permits by random selection.

5. Conditions A4, A6, A8 through A12, and A14 apply.

\* \* \* \* \*

10. You may use temporary tree stands and/or ground blinds while engaged in hunting deer during the applicable archery, shotgun, or muzzleloader deer seasons or while hunting turkey. We allow hunters to keep one tree stand or ground blind on each refuge during the permitted season. Hunters must mark ground blinds with their permit number. Hunters must mark tree stands with their permit number in such a fashion that all numbers are visible from the ground. Hunters must remove all temporary tree stands and ground blinds by the 15th day after the end of the permitted season.

D. Sport Fishing. We allow sport fishing along the Nashua River in accordance with State regulations.

\* \* \* \* \*

- 17. Amend § 32.42 Minnesota by:
  - a. Adding an entry for Crane Meadows National Wildlife Refuge;
  - b. Revising introductory paragraphs A., B., and C. under Litchfield Wetland Management District;
  - c. Adding paragraphs B.5. and D.4. under Minnesota Valley National Wildlife Refuge;
  - d. Revising the introductory text of paragraphs A. and B., revising paragraph B.4., and removing paragraphs B.5., B.6., and C.3. under Northern Tallgrass Prairie National Wildlife Refuge; and
  - e. Revising paragraph A.5., revising the introductory text of paragraph C., revising paragraphs C.1. through C.6., and adding paragraph C.7. under Sherburne National Wildlife Refuge.

The additions and revisions read as follows:

§ 32.42 Minnesota.

\* \* \* \* \*

Crane Meadows National Wildlife Refuge

A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow archery deer hunting for youth hunters and firearms deer hunting for persons with disabilities.

2. We allow turkey hunting for youth hunters and persons with disabilities during the State spring turkey season.

3. We prohibit the construction or use of permanent blinds, platforms, or ladders (see § 27.93 of this chapter).

4. Hunters must remove all stands from the refuge at the end of each day's hunt.

5. Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

6. We prohibit the possession of hunting firearms or archery equipment on areas closed to white-tailed deer or turkey hunting.

7. We prohibit deer pushes or deer drives in the areas closed to deer hunting.

8. We prohibit entry to hunting areas earlier than 2 hours before legal shooting hours (1/2 hour before legal sunrise).

9. We prohibit camping.

10. Turkey hunters may possess only approved nontoxic shot while in the field.

11. Hunters must unload, case, and break down hunting weapons when transporting them on refuge roads.

D. Sport Fishing. [Reserved]

\* \* \* \* \*

Litchfield Wetland Management District

A. Migratory Game Bird Hunting. We allow hunting of migratory game birds throughout the district except we prohibit hunting on that part of the Phare Lake Waterfowl Production Area in Renville County that lies within the Phare Lake State Game Refuge. All hunting is in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

B. Upland Game Hunting. We allow upland game hunting throughout the district except we prohibit hunting on that part of the Phare Lake Waterfowl Production Area in Renville County that

lies within the Phare Lake State Game Refuge. All hunting is in accordance with State regulations subject to the following condition: Conditions A4 and A5 apply.

C. Big Game Hunting. We allow big game hunting throughout the district except we prohibit hunting on that part of the Phare Lake Waterfowl Production Area in Renville County that lies within the Phare Lake State Game Refuge. All hunting is in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

Minnesota Valley National Wildlife Refuge

\* \* \* \* \*

B. Upland Game Hunting. \* \* \*

\* \* \* \* \*

5. Condition A7 applies.

\* \* \* \* \*

D. Sport Fishing \* \* \*

\* \* \* \* \*

4. We prohibit taking of any turtle species by any method.

\* \* \* \* \*

Northern Tallgrass Prairie National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, merganser, moorhen, coot, rail (Virginia and sora only), woodcock, common snipe, and mourning dove in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

B. Upland Game Hunting. We allow hunting of ring-necked pheasant, Hungarian partridge, rabbit (cottontail and jack), snowshoe hare, squirrel (fox and gray), raccoon, opossum, fox (red and gray), badger, coyote, striped skunk, and crow on designated areas of the refuge in accordance with State regulations subject to the following conditions:

\* \* \* \* \*

4. Conditions A7 and A8 apply.

\* \* \* \* \*

Sherburne National Wildlife Refuge

A. Migratory Game Bird Hunting.

\* \* \*

\* \* \* \* \*

5. We prohibit hunting during the State Special Goose Hunt.

\* \* \* \* \*

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow turkey hunting for youth hunters and persons with disabilities during the State spring turkey season.

2. We prohibit the construction or use of permanent blinds, platforms, or ladders.

3. Hunters must remove all stands from the refuge at the end of each day's hunt (see § 27.93 of this chapter).

4. Hunters must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day.

5. We prohibit the possession of hunting firearms or archery equipment on areas closed to white-tailed deer and turkey hunting.

6. We prohibit deer pushes or deer drives in the areas closed to deer hunting.

7. Conditions A4 and A7 apply.

\* \* \* \* \*

- 18. Amend § 32.43 Mississippi by:
■ a. Revising the Coldwater National Wildlife Refuge heading and paragraphs A., B., and C. under it; and
■ b. Revising paragraph D.9. under Noxubee National Wildlife Refuge.
The revisions read as follows:

§ 32.43 Mississippi.

\* \* \* \* \*

Coldwater River National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory waterfowl and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Youth hunters age 15 and younger must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Hunters born after January 1, 1972, also must carry a Hunter Education Safety course card or certificate. All hunters age 16 and older must possess and carry a valid, signed refuge hunting permit (name and address), certifying that he or she understands and will comply with all regulations. Hunters may obtain permits at the North Mississippi Refuges Complex Headquarters, 2776 Sunset Drive, Grenada, MS 38901 or by mail from the above address.

2. We restrict all public use to 2 hours before legal sunrise to 2 hours after legal sunset. We prohibit entering or remaining on the refuge before or after hours.

3. We allow hunting of migratory game birds only on Wednesdays, Fridays, Saturdays, and Sundays from 1/2 hour before legal sunrise and ending at 12 p.m. (noon). Hunters must remove all decoys, blind material (see § 27.93 of this chapter), litter (see § 27.94 of this chapter), and harvested waterfowl from

the area no later than 1 p.m. each day. After duck, merganser, and coot season closes, we allow hunting of goose in accordance with the Light Goose Conservation Order daily beginning 1/2 hour before legal sunrise and ending at legal sunset.

4. Each hunter must obtain a Migratory Bird Harvest Report Card (FWS Form 3-2361) available at each refuge information station and follow the printed instructions on the form. You must display the form in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the form and deposit it at one of the refuge information stations. Include all game harvested, and if you harvest no game, report "0."

5. We may close certain areas of the refuge for sanctuary or administrative purposes. We will mark such areas with "No Hunting" or "Area Closed" signs.

6. Waterfowl hunters may leave boats meeting all State registration requirements on refuge water bodies throughout the waterfowl season. You must remove boats (see § 27.93 of this chapter) within 72 hours after the season closes.

7. We restrict motor vehicle use to roads designated as vehicle access roads on the refuge map (see § 27.31 of this chapter). We prohibit blocking access to any road or trail entering the refuge (see § 27.31(h) of this chapter).

8. All hunters or persons on the refuge for any reason while in the field during any open refuge hunting season must wear a minimum of 500 square inches (3,250 cm<sup>2</sup>) of visible, unbroken, fluorescent-orange-colored material above the waistline. The only exception to this is waterfowl hunters who may remove the fluorescent-orange material once positioned to hunt. Waterfowl hunters must comply while walking/boating to and from the actual hunting area.

9. We allow dogs on the refuge only when specifically authorized for hunting. We encourage the use of dogs to retrieve dead or wounded waterfowl. Dogs must remain in the immediate control of their handlers at all times (see § 26.21(b) of this chapter).

10. We prohibit cutting or removing trees and other vegetation (see § 27.51 of this chapter). We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

11. We prohibit ATVs (see § 27.31(f) of this chapter), horses, and mules on the refuge.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, nutria, and raccoon on designated areas of the

refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4 (substitute Upland/Small Game/Furbearer Report [FWS Form 3-2362] for Migratory Bird Hunt Report), A5, A7, A10, and A11 apply.

2. We restrict all public use to 2 hours before legal sunrise and to 2 hours after legal sunset. We prohibit entering or remaining on the refuge before or after hours. We may make exceptions for raccoon hunters possessing a Special Use Permit (FWS Form 3-1383). Contact the refuge office for details.

3. When hunting, we allow only shotguns with approved nontoxic shot (see § 32.2(k)), .17 or .22-caliber rimfire rifles, or archery equipment without broadheads.

4. All hunters or persons on the refuge for any reason during any open-refuge hunting season must wear a minimum of 500 square inches (3,250 cm<sup>2</sup>) of visible, unbroken, fluorescent-orange-colored material above the waistline.

5. We allow dogs on the refuge only when specifically authorized for hunting. Dogs must remain in the immediate control of their handlers at all times (see § 26.21(b) of this chapter). Consult the refuge hunting brochure for specific seasons.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A4 (substitute Big Game Harvest Report [FWS Form 3-2359] for Migratory Bird Hunt Report), A5, A7, A11, and B4 apply.

2. We prohibit dogs while hunting deer. Hunters may only use dogs to hunt hog during designated hog seasons.

3. We prohibit use or possession of any drug or device for employing such drug for hunting (see § 32.2(g)).

4. We prohibit drives for deer.

5. We prohibit hunting or shooting across any open, fallow, or planted field from ground level or on or across any public road, public highway, railroad, or their rights-of-way during all general gun and primitive weapon hunts.

6. Hunters may erect portable deer stands 2 weeks prior to the opening of archery season on the refuge and must remove them (see § 27.93 of this chapter) by January 31. We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

\* \* \* \* \*

**Noxubee National Wildlife Refuge**

\* \* \* \* \*

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

9. We require anglers to possess and carry a signed, no-cost, refuge hunting, fishing, and public use permit (signed brochure) when fishing on the refuge.

\* \* \* \* \*

■ 19. Amend § 32.44 Missouri by:  
■ a. Revising paragraphs B. and C. under Big Muddy National Wildlife Refuge; and

■ b. Revising paragraphs A., C., and D. under Swan Lake National Wildlife Refuge.

The revisions read as follows:

**§ 32.44 Missouri.**

\* \* \* \* \*

**Big Muddy National Wildlife Refuge**

\* \* \* \* \*

*B. Upland Game Hunting.* We allow upland game hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may possess only approved nontoxic shot (see § 32.2(k)).

2. We allow upland game hunting on the 131-acre mainland unit of Boone's Crossing with archery methods only. On Johnson Island, we allow hunting of game animals during Statewide seasons using archery methods or shotguns using shot no larger than BB.

3. We allow upland game hunting on the Cora Island Unit only to shotguns with shot no larger than BB.

*C. Big Game Hunting.* We allow hunting of deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit the construction or use of permanent blinds, platforms, or ladders at any time.

2. We prohibit hunting over or placing on the refuge any salt or other mineral blocks (see § 32.2(h)).

3. We allow only portable tree stands from September 1 through January 31. Hunters must place their full name and address on their stands.

4. We restrict deer hunters on the Boone's Crossing Unit, including Johnson Island, to archery methods only.

5. The Cora Island Unit is open to deer hunting for archery methods only.

6. We prohibit trapping on all areas of the refuge.

7. You may possess only approved nontoxic shot while hunting on the refuge; this includes turkey hunting (see § 32.2(k)).

\* \* \* \* \*

**Swan Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose on designated

areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require Missouri Department of Conservation "Green Card" permits while hunting on the refuge in addition to all other required Federal and State license, stamps, and permits.

2. Hunters must check-in and out at the Refuge Hunter Check Station (use Missouri Department of Conservation form) before and after hunting.

3. Goose hunting is open only on Wednesdays, Fridays, Saturdays, Sundays, and all Federal holidays during the late goose season. We close to goose hunting during the refuge-managed deer hunts.

4. Hunting hours end at 1 p.m. on Units S1, S2, S3, T1, T3, V1, W1, and W2. Hunters using these units must have all equipment removed and be out of the units by 1 p.m. (see § 27.93 of this chapter).

5. We allow snow goose hunting in all units every day of the week during the designated Spring Conservation Order Season. Hunters may not check-in before 4 a.m. during the Conservation Order Season and must be off of the refuge by closing hours.

6. Hunters may hunt only in the designated areas they are assigned at the check station. We restrict hunters in Units A7, R1, and R4 to hunting from the permanent blinds. Hunters may hunt anywhere in all other units inside the designated unit by the use of temporary blinds or layout boats.

7. We allow game retrieval outside of designated hunting areas. We prohibit possession of hunting firearms while outside of the designated area except for going to and from parking areas.

8. We require that hunters leash or kennel hunting dogs when outside the hunting unit.

9. We restrict hunting units to parties no larger than four.

10. We prohibit driving vehicles into units. We allow hand-pulled carts. Hunters must park vehicles in designated parking areas for the unit to which they are assigned for hunting.

11. We prohibit cutting of woody vegetation (see § 27.51 of this chapter) on the refuge for blinds.

\* \* \* \* \*

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a Missouri Department of Conservation Permit, along with Missouri Department of Conservation hunter identification tags and parking permits to hunt during the managed deer hunt.

2. We require hunters to participate in a prehunt orientation for managed deer hunts.

3. You must check-in each morning and out each evening of the hunt at the Refuge Hunter Check Station (use Missouri Department of Conservation form).

4. You may not access the refuge across the boundary from neighboring private or public lands, and you must hunt in your designated area only.

5. We allow entry onto the refuge 1 hour prior to shooting hours (defined by State regulations) during managed deer hunts. You must be off the refuge 1 hour after shooting hours.

6. We prohibit shooting from or across refuge roads open to public vehicle use.

7. We allow use of portable tree stands and blinds during managed deer hunts. We require all stands and blinds to have the hunter's name, address, and phone number attached. Hunters must mark enclosed hunting blinds and stands with hunter orange visible from all sides.

8. We prohibit hunting over or placing on the refuge any salt or other mineral blocks (see § 32.2(h)).

*D. Sport Fishing.* We allow sport fishing on all designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing on the refuge only during refuge open hours.

2. The Taylor Point area of Elk Creek is open to fishing year-round during daylight hours. Anglers may access this area by a refuge road (FHWA Route 100) off of State Highway E. The area open to fishing year-round is 300 feet (90 m) upstream and 300 feet downstream of the parking lot along the banks of Elk Creek. In addition, Elk Creek is open to fishing year-round 300 feet downstream and upstream from the bridge on State Highway E. We close all fishing during the refuge-managed deer hunts.

3. We allow only nonmotorized boats on refuge waters with the exception of the Silver Lake impoundment. Anglers may use motor boats on the Silver Lake impoundment. No wake applies to all waters on the refuge.

4. Anglers must remove all boats from the refuge at the end of each day (see § 27.93 of this chapter).

\* \* \* \* \*

■ 20. Amend § 32.46 Nebraska by revising paragraph A.1., the introductory text of paragraph C., and paragraphs D.2. through D.5., and adding paragraphs D.6. and D.7. under Boyer Chute to read as follows:

**§ 32.46 Nebraska.**

\* \* \* \* \*

**Boyer Chute National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

1. Hunters may access the refuge from 1½ hours before legal sunrise until 1 hour after legal sunset along the immediate shoreline and including the high bank of the Missouri River. You may access the hunting area by water or, if by land, only within the public use area of the Island Unit.

\* \* \* \* \*

*C. Big Game Hunting.* We allow hunting of white-tailed deer in accordance with State regulations subject to the following condition: You must possess and carry a refuge access permit (signed brochure) at all times while in the hunting area. Hunters may enter the hunting areas only within the dates listed on the refuge access permit.

*D. Sport Fishing.* \* \* \*

\* \* \* \* \*

2. We allow boating at no-wake speeds, not to exceed 5 mph (8 km), on side or back channels. We prohibit all watercraft in the Boyer Chute waterway or other areas as posted.

3. We prohibit the use of trotlines, float lines, bank lines, or setlines.

4. We prohibit ice fishing.

5. We prohibit digging or seining for bait.

6. We prohibit the take or possession of turtles or frogs.

7. Anglers may use no more than two lines and two hooks per line.

\* \* \* \* \*

■ 21. Amend § 32.47 Nevada by revising paragraphs A.2. and D.1. under Sheldon National Wildlife Refuge to read as follows:

**§ 32.47 Nevada.**

\* \* \* \* \*

**Sheldon National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

2. We only allow nonmotorized boats or boats with electric motors.

\* \* \* \* \*

*D. Sport Fishing.* \* \* \*

1. We only allow nonmotorized boats or boats with electric motors.

\* \* \* \* \*

■ 22. Amend § 32.50 New Mexico by revising paragraphs C.5., C.8., C.9., C.10., C.14., and C.15. under Bosque del Apache National Wildlife Refuge to read as follows:

**§ 32.50 New Mexico.**

\* \* \* \* \*

**Bosque del Apache National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

\* \* \* \* \*

5. We prohibit hunting from a vehicle.

\* \* \* \* \*

8. We allow bearded Rio Grande turkey hunting for youth in two areas of the refuge: The north hunting area and the south hunting area. We provide maps with the refuge permit (Big/Upland Game Hunt Application, FWS Form 3–2356), which each hunter must carry, that show these areas in detail.

9. Drawn hunters must possess and carry their selection letter/permit (Big/Upland Game Hunt Application, FWS Form 3–2356) for hunting of bearded Rio Grande turkey. The permit is available only to youth hunters and is available through a lottery drawing. You must postmark applications by March 1 of each year. A \$6 nonrefundable application fee must accompany each hunt application.

10. We allow hunting of bearded Rio Grande turkey for youth hunters only on dates determined by refuge staff. Drawn hunters must report to refuge headquarters by 4:45 a.m. each hunt day. Legal hunting hours run from ½ hour before legal sunrise to ½ hour after legal sunset.

\* \* \* \* \*

14. We allow the use of temporary ground blinds only for turkey hunts, and hunters must remove them from the refuge daily (see § 27.93 of this chapter). It is unlawful to mark any tree or other refuge structure with paint, flagging tape, ribbon, cat-eyes, or any similar marking device.

15. We allow youth hunters only one legally harvested bearded Rio Grande turkey per hunt.

\* \* \* \* \*

■ 23. Amend § 32.52 North Carolina by:

■ a. Adding paragraphs A.6. and A.7. under Cedar Island National Wildlife Refuge;

■ b. Removing paragraph A.5. and redesignating paragraph A.6. as A.5., and revising paragraph C. under Currituck National Wildlife Refuge;

■ c. Revising paragraphs C.1. and D.1. under Mackay Island National Wildlife Refuge;

■ d. Revising paragraph A.1., removing paragraph A.10., redesignating paragraphs A.11. and A.12. as paragraphs A.10. and A.11. and revising newly redesignated paragraphs A.10. and A.11., revising paragraphs C.1., C.4., and C.8., adding paragraphs C.11. through C.13., revising the introductory text of paragraph D.1., and revising

paragraphs D.3., D.6.i., and D.6.iii. under Mattamuskeet National Wildlife Refuge;

■ e. Redesignating paragraphs D.1. through D.4. as paragraphs D.2. through D.5. and adding a new paragraph D.1. under Pee Dee National Wildlife Refuge;

■ f. Revising paragraphs A.1. through A.6., A.12., B.4., C., and D.1. under Pocosin National Wildlife Refuge; and

■ g. Revising paragraph A.6. and adding paragraphs A.7. and A.8. under Swanquarter National Wildlife Refuge.

The additions and revisions read as follows:

**§ 32.52 North Carolina.**

\* \* \* \* \*

**Cedar Island National Wildlife Refuge***A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

6. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. An adult may directly supervise up to two youth hunters age 15 or younger who must have successfully completed a State-approved hunter safety course and possess and carry proof of certification.

7. We open the refuge to daylight use only, except that we allow hunters to enter and remain in open hunting areas from 1 hour before legal shooting time until 1 hour after legal shooting time.

\* \* \* \* \*

**Currituck National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* We allow hunting of deer and feral hog on limited dates in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a refuge hunting permit (signed brochure) that hunters must sign and carry while hunting on the refuge.

2. Each hunter must pay an annual \$12.50 hunt permit fee.

3. We allow the use of shotguns, muzzleloading rifles/shotguns, pistols, and bows in designated units. We prohibit the use of all other rifles and crossbows.

4. Hunters may take two deer per day; there is no daily limit on feral hog.

5. Hunters must wear a minimum of 500 square inches (3,250 cm<sup>2</sup>) of hunter-orange material above the waist that is visible from all directions.

6. We prohibit the marking of trees and vegetation (see § 27.51 of this chapter) with blazes, flagging, or other marking devices.

7. We allow hunters on the refuge from 1 hour before legal sunrise to 1 hour after legal sunset.

8. We allow the use of portable tree stands, but hunters must remove them daily (see § 27.93 of this chapter).

9. Hunters may access the refuge by foot, boat, and/or vehicle, but we prohibit hunting from a boat or vehicle.

10. An adult at least age 21 may supervise only one youth under age 16. The youth must be within sight and normal voice contact of the adult.

\* \* \* \* \*

**Mackay Island National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

1. We require a Refuge Deer Hunting Permit (signed brochure) that hunters must sign and carry while hunting on the refuge.

\* \* \* \* \*

*D. Sport Fishing.* \* \* \*

1. We allow fishing only from legal sunrise to legal sunset from March 15 through October 15 with the exception that we allow fishing along the Marsh Causeway year-round. The 0.3 Mile Loop Trail and the terminus of the canal immediately adjacent to the Visitor Center are open year-round, but we close them during the Refuge Permit Deer Hunts.

\* \* \* \* \*

**Mattamuskeet National Wildlife Refuge***A. Migratory Game Bird Hunting.*

\* \* \*

1. We require refuge-issued permits (name and address) that you must validate at the refuge headquarters, sign, possess, and carry while hunting.

\* \* \* \* \*

10. We allow the taking of only Canada goose during the State September Canada goose season subject to the following conditions:

i. We allow hunting Monday through Saturday during the State season.

ii. The hunter must possess and carry a validated refuge permit (name and address) while hunting.

iii. We close the following areas to hunting of Canada goose: Impoundments MI–4, MI–5, and MI–6; in Rose Bay Canal, Outfall Canal, Lake Landing Canal, and Waupoppin Canal; 150 feet (45 m) from the mouth of the canals where they enter Lake Mattamuskeet; and 150 yards (135 m) from State Route 94.

iv. We allow portable blinds, but hunters must remove them daily (see § 27.93 of this chapter).

11. Each youth hunter age 15 or younger must remain within sight and normal voice contact of an adult age 21 or older. Youth hunters must have completed a State-certified hunter safety

course and possess and carry the form or certificate. An adult may directly supervise up to two youth hunters age 15 or younger.

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

1. The hunter must possess and carry a signed, validated refuge permit (name and address) while hunting.

\* \* \* \* \*

4. Hunters may take deer with shotgun, bow and arrow, crossbow, or muzzleloading rifle/shotgun.

\* \* \* \* \*

8. We allow the use of only portable blinds and deer stands. Hunters with a valid permit (name and address) may erect one portable blind or stand the day before the start of their hunt and must remove it at the end of the second day of that 2-day hunt (see § 27.93 of this chapter). Any stands or blinds left overnight on the refuge must have a tag with the hunter's name, address, and telephone number.

\* \* \* \* \*

11. We prohibit the use of all-terrain vehicles (ATVs) or off-highway vehicles (OHVs) (see § 27.31(f) of this chapter).

12. We require consent from refuge personnel to enter and retrieve legally taken game animals from closed areas including "No Hunting Zones."

13. We allow the use of only biodegradable-type flagging. We prohibit affixing plastic flagging, dots, glow tacks, reflectors, or other materials to refuge vegetation (see § 27.51 of this chapter).

*D. Sport Fishing.* \* \* \*

1. We are open to sport fishing, bow fishing, and crabbing from March 1 through October 31 from ½ hour before legal sunrise to ½ hour after legal sunset, except we allow bank fishing and crabbing year-round from:

\* \* \* \* \*

3. We allow motorized and nonmotorized fishing boats, canoes, and kayaks March 1 through October 31. We prohibit airboats, sailboats, Jet Skis, and windboards.

\* \* \* \* \*

6. \* \* \*

i. We allow only five handlines and hand-activated traps per person. Owners must be in attendance, and anglers must remove all handlines and traps daily.

\* \* \* \* \*

iii. Anglers may only take or possess 12 crabs per person per day.

\* \* \* \* \*

**Pee Dee National Wildlife Refuge**

\* \* \* \* \*

*D. Sport Fishing.* \* \* \*

1. We require all anglers to possess and carry a signed refuge Sport Fishing

Permit (signed brochure) and government-issued picture ID while fishing in refuge waters.

\* \* \* \* \*

**Pocosin Lakes National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

1. We prohibit hunting on the Davenport and Deaver tracts (which include the area surrounding the Headquarters/Visitor Center and the Scuppernong River Interpretive Boardwalk), the Pungo Shop area, New Lake, refuge lands between Lake Phelps and Shore Drive, that portion of the Pinner Tract east of SR 1105, the portion of Western Road between the intersection with Seagoing Road and the gate to the south, and the unnamed road at the southern boundary of the refuge land located west of Pettigrew State Park's Cypress Point Access Area. During November, December, January, and February, we prohibit all public entry on the Pungo and New Lakes, Duck Pen Road (except that portion that forms the Duck Pen Wildlife Trail and Pungo Lake Observation point when the trail and observation point are open), and the Pungo Lake, Riders Creek, and Dunbar Road banding sites.

2. We require consent from refuge personnel to enter and retrieve legally taken game animals from closed areas including "No Hunting Zones."

3. We require all hunters to possess and carry a signed, self-service refuge general hunting permit (signed brochure) while hunting on the refuge.

4. We open the refuge for daylight use only (legal sunrise to legal sunset), except that we allow hunters to enter and remain in open hunting areas from 1½ hours before legal shooting time until 1½ hours after legal shooting time except on the Pungo Unit (see condition C6).

5. We allow the use of all-terrain vehicles (ATVs) only on designated ATV roads (see § 27.31 of this chapter) and only to transport hunters and their equipment to hunt and scout. We allow ATV use only on the ATV roads at the following times:

i. When we open the ATV road and surrounding area to hunting;

ii. One week prior to the ATV road and surrounding area opening to hunting; and

iii. On Sundays, when we open the ATV road and surrounding area for hunting the following Monday.

6. Persons may only use (discharge) firearms in accordance with refuge regulations (50 CFR 27.42 and specific regulations in part 32). We prohibit hunting, taking, and attempting to take any wildlife from a vehicle while the

passenger area is occupied or when the engine is running except that we allow hunting from ATVs and other similarly classed vehicles (where they are authorized) and boats as long as they are stationary and the engine is turned off.

\* \* \* \* \*

12. While hunting, we require youth hunters under age 16 to possess and carry proof that they successfully passed a State-approved hunter education course. Youth hunters may only hunt under the direct supervision of a licensed hunter over age 21. One licensed hunter over age 21 may supervise up to two migratory game bird youth hunters at a time.

*B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

4. We prohibit the hunting of raccoon and opossum during, 5 days before, and 5 days after the State bear seasons. Outside of these periods, we allow the hunting of raccoon and opossum at night but only while possessing a Big/Upland Game Hunt Application (FWS Form 3–2356).

\* \* \* \* \*

*C. Big Game Hunting.* We allow hunting of deer, turkey, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A7 apply.

2. You may hunt spring turkey only if you possess and carry a valid permit (Big/Upland Game Hunt Application (FWS Form 3–2356)). The permits are valid only for the dates and areas shown on the permit. We require an application and a fee for these permits and hold a drawing, when necessary, to select the permittees.

3. We allow the use of only shotguns, muzzleloaders, and bow and arrow for deer and feral hog hunting. We allow hunters to take feral hog in any area that is open to hunting deer using only those weapons that we authorize for taking deer except that hunters may take feral hog with bow and arrow, muzzleloader, and shotgun on the Frying Pan Unit whenever the area is open to hunting any game species with firearms.

4. You may possess only approved nontoxic shot (see § 32.2(k)) while hunting turkeys on the Pungo Unit.

5. We allow deer hunting only with shotgun and muzzleloader on the Pungo Unit while possessing a valid permit from the North Carolina Wildlife Resources Commission for the Pocosin Lakes National Wildlife Refuge—Pungo Unit—either sex deer special hunts that we hold in late September and October. We require a fee that validates the State permit to participate in these special hunts.

6. During the special hunts described in C5, we allow only permitted hunters on the Pungo Unit from 1½ hours before legal sunrise until 1½ hours after legal sunset.

7. Prior to December 1, we allow deer hunting with bow and arrow on the Pungo Unit during all State deer seasons, except during the muzzleloading season and except during the special hunts described in C5.

8. Hunters must wear 500 square inches (3,250 cm<sup>2</sup>) of fluorescent-orange material above the waist that is visible from all sides while hunting deer and feral hog in any area open to hunting these species with firearms.

9. We allow the use of only portable deer stands (tree climbers, ladders, tripods, etc.). Hunters may use ground blinds, chairs, buckets, and other such items for hunting, but we require that you remove all of these items at the end of each day (see § 27.93 of this chapter), except that hunters with a valid permit for the special hunts described in condition C5 may install one deer stand on the Pungo Unit the day before the start of their hunt and leave it until the end of their hunt. Hunters must tag any stands left overnight on the refuge with their name, address, and telephone number.

10. While hunting, we require youth hunters under age 16 to possess and carry proof that they successfully passed a State-approved hunter education course. Youth hunters may only hunt under the direct supervision of a licensed hunter age 21 or older. A licensed hunter age 21 or older may only supervise one big game youth hunter at a time.

11. We prohibit the use of dogs to track, chase, or in any way assist with the take of big game.

*D. Sport Fishing.* \* \* \*

1. We allow fishing in Pungo Lake and New Lake only from March 1 through October 31, except that we close Pungo Lake and the entire Pungo Unit to fishing during the special hunts described in condition C5.

\* \* \* \* \*

**Swanquarter National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*  
\* \* \* \* \*

6. We allow hunting only during the State waterfowl season occurring in November, December, and January.

7. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. An adult may directly supervise up to two youth hunters age 15 or younger who must

have successfully completed a State-approved hunter safety course and possess and carry proof of certification.

8. We open the refuge to daylight use only (legal sunrise to legal sunset), except that we allow hunters to enter and remain in open hunting areas from 1 hour before legal shooting time until 1 hour after legal shooting time.

\* \* \* \* \*

■ 24. Amend § 32.53 North Dakota by revising paragraph B.10. under Upper Souris National Wildlife Refuge to read as follows:

**§ 32.53 North Dakota.**

\* \* \* \* \*

**Upper Souris National Wildlife Refuge**

\* \* \* \* \*

*B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

10. Hunters may possess only approved nontoxic shot for all upland game hunting as identified in § 20.21(j) of this chapter.

\* \* \* \* \*

■ 25. Amend § 32.55 Oklahoma by:

■ a. Revising paragraph B.2. under Deep Fork National Wildlife Refuge;

■ b. Revising paragraphs A.1., A.5., A.11., and A.12. under Sequoyah National Wildlife Refuge;

■ c. Revising the entry for Tishomingo National Wildlife Refuge; and

■ d. Adding an entry for Tishomingo Wildlife Management Unit.

The additions and revisions read as follows:

**§ 32.55 Oklahoma.**

\* \* \* \* \*

**Deep Fork National Wildlife Refuge**

\* \* \* \* \*

*B. Upland Game Hunting.* \* \* \*

\* \* \* \* \*

2. We allow shotguns, .22 and .17 caliber rimfire rifles, and pistols for rabbit and squirrel hunting. Hunters must possess nontoxic shot when using a shotgun (see § 32.2(k)).

\* \* \* \* \*

**Sequoyah National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

1. We require an annual refuge permit (Special Use Permit; FWS Form 3–1383) for all hunting. The hunter must possess and carry the signed permit while hunting. We require hunters to abide by all terms and conditions listed on the permit.

\* \* \* \* \*

5. Hunters must use only legal shotguns and possess only approved nontoxic shot for migratory bird

hunting. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (50 CFR 27.42 and specific refuge regulations in part 32).

\* \* \* \* \*

11. We prohibit hunters entering the Sandtown Bottom Unit prior to 5 a.m. during the hunting season. Until 7 a.m., the entrance is through the headquarters gate only, at which time hunters may enter the Sandtown Bottom Unit through any other access point on the refuge. Hunters must leave the Sandtown Bottom Unit by 1 hour after legal sunset.

12. We prohibit alcoholic beverages on all refuge lands.

\* \* \* \* \*

**Tishomingo National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

[Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow

hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Refuge bonus deer gun hunts are by special permit (issued by the Oklahoma State Department of Wildlife Conservation) only; we prohibit prehunt scouting or use of camera-monitoring devices.

2. We prohibit baiting (see § 32.2(h)).

3. We allow camping in compliance with conditions set out by the refuge.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Anglers may bank and wade fish with pole and line or rod and reel year-round in areas open for public fishing access.

2. Anglers may use boats from March 1 through September 30 in designated waters (see refuge map).

3. Anglers may “no-wake” boat fish during the boating season with line and pole or rod and reel, except in areas designated as Sanctuary Zones.

4. Anglers may use trotlines and other set tackle only in the Cumberland Pool (designated areas), Rock Creek, and between the natural banks of the Washita River. Anglers may only use set tackle with anchored floats.

5. We prohibit use of limblines, throwlines, juglines, and yo-yos.

6. We prohibit use of any containers (jugs, bottles) as floats.

7. Anglers may night fish from a boat (during boating season) in the

Cumberland Pool, except in the Sanctuary Zones. Anglers may night fish at the Headquarters area, Sandy Creek Bridge, Murray 23, and Nida Point.

9. Anglers may take bait only for personal use while fishing on the refuge in accordance with State law. We prohibit bait removal from the refuge for commercial sales. We also prohibit release of bait back into the water.

9. We prohibit bow fishing.

10. We prohibit take of fish by use of hands (noodling).

11. We prohibit take of frog, turtle, or mussel.

12. We prohibit swimming, water sports, personal watercraft, and airboats.

13. Condition C3 applies.

**Tishomingo Wildlife Management Unit**

*A. Migratory Game Bird Hunting.* We allow hunting of mourning dove and waterfowl on the Tishomingo Wildlife Management Unit of Tishomingo National Wildlife Refuge in accordance with State regulations.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, turkey, and rabbit on the Tishomingo Wildlife Management Unit of Tishomingo National Wildlife Refuge in accordance with State regulations.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on the Tishomingo Wildlife Management Unit of Tishomingo National Wildlife Refuge in accordance with State regulations.

*D. Sport Fishing.* We allow sport fishing on the Tishomingo Wildlife Management Unit of Tishomingo National Wildlife Refuge in accordance with State regulations.

\* \* \* \* \*

- 26. Amend § 32.56 Oregon by:
  - a. Adding paragraph A.4. under Bandon Marsh National Wildlife Refuge;
  - b. Revising the entry for Cold Springs National Wildlife Refuge;
  - c. Revising paragraph A. under Lewis and Clark National Wildlife Refuge;
  - d. Revising the entry for McKay Creek National Wildlife Refuge;
  - e. Revising the entry for Umatilla National Wildlife Refuge; and
  - f. Revising paragraphs C. and D. under William L. Finley National Wildlife Refuge.

The additions and revisions read as follows:

**§ 32.56 Oregon.**

\* \* \* \* \*

**Bandon Marsh National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

4. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific regulations in part 32).

\* \* \* \* \*

**Cold Springs National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, dove, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit overnight camping and/or parking.

2. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

3. We prohibit discharge of any firearm within ¼ mile (396 m) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

4. We allow only portable blinds and temporary blinds constructed of nonliving natural materials. Hunters must remove all decoys and other equipment (see § 27.93 of this chapter) at the end of each day.

5. We allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

6. We reserve parking lot F solely for Memorial Marsh Unit waterfowl hunters.

7. We require waterfowl hunting parties to space themselves a minimum of 200 yards (180 m) apart in the free roam area along the reservoir shoreline.

8. We allow only nonmotorized boats or boats with electric motors within that portion of the reservoir open to hunting.

9. On the Memorial Marsh Unit, we allow hunting only from numbered field blind sites, and hunters must park their vehicles only at the numbered post corresponding to the numbered field blind site they are using (see § 27.31 of this chapter). Selection of parking sites/numbered posts is on a first-come, first-served basis at parking lot F. We prohibit free-roam hunting or jump shooting, and you must remain within 100 feet (30 m) of the numbered field blind post unless retrieving birds or setting decoys. We allow a maximum of four persons per blind site.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, and A3 apply.

2. We allow hunting from 12 p.m. (noon) to legal sunset on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, and Christmas Day.

*C. Big Game Hunting. [Reserved]*

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition A1 applies.

2. In the Cold Springs Reservoir, we allow fishing only from March 1 through September 30.

3. We allow use of only nonmotorized boats and boats with electric motors.

\* \* \* \* \*

**Lewis and Clark National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and snipe on the designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

2. We prohibit hunting on all exposed lands on Miller Sands Island and its partially enclosed lagoon, as posted. We prohibit hunting inside the diked portion of Karlson Island, as posted.

3. We prohibit permanent blinds. You must remove all personal property, including decoys and boats, by 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

\* \* \* \* \*

**McKay Creek National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit overnight camping and/or parking.

2. We prohibit possession of toxic shot for hunting (see § 32.2(k)).

3. We prohibit discharge of any firearm within ¼ mile (396 m) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

4. We only allow portable blinds and temporary blinds constructed of nonliving natural materials. Hunters must remove all decoys and other equipment (see § 27.93 of this chapter) at the end of each day.

5. We require waterfowl hunting parties to space themselves a minimum of 200 yards (180 m) apart.

6. We prohibit the use of boats.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the refuge in

accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, and A3 apply.
2. On the opening weekend of the hunting season, we require all hunters to possess and carry a special refuge permit (name/address/phone number).

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition A1 applies.
2. We allow fishing from March 1 through September 30.

\* \* \* \* \*

### Umatilla National Wildlife Refuge

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit overnight camping and/or parking.
2. We prohibit possession of toxic shot for hunting (see § 32.2(k)).
3. We prohibit discharge of any firearm within ¼ mile (396 m) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.
4. We allow only portable blinds and temporary blinds constructed of nonliving natural materials. Hunters must remove all decoys and other equipment (see § 27.93 of this chapter) at the end of each day.
5. On the McCormack Unit, we allow hunting subject to the following conditions:

- i. The McCormack Unit is a fee-hunt area only open to hunting on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day during State waterfowl seasons.
- ii. We require hunters to stop at the check station to obtain a special refuge permit (name/address/phone number) that you must possess and carry, to pay a recreation user fee, and to obtain a blind assignment before hunting.
- iii. We allow hunting only from assigned blind sites and require hunters to remain within 100 feet (30 m) of marked blind sites unless retrieving birds.
- iv. Hunters may only possess up to 25 shot shells per hunt day.

5. On the McCormack Unit, we allow hunting subject to the following conditions:

- i. The McCormack Unit is a fee-hunt area only open to hunting on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day during State waterfowl seasons.
- ii. We require hunters to stop at the check station to obtain a special refuge permit (name/address/phone number) that you must possess and carry, to pay a recreation user fee, and to obtain a blind assignment before hunting.
- iii. We allow hunting only from assigned blind sites and require hunters to remain within 100 feet (30 m) of marked blind sites unless retrieving birds.
- iv. Hunters may only possess up to 25 shot shells per hunt day.

6. On the Boardman Unit, we require waterfowl hunting parties to space themselves a minimum of 200 yards (180 m) apart.
7. We close all islands within the Columbia River to all access.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the refuge in

accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A3, and A7 apply.
2. We allow hunting of upland game from 12 p.m. (noon) to legal sunset of each hunt day.
3. On the McCormack Fee Hunt Unit, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day.
4. On the McCormack Unit, we require all hunters to possess and carry a special refuge permit (name/address/phone number).

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A3, and A7 apply.
2. We allow hunting by special permit only (issued by the State).

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A7 apply.
2. We allow fishing on refuge impoundments and ponds from February 1 through September 30.

accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A3, and A7 apply.
2. We allow hunting of upland game from 12 p.m. (noon) to legal sunset of each hunt day.
3. On the McCormack Fee Hunt Unit, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day.
4. On the McCormack Unit, we require all hunters to possess and carry a special refuge permit (name/address/phone number).

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A3, and A7 apply.
2. We allow hunting by special permit only (issued by the State).

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A7 apply.
2. We allow fishing on refuge impoundments and ponds from February 1 through September 30.

\* \* \* \* \*

### William L. Finley National Wildlife Refuge

\* \* \* \* \*

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow shotgun and archery hunting on designated dates from ½ hour before legal sunrise until ½ hour after legal sunset.
2. We allow shotguns using only buckshot or slugs.
3. We prohibit overnight camping and after-hours parking on the refuge.
4. We prohibit hunting from refuge structures, observation blinds, or boardwalks.
5. All vehicles must remain parked in designated areas.
6. Hunters may use portable or climbing deer stands and must remove stands daily (see § 27.93 of this chapter). We prohibit driving or screwing nails, spikes, or other objects into trees or hunting from any tree into which such an object has been driven (see § 32.2(i)). We prohibit limbing of trees.
7. All hunters must complete a Big Game Harvest Report (FWS Form 3–2359) available at the designated self-service hunt kiosks located on the refuge.
8. Persons possessing, transporting, or carrying firearms on national wildlife

refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32).

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing on Muddy Creek from the beginning of the State trout season in April through October 31.
2. We prohibit the use of boats.

■ 27. Amend § 32.57 Pennsylvania by revising paragraphs A.2. through A.4., B.2., and C. under Erie National Wildlife Refuge to read as follows:

■ 27. Amend § 32.57 Pennsylvania by revising paragraphs A.2. through A.4., B.2., and C. under Erie National Wildlife Refuge to read as follows:

■ 27. Amend § 32.57 Pennsylvania by revising paragraphs A.2. through A.4., B.2., and C. under Erie National Wildlife Refuge to read as follows:

■ 27. Amend § 32.57 Pennsylvania by revising paragraphs A.2. through A.4., B.2., and C. under Erie National Wildlife Refuge to read as follows:

■ 27. Amend § 32.57 Pennsylvania by revising paragraphs A.2. through A.4., B.2., and C. under Erie National Wildlife Refuge to read as follows:

■ 27. Amend § 32.57 Pennsylvania by revising paragraphs A.2. through A.4., B.2., and C. under Erie National Wildlife Refuge to read as follows:

■ 27. Amend § 32.57 Pennsylvania by revising paragraphs A.2. through A.4., B.2., and C. under Erie National Wildlife Refuge to read as follows:

■ 27. Amend § 32.57 Pennsylvania by revising paragraphs A.2. through A.4., B.2., and C. under Erie National Wildlife Refuge to read as follows:

refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32).

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing on Muddy Creek from the beginning of the State trout season in April through October 31.
2. We prohibit the use of boats.

■ 27. Amend § 32.57 Pennsylvania by revising paragraphs A.2. through A.4., B.2., and C. under Erie National Wildlife Refuge to read as follows:

### § 32.57 Pennsylvania.

\* \* \* \* \*

### Erie National Wildlife Refuge

*A. Migratory Game Bird Hunting.*

\* \* \* \* \*

\* \* \* \* \*

2. We require all hunters to possess and carry on their person a signed refuge hunt permit (signed brochure).
3. We only allow nonmotorized boats for waterfowl hunting in permitted areas.
4. We require that hunters remove all boats, blinds, cameras, and decoys from the refuge within 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

*B. Upland Game Hunting.* \* \* \*

2. Conditions A1, A2, A4, and A5 apply.

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■ 28. Amend § 32.60 South Carolina by: ■ a. Revising paragraphs C.9. and C.13. and adding paragraph C.17. under

Pinckney Island National Wildlife Refuge; and

■ b. Revising paragraphs A.2., A.3., A.4., and B.2., adding paragraph B.4., revising paragraphs C.1., C.7., and C.13., and removing paragraphs C.19. through C.24. under Waccamaw National Wildlife Refuge.

The additions and revisions read as follows:

§ 32.60 South Carolina.

\* \* \* \* \*

Pinckney Island National Wildlife Refuge

\* \* \* \* \*

C. Big Game Hunting. \* \* \*

\* \* \* \* \*

9. Hunters must be on their stands from 1/2 hour before legal sunrise until 9 a.m. and from 2 hours before legal sunset until 1/2 hour after legal sunset.

\* \* \* \* \*

13. You may take five deer (no more than two antlered).

\* \* \* \* \*

17. We prohibit the use of trail or game cameras.

\* \* \* \* \*

Waccamaw National Wildlife Refuge

A. Migratory Game Bird Hunting.

\* \* \* \* \*

2. Each youth hunter age 15 and younger must remain within sight, within normal voice contact, and under supervision of an adult age 21 or older. The adult must comply with all State and Federal hunting license requirements and possess a signed refuge hunting permit (signed brochure).

3. We allow waterfowl hunting only until 12 p.m. (noon) each Saturday and Wednesday during the State waterfowl season. Hunters may enter the refuge no earlier than 5 a.m. on hunt days and must be off the refuge by 2 p.m.

4. We allow scouting Monday through Friday during the waterfowl season. Hunters must be off the refuge by 2 p.m.

\* \* \* \* \*

B. Upland Game Hunting. \* \* \*

\* \* \* \* \*

2. We allow hunting only in designated areas and only on days designated annually by the refuge within the State season.

\* \* \* \* \*

4. We prohibit shooting any game from a boat except waterfowl.

C. Big Game Hunting. \* \* \*

1. Conditions A1, A2, A9, A10, B2, and B4 apply.

\* \* \* \* \*

7. We allow scouting all year during daylight hours except during the State

waterfowl season. During the waterfowl season, the same regulations that apply to scouting for waterfowl (A4) apply to scouting for big game species. We prohibit the use of trail cameras and other scouting devices.

\* \* \* \* \*

13. You must hunt deer and feral hog from an elevated hunting stand.

\* \* \* \* \*

■ 29. Amend § 32.62 Tennessee by:

■ a. Revising paragraph C.4. under Lower Hatchie National Wildlife Refuge; and

■ b. Revising paragraphs B.1. and C.4. under Reelfoot National Wildlife Refuge.

The revisions read as follows:

§ 32.62 Tennessee.

\* \* \* \* \*

Lower Hatchie National Wildlife Refuge

\* \* \* \* \*

C. Big Game Hunting. \* \* \*

\* \* \* \* \*

4. Hunters may possess lead shot while deer hunting on the refuge (see § 32.2(k)).

\* \* \* \* \*

Reelfoot National Wildlife Refuge

\* \* \* \* \*

B. Upland Game Hunting. \* \* \*

1. The refuge is a day-use area only (legal sunrise to legal sunset), with the exception of legal hunting activities.

\* \* \* \* \*

C. Big Game Hunting. \* \* \*

\* \* \* \* \*

4. Hunters may possess lead shot while deer hunting on the refuge (see § 32.2 (k)).

\* \* \* \* \*

■ 30. Amend § 32.63 Texas by:

■ a. Adding paragraph C.10. under Balcones Canyonlands National Wildlife Refuge;

■ b. Adding paragraph A.5. under Big Boggy National Wildlife Refuge;

■ c. Adding paragraph A.7., revising paragraphs D.1. and D.2., and adding D.7. under Brazoria National Wildlife Refuge;

■ d. Revising paragraphs C.1., C.2., C.3., C.6., C.7., C.8., C.15., C.16., and C.17. under Laguna Atascosa National Wildlife Refuge;

■ e. Revising paragraph A.3., adding paragraph A.6., revising paragraph D.2., and adding paragraph D.3. under San Bernard National Wildlife Refuge; and

■ f. Revising paragraphs B.1., B.2., and B.4. through B.8., adding paragraph B.9., and revising paragraph C.1., redesignating paragraphs C.2. and C.3. as paragraphs C.3. and C.4., adding a

new paragraph C.2., and removing paragraphs C.5. and C.6. under Trinity River National Wildlife Refuge.

The additions and revisions read as follows:

§ 32.63 Texas.

\* \* \* \* \*

Balcones Canyonlands National Wildlife Refuge

\* \* \* \* \*

C. Big Game Hunting. \* \* \*

\* \* \* \* \*

10. Hunters must exit the refuge no later than 1 1/2 hours after legal sunset.

\* \* \* \* \*

Big Boggy National Wildlife Refuge

A. Migratory Game Bird Hunting.

\* \* \* \* \*

\* \* \* \* \*

5. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32).

\* \* \* \* \*

Brazoria National Wildlife Refuge

A. Migratory Game Bird Hunting.

\* \* \* \* \*

\* \* \* \* \*

7. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32).

\* \* \* \* \*

D. Sport Fishing. \* \* \*

1. We allow fishing only on Nick's Lake, Salt Lake, and Lost Lake.

2. We allow access for shore fishing at Bastrop Bayou, Clay Banks, and Salt Lake Public Fishing Areas; we prohibit the use or possession of alcoholic beverages in all Public Fishing Areas.

\* \* \* \* \*

7. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32).

\* \* \* \* \*

Laguna Atascosa National Wildlife Refuge

\* \* \* \* \*

C. Big Game Hunting. \* \* \*

1. We require hunters to pay a fee and obtain a refuge hunt permit (name and address only). We issue replacement permits for an additional nominal fee. All hunt fees are nonrefundable. We require the hunter to possess and carry a signed and dated refuge hunt permit.

2. We allow archery and firearm hunting on designated units of the refuge. Units 1, 2, 3, 5, 6, and 8 are open to archery hunting during designated dates. Units 2, 3, 5, and 8 are open to firearm hunting during designated dates. We close the following areas to hunting: Adolph Thomae, Jr. County Park in Unit 3, posted "No Hunting Zones" within all hunt units, La Selva Verde Tract (Armstrong), Waller Tract, Tocayo (COHYCO, Inc.) Tract, Frieze Tract, Escondido Tract, Sendero del Gato, Resaca de la Gringa, Bahia Grande Unit, South Padre Island Unit, and the Boswell Tract.

3. We offer hunting during specific portions of the State hunting season. We determine specific deer hunt dates annually, and they usually fall within October, November, December, and January. We may provide special feral hog and nilgai antelope hunts to reduce populations at any time during the year.

6. An adult age 17 or older must accompany and remain within sight and normal voice contact of each youth hunter, ages 9 through 16. Hunters must be at least age 9.

7. We allow the use of only longbows, compound bows, and recurved bows during the archery hunt. We allow the use of only shoulder-fired muzzleloaders, rifles, and crossbows during the firearm hunt. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32). Muzzleloader firearms must be .40 caliber or larger, and modern rifles must be centerfired and .22 caliber or larger. We prohibit loaded authorized hunting firearms (see § 27.42 of this chapter) in the passenger compartment of a motor vehicle. We define "loaded" as having rounds in the chamber or magazine or a firing cap on a muzzleloading firearm. We prohibit target practice or "sighting-in" on the refuge.

8. We allow a scouting period prior to the commencement of the refuge deer hunting season. A permitted hunter and a limit of two nonpermitted individuals may enter the hunt units during the scouting period. We allow access to the

units during the scouting period from legal sunrise to legal sunset. You must clearly display the refuge-issued Hunter Vehicle Validation Tags/Scouting Permits (name, address, and phone number; available from the refuge office) face up on the vehicle dashboard when hunting and scouting.

\* \* \* \* \*

15. We prohibit killing or wounding an animal covered in this section and intentionally or knowingly failing to make a reasonable effort to retrieve and include it in the hunter's bag limit.

16. We prohibit use of or hunting from any type of watercraft or floating device.

17. Hunters must receive authorization from a refuge employee to enter closed refuge areas to retrieve harvested game.

\* \* \* \* \*

### San Bernard National Wildlife Refuge

#### A. Migratory Game Bird Hunting.

\* \* \*

\* \* \* \* \*

3. We require hunters to use the Waterfowl Lottery Application (FWS Form 3-2355) and payment of fees for the Sergeant Permit Waterfowl Hunt Area. Hunters must abide by all terms and conditions set by the permits.

\* \* \* \* \*

6. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32).

\* \* \* \* \*

#### D. Sport Fishing. \* \* \*

\* \* \* \* \*

2. We allow access for shore fishing at Cedar Lake Creek Public Fishing Area; we prohibit the use or possession of alcoholic beverages in all Public Fishing Areas.

3. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32).

\* \* \* \* \*

### Trinity River National Wildlife Refuge

\* \* \* \* \*

#### B. Upland Game Hunting. \* \* \*

1. We require hunters to possess a refuge permit (signed brochure) and pay a fee for the hunt application. For information concerning the hunts,

contact the refuge office. The hunter must carry the nontransferable permit at all times while hunting.

2. We will offer a limited season upland game squirrel and rabbit hunt. We require refuge permits and hunters must turn in the Upland/Small Game/Furbearer Report (FWS Form 3-2362) by the date specified on the permit. Failure to submit the report will render the hunter ineligible for the next year's limited upland game hunt. Drawings will be either by lottery or on a first-come-first-served basis. We will describe hunt units in maps and written directions.

\* \* \* \* \*

4. All units are walk-in only. We prohibit hunters using dogs, feeders, baiting, campsites, fires, horses, bicycles, and all-terrain vehicles (except on designated units which allow ATV use for hunters with disabilities). We provide access for hunters with disabilities. Please contact the refuge office for additional information.

5. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and specific refuge regulations in part 32). Units will have a hunting type of weapon restriction (long gun, shotgun, or archery) due to safety concerns.

6. Youth hunters age 12 through 17 must hunt with a permitted adult age 18 or older and be within sight and normal voice contact of the adult.

7. For safety we require a minimum distance between hunt parties of 200 yards (180 m). Hunters must visibly wear 400 square inches (2,600 cm<sup>2</sup>) of hunter orange above the waist and a hunter-orange hat or cap.

8. We require hunters to park only in the assigned parking area at each hunt unit. They may enter the refuge no earlier than 4:30 a.m. We will allow hunting from ½ hour before legal sunrise to legal sunset only during the days specified on the permit.

9. Hunters may place no more than one temporary stand on the refuge. Hunters may place the stand during the scouting week before the hunt begins and must remove it the day the hunt ends. Hunters must remove all flagging or markers the day the hunt ends. We prohibit the use of paint for marking. Hunters must label blinds with the name of the permit holder. We prohibit hunting or erection of blinds along refuge roads or main trails.

#### C. Big Game Hunting. \* \* \*

1. We will offer limited (shortened) seasons for big game hunting of deer

and feral hog. The limited hunts are during the archery, general, and muzzleloader State seasons. We require refuge permits (signed refuge brochure) and Big Game Harvest Report (FWS Form 3-2359). Hunters must turn in both forms by the date specified on the permit. Failure to submit the Harvest Report will render the hunter ineligible for the next year's limited big game hunt. Drawings are by lottery. We will describe hunt units in maps and provide written directions.

2. Conditions B3 through B9 apply.

\* \* \* \* \*

■ 31. Amend § 32.64 Utah by revising paragraphs A.10., B., and C. under Ouray National Wildlife Refuge to read as follows:

**§ 32.64 Utah.**

\* \* \* \* \*

**Ouray National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

\* \* \*

\* \* \* \* \*

10. Persons possessing, transporting, or carrying firearms on national wildlife refuges must comply with all provisions of State and local law. Persons may only use (discharge) firearms in accordance with refuge regulations (see § 27.42 of this chapter and part 32).

*B. Upland Game Hunting.* We allow hunting of pheasant and turkey in accordance with State regulations subject to the following conditions:

1. We allow pheasant and turkey hunting within designated areas.
2. We prohibit hunting on the islands and sandbars within the Green River.
3. We allow turkey hunting for youth hunters under age 14 during the general-season, youth-only turkey hunt season.

*C. Big Game Hunting.* We allow hunting of deer and elk in accordance with State regulations subject to the following conditions:

1. We allow deer and elk hunting within designated areas.
2. We prohibit hunting on the islands and sandbars within the Green River.
3. We allow use of portable tree stands and hunting blinds. Hunters must remove all tree stands and blinds no later than the last day of the hunting season for which they have a permit (see § 27.93 of this chapter).
4. We allow elk hunting for youth hunters under age 14 only prior to October 1.
5. We allow elk hunting during the Uintah Basin Extended Archery Elk Hunt starting on October 1.
6. We prohibit elk hunting during the general season any-legal-weapon (rifle) and muzzleloader- bull-elk hunts.

7. We allow elk hunting during limited late season antlerless elk (after December 1), hunter deprecation pool, and other disabled/youth elk hunts in accordance with State and refuge regulations.

\* \* \* \* \*

■ 32. Amend § 32.67 Washington by:

- a. Revising the entry for Columbia National Wildlife Refuge;
- b. Revising the entry for Conboy Lake National Wildlife Refuge;
- c. Revising the entry for McNary National Wildlife Refuge;
- d. Revising the entry for Toppenish National Wildlife Refuge; and
- e. Revising the entry for Umatilla National Wildlife Refuge.

The revisions read as follows:

**§ 32.67 Washington.**

\* \* \* \* \*

**Columbia National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Except for Soda Lake Campground, we prohibit overnight parking and/or camping.
2. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).
3. We prohibit discharge of any firearm within ¼ mile (396 m) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.
4. We only allow portable blinds and temporary blinds constructed of nonliving natural materials. Hunters must remove all decoys and other equipment (see § 27.93 of this chapter) at the end of each day.
5. We allow hunting only on Wednesdays, Saturdays, Sundays, and Federal holidays on Marsh Unit 1 and Farm Units 226-227.
6. Prior to entering the Farm Unit 226-227 hunt area, we require you to possess and carry a special refuge permit (name/address/phone number), pay a recreation user fee, and obtain a blind assignment.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, and A3 apply.
2. We allow hunting of only upland game birds during State upland game seasons that run concurrently with the State waterfowl season.
3. We allow hunting from 12 p.m. (noon) to legal sunset on Wednesdays, Saturdays, Sundays, and Federal holidays in Marsh Unit 1.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, and A3 apply.
  2. We allow hunting only during State deer seasons that run concurrently with the State waterfowl season.
  3. We allow hunting with shotgun and archery only.
- D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:
1. Condition A1 applies.
  2. On waters open to fishing, we allow fishing only from April 1 to September 30, with the exception of Falcon, Heron, Goldeneye, Corral, Blythe, Chukar, and Scaup Lakes that are open year-round.
  3. We allow frogging during periods when we allow fishing on designated waters.

**Conboy Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit overnight camping and/or parking.
2. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).
3. We prohibit discharge of any firearm within ¼ mile (396 m) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.
4. We allow only portable blinds and temporary blinds constructed of nonliving natural materials. Hunters must remove all decoys and other equipment at the end of each day (see § 27.93 of this chapter).

*B. Upland Game Hunting. [Reserved]*

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions: Conditions A1, A2, and A3 apply.

*D. Sport Fishing. [Reserved]*

\* \* \* \* \*

**McNary National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, dove, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit overnight camping and/or parking.
2. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).
3. We prohibit discharge of any firearm within ¼ mile (396 m) of any

maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

4. We allow only portable blinds and temporary blinds constructed of nonliving natural materials. Hunters must remove all decoys and other equipment (see § 27.93 of this chapter) at the end of each day.

5. On the McNary Fee Hunt Area (McNary Headquarters Unit), we allow hunting subject to the following conditions:

i. The McNary Fee Hunt Area (McNary Headquarters Unit) is only open on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day.

ii. We require hunters to possess and carry a special refuge permit (name/address/phone number), pay a recreation user fee, and obtain a blind assignment before hunting.

iii. We allow hunting only from assigned blind sites and require hunters to remain within 100 feet (30 m) of marked posts unless retrieving birds or setting decoys.

iv. We prohibit the hunting of dove.

v. Hunters may only possess up to 25 shot shells per hunt day.

6. On the Peninsula Unit, we allow hunting subject to the following conditions:

i. On the east shoreline of the Peninsula Unit, we allow hunting only from established numbered blind sites, assigned on a first-come, first-served basis. We require hunters to remain within 100 feet (30 m) of marked posts unless retrieving birds or setting decoys.

ii. On the west shoreline of the Peninsula Unit, we require hunters to space themselves a minimum of 200 yards (180 m) apart.

7. We close Strawberry Island in the Snake River to all access.

8. We close Badger and Foundation Islands in the Columbia River to all access.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A3, A7, and A8 apply.

2. On the McNary Fee Hunt Area (McNary Headquarters Unit), we allow hunting on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day. We prohibit hunting before 12 p.m. (noon) on each hunt day.

3. On the Peninsula Unit, we prohibit hunting before 12 p.m. (noon) on goose hunt days.

*C. Big Game Hunting.* We allow hunting of deer only on the Stateline,

Juniper Canyon, and Wallula Units in accordance with State regulations subject to the following conditions.

1. Conditions A1, A2, A3, A7, and A8 apply.

2. On the Wallula Unit, we allow hunting with shotgun and archery only.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions: Conditions A1, A7, and A8 apply.

\* \* \* \* \*

#### **Toppenish National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, dove, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit overnight camping and/or parking.

2. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

3. We prohibit discharge of any firearm within ¼ mile (396 m) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

4. We allow only portable blinds and temporary blinds constructed of nonliving natural materials. Hunters must remove all decoys and other equipment (see § 27.93 of this chapter) at the end of each day.

5. We allow dove hunting only on the Chloe, Webb, Petty, Halvorson, Chambers, and Isiri Units.

6. On the Pumphouse and Robbins Road Units, hunters may only possess up to 25 shot shells per hunt day.

7. On the Pumphouse, Petty, Isiri, Chamber, and Chloe Units, we allow hunting 7 days a week subject to the following condition: We require hunting parties to space themselves a minimum of 200 yards (180 m) apart.

8. On the Halvorson and Webb Units, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

9. On the Robbins Road Unit, we allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

10. On the Robbins Road and Pumphouse Units, we allow hunting only from numbered field blind sites, and hunters must park their vehicles only at the numbered post corresponding to the numbered field blind site they are using (see § 27.31 of this chapter). Selection of parking sites/numbered posts is on a first-come, first-served basis at the designated parking lot. We prohibit free-roam hunting or

jump shooting, and you must remain within 100 feet (30 m) of the numbered field blind post unless retrieving birds or setting decoys. We allow a maximum of four persons per blind site.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3 apply.

2. We allow hunting of upland game from 12 p.m. (noon) to legal sunset of each hunt day.

3. On the Halvorson and Webb Units, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

4. On the Robbins Road Unit, we allow hunting only on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* [Reserved]

\* \* \* \* \*

#### **Umatilla National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, dove, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit overnight camping and/or parking.

2. You may possess only approved nontoxic shot for hunting (see § 32.2(k)).

3. We prohibit discharge of any firearms within ¼ mile (396 m) of any maintained building or Federal facility, such as, but not limited to, a structure designed for storage, human occupancy, or shelter for animals.

4. We only allow portable blinds and temporary blinds constructed of nonliving natural materials. You must remove all decoys and other equipment (see § 27.93 of this chapter) at the end of each day.

5. On the Paterson and Whitcomb Units, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

6. In the refuge ponds within the Paterson Unit, we allow only nonmotorized boats and boats with electric motors.

7. On the Ridge Unit, we allow only shoreline hunting and prohibit hunting from boats.

8. We require waterfowl hunting parties to space themselves a minimum of 200 yards (180 m) apart.

9. We close all islands within the Columbia River to all access.

*B. Upland Game Hunting.* We allow hunting of upland game birds on

designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A3, A5, and A9 apply.

2. We allow hunting of upland game from 12 p.m. (noon) to legal sunset of each hunt day.

C. Big Game Hunting. We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A3, and A9 apply.

2. We allow hunting by special permit only (issued by the State).

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A9 apply.

2. We allow fishing on refuge impoundments and ponds from February 1 through September 30.

\* \* \* \* \*

■ 33. Amend § 32.68 West Virginia by revising paragraphs A.2. and A.4., adding paragraph A.8., and revising paragraphs B.1., C.1., and C.2. under Canaan Valley National Wildlife Refuge to read as follows:

§ 32.68 West Virginia.

\* \* \* \* \*

Canaan Valley National Wildlife Refuge

A. Migratory Game Bird Hunting.

\* \* \* \* \*

2. We allow hunting on most refuge lands with the following exceptions: the area surrounding the refuge headquarters, areas marked as safety zones, areas marked as no hunting zones, areas marked as closed to all public entry, or within 500 feet (150 m) of any dwelling in accordance with State regulations.

\* \* \* \* \*

4. The refuge opens 1 hour before legal sunrise and closes 1 hour after legal sunset, including parking areas. We prohibit camping. We prohibit overnight parking except by Special Use Permit (FWS Form 3-1383) on Forest Road 80.

\* \* \* \* \*

8. We prohibit hunters from leaving decoys and other personal property on the refuge (see § 27.93 of this chapter).

B. Upland Game Hunting. \* \* \*

1. Conditions A1 (Upland/Small Game/Furbearer Report; FWS Form 3-2362), A2, A4, A6, and A7 apply.

\* \* \* \* \*

C. Big Game Hunting. \* \* \*

1. Conditions A1 (Big Game Harvest Report; FWS Form 3-2359), A2, A4, A6, A7, and B4 apply.

2. You may only enter the refuge on foot. You may use hand-powered, wheeled carts for transporting big game.

\* \* \* \* \*

- 34. Amend § 32.69 Wisconsin by:
■ a. Adding paragraph C.6. and revising paragraph D. under Horicon National Wildlife Refuge;
■ b. Removing paragraph C.2., redesignating paragraphs C.3. through C.11. as paragraphs C.2. through C.10., revising newly redesignated paragraph C.6., adding new paragraph C.11., and revising paragraph D. under Necedah National Wildlife Refuge; and
■ c. Revising paragraphs B. and D. under Trempealeau National Wildlife Refuge.

The additions and revisions read as follows:

§ 32.69 Wisconsin.

\* \* \* \* \*

Horicon National Wildlife Refuge

\* \* \* \* \*

C. Big Game Hunting. \* \* \*

\* \* \* \* \*

6. Any ground blind used during any gun deer season must display at least 144 square inches (936 cm²) of solid-blaze-orange material visible from all directions.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow only bank fishing.

2. We prohibit the use of fishing weights or lures containing lead.

\* \* \* \* \*

Necedah National Wildlife Refuge

\* \* \* \* \*

C. Big Game Hunting. \* \* \*

\* \* \* \* \*

6. Refuge Area 2 is open to deer hunting during State archery, gun, and

muzzleloader seasons, except for any early antlerless-only hunts.

\* \* \* \* \*

11. Any ground blind used during any gun deer season must display at least 144 square inches (936 cm²) of solid-blaze-orange material visible from all directions.

D. Sport Fishing. We allow fishing in designated waters of the refuge at designated times subject to the following conditions:

1. We allow use of nonmotorized boats in Sprague-Goose pools only when these pools are open to fishing.

2. We allow motorized boats in Suk Cerney Pool.

3. We allow fishing by hook and line only.

\* \* \* \* \*

Trempealeau National Wildlife Refuge

\* \* \* \* \*

B. Upland Game Hunting. [Reserved]

\* \* \* \* \*

D. Sport Fishing. We allow fishing on designated areas of the refuge from legal sunrise to legal sunset in accordance with State laws for inland waters subject to the following conditions:

1. We allow boats propelled by hand or electric motors only on refuge pools. We do not prohibit the possession of other watercraft motors, only their use. We do not restrict gasoline-powered motors on the navigable channel of the Trempealeau River.

2. We prohibit harvest of turtle, snake, frog, or any other reptile or amphibian (see § 27.21 of this chapter).

3. We prohibit the release of live bait.

4. We prohibit night-lighting, archery, spearing, or netting of fish.

5. We prohibit fishing within 200 feet (60 m) of a water control structure as per State regulation.

6. Anglers must remove ice fishing shelters from the refuge at the end of each day.

\* \* \* \* \*

Dated: August 29, 2011.

Eileen Sobeck,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011-22752 Filed 9-8-11; 8:45 am]

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Federal Register

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**H.R. 2553/P.L. 112-27**

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To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes. (Aug. 12, 2011; 125 Stat. 273)

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