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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 240 and 249

**[Release No. 34–67286A; File No. S7–44–10]**

**RIN 3235–AK87**

### Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations; Correction

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; correction; clarification.

**SUMMARY:** On July 13, 2012, the Securities and Exchange Commission (''Commission'') published a document in the **Federal Register** (77 FR 41602), concerning, among other things, the process for submissions for review of security-based swaps for mandatory clearing and notice filing requirements for clearing agencies. The document contained typographical errors in the preamble and in the general authority for Part 240. The Commission is publishing corrections to the preamble and the general authority as well as a clarification concerning the Office of Management and Budget (''OMB'') control number for Rule 3Ca–1 under the Securities Exchange Act of 1934 (''Exchange Act'').

**DATES:** Effective on August 13, 2012.

**FOR FURTHER INFORMATION CONTACT:** Catherine Moore, Senior Special Counsel, Kenneth Riitho, Special Counsel or Andrew Bernstein, Special Counsel, at (202) 551–5710; Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

**SUPPLEMENTARY INFORMATION:**

### Correction

In the **Federal Register** of July 13, 2012, in FR Doc. 2012–16233, the following corrections are made:

■ 1. On page, 41627 in the third line of the third column remove ''3'' and add in its place ''10.''

■ 2. On page, 41631 in the 40th line of the third column remove ''3'' and add in its place ''10.''

■ 3. On page, 41632 in the 32nd line of the first column remove ''3'' and add in its place ''10.''

■ 4. On page, 41645 in the 23rd line of the third column remove ''Security-Based Swap Submissions'' after the phrase, ''mandate to submit'' and add in its place ''Advance Notices.''

5. On page, 41646 in the 57th line of the first column remove ''14'' after the phrase, ''resulting in a total annual burden of'' and add in its place ''16.''

### PART 240—[CORRECTED]

■ 6. On page 41647, in the 24th line from the bottom of the third column, the general authority citation for part 240 is corrected to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 et seq.; 18 U.S.C. 1350, 12 U.S.C. 5221(e)(3), and Sec. 939A, Pub. L. 111–203, 124 Stat. 1376, (2010), unless otherwise noted.

* * * * *

### Clarification

On page 41627, in the 14th line from the bottom of the first column, it states: ''Finally, the Commission has submitted a new collection of information titled 'Rule 3Ca–1 Stay of Clearing Requirement and Review by the Commission under the Securities Exchange Act of 1934' to OMB for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. OMB has not yet assigned a control number to the new collection of information.'' The Commission has submitted the collection of information under Rule 3Ca–1 as part of the collection of information in ''Rule 19b–4 Filings with Respect to Proposed Rule Changes by Self-Regulatory Organizations'' (OMB Control No. 3235–0045), so a new control number for the information collection request under Rule 3Ca–1 will not be assigned. We provide below a clarification of why the information collection request under Rule 3Ca–1 was submitted under OMB Control No. 3235–0045:

Section 3C of the Exchange Act, as added by Section 763(a) of the Dodd-Frank Act (''Exchange Act Section 3C'') requires each clearing agency that plans to accept a security-based swap (or any group, category, type or class of security-based swaps) for clearing to submit such security-based swap to the Commission (referred to herein as a ''Security-Based Swap Submission'') for a determination by the Commission of whether the security-based swap (or any group, category, type or class of security-based swaps) referenced in the submission is required to be cleared.[1] The amendments to Rule 19b–4 and Form 19b–4 will require, among other things, that clearing agencies file Security-Based Swap Submissions and any related information electronically with the Commission on Form 19b–4 using the existing Electronic Form 19b–4 Filing System.[2]

Exchange Act Section 3C also provides that after making a mandatory clearing determination, the Commission, on application of a counterparty to a security-based swap (or group, category, type, or class of security-based swaps), or on its own initiative, may stay the clearing requirement.[3] The Commission adopted new Rule 3Ca–1 to establish the procedure by which the Commission may stay the requirement that a security-based swap is subject to mandatory clearing while the clearing of the security-based swap is reviewed.[4] The collection of information required by new Rule 3Ca–1 will be used by the Commission to determine whether to grant the stay of the clearing requirement sought by a counterparty and to review whether the clearing requirement will continue to apply to the security-based swap (or group,

[1] *See* 15 U.S.C. 78c–3(b)(2)(A) (as added by Section 763(a) of the Dodd-Frank Act).

[2] *See Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations,* Securities Exchange Act Release No. 67286 (June 28, 2012), 77 FR 41602 (July 13, 2012) (''*Adopting Release*'').

[3] *See* 15 U.S.C. 78c–3(c)(1) (as added by Section 763(a) of the Dodd-Frank Act).

[4] *See* Adopting Release, 77 FR 41618.

category, type, or class of security-based swaps) referenced in the application for a stay. [5]

After reviewing the collection of information requirements for the amendments to Rule 19b–4 and Form 19b–4 and for new Rule 3Ca–1, the Commission believes that the procedures for reviewing Security-Based Swaps Submissions and applications for a stay from a mandatory clearing requirement are so closely connected that the collection of information should be included in a single submission to OMB. Specifically, the number of applications for a stay from a mandatory clearing requirement will, at least in part, be dependent on the number of mandatory clearing determinations the Commission makes pursuant to a Security-Based Swap Submission filed pursuant to Rule 19b–4 and on Form 19b–4.[6] In estimating the collection of information requirement related to new Rule 3Ca–1, the Commission drew a comparison between the amount of time it would take for a clearing agency to prepare a Security-Based Swap Submission and the amount of time it would take a counterparty to prepare an application of a stay of a clearing requirement, given that each filing would likely address similar issues related to the clearing of the particular security-based swap.[7] In addition, the Commission believes that an application for a stay will take less time to prepare than a new submission, due to the fact that some of the information addressed in the application for a stay will have already been provided with the Security-Based Swap Submission when it was published for notice and comment.[8] Accordingly, the Commission believes that the collection of information that is required in connection with a request for a stay under new Rule 3Ca–1 is interrelated to the collection of information under Rule 19b–4 and Form 19b–4 and should not be treated as a separate collection of information. For that reason, the Commission has submitted the collection of information under Rule 3Ca–1 as part of the collection of information in ''Rule 19b–4 Filings with Respect to Proposed Rule Changes by Self-Regulatory Organizations'' (OMB Control No. 3235–0045).

[5] *See* Adopting Release, 77 FR 41628.

[6] *See* Adopting Release, 77 FR 41634.

[7] *Id.*

[8] *Id.*

Dated: July 19, 2012.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2012–17985 Filed 7–24–12; 8:45 am]

**BILLING CODE 8011–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 376

**[Docket No. RM12–13–000; Order No. 765]**

## Continuity of Operations Plan

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** In this rule the Commission revises its regulations pertaining to its Continuity of Operations Plan to allow the Commission the discretion to better address not only long-term and catastrophic events but also short-term events including loss of power or water. The rule allows for greater discretion regarding: the activation and deactivation of the Continuity of Operations Plan and any suspension of Commission operations; the length of time that the Continuity of Operations Plan is in effect and the length of time that Commission operations are suspended; the deactivation schedule and the resumption of full Commission operations; and the rescheduling of hearings, conferences and meetings. The rule also adds items to the list of requirements which are suspended when Commission operations are suspended.

**DATES:** *Effective Date:* The rule will become effective July 25, 2012.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Molloy, Office of the General Counsel, Federal Energy Regulatory Commission, Room 102–67, 888 First St. NE., Washington, DC 20426, (202) 502–8771. Lawrence R. Greenfield, Office of the General Counsel, Federal Energy Regulatory Commission, Room 102–15, 888 First St. NE., Washington, DC 20426, (202) 502–6415.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, Cheryl A. LaFleur, and Tony T. Clark.

### Final Rule

*(Issued July 19, 2012)*

### I. Introduction

1. The Commission's regulations pertaining to its Continuity of Operations Plan (COOP) were originally developed to address emergency conditions lasting up to 30 days during which Commission headquarters operations are disrupted or communications are unavailable, either of which may prevent the public or the Commission from meeting regulatory or statutory requirements.[1] Events such as the power outage and earthquake that affected Commission headquarters operations in 2011 show that the Commission's regulations pertaining to its COOP need to address a wide range of disruptions during which the Commission's headquarters is unable to function, either in whole or in part, in the ordinary manner. Accordingly, this Final Rule revises the Commission's regulations pertaining to its COOP to better address not only longer term and catastrophic events, but also shorter term events such as loss of power or water.

### II. Discussion

2. The Commission, in this Final Rule, adopts revisions to its COOP regulations. In doing so, however, the Commission emphasizes that its goal in the event of an emergency is to continue operations in as normal a manner as circumstances allow,[2] and, where a full or partial suspension of agency operations does occur, to return to full, normal operations as quickly as possible.

3. With this approach in mind, this Final Rule revises the Commission's COOP regulations to allow greater discretion to respond to the varying situations which may disrupt Commission headquarters functions.[3] This Final Rule recognizes that Commission headquarters operations may be temporarily disrupted in whole or in part, or communications with Commission headquarters may be temporarily unavailable, in whole or in part, due to a variety of causes and for periods of varying length depending on

[1] More information concerning the COOP can be found on the Commission's Web site at *www.ferc.gov/coop.asp.*

[2] For example, teleworking may allow certain Commission functions to continue in particular circumstances as if there had been no or only limited disruption to Commission headquarters functions. As appropriate in particular circumstances, such functions may include, for example, participation by Commission Trial Staff in informal settlement conferences and discussions in those proceedings that have been set for trial-type evidentiary hearing and/or settlement judge procedures.

[3] Notwithstanding the revisions to the Commission's COOP regulations adopted here, the Commission's goal in the event of an emergency that requires a full or partial suspension of agency operations is to return to full, normal operations as quickly as possible.

the cause. Accordingly, this Final Rule allows for the activation of the COOP and, following such activation, for the suspension of Commission operations, in whole or in part, as appropriate, in a variety of emergency situations, including situations such as loss of power or water.

4. Currently, the COOP can be activated for a period of varying length up to 30 days. This Final Rule explicitly provides that the Chairman (or the Chairman's delegate, pursuant to section 376.205 of the Commission's regulations,[4] as appropriate) may activate the COOP, and, following activation of the COOP, suspend Commission operations in whole or in part.[5] The Final Rule also explicitly provides that the Chairman (or the Chairman's delegate) may shorten the time during which the COOP is activated to less than 30 days, and the Commission (or the Commission's delegate pursuant to section 376.204 of the Commission's regulations,[6] as appropriate) may extend the time during which the COOP is activated to beyond 30 days, and that the Chairman (or the Chairman's delegate) may similarly shorten any suspension of Commission operations, and the Commission (or the Commission's delegate) may similarly extend any suspension of Commission operations. This Final Rule further explicitly provides time for the Commission to transition from the period when the COOP is active, and when Commission operations are suspended in whole or in part, to a return to full Commission functionality and normal operations.[7] To aid this transition, this Final Rule not only provides time for such transition but also explicitly provides that the Chairman (or the Chairman's delegate) may deactivate the COOP and may resume Commission operations either simultaneously for all activities, or activity by activity gradually over time, as the Chairman (or the Chairman's delegate) determines to be appropriate, in order to better manage the return to full Commission functionality and normal operations.

5. This Final Rule revises the timing of when filings are due and when the Commission must act, in the event of a suspension of Commission operations. This Final Rule also adds to the existing list of requirements which are suspended during a suspension of Commission operations several matters that were either inadvertently left out of prior Final Rules or were only implicitly covered, including: (1) comments responding to notices of inquiry; (2) responses to deficiency letters; (3) notices of intent to file new applications and applications for new licenses pursuant to section 15 of the Federal Power Act; (4) requests for rehearing of orders or letter orders issued by the Commission or its delegate; and (5) certain submittals by the Electric Reliability Organization.

6. This Final Rule further explicitly provides that administrative law judges and the Commission may reschedule hearings, conferences, and other meetings after the resumption of Commission operations following the suspension of those operations.

## III. Regulatory Flexibility Act Certification

7. The Regulatory Flexibility Act of 1980 (RFA)[8] generally requires a description and analysis of Final Rules that will have a significant economic impact on a substantial number of small entities. This Final Rule concerns a matter of internal agency procedure and it will not have such an impact. An analysis under the RFA is not required.

## IV. Information Collection Standard

8. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[9] This Final Rule contains no new information collections. Therefore, OMB review of this Final Rule is not required.

## V. Environmental Analysis

9. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. Excluded from this requirement are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[10] This rule is procedural in nature and therefore falls within this exception; consequently, no environmental consideration is necessary.

## VI. Document Availability

10. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington, DC 20426.

11. From the Commission's Home Page on the Internet, this information is available in eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits (i.e., the subdocket number—e.g., 000, 001, 002, etc.) in the docket number field.

12. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact Online Support at 1–866–208–3676 (email at *FERCOnlineSupport@ferc.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659 (email at *public.referenceroom@ferc.gov*).

## VII. Effective Date and Congressional Notification

13. The provisions of 5 U.S.C. 801 regarding Congressional review of Final Rules do not apply to this Final Rule because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

14. These regulations are effective on July 25, 2012. The Commission finds that notice and public comments are unnecessary because this rule concerns only agency procedure or practice. Therefore the Commission finds good cause to waive the notice period otherwise required before the effective date of a Final Rule.

## List of Subjects in 18 CFR Part 376

Civil defense, Organization and functions (Government agencies)

By the Commission.

**Kimberly D. Bose,**

*Secretary.*

In consideration of the foregoing, the Commission amends part 376, Chapter I, Title 18, Code of Federal Regulations, to read as follows:

[4] 18 CFR 376.205.

[5] 42 U.S.C. 7171(c) (the Chairman ''shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission''); accord 18 CFR 376.205 (the Chairman is ''administrative head'' of the Commission); cf. 42 U.S.C. 7171(h) (the Commission may sit anywhere in the United States).

[6] 18 CFR 376.204.

[7] The revised regulations do so by, among other things, providing a 14-day period when certain deadlines and activities continue to be held in abeyance notwithstanding the deactivation of the COOP; this 14-day period will allow a smooth transition from suspension of Commission operations to full Commission functionality and normal operations.

[8] 5 U.S.C. 601–12.

[9] 5 CFR 1320.12.

[10] 18 CFR 380.4(a)(2); *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

## PART 376—ORGANIZATION, MISSION, AND FUNCTIONS; COMMISSION OPERATION DURING EMERGENCY CONDITIONS

■ 1. The authority citation for part 376 continues to read as follows:

**Authority:** 5 U.S.C. 553; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

■ 2. Section 376.209 is revised to read as follows:

### § 376.209 Continuity of Operations Plan and suspension of Commission operations.

(a)(1)(i) *Activation of COOP and suspension of Commission operations.* The Commission's Continuity of Operations Plan may be activated by the Chairman (or the Chairman's delegate pursuant to § 376.205, as appropriate). In circumstances in which the Commission's Continuity of Operations Plan is activated, Commission headquarters operations may be temporarily disrupted in whole or in part or communications with Commission headquarters may be temporarily unavailable, either of which may prevent the public or the Commission from meeting regulatory or statutory requirements. After the Commission's Continuity of Operations Plan is activated, Commission operations other than emergency functions may be suspended in whole or in part by the Chairman (or the Chairman's delegate, as appropriate). The provisions of this section are effective upon activation of the Continuity of Operations Plan and the subsequent suspension of Commission operations, in whole or in part, and shall remain in effect up to 30 days, or such shorter time than 30 days as the Chairman (or the Chairman's delegate, as appropriate) determines to be appropriate, or such longer time than 30 days as the Commission (or the Commission's delegate pursuant to section 376.204 of this Part, as appropriate) determines to be appropriate. Resumption of Commission operations following activation of the Continuity of Operations Plan and any subsequent suspension of Commission operations, in whole or in part, may occur either simultaneously for all activities, or over time for just some activities, and in such manner and at such time, as the Chairman (or the Chairman's delegate, as appropriate) or the Commission (or the Commission's delegate, as appropriate) determines to be appropriate.

(ii) *Notification of COOP activation and, following such activation, notification of suspension of Commission operations.* During periods when the Commission's Continuity of Operations Plan is activated and, following such activation, when Commission operations are subsequently suspended in whole or in part, the Chairman (or the Chairman's delegate pursuant to § 376.205, as appropriate) will notify the public that the Continuity of Operations Plan has been activated and that Commission operations have been suspended in whole or in part by sending a press release announcing that fact to major wire services, industry press, and appropriate metropolitan area radio stations The Commission's Web site (*http://www.ferc.gov*) or the Commission's alternative Web site (*http://www.fercalt.gov*), as appropriate, will be activated and a notice that the Continuity of Operations Plan has been activated and that Commission operations have been suspended in whole or in part will be prominently displayed thereon. The Web site or alternative Web site, as appropriate, will act as a resource for the press, industry, and general public. An additional press release will be sent to appropriate media outlets and a notice will be prominently displayed on the Commission's Web site or alternative Web site, as appropriate, when the Continuity of Operations Plan is deactivated and the Commission's headquarters are reopened or reconstituted and Commission operations resume.

(2) *Activities continued during COOP.* Notwithstanding other provisions of this section, during periods when the Commission's Continuity of Operations Plan is activated and, following such activation, when Commission operations are subsequently suspended in whole or in part, the Commission will continue to conduct emergency functions. As part of its emergency functions, the Commission will act on requests to ensure continued construction of essential natural gas facilities with sensitive construction timelines, on Commencement of Service requests, and on completion of dam safety work, in a manner consistent with the maintenance of environmental protections. Also as part of its emergency functions, the Commission will ensure that its personnel are available to respond to plant accidents or reportable incidents at LNG facilities, and to address dam safety, public safety, and security incidents at jurisdictional hydropower projects and to address other matters involving the safety of human life or protection of property. Alternate channels of communication will include measures to ensure that these activities can go forward unhindered.

(b) *Standards of conduct for transmission service providers.* During periods when the Commission's Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part, a Transmission Provider affected by the same emergency affecting the Commission may, for up to 30 days, or such other time as the Chairman (or the Chairman's delegate pursuant to § 376.205, as appropriate) may direct, delay compliance with the requirement to report to the Commission each emergency that resulted in any deviation from the standards of conduct within 24 hours of such deviation. If the emergency prevents such Transmission Provider from posting information on its OASIS or Internet Web site, the Transmission Provider may, for up to 30 days, or such shorter time as the Chairman (or the Chairman's delegate, as appropriate) may direct or such longer time as the Commission (or the Commission's delegate pursuant to § 376.204, as appropriate) may direct, also delay compliance with the requirements of § 358.4(a)(2) of this chapter to post this information on its OASIS or Internet Web site, as applicable.

(c) *Tolling of time periods for Commission action.* Unless otherwise directed, for those pending matters where the date that the Commission must act falls during the period when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part and also during the 14 days thereafter, the Commission tolls, for purposes of further consideration, the time period in which the Commission must act. Such matters include:

(1) 60-day period to act on requests for Exempt Wholesale Generator or Foreign Utility Company status;

(2) 90-day period for acting on requests for certification of qualifying facility status;

(3) 60-day period for acting on interlocking directorate applications;

(4) 60-day period for acting on Public Utility Holding Company Act exemptions and waivers;

(5) 180-period for acting on applications under section 203 of the Federal Power Act;

(6) 150-day period for acting on intrastate pipeline applications for approval of proposed rates;

(7) Period ending 60 days prior to the Electric Reliability Organization's (ERO) fiscal year for acting on the ERO's budget;

(8) 60-day period for acting on notifications that a Reliability Standard may conflict with a function, rule, order, tariff, rate schedule or agreement;

(9) 60-day period for acting on applications for review of a penalty imposed by the ERO for violation of a Reliability Standard;

(10) 45-day protest period for protesting Prior Notice Filings, and the 30-day period for resolving and filing to withdraw such Protests;

(11) 30-day period for acting on requests for rehearing;

(12) Time periods for action by a presiding officer or the Motions Commissioner, as well as by the Commission, on motions to permit interlocutory appeals, interlocutory appeals and certified questions; and

(13) 90-day period for acting on applications requesting relief from, or reinstatement of, an electric utility's mandatory purchase obligation pursuant to section 210(m) of the Public Utility Regulatory Policies Act of 1978.

(d) *Suspension of certain requirements.* Unless otherwise directed, during periods when the Commission's Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part, the requirements to file by a certain date are suspended when communications with Commission headquarters are unavailable such that filings, submissions, and notifications cannot be received by the Commission. Unless otherwise directed by the Chairman (or the Chairman's delegate pursuant to § 376.205, as appropriate), those filings, submissions, and notifications, the filing of which was suspended, will be due the first day that communications with Commission headquarters are available such that filings, submissions, and notifications can be received by the Commission. Such filings, submissions, and notifications include:

(1) Filings to comply with orders or notices, including orders or notices issued by the Commission, a presiding officer, and a Commission decisional employee (including the directors of the Commission's various offices and their delegates);

(2) Filings required to be made by a date certain either under the Commission's regulations, or under orders and notices issued by the Commission, a presiding officer, and a Commission decisional employee (including the directors of the Commission's various offices and their delegates); such filings include, e.g., briefs, motions, and answers to motions;

(3) Motions to intervene and notices of intervention, or protests;

(4) Comments responding to notices of inquiry, proposed rulemakings or technical conferences;

(5) Responses to data requests and deficiency letters issued either by the Commission or by a decisional employee pursuant to delegated authority;

(6) Self-reports of violations;

(7) Responses to staff audit reports;

(8) Contacts with the Commission's Enforcement Hotline;

(9) Accounting filings required by the Commission's Uniform Systems of Accounts;

(10) Forms required to be filed by a date certain;

(11) Notices of intent to file new applications and applications for new licenses pursuant to section 15 of the Federal Power Act;

(12) Requests for rehearing of orders and letter orders issued either by the Commission or by a decisional employee pursuant to delegated authority; and

(13) The Electric Reliability Organization's advising the Commission of the Electric Reliability Organization's intent to issue Level 1 Advisories, Level 2 Recommendations, and Level 3 Essential Actions, and the Electric Reliability Organization's reporting to the Commission on actions taken in response to Level 2 Recommendations and Level 3 Essential Actions.

(e) *Acceptance and suspension of rate and other filings.* Unless otherwise directed, if the date by which the Commission is required to act on rate and other filings made pursuant to section 4 of the Natural Gas Act, section 205 of the Federal Power Act, and section 6(3) of the Interstate Commerce Act falls during a period when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part and also during the 14 days thereafter, such filings shall be deemed to be accepted for filing and suspended and made effective on the requested effective date, subject to refund and further order of the Commission. The acceptance for filing and suspension of these filings is without prejudice to any further action the Commission may take with respect to these filings.

(f) *Electric Reliability Organization penalties.* Unless otherwise directed, if the date a penalty imposed by the Electric Reliability Organization under section 215 of the Federal Power Act would take effect falls during a period when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part and also during the 14 days thereafter, review of such penalty by the Commission shall be deemed to be initiated and the penalty shall be stayed pending further action of the Commission.

(g) *Consistency of State action with Reliability Standard.* Unless otherwise directed, if the date by which a Commission determination under section 215 of the Federal Power Act as to whether a State action is inconsistent with a Reliability Standard is required to be made falls during a period when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part and also during the 14 days thereafter, the effectiveness of the State action will be deemed to be stayed pending further action by the Commission.

(h) *Suspension of evidentiary hearings and related conferences and meetings.* During periods when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part, all evidentiary hearings, prehearing conferences, settlement conferences, and other meetings before presiding officers are suspended, and any requirement that a presiding officer act on motions (including motions to permit interlocutory appeals and to certify questions) is also suspended. Service of data requests and other discovery, and responses thereto, by and to the Commission's Trial Staff is similarly suspended. Upon resumption of Commission operations in whole or in relevant part, such hearings, conferences and other meetings will be rescheduled, action on motions also will be rescheduled, and service of data requests and other discovery, and responses thereto, by and to the Commission's Trial Staff, will similarly be rescheduled, by the presiding officer or the Commission, as appropriate.

(i) *Enforcement Actions under the Public Utility Regulatory Policies Act of 1978.* Unless otherwise directed, if the date by which the Commission is required to act on a petition for enforcement action under section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 falls during a period when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in relevant part, and also during the 14 days thereafter, the Commission will not initiate such an enforcement action under section

210(h)(2) of the Public Utility Regulatory Policies Act of 1978 and the petitioner may itself bring its own enforcement action in the appropriate court.

(j) *Chairman's and Commission's authority to modify deadlines and timeframes.* During periods when the Continuity of Operations Plan is activated and, following such activation, when Commission operations are suspended in whole or in part and also during the 14 days thereafter, the Chairman (or the Chairman's delegate pursuant to § 376.205, as appropriate), may shorten, and the Commission (or the Commission's delegate pursuant to § 376.204, as appropriate) may extend, with respect to the matters addressed in this section, as appropriate:

(1) The time periods and dates for filings with the Commission, a decisional employee, or a presiding officer;

(2) The time periods and dates for reports, submissions and notifications to the Commission, a decisional employee, or a presiding officer; and

(3) The time periods and dates for actions by the Commission, a decisional employee, or a presiding officer.

[FR Doc. 2012–18157 Filed 7–24–12; 8:45 am]

**BILLING CODE 6717–01–P**

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404 and 416

**[Docket No. SSA–2010–0060]**

**RIN 0960–AH26**

## Expedited Vocational Assessment Under the Sequential Evaluation Process

**AGENCY:** Social Security Administration.

**ACTION:** Final rules.

**SUMMARY:** We are revising our rules to give adjudicators the discretion to proceed to the fifth step of the sequential evaluation process for assessing disability when we have insufficient information about a claimant's past relevant work history to make the findings required for step 4. If an adjudicator finds at step 5 that a claimant may be unable to adjust to other work existing in the national economy, the adjudicator will return to the fourth step to develop the claimant's work history and make a finding about whether the claimant can perform his or her past relevant work. We expect that this new expedited process will not disadvantage any claimant or change the ultimate conclusion about whether a claimant is disabled, but it will promote administrative efficiency and help us make more timely disability determinations and decisions.

**DATES:** These rules are effective August 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Janet Truhe, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–7203. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

We published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on September 13, 2011.[1] In the NPRM, we proposed to give adjudicators the discretion to proceed to the fifth step of the sequential evaluation process for assessing disability when we have insufficient information about a claimant's past relevant work history to make the findings required for step 4. If an adjudicator finds at step 5 that a claimant may be unable to adjust to other work existing in the national economy, the adjudicator will return to the fourth step to develop the claimant's work history and make a finding about whether the claimant can perform his or her past relevant work. The expedited process does not affect our responsibility under the Social Security Act (Act) and our current regulations to make every reasonable effort to develop claimants' medical evidence.[2] The preamble to the NPRM provides a full explanation of the background of this expedited process. You can view the preamble to the NPRM by visiting *www.regulations.gov* and searching for document ''SSA–2010–0060–0001.''

### Public Comments

We provided 60 days for the public to comment on the NPRM. We received three comment letters. They came from a member of the disability advocacy community, a regional disability advocacy group, and a national group of Social Security claimants' representatives. You can view the comments by visiting *www.regulations.gov* and searching for ''SSA–2010–0060.'' After carefully considering the comments, we are adopting our proposed revisions, with a few minor changes described below, in these final rules.

Because of their length, we have condensed, summarized, and paraphrased the comments and responded to the significant issues raised by the commenters that were within the scope of these rules.

*Comment:* One commenter expressed concern that adjudicators may incorrectly deny claims if they do not fully develop claimants' past work histories and consider the special medical-vocational profiles.[3] To ensure that adjudicators properly consider the special profiles, the commenter recommended that we require adjudicators who do not make findings at step 4 to state that they considered the potential application of the special profiles before they deny claims at step 5.

*Response:* We agree with the commenter that adjudicators who do not make findings at step 4 using the expedited process must consider the potential application of the special medical-vocational profiles before they deny claims at step 5. To remind our adjudicators to consider the special profiles in this situation, we are including a reference to section 404.1562[4] in final sections 404.1520(h) and 404.1594(f)(9) and a reference to section 416.962[5] in final sections 416.920(h) and 416.994(b)(5)(viii). We are also including a reference to section 404.1562 in final section 404.1545(a)(5)(ii) to be consistent with the reference to section 416.962 we proposed and are adopting in final section 416.945(a)(5)(ii).

However, we are not adopting the suggestion to require adjudicators to state that they considered medical-vocational profiles in this situation because we can address the commenter's concern in ways that we believe will be more effective.

First, we currently have an electronic claims analysis tool in widespread use at the initial level of our administrative review process that reminds adjudicators to consider these profiles before they evaluate claims at step 5. We will insert a similar reminder in this tool so that adjudicators will consider special profiles before determining whether to proceed to step 5 using the expedited process. As we indicated in the NPRM, if adjudicators use the

[1] 76 FR 56357.

[2] See sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act and 20 CFR 404.1512(d) and 416.912(d).

[3] See 20 CFR 404.1562 and 416.962, Social Security Ruling 82–63, and POMS DI 25010.001, available at *http://policynet.ba.ssa.gov/poms.nsf/lnx/0425010001.*

[4] Medical-vocational profiles showing an inability to make an adjustment to other work.

[5] Id.

expedited process, they will still consider whether claimants may be disabled based on the special medical-vocational profiles, the Medical-Vocational Guidelines (Guidelines),[6] or an inability to meet the mental demands of unskilled work.[7] We also explained that ''[i]f any of these rules would indicate that the claimant may be disabled or if the adjudicator has any doubt whether the claimant can perform other work existing in significant numbers in the economy, the adjudicator *must* return to step 4 to further develop the claimant's vocational information and determine whether the claimant can perform his or her past relevant work.'' [8] If there is insufficient evidence about a claimant's past relevant work in the record to determine whether a special medical-vocational profile applies, the adjudicator must return to step 4 to further develop the vocational evidence because a special medical-vocational profile may apply.

Second, we plan to conduct training on these final rules for adjudicators at all levels of the disability determination process regarding use of the new expedited process. We will also monitor the use of the expedited process during quality reviews to ensure that we apply the process correctly.

*Comment:* One commenter doubted whether we could deny claims at step 5 using the expedited process because a step 5 analysis must include consideration of claimants' past work histories. Another commenter stated we should always develop a complete past work history because evidence of past work can influence our finding at step 5 and can inform our assessment of the claimant's residual functional capacity (RFC).[9]

*Response:* We disagree with these comments. There are a number of situations in which it would be appropriate to deny a claim without considering a claimant's past work history. For example, if a claimant is 44 years old with a high school education and has the RFC to perform a full range of sedentary work, Rules 201.27, 201.28, and 201.29 of the Medical-Vocational Guidelines (Guidelines) direct that this claimant be found not disabled, regardless of the skill level of his or her past relevant work or the transferability of those skills.[10] As we explained in the NPRM, adjudicators will only find that a claimant is not disabled without returning to step 4 when they can find at step 5 that a claimant is not disabled ''based solely on age, education, and RFC, *regardless of the claimant's skill level and transferability of those skills.''* [11]

We also disagree with the comment that we need evidence of past work history to determine a claimant's RFC. As our current rules make clear, we determine a claimant's RFC *before* we go to step 4,[12] and we do not assess RFC in the context of a claimant's past work history. Rather, we determine a claimant's RFC based on his or her ability to meet the ''physical, mental, sensory, and other requirements of work'' [13] on a ''regular and continuous basis.'' [14] For example, the physical demands of work include activities such as sitting, standing, and walking.[15] We do not assess RFC in the context of a claimant's past work history; therefore, we can use the proposed expedited process regardless of past work history development.

*Comment:* One commenter questioned our view that the expedited process would not disadvantage any claimant [16] and expressed several concerns. The commenter believed that adjudicators would have too much discretion to decide when to use the expedited process because we did not explain what we mean by ''insufficient'' evidence to make a finding at step 4. The commenter said that by not requiring our adjudicators to make even a ''reasonable effort'' to obtain additional evidence of past work history, we diminish their duty to develop the record, even if evidence is readily available. The commenter also said that if we adopted the expedited process we would adjudicate claims using different procedures and would incorrectly deny some claims without fully assessing some claimants' abilities to perform their past relevant work. The commenter recognized that making the correct decision ''as early in the process as possible is the key to a fair process,'' but said that the expedited process might lead us to deny claims incorrectly due to insufficient development of past work.

*Response:* We disagree with these comments. First, in response to the commenter's concern about the definition of ''insufficient,'' we explained in the NPRM that we would consider evidence to be insufficient when a claimant does not provide us with enough information about each of his or her jobs within the relevant 15-year period on Form SSA–3368, Disability Report-Adult, (or the Internet version of this form) [17] and, when necessary, Form SSA–3369, Work History Report,[18] for us to make a finding at step 4.[19] Our adjudicators are familiar with the concept of ''insufficient evidence'' in this context, and we are confident that they understand reference to ''insufficient evidence'' of a claimant's ability to do his or her past work. We also have not revised these rules to require adjudicators to make a reasonable effort to collect additional work history before going to step 5 in all cases. Imposing such a requirement would delay adjudication in those cases in which the claimant's past relevant work history has no effect on the ultimate finding of disability.

Although use of the expedited process may change whether we deny a claim at step 5 versus step 4, we expect that it will not change the ultimate determination of whether the claimant is disabled. We will only deny a claim at step 5 using the expedited process if the claimant's age, education, and RFC indicate that he or she is not disabled regardless of what an inquiry into past relevant work would reveal. As we noted in the NPRM, our experience using a similar expedient in the ten ''prototype'' States supports the conclusion that the expedited process does not change our ultimate decision as to whether or not a claimant is disabled.[20]

*Other Changes*

We are correcting a cross-reference in §§ 404.1527 and 416.927 to reflect renumbering changes in a final rule published on February 23, 2012 at 77 FR 10651.

[6] See 20 CFR 404.1569 and 416.969.

[7] See 76 FR at 56359.

[8] Id. (emphasis added).

[9] See 20 CFR 404.1545 and 416.945. An RFC assessment is a finding about the most a claimant can still do despite his or her physical and mental limitations.

[10] See Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines. In this example, none of the special profiles would potentially apply, and we assume that the claimant can meet the mental demands of unskilled work.

[11] 76 FR at 56359 (emphasis added).

[12] See 20 CFR 404.1520(a)(4) and 416.920(a)(4).

[13] 20 CFR 404.1545(a)(4) and 416.945(a)(4).

[14] 20 CFR 404.1545(b) and (c) and 416.945(b) and (c).

[15] See 20 CFR 404.1545(b) and 416.945(b).

[16] See 76 FR at 56357.

[17] Currently available at *https://secure.ssa.gov/apps6z/radr/radr-fi.*

[18] Currently available at *http://www.socialsecurity.gov/online/ssa-3369.pdf.*

[19] 76 FR at 56358.

[20] 76 FR at 56359.

**Regulatory Procedures**

*Executive Order 12866, as Supplemented by Executive Order 13563*

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Thus, OMB reviewed them.

*Regulatory Flexibility Act*

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they only affect individuals. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

*Paperwork Reduction Act*

These final rules do not create any new or affect any existing collections; therefore, they do not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

*20 CFR Part 416*

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

**Michael J. Astrue,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we are amending title 20 of the Code of Federal Regulations part 404 subpart P and part 416 subpart I as set forth below:

## PART 404—FEDERAL OLD AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

## Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 is revised to read as follows:

**Authority:** Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.1505 by revising the sixth sentence of paragraph (a) to read as follows:

**§ 404.1505 Basic definition of disability.**

(a) * * * If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work. (*See* § 404.1520(h) for an exception to this rule.) * * *

* * * * *

■ 3. Amend § 404.1520 by adding a new second sentence to paragraph (a)(4), by revising the last sentence of paragraph (a)(4)(iv), the last sentence of paragraph (a)(4)(v), the second sentence of paragraph (f), and by adding a new paragraph (h), to read as follows:

**§ 404.1520 Evaluation of disability in general.**

(a) * * *

(4) * * * See paragraph (h) of this section for an exception to this rule. * * *

(iv) * * * See paragraphs (f) and (h) of this section and § 404.1560(b).

(v) * * * See paragraphs (g) and (h) of this section and § 404.1560(c).

* * * * *

(f) * * * See paragraph (h) of this section and § 404.1560(b). * * *

* * * * *

(h) *Expedited process.* If we do not find you disabled at the third step, and we do not have sufficient evidence about your past relevant work to make a finding at the fourth step, we may proceed to the fifth step of the sequential evaluation process. If we find that you can adjust to other work based solely on your age, education, and the same residual functional capacity assessment we made under paragraph (e) of this section, we will find that you are not disabled and will not make a finding about whether you can do your past relevant work at the fourth step. If we find that you may be unable to adjust to other work or if § 404.1562 may apply, we will assess your claim at the fourth step and make a finding about whether you can perform your past relevant work. See paragraph (g) of this section and § 404.1560(c).

■ 4. In § 404.1527(e)(1)(ii), remove ''paragraph (f)(1)(i) of this section'' and add in its place ''paragraph (e)(1)(i) of this section''.

■ 5. Amend § 404.1545 by revising the first sentence of paragraph (a)(5)(ii) to read as follows:

**§ 404.1545 Your residual functional capacity.**

(a) * * *

(5) * * *

(ii) If we find that you cannot do your past relevant work, you do not have any past relevant work, or if we use the procedures in § 404.1520(h) and § 404.1562 does not apply, we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can adjust to any other work that exists in the national economy. * * *

* * * * *

■ 6. Amend § 404.1560 by adding a second sentence to paragraph (b) and revising the first two sentences of paragraph (c)(1) to read as follows:

**§ 404.1560 When we will consider your vocational background.**

* * * * *

(b) * * * See § 404.1520(h) for an exception to this rule.

* * * * *

(c) *Other work.* (1) If we find that your residual functional capacity does not enable you to do any of your past relevant work or if we use the procedures in § 404.1520(h), we will use the same residual functional capacity assessment when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and the vocational factors of age, education, and work experience, as appropriate in your case. (*See* § 404.1520(h) for an exception to this rule.) * * *

* * * * *

■ 7. Amend § 404.1565 by revising the second sentence of paragraph (b) to read as follows:

**§ 404.1565 Your work experience as a vocational factor.**

* * * * *

(b) * * * If you cannot give us all of the information we need, we may try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker. * * *

■ 8. Amend § 404.1569 by revising the third sentence to read as follows:

**§ 404.1569 Listing of Medical-Vocational Guidelines in appendix 2.**

* * * We apply these rules in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable

impairment from doing vocationally relevant past work. (*See* § 404.1520(h) for an exception to this rule.) * * *

■ 9. Amend § 404.1594 by revising paragraph (f)(8) and adding a new paragraph (f)(9) to read as follows:

**§ 404.1594 How we will determine whether your disability continues or ends.**

* * * * *

(f) * * *

(8) If you are not able to do work you have done in the past, we will consider whether you can do other work given the residual functional capacity assessment made under paragraph (f)(7) of this section and your age, education, and past work experience (*see* paragraph (f)(9) of this section for an exception to this rule). If you can, we will find that your disability has ended. If you cannot, we will find that your disability continues.

(9) We may proceed to the final step, described in paragraph (f)(8) of this section, if the evidence in your file about your past relevant work is not sufficient for us to make a finding under paragraph (f)(7) of this section about whether you can perform your past relevant work. If we find that you can adjust to other work based solely on your age, education, and residual functional capacity, we will find that you are no longer disabled, and we will not make a finding about whether you can do your past relevant work under paragraph (f)(7) of this section. If we find that you may be unable to adjust to other work or if § 404.1562 may apply, we will assess your claim under paragraph (f)(7) of this section and make a finding about whether you can perform your past relevant work.

* * * * *

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart I—[Amended]

■ 10. The authority citation for subpart I of part 416 continues to read as follows:

**Authority:** Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 11. Amend § 416.905 by revising the last sentence of paragraph (a) to read as follows:

**§ 416.905 Basic definition of disability for adults.**

(a) * * * If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work. (*See* § 416.920(h) for an exception to this rule.)

* * * * *

■ 12. Amend § 416.920 by adding a new second sentence to paragraph (a)(4), by revising the last sentence of paragraph (a)(4)(iv), the last sentence of paragraph (a)(4)(v), the second sentence of paragraph (f), and by adding a new paragraph (h), to read as follows:

**§ 416.920 Evaluation of disability of adults, in general.**

(a) * * *

(4) * * * See paragraph (h) of this section for an exception to this rule.

* * *

(iv) * * * See paragraphs (f) and (h) of this section and § 416.960(b).

(v) * * * See paragraphs (g) and (h) of this section and § 416.960(c).

* * * * *

(f) * * * See paragraph (h) of this section and § 416.960(b). * * *

* * * * *

(h) *Expedited process.* If we do not find you disabled at the third step, and we do not have sufficient evidence about your past relevant work to make a finding at the fourth step, we may proceed to the fifth step of the sequential evaluation process. If we find that you can adjust to other work based solely on your age, education, and the same residual functional capacity assessment we made under paragraph (e) of this section, we will find that you are not disabled and will not make a finding about whether you can do your past relevant work at the fourth step. If we find that you may be unable to adjust to other work or if § 416.962 may apply, we will assess your claim at the fourth step and make a finding about whether you can perform your past relevant work. See paragraph (g) of this section and § 416.960(c).

■ 13. In § 416.927(e)(1)(ii), remove ''paragraph (f)(1)(i) of this section'' and add in its place ''paragraph (e)(1)(i) of this section''.

■ 14. Amend § 416.945 by revising the first sentence of paragraph (a)(5)(ii) to read as follows:

**§ 416.945 Your residual functional capacity.**

(a) * * *

(5) * * *

(ii) If we find that you cannot do your past relevant work, you do not have any past relevant work, or if we use the procedures in § 416.920(h) and § 416.962 does not apply, we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can adjust to any other work that exists in the national economy.

* * * * *

■ 15. Amend § 416.960 by adding a second sentence to paragraph (b) and revising the first two sentences of paragraph (c)(1) to read as follows:

**§ 416.960 When we will consider your vocational background.**

* * * * *

(b) * * * See § 416.920(h) for an exception to this rule.

* * * * *

(c) *Other work.* (1) If we find that your residual functional capacity does not enable you to do any of your past relevant work or if we use the procedures in § 416.920(h), we will use the same residual functional capacity assessment when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and the vocational factors of age, education, and work experience, as appropriate in your case. (*See* § 416.920(h) for an exception to this rule.) * * *

* * * * *

■ 16. Amend § 416.965 by revising the second sentence of paragraph (b) to read as follows:

**§ 416.965 Your work experience as a vocational factor.**

* * * * *

(b) * * * If you cannot give us all of the information we need, we may try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker. * * *

■ 17. Amend § 416.969 by revising the third sentence to read as follows:

**§ 416.969 Listing of Medical-Vocational Guidelines in appendix 2 of subpart P of part 404 of this chapter.**

* * * We apply these rules in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable impairment from doing vocationally relevant past work. (*See* § 416.920(h) for an exception to this rule.) * * *

■ 18. Amend § 416.987 by revising the first sentence of paragraph (b) to read as follows:

**§ 416.987 Disability redeterminations for individuals who attain age 18.**

* * * * *

(b) * * * When we redetermine your eligibility, we will use the rules for adults (individuals age 18 or older) who file new applications explained in § 416.920(c) through (h). * * *

* * * * *

■ 19. Amend § 416.994 by revising paragraph (b)(5)(vii) and adding a new paragraph (b)(5)(viii) to read as follows:

**§ 416.994 How we will determine whether your disability continues or ends, disabled adults.**

* * * * *

(b) * * *

(5) * * *

(vii) *Step 7.* If you are not able to do work you have done in the past, we will consider whether you can do other work given the residual functional capacity assessment made under paragraph (b)(5)(vi) of this section and your age, education, and past work experience (*see* paragraph (b)(5)(viii) of this section for an exception to this rule). If you can, we will find that your disability has ended. If you cannot, we will find that your disability continues.

(viii) *Step 8.* We may proceed to the final step, described in paragraph (b)(5)(vii) of this section, if the evidence in your file about your past relevant work is not sufficient for us to make a finding under paragraph (b)(5)(vi) of this section about whether you can perform your past relevant work. If we find that you can adjust to other work based solely on your age, education, and residual functional capacity, we will find that you are no longer disabled, and we will not make a finding about whether you can do your past relevant work under paragraph (b)(5)(vi) of this section. If we find that you may be unable to adjust to other work or if § 416.962 may apply, we will assess your claim under paragraph (b)(5)(vi) of this section and make a finding about whether you can perform your past relevant work.

* * * * *

[FR Doc. 2012–17934 Filed 7–24–12; 8:45 am]

BILLING CODE 4191–02–P

## SOCIAL SECURITY ADMINISTRATION

## 20 CFR Part 418

**[Docket No. SSA–2010–0029]**

**RIN 0960–AH22**

## Regulations Regarding Income-Related Monthly Adjustment Amounts to Medicare Beneficiaries' Prescription Drug Coverage Premiums

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, without change, the interim final rule with request for comments we published in the **Federal Register** on December 7, 2010, at 75 FR 75884. The interim final rule contained the rules that we apply to determine the income-related monthly adjustment amount for Medicare prescription drug coverage (also known as Medicare Part D) premiums. This new subpart implemented changes made to the Social Security Act (Act) by the Affordable Care Act. The interim final rule allowed us to implement the provisions of the Affordable Care Act related to the income-related monthly adjustment amount for Medicare prescription drug coverage premiums when they went into effect on January 1, 2011.

**DATES:** The interim final rule with request for comments published on December 7, 2010 (75 FR 75884) is confirmed as final effective July 25, 2012.

**FOR FURTHER INFORMATION CONTACT:** Craig Streett, Office of Income Security Programs, Social Security Administration, 2–R–24 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–9793. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

As we discussed in the interim final rule, in March 2010 Congress passed the Affordable Care Act, which established an income-related adjustment to Medicare prescription drug coverage premiums.[1] The interim final rule added a new subpart C, Income-Related Monthly Adjustments to Medicare Prescription Drug Coverage Premiums, to part 418 of our rules. Subpart C contains the rules that we use to determine when you will be required to pay an income-related monthly adjustment amount in addition to your Medicare prescription drug coverage monthly premium.

The interim final rule also amended our rules on the Medicare Part B (supplementary medical insurance) income-related monthly adjustment amounts to add section 418.1322. This section explains that if we make an income-related monthly adjustment amount determination for you for the effective year for purposes of the Medicare prescription drug coverage program, we will apply the same income-related monthly adjustment amount determination to your Medicare Part B premium for the same effective year.

### Public Comments

On December 7, 2010, we published an interim final rule with request for comments in the **Federal Register** at 75 FR 75884 and provided a 60-day comment period. We received one comment from a member of the public, comments from one organization, and joint comments from four other organizations. We carefully considered the concerns expressed in these comments, but did not make any changes to the interim final rule. We have summarized the commenters' views and have responded to the significant comments that are within the scope of the interim final rule.

*Comment:* One commenter stated that the reasoning behind charging higher Medicare premiums is flawed because citizens who have contributed more to the system should have access to the same products and benefits at the same rate as other citizens. The commenter considered the income-related monthly adjustment to be a tax that could only be established by amending the tax code and suggested that a better alternative would be to reduce Medicare premiums and apportion the costs for primary coverage among the multiple health insurance policies that he believes most beneficiaries have.

*Response:* We have not adopted this comment because the reduction of Federal premium subsidies was legislated by Congress, and our regulations must conform to the provisions of the law.

*Comment:* One organization suggested that we provide notices to beneficiaries affected by the income-related monthly adjustment as early as possible, for example, by October 31 for premium adjustments beginning the following January. The commenter stated that early notice would give enrollees time

[1] Public Law 111–148 § 3308(a).

to adjust their finances, raise any disagreements with income determinations, and reduce the number of retroactive adjustments that are required.

*Response:* We did not adopt this comment. The Internal Revenue Service provides us with modified adjusted gross income data no later than October 15 of each year, as required by law.[2] We must then process the data, verify our data processing, print, and mail the notices. For this reason, we cannot provide notice to beneficiaries regarding the income-related monthly adjustment amount as early as October 31. We do strive to mail the notices promptly and believe that delivery before December provides sufficient time for beneficiaries to make suitable preparations.

These notices contain information about beneficiaries' appeal rights and notify the beneficiaries that they have 60 days to file an appeal when they disagree with the determination. Our notices also inform the beneficiaries of their right to request a new initial determination.

*Comment:* Another comment encouraged us to develop materials to explain what beneficiaries who pay an income-related monthly adjustment can do if they experience a major life-changing event and a significant reduction in income, but have not yet filed a tax return reflecting that change.

*Response:* We already provide information to beneficiaries concerning the issues the commenter raised. When we send a letter telling a beneficiary that he or she must pay an income-related monthly adjustment, we include comprehensive information about what the beneficiary can do if he or she experiences a major life-changing event with a significant reduction in income. We also make available at our offices and on our web site, publications with information explaining this issue.[3] The Centers for Medicare & Medicaid Services (CMS) also provides information on this subject on its Medicare Web site, *www.medicare.gov.*

*Comment:* A comment submitted jointly by four organizations proposed a change in regulations to clarify that a beneficiary's appeal of the imposition of an income-related monthly adjustment on Medicare Part B would automatically apply to an income-related monthly adjustment imposed on Medicare prescription drug coverage, and vice versa. In addition, the organizations suggested that if a beneficiary appeals either a Medicare Part B or Medicare prescription drug coverage income-related monthly adjustment initial determination, we should suspend determinations for both parts until the appeals process is complete and there is a final determination. The commenters proposed that joining the appeals and determinations resulting from those appeals would be beneficial in saving time and paperwork.

*Response:* We agree that 20 CFR 418.1322 and 418.2322 ensure that we apply any income-related monthly adjustment decision made in one program to the other. Under these provisions, if we make a new decision or change a decision on appeal for one program, we will also apply the decision to the other program.

Thus, if a beneficiary has both Medicare Part B and Medicare prescription drug coverage, any changes to an income-related monthly adjustment determination made on appeal will affect both programs and separate appeals are not necessary. In the current income-related monthly adjustment appeal process, we do not suspend the collection of the income-related monthly adjustment while the beneficiary appeals the determination. We make every effort possible to adjudicate the appeal quickly and implement the decision immediately thereafter. If an appeal decision results in an overpayment of premiums, we process refunds without additional action by the beneficiary.

*Comment:* Another commenter proposed a change in regulations to allow a request for a new initial determination when a beneficiary believes that CMS has provided incorrect Medicare prescription drug coverage information. The commenter stated that beneficiaries not enrolled in a Medicare prescription drug coverage plan are entitled to a workable Social Security Administration (SSA) process to establish that an income-related monthly adjustment does not apply. In addition, the commenter suggested that regulatory language include a requirement that Medicare prescription drug plan sponsors, CMS, and SSA exchange updated enrollment information frequently to decrease the probability that beneficiaries are charged an income-related monthly adjustment inappropriately.

*Response:* We are not involved in the Medicare prescription drug coverage enrollment process and we cannot determine the absence of coverage without CMS input. Additionally, adding a process to allow a beneficiary to establish the absence of Medicare prescription drug coverage could negatively affect beneficiaries who merely change plans or re-enroll shortly thereafter. The income-related monthly adjustment could be removed and result in the beneficiary owing a lump sum payment when the new plan information is received. CMS provides us with information about participation in Medicare-approved prescription drug coverage, and we refund any incorrectly billed income-related monthly adjustment for prescription drug coverage money as soon as possible.

*Comment:* The four organizations also suggested that we include the language of the subpart B regulations in the subpart C regulations rather than incorporating the text by cross-references.

*Response:* We have not adopted the comment. We believe that stating the language one time promotes administrative simplicity. We use cross-references in our regulations in other instances, and we are confident that they do not confuse the reader or make it more difficult to use our regulations. Guidelines issued by the Office of the Federal Register authorize agencies to use cross-references in their rules in appropriate situations, and we believe that the situations in which we have used cross-references in these rules are necessary and appropriate. Moreover, adding the subpart B text to our subpart C rules would make the subpart C regulations more complicated and more difficult to use.

## Regulatory Procedures

### *Executive Order 12866 as supplemented by Executive Order 13563*

We consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the criteria for a significant regulatory action under Executive Order 12866 as supplemented by Executive Order 13563. Thus, OMB reviewed the final rule.

### *Regulatory Flexibility Act*

We certify that this rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

### *Paperwork Reduction Act*

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 93.770 Medicare Prescription

[2] 42 U.S.C. 1395w–113(a)(7)(E)(ii).

[3] *See, e.g., Medicare Premiums: Rules for Higher-Income Beneficiaries.* Available at: *http://www.socialsecurity.gov/pubs/10536.pdf.*

Drug Coverage; 93.774 Medicare Supplementary Medical Insurance; 96.002 Social Security—Retirement Insurance.)

**List of Subjects in 20 CFR Part 418**

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Medicare subsidies.

**Michael J. Astrue,**

*Commissioner of Social Security.*

Accordingly, the interim final rule amending 20 CFR chapter III, part 418, subpart B and adding subpart C that was published at 75 FR 75884 on December 7, 2010, is adopted as a final rule without change.

[FR Doc. 2012–17935 Filed 7–24–12; 8:45 am]

BILLING CODE 4191–02–P

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### 29 CFR Part 1614

**RIN Number 3046–AA73**

### Federal Sector Equal Employment Opportunity

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is issuing this final rule to revise its regulations for processing equal employment opportunity complaints by federal sector employees and job applicants. The revisions implement those recommendations of the Commission's Federal Sector Workgroup which require regulatory changes. The revisions include: reaffirming the existing statutory requirement that agencies comply with EEOC regulations, Management Directives, and Bulletins; providing for EEOC notices to non-compliant agencies; permitting pilot projects for EEO complaint processing; requiring agencies to issue a notice of rights to complainants when the investigation will not be timely completed; requiring agencies to submit complaint files and appeals documents to EEOC in digital formats; and making administrative judge decisions on the merits of class complaints final with both parties having the right to appeal to EEOC. The Commission is engaged in further review of the Federal sector EEO complaint process in order to improve its quality and efficiency. The current rulemaking constitutes the Commission's initial step in that review. The Commission will consider additional reforms, including, but not limited to, regulatory changes.

**DATES:** Effective September 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Schlageter, Assistant Legal Counsel, Kathleen Oram, Senior Attorney, or Gary Hozempa, Senior Attorney, Office of Legal Counsel, 202–663–4640 (voice), 202–663–7026 (TTY). (These are not toll free numbers.) This notice is also available in the following formats: Large print, braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to EEOC's Publications Center at 1–800–669–3362 (voice) or 1–800–800–3302 (TTY).

**SUPPLEMENTARY INFORMATION:**

### Introduction

EEOC enforces the statutes that prohibit workplace discrimination in the federal government. These statutes include: section 717 of Title VII of the Civil Rights Act of 1964, which prohibits discrimination against applicants and employees based on race, color, religion, sex, and national origin; section 501 of the Rehabilitation Act of 1973, which prohibits employment discrimination on the basis of disability; section 15 of the Age Discrimination in Employment Act of 1967, which prohibits employment discrimination on the basis of age; the Equal Pay Act of 1963, which prohibits sex-based wage discrimination; and the Genetic Information Nondiscrimination Act of 2008, which prohibits employment discrimination on the basis of genetic information. EEOC is responsible under these statutes for processing equal employment opportunity (EEO) complaints by Federal employees and applicants.

The EEO complaint process is initiated when a federal employee or job applicant contacts an EEO counselor to allege discrimination. If the allegation is not resolved in counseling, the individual may file a formal EEO complaint with the employing agency and that agency investigates the complaint. At the conclusion of the investigation, the complainant may request a hearing before an EEOC administrative judge or a final decision by the agency. After the hearing or final decision, the complainant may appeal to EEOC. Complainants also have the right to sue the alleged discriminating agency in federal district court if they are not satisfied with the administrative resolution of their complaints.

In 2004, former EEOC Chair Cari M. Dominguez asked Commissioner Stuart J. Ishimaru to lead a workgroup to develop consensus recommendations from the Commissioners for improvements to the EEO complaint process. The Federal Sector Workgroup considered testimony and submissions from the November 12, 2002 Commission meeting on federal sector reform, draft staff proposals for federal sector reform, and numerous submissions from internal and external stakeholders with suggestions for improvements to the federal sector process. The Workgroup determined that it did not have internal consensus for large scale revision of the federal sector EEO complaint process at the time, but that there was agreement on several discrete changes to the existing regulations that would clarify or build on the improvements made by the last major revisions to 29 CFR Part 1614 in 1999. The EEOC plans to accompany this final rule with the issuance of additional guidance in Management Directive 110 and other program changes at EEOC. This final rule is part of an ongoing review by the Commission of the federal sector EEO complaint process in which the Commission is examining recommendations regarding the investigative function, including perceived conflicts of interest in the way investigations are conducted and alternatives to the current investigation process, and the hearings and appellate review process.

A notice of proposed rulemaking (NPRM) was circulated to all agencies for comment pursuant to Executive Order 12067 and subsequently published in the **Federal Register** on December 21, 2009. 74 FR 67839 (2009). The notice proposed changes to the Commission's federal sector EEO complaint processing regulations at 29 CFR Part 1614 to implement the recommendations of the Federal Sector Workgroup. It sought public comment on those proposals.

The Commission received thirty-five public comments on the NPRM: fourteen comments from federal agencies; five comments from civil rights groups; five comments from unions and other groups; five comments from attorneys; and six comments from individuals. The Commission has carefully considered all of the comments and has made several changes to the NPRM in response to the comments. The comments on the NPRM and the changes made are discussed more fully below.

### Agency Process

The Workgroup considered many recommendations for improvement to

the parts of the federal sector EEO complaint process for which the agencies bear responsibility—counseling, investigations, and final actions. The Workgroup made a number of non-regulatory and regulatory recommendations to improve the agency process. This final rule contains the following changes to the agency EEO complaint process in part 1614.

**Compliance**

The final rule adds two new paragraphs to § 1614.102. One paragraph, § 1614.102(e), requires that agency EEO programs comply with part 1614 and the Management Directives and Bulletins issued by EEOC (hereinafter ''compliance proposal'') to carry out section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16, and indicates that the Commission will review programs for compliance. The final rule further provides that, as part of EEOC's compliance efforts, the Chair may issue notices to agencies when non-compliance is found, and may publicly identify non-compliant agencies (hereinafter ''program review proposal''). With these provisions, the Commission intends to re-emphasize all agencies' obligations to comply with EEOC's ''rules, regulations, orders, and instructions,'' as required by section 717 of Title VII, 42 U.S.C 2000e–16(b), and to provide some additional mechanisms for reviewing and seeking compliance from agencies that fail to comply with the requirements of Part 1614, Management Directive 110, Management Directive 715, and Management Bulletin 100–1, or any Management Directives or Bulletins that may be issued in the future to carry out section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C 2000e–16.

The majority of comments, including those submitted by several agencies, supported both proposals, with more than a third of them recommending that EEOC adopt stronger provisions, such as making reports of non-compliance public and providing for sanctions against non-complying agencies. A handful of agencies objected to the compliance proposal, arguing that it is duplicative of Title VII's requirement that agencies comply with EEOC guidance and instructions, and that, if enacted, the compliance proposal will give regulatory effect to EEOC Management Directives and Bulletins without notice and comment, in violation of the Administrative Procedure Act (APA). With respect to the program review proposal, several agencies requested that the regulation specifically provide for agency opportunity to comply or provide an explanation for non-compliance before EEOC issues a notice of non-compliance.

EEOC has slightly modified the proposed language of the NPRM to remove a reference to the Chair identifying non-compliant agencies in the Annual Report on the Federal Workforce, and has replaced it with a more general provision stating that, if the Office of Federal Operation's (OFO) attempts at compliance are not successful, the Chair may publicly identify non-compliant agencies. The compliance proposal derives from section 717(b) of Title VII, 42 U.S.C. 2000e–16(b), which requires an agency to comply with EEOC rules and directives pertaining to federal sector EEO programs (''the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this paragraph through appropriate remedies * * * and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section * * *. The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions * * *).'' Similarly, Executive Order 12067 authorizes EEOC to develop rules, policies, and guidelines to administer the federal sector EEO program and requires agencies to comply with those directives. While the compliance proposal, as some agencies noted, reiterates the authority given to EEOC under Title VII, it has been EEOC's experience that not all agencies understand that they are required to comply not only with the rules set forth in 29 CFR part 1614, but also with the compulsory instructions in EEOC's Directives and Bulletins, such as MD–110. Therefore, the compliance proposal is necessary to underscore both EEOC's authority over the federal sector EEO program and an agency's duty to maintain its EEO program consistent with EEOC's mandatory directives.

Agency concerns that the compliance proposal will deny them an opportunity to comment upon orders and procedures that EEOC may issue in the future are misplaced. Under Executive Order 12067, before EEOC issues a new rule, directive, or bulletin about the federal sector EEO program, it must first afford each federal agency an opportunity to comment, advise and consult. As a result, any new rule, directive, or bulletin contemplated by EEOC will go through this interagency coordination process and therefore no EEOC rule, directive, or bulletin, will be issued without agency notice and comment.

With respect to those agency objections that specifically rely on the APA, the National Employment Lawyers Association (NELA), in its comments, argues that ''the relationship between the EEOC and federal agencies is not governed by the APA, which allows a challenge to agency action only by a 'person suffering legal wrong.'" *See* 5 U.S.C. 702. Under the APA, a ''person'' includes entities ''other than agencies.'' 5 U.S.C. 551(2). Therefore, NELA argues, an agency is not an entity afforded the protection an individual enjoys under the APA. Even assuming that an agency lacks standing under the APA to complain about APA protections, EO 12067 provides agencies the notice and comment protections about which the agencies expressed concerns in their comments. As noted above, agencies will have the opportunity to review and comment upon future EEOC rules, directives, and bulletins before they are issued.

EEOC's intent is to assist agencies in perfecting their EEO programs and to persuade agencies whose EEO programs fall short of EEOC standards to correct any noted deficiencies. There will not be a single process for determining non-compliance. Each situation will depend upon the nature of the alleged non-compliance, how the non-compliance comes to EEOC's attention, and how the agency responds to EEOC's inquiries and attempts to obtain compliance. Therefore, it is not feasible to explain how EEOC will determine in every instance whether an agency is in compliance with 29 CFR part 1614 or the mandatory language in EEOC's Directives and Bulletins. In all instances, however, before the Chair issues an agency a notice of non-compliance, the agency will be given a reasonable opportunity to justify its non-compliance or persuade EEOC that it is in compliance with EEOC's regulation or the mandatory sections of EEOC's Directives and Bulletins. As appropriate, EEOC may also make the Chair's notice of non-compliance public. The program review procedures will be set out in MD–110.

**Pilot Projects**

The second new paragraph in § 1614.102 permits EEOC to grant agencies variances from particular provisions of part 1614 to conduct pilot projects for processing complaints in ways other than those prescribed in part 1614. The NPRM provided that pilots would be subject to EEOC approval by vote of the Commissioners and that approval would usually not be granted

for more than 12 months. The Commission supports pilot projects because they can provide helpful data for future recommendations regarding changes to the federal sector EEO complaint process.

All of the agencies and several other commenters supported the pilot projects proposal. In the NPRM, the Commission specifically requested comments on the proposed 12 month maximum timeframe for pilot projects. Comments on the appropriate timeframe for pilot projects were mixed, with some noting that a year is sufficient, and others arguing that a two year timeframe would be preferable. The majority of commenters on the timeframe recommended that EEOC permit extensions of whatever timeframe is adopted. In addition, several comments suggested that agencies be permitted to keep pilot projects in place until all complaints that have entered the pilot project are fully processed. About a third of the commenters expressed concerns about the pilot project proposal. Some recommended that pilot projects be limited to the investigative stage only. Some suggested that pilot projects should be entirely voluntary with an opt-out feature. Others recommended that EEOC include in the regulation criteria that will ensure the protection of complainants' rights in pilot projects. Finally, some commenters noted that federal employee unions should be involved in the development of agency pilot projects.

We have amended § 1614.102(f) to extend the maximum timeframe for variances from the requirements of part 1614 for pilot projects to 24 months. We believe that the proposed 12 month maximum timeframe was too short for some pilot projects to provide meaningful data for analysis of alternatives to the part 1614 process. We note, however, that the timeframe is a maximum only, not a minimum, and that agencies may develop pilot projects that last less than 24 months as appropriate. We have also added a provision giving the Director of the Office of Federal Operations authority to grant, for good cause shown, requests for extensions of variances for up to 12 months. We note as well that the 24 month maximum timeframe for pilot projects will permit agencies to accept complaints into pilot projects for up to 24 months, and that agencies may conclude processing those complaints in the pilot project for a reasonable period thereafter.

We have also added a sentence to the regulation stating that pilot projects must require that complainants knowingly and voluntarily opt-in to the pilot project. It was always the Commission's intention that complainants must affirmatively choose to participate in pilot projects, and that, if they do not opt-in, their complaints would be processed under the part 1614 process. We note that the Commission plans to issue guidance in its Management Directive 110 on additional criteria that the Commission will consider for pilot projects, e.g., requirements that such projects are not a subterfuge for diminishing complainants' rights, that plans for publicizing the pilot among agency employees should be detailed, that criteria for evaluating the success of the pilot should be adequate, that interim evaluations will be done, that the proposed length of the pilot is justified, and that anticipated start and end dates are reasonable. Guidance will also be included on the timeframes for pilot projects and requests for extensions. Agencies may need to consult or negotiate with their unions about pilot project proposals and, if that is the case, they must do so before submitting proposals to EEOC for approval.

The Commission believes that it is preferable that EEOC provide oversight of pilot projects rather than having agencies secure independent authority to operate pilot projects that deviate from the requirements of part 1614, as has occurred in the past. Commission approval of pilot projects will ensure that agency management does not have unfettered discretion and that pilots will not disadvantage complainants.

**Notice of Rights**

The final rule adds a new paragraph to § 1614.108 Investigation of complaints, that requires agencies that have not completed an investigation within the 180-day time limit for investigations (or up to 360 days if the complaint has been amended) to send a notice to the complainant indicating that the investigation is not complete, providing the date by which it will be completed, and explaining that the complainant has the right to request a hearing or file a lawsuit.

The majority of agencies that commented opposed the notice proposal, arguing variously that it is unnecessary, duplicative, and would not add value to the complaint process. A few agencies, however, agreed with the proposal. All other commenters supported the notice proposal, with half of them recommending that it should include stronger provisions, including sanctions against agencies that fail to complete an investigation in 180 days.

The Commission is retaining the notice requirement in the final rule. The Commission believes that it is important that agencies issue a notice to complainants about their rights in the EEO process at the conclusion of the 180-day investigation period so that they can make informed decisions about whether to wait for completion of the investigation, request an immediate hearing, or file a lawsuit. In addition, the Commission believes that requiring such a notice may shorten delays in agency investigations by providing an incentive for agencies to timely complete their investigations. The notice must be in writing, must describe the hearing process and include a simple explanation of discovery and burdens of proof, and must contain an estimated investigation completion date. The Commission further notes that a full range of sanctions are available should an agency not complete its investigation within the required time period. See, *Royal* v. *Dept. of Veterans Affairs,* EEOC Request No. 0520080052 (Sept. 25, 2009); *Reading* v. *Dept. of Veterans Affairs,* EEOC Appeal No. 07A40125 (October 12, 2006); *Talahongva-Adams* v. *Dept. of the Interior,* EEOC Appeal No. 0120081694 (May 28, 2010). Nor does a complainant waive his right to seek sanctions when an agency fails to complete its investigation within the required timeframe simply because a notice is issued by the agency. Sanctions may be warranted even if the complainant elects not to request a hearing but instead waits for the completion of the investigation, unless a specific extension of time has been sought from, and granted by, the complainant, or for other good cause shown.

**Rehabilitation Act Coverage**

In the NPRM, the Commission proposed to amend § 1614.103(b)(6) to comport with the coverage provisions of the Rehabilitation Act and state that part 1614 applies to EEO complaints against the Government Printing Office, except for complaints under the Rehabilitation Act. We received only two comments on the proposal, both favorable. The final rule contains this revision.

**Retaliation**

EEOC proposed in the NPRM to amend § 1614.107(a)(5) to clarify that complaints alleging discrimination in proposals to take personnel actions or other preliminary steps to taking personnel actions should be dismissed unless the complaint alleges that the proposal or preliminary step is retaliatory. After explaining its rationale for this change, EEOC also discussed

alternative language that had been suggested by an agency during the E.O. 12067 interagency coordination. The alternative language provided that complaints alleging discrimination regarding a proposal to take a personnel action, or other preliminary step to taking a personnel action, shall be dismissed ''except that with regard to a claim of retaliation, allegations of severe or repeated threats of adverse action may state a claim of a hostile work environment that is not subject to dismissal on such basis.''

The majority of comments supported EEOC's proposal. Non-agency comments were overwhelmingly supportive, and a handful of them specifically rejected the alternative discussed in the preamble. The Leadership Conference on Civil and Human Rights (LCCHR), for example, argued that the alternative has no basis in law and that there is no plausible rationale for requiring a different standard for federal employees. Agency comments were mixed, with some supporting EEOC's proposal, several supporting the alternative, and others simply criticizing EEOC's proposal without mentioning the alternative. The agencies opposing EEOC's proposal generally argued that the change would encourage premature complaints.

EEOC agrees with the comments favoring its proposed change and has retained it in the final rule. The change to § 1614.107(a)(5) is consistent with EEOC policy guidance on retaliation as applied in the private sector. *See* 2 EEOC Compliance Manual § 8–II.D.3 (1998) (''[A]ny adverse treatment that is based on a retaliatory motive and is reasonably likely to deter the charging party or others from engaging in protected activity'' is prohibited retaliation). Moreover, the amendment codifies EEOC appellate decision precedent in the federal sector. *See, e.g., Lorina D. Goodwin* v. *F. Whitten Peters, Secretary, Department of the Air Force,* EEOC Appeal Nos. 01991301 & 01A01796, 2000 WL 1616337 (October 18, 2000) (holding that the complainant's challenge of a proposed dismissal as being retaliatory stated a claim because ''proposed actions can be considered adverse actions in the reprisal context if they are reasonably likely to deter protected activity'').

A number of commenters, such as the National Treasury Employees Union (NTEU), point out that it is possible that a supervisor might place an employee on a performance improvement plan or propose an adverse action against an employee with the intent of deterring that employee from filing or proceeding with an EEO complaint. And it is not difficult to imagine that the employee could be deterred. A proposed personnel action is not an empty gesture which an employee can ignore without fear of consequences. For example, when a manager proposes a removal for purported performance deficiencies, any employee not wanting to be fired 30 days later must answer the proposal and attempt to refute the agency's allegations of specific performance deficiencies. *See generally* 5 CFR 432.105. Defending against a proposal can be a daunting task, even if the allegations are untrue. Knowing this, an unscrupulous manager who has been accused of employment discrimination could initiate a trumped-up proposed removal in order to cause the employee to drop the complaint and avoid termination. If this occurs, the manager would have engaged in prohibited retaliation under EEOC guidance and precedent, and under the Supreme Court's holding in *Burlington Northern & Santa Fe Railway Co.* v. *White,* 548 U.S. 53, 68 (2006) (Title VII's anti-retaliation provision protects individuals from a retaliatory action that a reasonable person would have found ''materially adverse,'' which in the retaliation context means that the action might have deterred a reasonable person from opposing discrimination or participating in the EEO complaint process). Therefore, EEOC believes it is vitally important that an employee be able to challenge as retaliatory a preliminary step to a personnel action or a proposed action that is reasonably likely to deter that employee from engaging in protected activity.

This revision to the dismissal provision does not change the standard for stating a claim of retaliation under Title VII. Agencies should dismiss retaliation complaints filed by complainants who have not engaged in prior EEO activity or opposed unlawful employment practices. Also, while agencies would no longer be able to dismiss a claim alleging that a proposal or preliminary step was retaliatory under 29 CFR 1614.107(a)(5), they would still evaluate the claim under the failure to state a claim dismissal provision in 29 CFR 1614.107(a)(1). Agencies should dismiss complaints of allegedly retaliatory proposals and other preliminary steps under 29 CFR 1614.107(a)(1) if the alleged retaliatory actions are not materially adverse: that is, if the alleged retaliatory proposal or preliminary step would not dissuade a reasonable worker in the complainant's circumstances from engaging in protected EEO activity.[1]

Not all preliminary steps or proposals are materially adverse. As noted in *Burlington Northern,* ''[a]n employee's decision to report discriminatory behavior cannot immunize that employee from those petty slights or minor annoyances that often take place at work and that all employees experience.'' 548 U.S. at 68; *see also* 2 EEOC Compliance Manual section 8–II.D.3 (1998) (''[P]etty slights and trivial annoyances are not actionable, as they are not likely to deter protected activity.''). Therefore, the challenged preliminary step or proposed action must be likely to deter a reasonable employee from protected activity. Given all the circumstances, a threatened letter of warning may not deter a reasonable complainant from filing a complaint, whereas a proposed suspension may have a deterring effect. ''Context matters * * * for an 'act that would be immaterial in some situations is material in others.' '' *Burlington Northern,* 548 U.S. at 69 (quoting *Washington* v. *Illinois Dept. of Revenue,* 420 F.3d 658, 661 (7th Cir. 2005)).

The alternative language discussed in the preamble of the NPRM regarding 29 CFR 1614.107(a)(5) limits actionable complaints alleging that a proposal or preliminary step is retaliatory to those containing allegations of ''severe or repeated threats of adverse action'' that ''state a claim of a hostile work environment.'' The commenters opposed to the alternative, such as NTEU, Leadership Conference on Civil and Human Rights, and the NAACP Legal Defense & Educational Fund (LDEF), were concerned that the burden of proof necessary to establish a hostile work environment is greater than that necessary to show that a reasonable employee has been deterred from engaging in protected activity, especially in the context of threatened actions. These commenters noted that, under the alternative language, retaliation involving only a single or a few threats would not rise to the pervasive level necessary to establish a hostile environment and thus would be permitted unless the actions are sufficiently severe. They expressed concern that only a threat pertaining to

[1] Additionally, under 29 CFR 1614.105(a)(1), an aggrieved person is required to contact a counselor within 45 days of the date of the alleged discriminatory action unless that time period is extended pursuant to 29 CFR 1614.105(a)(2). Failure to contact a counselor within 45 days may result in dismissal under 29 CFR 1614.107(a)(2). An aggrieved person who wants to challenge a proposed or preliminary action, whether alone or in conjunction with a final action, should be mindful of the applicable time limits. In order to ensure that a retaliation claim based on a proposal or preliminary step will not be dismissed as untimely, the aggrieved person should contact a counselor within 45 days of that preliminary step or proposal.

an ultimate employment action, such as a removal, would suffice to establish severity under the alternative standard and thus state an actionable claim for retaliation. Under EEOC's proposal, on the other hand, the inquiry focuses more on the context in which the threat is made and the effect that threat would have on a reasonable employee. It is highly unlikely that a threat to transfer an employee's assigned duties without loss of pay or position, as occurred in *Burlington Northern,* would rise to the requisite level of pervasiveness or severity under the alternative approach, but it could reasonably deter protected activity and thus state a claim under EEOC's proposal.

The Commission believes the concerns expressed in the comments about the alternative proposal are well founded. *Burlington Northern* states that the anti-retaliation provisions of Title VII do not mirror the anti-discrimination provisions and that this difference must be given weight when interpreting the statute. 548 U.S. 53, at 62–63. As discussed in *Martinelli* v. *Penn Millers Ins. Co.,* 269 Fed.Appx. 226, 230, 2008 WL 723973 (3d Cir. March 18, 2008), after *Burlington Northern,* an employee claiming ''retaliation by workplace harassment'' is ''no longer required to show that the harassment was severe or pervasive * * *.'' *See also Thomas* v. *Atmos Energy Corp.,* 223 Fed.Appx. 369, 376 n.2, 2007 WL 866709 (5th Cir. March 21, 2007) (''*Burlington Northern* set a lower threshold for finding an adverse employment action'' and thus the employee need not show that he was retaliated against with respect to an ''ultimate employment action'' such as a removal). As noted by the LDEF, the alternative language ignores this distinction between the anti-retaliation and anti-discrimination provisions and therefore would require a higher threshold both to state a claim and to prevail on claims of retaliation. Additionally, the alternative does not account for threats or actions not related to the workplace, which also is inconsistent with the Court's ruling in *Burlington Northern.* 548 U.S. 53, at 63.

Adopting the alternative language would impose a higher threshold upon federal employees than exists for employees in the private sector and would therefore permit a federal agency to take actions against its employees that would be retaliatory if committed by a private employer. It also would depart from EEOC's own federal sector precedent regarding retaliation and threatened actions. In short, there is no legitimate reason for requiring that only federal employees be subject to the more stringent ''severe or pervasive'' standard applicable to hostile work environment claims. The alternative approach would make it harder for federal employees to prove retaliation than their private-sector counterparts and would result in significantly less enforcement of the anti-retaliation protections afforded federal employees.

**EEOC Process**

*Electronic Filing*

In the NPRM, the Commission proposed to require that agencies submit appellate records and complaint files to the Commission electronically. The NPRM provided that complainants would be encouraged, but not required, to submit appeals and other documentation electronically. The majority of commenters expressed concerns about the electronic filing proposal. The agencies noted that they are concerned about confidentiality of the records and the security of whatever system EEOC employs, noting that all documents would have to be encrypted. They also expressed concerns about costs and the need to budget for the requirement. A handful of other commenters supported the proposal, while others noted that EEOC needs to study security measures, and that the Commission should ensure that there is no adverse impact on complainants who continue to submit paper documents. Several commenters suggested that EEOC model its electronic filing system on the system used by the Merit Systems Protection Board, which permits electronic filing after a party has registered, but does not require it.

We wish to reassure agencies and the public that EEOC will comply with all federal electronic information security requirements with respect to accepting digital records. EEOC has launched a pilot Web site portal electronic filing system that is available to all agencies. In addition, EEOC currently accepts digital complaint files from a number of agencies. Some agencies place scanned files in a secure location on their own Web sites that EEOC accesses with a password. Other agencies submit password-protected CDs containing digital complaint files to EEOC. We have revised the regulation to require the submission of digital records rather than electronic filing. This will allow agencies and others to use the EEOC's portal (when available) or any of the other means described above to submit digital appeals, complaint files, and other filings. The final rule requires that agencies submit these records in an acceptable format to the Office of Federal Operations, absent a showing of good cause why the agency cannot do so. We do not anticipate that cost will constitute good cause in most cases since the cost of scanning equipment is relatively inexpensive and the staff time required to scan documents will probably be the same or less than the staff time required to make paper photocopies of documents. Complainants will be encouraged, but not required, to submit digital appellate records to the Office of Federal Operations. EEOC will provide more detailed guidance regarding acceptable digital formats and what constitutes a showing of good cause in Management Directive 110.

*Filing Date for Opposition Briefs*

In the NPRM, the Commission proposed to revise § 1614.403(f) to require that briefs in opposition to appeals be submitted to the Commission and served on the opposing party within 35 days of service of the statement or brief supporting the appeal (as opposed to the existing requirement that they be filed within 30 days of receipt of the statement or brief supporting the appeal.) We requested additional comments on irradiation-based mail delay experience. Nearly all of the agencies that commented reported that they often have significant delays in receiving mail because of the irradiation process. They noted that delays can range from ten days to three or four weeks. If the deadline for filing opposition briefs is tied to service, rather than receipt, of the supporting brief, agencies experiencing irradiation mail delays will have fewer days to prepare and submit opposition briefs. Because of the frequency and length of irradiation delays, the Commission can anticipate many motions for extension or apparently untimely briefs with consequent increase in the number of motions for default, which would unnecessarily burden the parties and Commission staff. Accordingly, we have removed the proposed amendment from this final rule, and the current regulation providing that statements or briefs in opposition must be filed within 30 days of receipt of the statement or brief supporting the appeal will remain in effect.

*Reconsideration*

The final rule amends § 1614.405(b) (redesignated as § 1614.405(c)) to provide that decisions under the section are final for purposes of filing a civil action in federal court, unless a timely request for reconsideration is filed by a party to the case. We received only two comments on this proposal, both favorable.

*Breach*

In the NPRM, the Commission proposed to revise § 1614.504(c) to differentiate the remedies available for breach of settlement agreements and breach of final decisions. We received only a handful of comments on the proposal; most were positive. The final rule retains the provision. For breach of a settlement, the regulation continues to state that the Commission may order compliance or reinstatement of the complaint for further processing from the point processing ceased, whereas for breach of a final decision, the regulation states that compliance is the only remedy. The Commission is making final its proposed editorial changes to §§ 1614.402, 1614.405(a), and 1614.409 to correct errors and omissions.

**Class Complaints**

The Workgroup carefully considered the class complaint process and made a number of recommendations to improve its effectiveness. As a result of those recommendations, in the NPRM the Commission proposed to revise the class complaint regulations to make an administrative judge's decision on the merits of a class complaint a final decision, which the agency can fully implement or appeal in its final action. Currently, the administrative judge issues final decisions on the acceptance of class complaints, and the merits of individual complaints, but only issues recommended findings and conclusions on the merits of class complaints, which the agency may accept, reject, or modify in its final decision. Previously, in a 1999 rulemaking, the Commission changed the administrative judge's recommended decisions on the merits of individual complaints and on the acceptance of class complaints to final decisions that must be fully implemented or appealed by the agency in its final action. With the current change, all administrative judge decisions will be final decisions which the agency can either implement in full or appeal. If the agency does not fully implement the administrative judge's decision, it only has to appeal the parts of the decision that it wishes to contest. For example, if an administrative judge finds that the agency discriminated against the class and awards reinstatement and backpay, and if the agency disagrees with the award of reinstatement, the agency's appeal need only challenge the reinstatement award.

The Commission also proposed in the NPRM to provide for expedited processing of appeals of decisions to accept or dismiss class complaints (certification decisions) to shorten the class certification process. Specifically, the Commission proposed to amend § 1614.405 to provide that decisions on appeals of decisions to accept or dismiss class complaints will be issued within 90 days of receipt of the appeal. We received uniform comments supporting both class complaint process proposals. Therefore, the final rule retains both provisions.

We note that, with respect to the class proposals, several commenters recommended additional changes to the class complaint process involving issues such as: Holding individual complaints in abeyance and subsuming individual complaints, permitting complainants to opt-out of a class complaint, changing the requirement that agencies notify class members of certification before appeal, mandating pre-certification discovery, and ensuring that certified cases are promptly assigned and processed. While these other comments fall outside of the scope of the changes proposed in the NPRM, the Commission will consider them for a future rulemaking. In addition, some of the recommendations for additional changes not proposed in the NPRM are not regulatory, and the Commission will separately consider whether any of them should be implemented independently from the final rule.

**Other Changes**

The final rule amends § 1614.109(g) to rename the section ''Summary Judgment'' instead of ''Decision without a hearing.'' This change is intended to convey more clearly the Commission's policy that the standards of Rule 56 of the Federal Rules of Civil Procedure governing summary judgments apply in the EEOC hearings process, except insofar as Commission decision precedent has held or holds otherwise. This change is not intended, however, to alter existing Commission policy or practice; Commission decisions on the summary judgment process will continue to apply.

The final rule includes an editorial change to § 1614.204(f)(1) to correct the omission of the word ''shall.''

The final rule also amends § 1614.302(c)(2) to correct an erroneous cross reference. The section now refers to § 1614.107(a)(4).

Finally, the Commission proposed in the NPRM to revise § 1614.502(c) to change the time frame within which agencies must provide the relief ordered from 60 days to 120 days. The regulation currently requires an agency to pay an administrative complainant who prevails before the EEOC within 60 days of EEOC's final decision. Since 1991, however, complainants have had up to 90 days to file suit in United States district court if they are dissatisfied with EEOC's decision.

Public comments were mixed on this proposal. While a couple of agencies supported it, individual commenters strongly opposed it, recommending that relief be provided immediately, and that remedial orders should be binding regardless of whether suit is filed. Other commenters suggested that EEOC should allow complainants to certify that they will not file suit, and then require agencies to provide relief within 30 or 60 days of certification. The Commission is sympathetic to the commenters' concerns about receiving relief in a timely fashion, but also recognizes that it is difficult in many instances for agencies to provide relief within the current 60 day timeframe. More importantly, the Commission believes that agencies should not be required to provide relief before the expiration of the complainants' 90-day right to file suit period. In the final rule, the Commission is adopting the proposal to extend the timeframe for providing relief to 120 days.

**Regulatory Procedures**

*Executive Orders 13563 and 12866*

This final rule has been drafted and reviewed in accordance with Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as recently reaffirmed and supplemented by E.O. 13563, ''Improving Regulation and Regulatory Review.'' This final rule is a ''significant regulatory action'' under E.O. 12866, section 3(f)(1), and accordingly was submitted to the Office of Management and Budget for interagency review. In promulgating this final rule, the Commission has adhered to the regulatory philosophy and applicable principles set forth in E.O. 13563, which directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its cost (recognizing that some benefits and costs are difficult to quantify); tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives; and select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

Based on the information currently available, we anticipate that most of the changes involve no or negligible cost and will benefit the agencies or users of the process by clarifying obligations,

correcting cross references, providing earlier appellate review, and providing quicker decisions from EEOC. Most agencies, for example, already comply with Part 1614 and EEOC's Management Directives and Bulletins, as required by section 717(b) of Title VII of the Civil Rights Act of 1964, as amended. Therefore, continued compliance will not require additional expenditures. The compliance proposal may actually reduce costs, e.g., to the extent that the agency's compliance obligation is clarified, it may save the agencies, complainants, and EEOC the time and costs of attempting to secure agency compliance.

With respect to monitoring compliance, EEOC already engages in compliance activities with its Directives and Bulletins. Therefore, no new personnel will need to be hired and EEOC's compliance efforts will not have to be increased. The only new provision is that the EEOC Chair may issue a notice of non-compliance that may be made public. The clarification of an agency's compliance responsibilities and the possibility of a public notice will eliminate some non-compliance and shorten other instances of non-compliance.

The cost that comes with most of the remaining changes is relatively small, and all costs are justified by the expected benefit and would only be borne by the federal government. Requiring an agency to notify the complainant when it will not complete an investigation in the required timeframe will have minimal cost but will provide an incentive for completing investigations timely while protecting the complainant's rights. Electronic filing will reduce costs and time. The cost of pilot projects will depend upon what the individual agency proposes and is likely to be a savings; the benefit of such projects is that potential changes to the process will be tested before they are implemented government-wide.

*Regulatory Flexibility Act*

The Commission certifies under 5 U.S.C. Sec. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not have a significant economic impact on a substantial number of small entities, because it applies exclusively to employees and agencies of the federal government. For this reason, a regulatory flexibility analysis is not required.

*Unfunded Mandates Reform Act of 1995*

This final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Paperwork Reduction Act*

This regulation contains no information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Congressional Review Act*

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**List of Subjects in 29 CFR Part 1614**

Administrative practice and procedure, Age discrimination, Equal employment opportunity, Government employees, Individuals with disabilities, Race discrimination, Religious discrimination, Sex discrimination.

For the Commission.

Dated: July 18, 2012.

**Jacqueline A. Berrien,**

*Chair.*

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission hereby amends chapter XIV of title 29 of the Code of Federal Regulations as follows:

## PART 1614—[AMENDED]

■ 1. The authority citation for part 1614 continues to read as follows:

**Authority:** 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e-16; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

■ 2. In § 1614.102, add paragraphs (e) and (f) to read as follows:

**§ 1614.102 Agency program.**

* * * * *

(e) Agency programs shall comply with this Part and the Management Directives and Bulletins that the Commission issues. The Commission will review agency programs from time to time to ascertain whether they are in compliance. If an agency program is found not to be in compliance, efforts shall be undertaken to obtain compliance. If those efforts are not successful, the Chair may issue a notice to the head of any federal agency whose programs are not in compliance and publicly identify each non-compliant agency.

(f) Unless prohibited by law or executive order, the Commission, in its discretion and for good cause shown, may grant agencies prospective variances from the complaint processing procedures prescribed in this Part. Variances will permit agencies to conduct pilot projects of proposed changes to the complaint processing requirements of this Part that may later be made permanent through regulatory change. Agencies requesting variances must identify the specific section(s) of this Part from which they wish to deviate and exactly what they propose to do instead, explain the expected benefit and expected effect on the process of the proposed pilot project, indicate the proposed duration of the pilot project, and discuss the method by which they intend to evaluate the success of the pilot project. Variances will not be granted for individual cases and will usually not be granted for more than 24 months. The Director of the Office of Federal Operations for good cause shown may grant requests for extensions of variances for up to an additional 12 months. Pilot projects must require that participants knowingly and voluntarily opt-in to the pilot project. Requests for variances should be addressed to the Director, Office of Federal Operations.

■ 3. In § 1614.103, revise paragraph (b)(6) to read as follows:

**§ 1614.103 Complaints of discrimination covered by this part.**

* * * * *

(b) * * *

(6) The Government Printing Office except for complaints under the Rehabilitation Act; and

* * * * *

■ 4. In § 1614.107, revise paragraph (a)(5) to read as follows:

**§ 1614.107 Dismissals of complaints.**

(a) * * *

(5) That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory, unless the complaint alleges that the proposal or preliminary step is retaliatory;

* * * * *

■ 5. Amend § 1614.108 by redesignating paragraph (g) as paragraph (h), and adding a new paragraph (g) to read as follows:

**§ 1614.108 Investigation of complaints.**

* * * * *

(g) If the agency does not send the notice required in paragraph (f) of this section within the applicable time limits, it shall, within those same time limits, issue a written notice to the complainant informing the complainant that it has been unable to complete its investigation within the time limits required by § 1614.108(f) and estimating a date by which the investigation will be completed. Further, the notice must explain that if the complainant does not want to wait until the agency completes the investigation, he or she may request a hearing in accordance with paragraph (h) of this section, or file a civil action in an appropriate United States District Court in accordance with § 1614.407(b). Such notice shall contain information about the hearing procedures.

* * * * *

**§ 1614.109 [Amended]**

■ 6. In § 1614.109, revise the paragraph (g) subject heading to read ''Summary Judgment''.

■ 7. Amend § 1614.204:

■ a. In paragraph (f)(1), by removing the words ''administrative judge notify'' from the first sentence and adding in their place the words ''administrative judge shall notify'';

■ b. By revising paragraphs (i), (j), and (k);

■ c. In paragraph (l)(2), by removing the words ''final decision'' and adding in their place the words ''final order'';

■ d. In paragraph (l)(3), by removing the words ''final decision'' in the first and next to last sentences and adding in their place the words ''final order'' and

■ e. By revising the third sentence in paragraph (l)(3).

The revisions read as follows:

**§ 1614.204 Class complaints.**

* * * * *

(i) *Decisions:* The administrative judge shall transmit to the agency and class agent a decision on the complaint, including findings, systemic relief for the class and any individual relief, where appropriate, with regard to the personnel action or matter that gave rise to the complaint. If the administrative judge finds no class relief appropriate, he or she shall determine if a finding of individual discrimination is warranted and, if so, shall order appropriate relief.

(j) *Agency final action.* (1) Within 60 days of receipt of the administrative judge's decision on the complaint, the agency shall take final action by issuing a final order. The final order shall notify the class agent whether or not the agency will fully implement the decision of the administrative judge and shall contain notice of the class agent's right to appeal to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit, and the applicable time limits for appeals and lawsuits. If the final order does not fully implement the decision of the administrative judge, then the agency shall simultaneously file an appeal in accordance with § 1614.403 and append a copy of the appeal to the final order. A copy of EEOC Form 573 shall be attached to the final order.

(2) If an agency does not issue a final order within 60 days of receipt of the administrative judge's decision, then the decision of the administrative judge shall become the final action of the agency.

(3) A final order on a class complaint shall, subject to subpart D of this part, be binding on all members of the class and the agency.

(k) *Notification of final action:* The agency shall notify class members of the final action and relief awarded, if any, through the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the agency within 10 days of the transmittal of the final action to the agent.

(l) * * *

(3) * * * The claim must include a specific detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that this discriminatory action took place within the period of time for which class-wide discrimination was found in the final order.

**§ 1614.302 [Amended]**

■ 8. In § 1614.302, in paragraph (c)(2), remove the words ''§ 1614.107(d)'' wherever they appear and add in their place the words ''§ 1614.107(a)(4)''.

**§ 1614.401 [Amended]**

■ 9. In § 1614.401, in paragraph (c), remove the words ''a class agent may appeal a final decision on a class complaint'' and add in their place the words ''a class agent may appeal an agency's final action or an agency may appeal an administrative judge's decision on a class complaint''.

■ 10. In § 1614.402, add a sentence to paragraph (a) before the last sentence to read as follows:

**§ 1614.402 Time for appeals to the Commission.**

(a) * * * Appeals described in § 1614.401(d) must be filed within 30 days of receipt of the final decision of the agency, the arbitrator or the Federal Labor Relations Authority.

* * * * *

■ 11. In § 1614.403, revise the first sentence of paragraph (a), and add paragraph (g) to read as follows:

**§ 1614.403 How to appeal.**

(a) The complainant, agency, agent, grievant or individual class claimant (hereinafter appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at P.O. Box 77960, Washington, DC 20013, or electronically, or by personal delivery or facsimile. * * *

* * * * *

(g) Agencies are required to submit appeals, complaint files, and other filings to the Office of Federal Operations in a digital format acceptable to the Commission, absent a showing of good cause why an agency cannot submit digital records. Appellants are encouraged, but not required, to submit digital appeals and supporting documentation to the Office of Federal Operations in a format acceptable to the Commission.

■ 12. Amend § 1614.405 by revising the second sentence of paragraph (a), redesignating paragraph (b) as paragraph (c), adding a new paragraph (b), and revising the first sentence of newly redesignated paragraph (c) introductory text to read as follows:

**§ 1614.405 Decisions on appeals.**

(a) * * * The Commission shall dismiss appeals in accordance with §§ 1614.107, 1614.403(c) and 1614.409. * * *

(b) The Office of Federal Operations, on behalf of the Commission, shall issue decisions on appeals of decisions to accept or dismiss a class complaint issued pursuant to § 1614.204(d)(7) within 90 days of receipt of the appeal.

(c) A decision issued under paragraph (a) of this section is final within the meaning of § 1614.407 unless a timely request for reconsideration is filed by a party to the case. * * *

■ 13. In § 1614.409, revise the first sentence to read as follows:

**§ 1614.409 Effect of filing civil action.**

Filing a civil action under § 1614.407 or § 1614.408 shall terminate

Commission processing of the appeal. * * *

**§ 1614.502 [Amended]**

■ 14. In § 1614.502, amend the last sentence of paragraph (c) by removing the words ''60 days'' and adding in their place add the words ''120 days''.

■ 15. In § 1614.504, revise the second sentence of paragraph (c) to read as follows:

**§ 1614.504 Compliance with settlement agreements and final action.**

* * * * *

(c) * * * If the Commission determines that the agency is not in compliance with a decision or settlement agreement, and the noncompliance is not attributable to acts or conduct of the complainant, it may order such compliance with the decision or settlement agreement, or, alternatively, for a settlement agreement, it may order that the complaint be reinstated for further processing from the point processing ceased. * * *

[FR Doc. 2012–18134 Filed 7–24–12; 8:45 am]

**BILLING CODE 6570–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 223

**[Docket ID: DOD–2010–OS–0108]**

**RIN 0790–AI64**

## DoD Unclassified Controlled Nuclear Information (UCNI)

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This rule updates policies and responsibilities for controlling Department of Defense (DoD) Unclassified Controlled Nuclear Information (UCNI) in accordance with the provisions of current U.S. Code. This revision streamlines and reflects current practices within the Department of Defense. This rule may be altered, in accordance with applicable statutory and regulatory requirements, as necessary to align with any future direction given in response to on-going efforts currently being led by the National Archives and Records Administration in the implementation of Executive Order 13556, ''Controlled Unclassified Information,'' signed on November 4, 2010.

**DATES:** This rule is effective August 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Linda B. Jones, (757) 229–3866.

**SUPPLEMENTARY INFORMATION:** The Department of Defense published a proposed rule on April 25, 2011 (76 FR 22849–22854). Comments from two submitters were received and are addressed below:

*Comment:* One submitter suggested clarifications and changes to the markings specified by sections 223.6(d) and 223.6(e). We made the changes suggested.

*Comment:* One comment suggested a change to the placement of the required markings for consistency with 32 CFR part 2001.21(b). As 32 CFR part 2001 applies only to classified national security information, we have not changed the placement requirements in the final rule.

*Comment:* One comment recommended adding a statement regarding parenthetical markings for classified messages. The change was made.

*Comment:* Suggestions for clarifying the last half of paragraph 223.6(d)(3) were made. Changes were incorporated in the final rule when we agreed they clarified the guidance.

*Comment:* One comment questioned the scope of the allowable dissemination within the U.S. Government. A change to the dissemination guidance was made.

*Comment:* One submitter suggested more definitive guidance on identifying information that qualifies for designation as DoD UCNI and that which qualifies for classification. Classification of information regarding protection of DoD special nuclear material, equipment and facilities, is a decision made by an authorized classification authority based on his or her reasoned judgment as to the degree of damage that could be caused by unauthorized disclosure. As such determinations are inherently subjective, risk-managed decisions and, thus, it is not possible to identify a ''definitive line where UCNI stops and higher classification starts.'' No changes were made as a result of this comment.

*Comment:* Additional changes were made based on DoD legal and editorial review.

### Regulatory Procedures

*Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''*

It has been certified that 32 CFR part 223 does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribunal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

It has been certified that 32 CFR part 223 is not economically significant, and 32 CFR part 223 has been reviewed by the Office of Management and Budget as required under the provisions of E.O. 12866.

*Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''*

It has been certified that 32 CFR part 223 does not contain a Federal mandate that may result in the expenditure by State, local, and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

*Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)*

It has been certified that 32 CFR part 223 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

*Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)*

It has been certified that 32 CFR part 223 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

*Executive Order 13132, ''Federalism''*

It has been certified that 32 CFR part 223 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

### List of Subjects in 32 CFR Part 223

National defense, Nuclear energy, Reporting and recordkeeping requirements, Security measures.

■ Accordingly, 32 CFR part 223 is revised to read as follows.

## PART 223—DOD UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION (UCNI)

Sec.
223.1 Purpose.
223.2 Applicability.
223.3 Definitions.
223.4 Policy.
223.5 Responsibilities.
223.6 Procedures-identifying and controlling DoD UCNI.
223.7 Procedures-determination of DoD UCNI.

**Authority:** 10 U.S.C. 128 and 5 U.S.C. 552(b)(3).

### § 223.1 Purpose.

This part:

(a) Updates policies, assigns responsibilities and prescribes procedures for the implementation of 10 United States Code (U.S.C.) 128, which is the statutory basis for controlling unclassified information on the physical protection of DoD special nuclear material (SNM), SNM equipment, and SNM facilities. Such information is referred to as DoD UCNI, to distinguish it from a similar Department of Energy (DOE) program.

(b) Identifies the authority to be used for denying disclosure of DoD UCNI pursuant to 5 U.S.C. 552.

(c) Supplements security classification guidance contained in DoD Instruction 5210.67,[1] DOE classification guide CG–SS–4,[2] and DoD/DOE joint classification guides by establishing procedures for identifying, controlling, and limiting the dissemination of unclassified information on the physical protection of DoD SNM.

### § 223.2 Applicability.

This part applies to:

(a) Office of the Secretary of Defense, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereinafter referred to collectively as the ''DoD Components'').

(b) All SNM, regardless of form, whether in reactor cores or other items under the direct control of the DoD Components (hereinafter referred to as ''DoD SNM'').

(c) Nuclear weapons containing SNM that are in DoD custody (hereinafter referred to as ''nuclear weapons in DoD custody'').

(d) Contractors, consultants, and grantees of the Department of Defense.

### § 223.3 Definitions.

These terms and their definitions are for the purposes of this part:

(a) *Atomic Energy Defense Programs.* Activities, equipment, and facilities of the Department of Defense that are capable of the following:

(1) Development, production, testing, sampling, maintenance, repair, modification, assembly, utilization, transportation, or retirement of nuclear weapons or nuclear weapon components.

(2) Production, utilization, or transportation of DoD SNM for military applications.

(3) Safeguarding of activities, equipment, or facilities that support the functions in paragraphs (a)(1) and (a)(2) of this section, including the protection of nuclear weapons, nuclear weapon components, or DoD SNM for military applications at a fixed facility or in transit.

(b) *Document or material.* The physical medium on or in which information is recorded, or a product or substance that contains or reveals information, regardless of its physical form or characteristics.

(c) *DoD UCNI.* Unclassified information on the physical protection of DoD SNM, SNM equipment, and SNM facilities, including unclassified information on the physical protection of nuclear weapons containing SNM that are in DoD custody.

(d) *Information.* Any fact or concept, regardless of the physical form or characteristics of the medium on or in which it is recorded, contained, or revealed.

(e) *Intelligence Community.* An element or agency of the U.S. Government identified in or designated pursuant section 3.5(h) of Executive Order 12333, as amended.

(f) *Reviewing official.* An individual appointed by the Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs who may make a determination that a document or material contains, does not contain, or no longer contains DoD UCNI.

(g) *Safeguards.* An integrated system of physical protection, document and material accounting, and control measures designed to deter, prevent, detect, and respond to unauthorized possession, use, or sabotage of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody.

(h) *SNM.* Defined in 42 U.S.C. 2014.

(i) *SNM equipment.* Equipment, systems, or components whose failure or destruction would cause an impact on safeguarding DoD SNM resulting in an unacceptable interruption to a national security program or an unacceptable impact on the health and safety of the public.

(j) *SNM facility.* A DoD facility that performs a function in support of Atomic Energy Defense Programs whose disruption could reasonably be expected to have a significant adverse effect on safeguarding DoD SNM, the health and safety of the public or the common defense and security.

(k) *Unauthorized dissemination.* The intentional or negligent transfer, in any manner and by any person, of information contained in a document or material determined by a reviewing official to contain DoD UCNI, and so marked in accordance with the procedures in § 223.6 of this part, to any person or entity other than an individual or entity authorized access to DoD UCNI in accordance with 10 U.S.C. 128 and this part.

### § 223.4 Policy.

It is DoD policy that:

(a) Unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment, for the physical protection of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody is prohibited.

(b) Unclassified information shall be protected as DoD UCNI based on a determination that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody.

(c) Unclassified information regarding physical protection of DoD SNM and nuclear weapons in DoD custody shall be made publicly available to the fullest extent possible by applying the minimum restrictions, consistent with the requirements of 10 U.S.C. 128, necessary to protect the health and safety of the public or the common defense and security.

(d) This part and title 10 of the Code of Federal Regulations (CFR) part 1017 shall be used as guidance for handling DOE UCNI that is under DoD control.

(e) This part does not prevent a determination that information previously determined to be DoD UCNI is classified information in accordance

[1] Copies available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/521067p.pdf.*

[2] Copies available to authorized recipients from the Director of Classification, Department of Energy.

with Volume 1 of DoD Manual 5200.01 [3] and other applicable standards of classification.

**§ 223.5 Responsibilities.**

(a) The Under Secretary of Defense for Intelligence (USD(I)) shall oversee the DoD program for controlling DoD UCNI and coordinate DoD compliance with the DOE program for controlling DOE UCNI.

(b) The Assistant Secretary of Defense for Nuclear, Chemical, and Biological Defense Programs (ASD(NCB)), under the authority, direction, and control of the Under Secretary of Defense for Acquisition, Technology, and Logistics, shall:

(1) Identify information regarding nuclear weapons security and the protection of SNM at DoD nuclear reactor facilities as DoD UCNI and protect it from unauthorized dissemination, consistent with the requirements of 10 U.S.C. 128 and this part.

(2) Advise the USD(I) on implementation of the DoD UCNI program.

(3) Designate a DoD UCNI reviewing official, who shall be authorized to determine that materials or documents contain, do not contain, or no longer contain DoD UCNI.

(c) The Director, Administration and Management shall provide guidance, as needed, to the Heads of the DoD Components regarding 5 U.S.C. 552, as implemented by 32 CFR part 286, as it applies to the DoD UCNI program.

(d) The Heads of the DoD Components shall identify DoD UCNI within their Component and protect it from unauthorized dissemination, consistent with the requirements of 10 U.S.C. 128 and this part.

**§ 223.6 Procedures-identifying and controlling DoD UCNI.**

(a) *General.* (1) The decision to protect unclassified information as DoD UCNI shall be based on a determination that the unauthorized dissemination of such information could reasonably be expected to have an adverse effect on the health and safety of the public or the common defense and security by increasing significantly the likelihood of the illegal production of nuclear weapons or the theft, diversion, or sabotage of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody. This is called the ''adverse effects test.''

(2) DoD UCNI shall be identified, controlled, marked, transmitted, and safeguarded in the DoD Components, the Intelligence Community, and the North Atlantic Treaty Organization (NATO), and among DoD contractors, consultants, and grantees. Within NATO, DoD UCNI shall be marked, controlled, and safeguarded as ''NATO RESTRICTED'' information.

(3) Contracts requiring access to or the preparation of unclassified information that is or could be DoD UCNI shall require compliance with this part and any applicable DoD Component regulations, and shall specify requirements for identifying, marking, handling, and safeguarding DoD UCNI.

(b) *Identifying DoD UCNI.* (1) To be designated and protected as DoD UCNI, information must:

(i) Be unclassified.

(ii) Pertain to security measures, including plans, procedures, and equipment, for the physical protection of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody.

(iii) Meet the adverse effects test.

(2) Information shall be protected as DoD UCNI if it qualifies for one or more of the categories listed in § 223.7(c) and meets the criteria in paragraph (b)(1) of this section.

(3) DoD personnel, in making a determination to protect unclassified information as DoD UCNI, shall consider the probability of illegal production of nuclear weapons or of theft, diversion, or sabotage of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody if the information proposed for protection were made available for public disclosure and dissemination. The cognizant official shall consider how the unauthorized disclosure or dissemination of such information could assist a potential adversary in:

(i) Selecting a target for an act of theft, diversion, or sabotage of nuclear weapons in DoD custody, DoD SNM, SNM equipment, or SNM facilities (e.g., relative importance of a facility or the location, form, and quantity of DoD SNM). Information that can be obtained by observation from public areas outside controlled locations should not be considered as DoD UCNI.

(ii) Planning or committing an act of theft, diversion, or sabotage of nuclear weapons in DoD custody, DoD SNM, SNM equipment, or SNM facilities (e.g., design of security systems; building plans; methods and procedures for transfer, accountability, and handling of nuclear weapons or DoD SNM; or security plans, procedures, and capabilities).

(iii) Measuring the success of an act of theft, diversion, or sabotage of nuclear weapons in DoD custody, DoD SNM, SNM equipment, or SNM facilities (e.g., actual or hypothetical consequences of the sabotage of specific vital equipment or facilities).

(iv) Illegally producing a nuclear explosive device (e.g., unclassified nuclear weapon design information useful in designing a primitive nuclear device; location of unique DoD SNM needed to fabricate such a device; or location of a nuclear weapon).

(v) Dispersing DoD SNM in the environment (e.g., location, form, and quantity of DoD SNM).

(c) Where questions or disagreements arise on designation or continued protection of information as DoD UCNI, the reviewing official appointed by the ASD(NCB) shall make the final determination. If a determination cannot be made because applicable guidance is unclear or does not exist, the document or material in question shall be referred to the reviewing official for a determination.

(d) *Access to DoD UCNI.* (1) No explicit designation or security clearance is required for access to DoD UCNI; however, a person granted access to DoD UCNI must have a need to know the specific DoD UCNI to which access is granted in the performance of official duties or of DoD-authorized activities.

(2) The individual granting access to DoD UCNI shall notify each person granted such access of applicable regulations, including the physical protection and access requirements, concerning the protection of DoD UCNI as well as any special dissemination limitations that apply to the specific DoD UCNI to which access is being granted, prior to dissemination of the DoD UCNI to the person.

(3) The requirement to notify persons granted access to DoD UCNI of applicable regulations concerning protection and dissemination of DoD UCNI may be met by attachment of an appropriate cover sheet to the front of each document or material containing DoD UCNI prior to its transmittal to the person granted access.

(e) *Marking DoD UCNI.* (1) An unclassified document with DoD UCNI shall be marked ''DOD UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION'' (or abbreviated ''DOD UCNI'') at the bottom on: the outside of the front cover, if any; the outside of the back cover, if any; the first page; and each individual page containing DoD UCNI.

(2) Within an unclassified document, an individual page containing DoD UCNI shall be marked to show which of its portions contain DoD UCNI. In marking sections, parts, paragraphs, or

[3] Available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/520001_vol1.pdf.*

similar portions, the parenthetical term ''(DCNI)'' shall be used and placed at the beginning of the applicable portions.

(3) In a classified document, an individual page that has both DoD UCNI and classified information shall be marked at the top and bottom of the page with the highest security classification of information appearing on that page or with the overall classification of the document. In marking sections, parts, paragraphs, or similar portions, the parenthetical term ''(U//DCNI)'' shall be used and placed at the beginning of those portions containing DoD UCNI. In a classified document, an individual page that has DoD UCNI, but no classified information, shall be marked ''UNCLASSIFIED//DOD UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION'' (or ''UNCLASSIFIED//DOD UCNI'') at the top and bottom of the page, unless the page is marked with the overall classification of the document. The DoD UCNI information may be included in the same portion with other classified or unclassified information, if all relevant statutory and regulatory markings and citations are included. Volume 2 of DoD Manual 5200.01 [4] provides additional guidance on marking classified documents.

(4) Other material (e.g., electronic media, photographs, films, tapes, or slides) containing DoD UCNI shall be conspicuously marked ''DOD UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION'' (or ''DOD UCNI''), in accordance with paragraphs (d)(1) through (d)(3) of this section, to ensure that a recipient or viewer is aware of the status of the information.

(e) *Dissemination and Transmission.* (1) DoD UCNI may be disseminated among the DoD Components, members of the Intelligence Community, NATO, and DoD contractors, consultants, and grantees on a need-to-know basis for the conduct of official business for the Department of Defense. Dissemination to NATO or other foreign or international entities requires prior review and approval by the appropriate dissemination entity.

(2) Recipients shall be made aware of the status as DoD UCNI for all such information disseminated to them. Transmission of DoD UCNI shall be by means which preclude unauthorized disclosure or dissemination (e.g., secure phone, encrypted email).

(3) Documents containing DoD UCNI shall be marked as prescribed in paragraph (d) of this section. Transmittal documents shall call attention to the presence of DoD UCNI attachments using an appropriate statement in the text or including at the bottom of the transmittal document a statement similar to: ''The attached document contains DoD Unclassified Controlled Nuclear Information (DoD UCNI).''

(4) DoD UCNI transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the DoD UCNI marking. That may be accomplished by adding the transmittal statement ''DEPARTMENT OF DEFENSE/UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION/EXEMPT FROM MANDATORY DISCLOSURE PURSUANT TO 5 U.S.C. 552(b)(3), AS AUTHORIZED BY 10 U.S.C. 128'' to the document cover before transfer.

(5) When not commingled with classified information, DoD UCNI may be sent by first-class mail in a single, opaque envelope, or wrapping.

(6) DoD UCNI shall not be discussed or transmitted over an unprotected telephone or telecommunications circuit (to include facsimile transmissions) except in case of an emergency.

(7) Each part of electronically transmitted messages containing DoD UCNI portions shall be marked appropriately. Unclassified messages, including email, with DoD UCNI portions shall have the abbreviation ''DOD UCNI'' at the top of the message, before the beginning of the text, and the parenthetical marking ''(DCNI)'' preceding each portion of text containing DoD UCNI information. Classified messages containing DoD UCNI portions shall be marked with the highest classification of information within the message; use the parenthetical marking ''(U//DCNI)'' preceding each portion of text containing DoD UCNI information.

(8) DoD UCNI processed, stored, or produced on stand-alone or networked computers or other information technology systems shall enforce protection from unauthorized disclosure or dissemination, in accordance with the procedures in paragraph (f) of this section.

(9) A document marked as having DoD UCNI may be reproduced minimally without permission of the originator and consistent with the need to carry out official business.

(f) *Safeguarding DoD UCNI.* (1) During normal working hours, documents and materials determined to contain DoD UCNI shall be safeguarded and controlled by measures designed to reduce the risk of access to DoD UCNI by unauthorized individuals. Particular attention should be paid to areas where DoD UCNI is used or stored if unescorted access by unauthorized individuals is possible.

(2) At the close of business, DoD UCNI shall be stored to preclude disclosure. Storage of such information with other unclassified information in unlocked receptacles (e.g., desks, bookcases) is adequate if Government or Government-contractor internal building security is provided during non-duty hours. When such internal building security is not provided, locked rooms or buildings normally provide adequate after-hours protection. If such protection is not considered adequate, DoD UCNI shall be stored in locked receptacles (e.g., locked file cabinet, locked desk drawer, safe).

(3) Non-record copies of DoD UCNI shall be destroyed by shredding or burning or, if the sensitivity or volume of the information justifies it, in accordance with the procedures specified by Volume 3 of DoD Manual 5200.01 [5] for classified information. Record copies of DoD UCNI shall be disposed of in accordance with the DoD Component's record management regulations. DoD UCNI on magnetic storage media shall be disposed of by overwriting to preclude its reconstruction. DoD UCNI in electronic form shall be deleted and also removed from any desktop trash or recycling files.

(4) Unauthorized dissemination and disclosure of DoD UCNI justifies investigative and administrative actions to determine cause, assess impact, and fix responsibility. The DoD Component that originated the DoD UCNI shall be informed of its unauthorized disclosure and the outcome of the investigative and administrative actions. Unauthorized disclosure of DoD UCNI does not constitute a compromise of classified information.

(g) *Retirement of Document or Material.* (1) Any unclassified document or material that is not marked as containing DoD UCNI but that may contain DoD UCNI shall be marked upon retirement in accordance with the DoD Component's record management regulations.

(2) A document or material marked as containing DoD UCNI is not required to be reviewed upon, or subsequent, to retirement. Retired documents or materials shall be reviewed in accordance with paragraph (h) of this section upon a request for their release made pursuant to 5 U.S.C. 552.

[4] Available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/520001_vol2.pdf.*

[5] Available on the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/520001_vol3.pdf.*

(h) *Requests for Public Release of UCNI.* (1) Pursuant to 10 U.S.C. 128, information that qualifies as DoD UCNI is exempt from mandatory disclosure pursuant to 5 U.S.C. 552. Requests for the public release of DoD UCNI shall be denied, in accordance with procedures established in 32 CFR part 286, pursuant to 5 U.S.C. 552(b)(3), citing 10 U.S.C. 128 as authority.

(2) Requests for DOE UCNI contained within DoD documents shall also be denied pursuant to 5 U.S.C. 552(b)(3), but 42 U.S.C 2168 shall be cited, after formal FOIA consultation with the DOE, as the basis for invoking the exemption. Requests for DOE documents will be formally referred to DOE for final adjudication and response to the requestor.

(3) The reviewing official designated by the ASD (NCB) shall review any retired DoD UCNI document or material upon a request for its release made pursuant to 5 U.S.C. 552.

**§ 223.7 Procedures-determination of DoD UCNI.**

(a) *Use of the Guidelines.* (1) The guidelines in this section are the basis for determining what unclassified information regarding the physical protection of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody, in a given technical or programmatic subject area are to be designated as DoD UCNI.

(2) The decision to protect unclassified information as DoD UCNI shall be based on a determination that the unauthorized dissemination of such information could reasonably be expected to have an adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of the illegal production of nuclear weapons or the theft, diversion, or sabotage of SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody.

(b) *General Guidance.* (1) Unclassified information relating to the physical protection of DoD SNM, SNM equipment, SNM facilities, or nuclear weapons in DoD custody is to be protected from public disclosure to prevent the adverse effects identified in paragraph (a)(2) of this section. Public availability of information that would not result in such adverse effects is not to be restricted.

(2) In controlling DoD SNM information, only the minimum restrictions needed to protect the health and safety of the public or the common defense and security shall be applied to prohibit the disclosure and dissemination of DoD UCNI.

(3) Any information that has been, or is, widely and irretrievably disseminated in the public domain and whose dissemination was not, or is not, under Government control is exempt from control under these guidelines. However, the fact that information is in the public domain is not a sufficient basis for determining that similar or updated Government-owned and -controlled information in another document or other material is not, or is no longer, DoD UCNI; case-by-case determinations are required.

(c) *Topical Guidance.* DoD Components shall consider the topics discussed in this section during the preparation of unclassified information that addresses the physical protection of DoD SNM or nuclear weapons in DoD custody to determine if it qualifies for control as DoD UCNI.

(1) *Vulnerability Assessments.* (i) General vulnerabilities that could be associated with specific DoD SNM, SNM equipment, SNM facility locations, or DoD nuclear weapons storage facilities.

(ii) The fact that DoD SNM or nuclear weapons facility security-related projects or upgrades are planned or in progress, if not observable from a public area.

(iii) Identification and description of security system components intended to mitigate the consequences of an accident or act of sabotage at a DoD SNM or nuclear weapons facility.

(2) *Material Control and Accountability.* (i) Total quantity or categories of DoD SNM at a facility.

(ii) Control and accountability plans or procedures.

(iii) Receipts that, cumulatively, would reveal quantities and categories of DoD SNM of potential interest to an adversary.

(iv) Measured discards, decay losses, or losses due to fission and transmutation for a reporting period.

(v) Frequency and schedule of DoD SNM inventories.

(3) *Facility Description.* (i) Maps, conceptual design, and construction drawings of a DoD SNM or nuclear weapons facility showing construction characteristics of building(s) and associated electrical systems, barriers, and back-up power systems not observable from a public area.

(ii) Maps, plans, photographs, or drawings of man-made or natural features in a DoD SNM or nuclear weapons facility not observable from a public area; e.g., tunnels, storm or waste sewers, water intake and discharge conduits, or other features having the potential for concealing surreptitious movement.

(iii) Communications and computer network configurations and capabilities.

(4) *Intrusion Detection and Security Alarm Systems.* (i) Information on the layout or design of security and alarm systems at a specific DoD SNM or nuclear weapons facility, if the information is not observable from a public area.

(ii) The fact that a particular system make or model has been installed at a specific DoD SNM or nuclear weapons facility, if the information is not observable from a public area.

(iii) Performance characteristics of installed systems.

(5) *Keys, Locks, Combinations, and Tamper-Indicating Devices.* (i) Types and models of keys, locks, and combinations of locks used in DoD SNM or nuclear weapons facilities and during shipment.

(ii) Method of application of tamper-indicating devices.

(iii) Vulnerability information available from unclassified vendor specifications.

(6) *Threat Response Capability and Procedures.* (i) Information about arrangements with local, State, and Federal law enforcement agencies of potential interest to an adversary.

(ii) Information in ''non-hostile'' contingency plans of potential value to an adversary to defeat a security measure, e.g., fire, safety, nuclear accident, radiological release, or other administrative plans.

(iii) Required response time of security forces.

(7) *Physical Security Evaluations.* (i) Method of evaluating physical security measures not observable from public areas.

(ii) Procedures for inspecting and testing communications and security systems.

(8) *In-Transit Security.* (i) Fact that a shipment is going to take place.

(ii) Specific means of protecting shipments.

(iii) Number and size of packages.

(iv) Mobile operating and communications procedures that an adversary could exploit.

(v) Information on mode, routing, protection, communications, and operations that must be shared with law enforcement or other civil agencies, but not visible to the public.

(vi) Description and specifications of transport vehicle compartments or security systems not visible to the public.

(9) *Information on Nuclear Weapon Stockpile and Storage Requirements, Nuclear Weapon Destruction and Disablement Systems, and Nuclear Weapon Physical Characteristics.* Refer

to DOE CG–SS–4 for guidance about the physical protection of information on nuclear weapon stockpile and storage requirements, nuclear weapon destruction and disablement systems, and nuclear weapon physical characteristics that may, under certain circumstances, be unclassified. Such information meeting the adverse effects test shall be protected as DoD UCNI.

Dated: July 16, 2012.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2012–18122 Filed 7–24–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket Number USCG–2012–0341]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events, Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Wrightsville Channel; Wrightsville Beach, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily changing the enforcement period of one special local regulation for a recurring marine event in the Fifth Coast Guard District, specifically the ''Wilmington YMCA Triathlon'', locally known as the ''Beach 2 Battleship'', conducted on the waters of Wrightsville Channel near Wrightsville Beach, North Carolina. This Special Local Regulation is necessary to provide for the safety of life on navigable waters during the event, which has been rescheduled from the last Saturday in October or the first or second Saturday in November to the third Saturday in October. This action is intended to restrict vessel traffic on Wrightsville Channel during the swimming portion of this event.

**DATES:** This rule is effective from September 15, 2012 until November 15, 2012. The regulated area discussed in this rule will be enforced on October 20, 2012 from 7 a.m. until 11 a.m.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2012–0341]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email BOSN4 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

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

### A. Regulatory History and Information

Annually, since 2008, a regulation has been enforced for the ''Wilmington YMCA Triathlon'', locally known as the ''Beach 2 Battleship''. The event was recently added to 33 CFR 100.501 on January 19, 2012 in 77 FR 2629. Historically no comments or objections have been received for the regulation. Based on tidal predictions the sponsor has requested a change to the effective dates of this rule.

On May 24, 2012 a Notice of Proposed Rule Making (NRPM) was published in 33 FR 30929 reflecting the change to the effective dates. We received no comments on the proposed rule. No public meeting was requested, and none was held.

### B. Basis and Purpose

The YMCA sponsors an annual Triathlon, ''Wilmington YMCA Triathlon'', locally known as the ''Beach 2 Battleship'', in the Wrightsville Beach area of North Carolina. The Triathlon consists of three events: a running portion, a bike-riding portion, and a swimming portion. The swimming portion of the Triathlon takes place in the waters adjacent to Wrightsville Beach. A special local regulation is effective annually to create a safety zone for the swimming portion of the Triathlon.

The regulation listing annual marine events within the Fifth Coast Guard District and corresponding dates is 33 CFR 100.501. The Table to § 100.501 identifies marine events by Captain of the Port zone. This particular marine event is listed in section (d.) line No. 4 of the table.

The current regulation described in section (d.) line No. 4 of the table indicates the Triathlon should take place this year on October 27, 2012, November 3, 2012 or November 10, 2012, this year. This regulation changes the date for the event to take place on October 20, 2012 for this year only.

The swim portion of the Triathlon, scheduled to take place on Saturday October 20, 2012, will consist of two groups of 950 swimmers entering Banks Channel at the Blockade Runner Hotel and swimming northwest along Motts Channel to Seapath Marine. A fleet of spectator vessels are expected to gather near the event site to view the competition.

To provide for the safety of the participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during this event. The regulation at 33 CFR 100.501 would be enforced from 7 a.m. to 11 a.m. on October 20, 2012; vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

### C. Discussion of Comments, Changes and the Final Rule

We received no comments on the proposed rule. No public meeting was requested, and none was held.

The Coast Guard will temporarily suspend the regulation listed at section (d.) line No. 4 in the Table to § 100.501 and insert this new temporary regulation at the Table to § 100.501 line No. 5 in order to reflect the change of date for this year's event. This change is needed to accommodate the change in date of the annual Triathlon. No other portion of the Table to § 100.501 or other provisions in § 100.501 shall be affected by this regulation.

This safety zone will restrict vessel movement on the specified waters of Wrightsville Channel, Wrightsville Beach, NC. The regulated area will be established in the interest of participant safety during the swim portion of the ''Wilmington YMCA Triathlon'' and will be enforced from 7 a.m. to 11 a.m. on October 20, 2012. The Coast Guard, at its discretion, when deemed safe will allow the passage of vessels. During the Marine Event no vessel will be allowed to transit the waterway unless the vessel is given permission from the Patrol Commander to transit the regulated segment of the waterway.

Any vessel transiting the regulated area must do so at a no-wake speed during the effective period. Nothing in this rule negates the requirement to

operate at a safe speed as provided in the Navigational Rules and Regulations.

**D. 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.

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation prevents traffic from transiting waters of Wrightsville Channel during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notification will be made to the maritime community via marine information broadcast and local area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. Vessel traffic will be able to transit the regulated area before and after the races, when the Coast Guard Patrol Commander deems it is safe to do so. Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received no comments from the Small Business Administration on this rule. 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 of operators of vessels intending to transit Wrightsville Channel from 7 a.m. to 11 a.m. on October 20, 2012.

This rule will not have a significant economic impact on substantial number of small entities for the following reasons. The regulation will be enforced for only two hours. Although the regulated area will apply to Motts, Banks and Wrightsville Channels, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course. The Patrol Commander will allow non-participating vessels to transit the event area once all swimmers are safely clear of navigation channels and vessel traffic areas. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

responsibilities between the Federal Government and Indian tribes.

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. This special local regulation is necessary to provide for the safety of the general public and event participants from potential hazards associated with movement of vessels near the event area. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

**List of Subjects in 33 CFR Part 100**

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

■ 2. At § 100.501, in the Table to § 100.501, make the following amendments:

■ a. Under ''(d) Coast Guard Sector North Carolina—COTP Zone,'' suspend entry (d)4.

■ b. Under ''(d) Coast Guard Sector North Carolina—COTP Zone,'' add entry (d)5 to read as follows:

**§ 100.501 Special Local Regulations; Recurring Marine Event in the Fifth Coast Guard District.**

* * * * *

(D.) COAST GUARD SECTOR NORTH CAROLINA—COTP ZONE

| Number | Date | Event | Sponsor | Location |
|---|---|---|---|---|
| * | * | * | * | * * * |
| 5 ..... | October 20, 2012, from 7 a.m to 11 a.m. | Wilmington YMCA Triathlon. | Wilmington YMCA .. | The waters of, and adjacent to, Wrightsville Channel from Wrightsville Channel Day beacon 14 (LLNR 28040), located at 34°12′18″ N, longitude 077°48′10″ W, to Wrightsville Channel Day beacon 25 (LLNR 28080), located at 34°12′51″ N, longitude 77°48′53″ W. |

Dated: June 28, 2012.

**A. Popiel,**

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

[FR Doc. 2012–18154 Filed 7–24–12; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[Docket No. USCG–2010–1024]**

## Olympia Harbor Days Tug Boat Races, Budd Inlet, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Special Local Regulation, Olympia Harbor Days Tug Boat Races, Budd Inlet, WA from 12 p.m. through 8 p.m. on September 2, 2012. This action is necessary to restrict vessel movement within the specified race area immediately prior to, during, and immediately after racing activity in order to ensure the safety of participants, spectators and the maritime public. Entry into, transit through, mooring or anchoring within the specified race area is prohibited unless authorized by the Captain of the Port, Puget Sound or Designated Representatives.

**DATES:** The regulations in 33 CFR 100.1309 will be enforced from 12 p.m. through 8 p.m. on September 2, 2012.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or email Ensign Nathaniel P. Clinger, Sector Puget Sound Waterways Management Division, Coast Guard; telephone 206–217–6045, email *SectorPugetSoundWWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard is providing notice of enforcement of the Special Local Regulation for Olympia Harbor Days Tug Boat Races, Budd Inlet, WA in 33 CFR 100.1309 on September 2, 2012, from 12 p.m. to 8 p.m.

The following area is specified as a race area: All waters of Budd Inlet, WA the width of the navigation channel south of a line connecting the following points: 47°05.530′ N 122°55.844′ W and 47°05.528′ N 122°55.680′ W until reaching the northernmost end of the navigation channel at a line connecting the following points: 47°05.108′ N 122°55.799′ W and 47°05.131′ N 122°55.659′ W then southeasterly until reaching the southernmost entrance of the navigation channel at a line connecting the following points: 47°03.946′ N 122°54.577′ W, 47°04.004′ N 122°54.471′ W.

Under the provisions of 33 CFR 100.1309, the regulated area shall be closed immediately prior to, during and immediately after the event to all persons and vessels not participating in

the event and authorized by the event sponsor.

This notice is issued under authority of 33 CFR 100.1309 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area.

Dated: July 2, 2012.

**S.J. Ferguson,**

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

[FR Doc. 2012–18126 Filed 7–24–12; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 110

**[Docket No. USCG–2009–1131]**

**RIN 1625–AA01**

## Anchorage Regulations; Narragansett Bay and Rhode Island Sound, RI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is removing an obsolete naval explosives anchorage in Narragansett Bay, Rhode Island, and adding an offshore anchorage in Rhode Island Sound south of Brenton Point, Rhode Island, for use by vessels waiting to enter Narragansett Bay.

**DATES:** This rule is effective August 24, 2012.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–1131 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1131 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Mr. Edward G. LeBlanc at Coast Guard Sector Southeastern New England, 401–435–2351. If you have questions on viewing the docket, please call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On March 21, 2011, we published a notice of proposed rulemaking (NPRM) entitled ''Anchorage Regulations; Narragansett Bay and Rhode Island Sound, RI,'' in the **Federal Register** (76 FR 15246). We received nine comments on the proposed rule.

### Basis and Purpose

The Secretary of Homeland Security has delegated to the Coast Guard the authority to establish and regulate anchorage grounds in accordance with 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; and Department of Homeland Security Delegation No. 0170.1. The purpose of this rule is to remove an obsolete and no longer used anchorage in Narragansett Bay from the Code of Federal Regulations (CFR), and formalize and codify an area of Rhode Island Sound that under current informal practice is routinely used by mariners as an anchorage while waiting to enter Narragansett Bay.

### Background

This rule removes the Naval explosives anchorage described in 33 CFR 110.145(a)(2)(ii). Naval Station Newport, Rhode Island had indicated to the Coast Guard that this anchorage is obsolete and no longer necessary for naval purposes. Leaving this obsolete anchorage in the CFR and on navigation charts leaves mariners with the mistaken impression that the area is reserved for a special purpose (*i.e.,* explosives vessel anchoring) when in fact, it is no longer used or needed for that purpose.

The rule also adds a new anchorage to formalize and codify the current practice of commercial vessels that anchor in an area south of Brenton Point, Newport, Rhode Island, while waiting to enter Narragansett Bay. Establishing this anchorage in the CFR, and placing it on navigation charts, will remove ambiguity and clarify for mariners the preferred and safest area in which to anchor offshore when waiting to enter Narragansett Bay.

The new anchorage area would encroach on a Navy Restricted Area (33 CFR 334.78). According to the regulation, anchoring within the Restricted Area is precluded only during periods of mine warfare training. However, mine warfare training is no longer conducted in that area. Thus, the Coast Guard requested that the U.S. Army Corps of Engineers remove the now-defunct area from the Code of Federal Regulations. In a letter received by the Corps of Engineers on May 5, 2011, the U.S. Navy also requested that the Corps of Engineers disestablish the Restricted Area as it is no longer needed. (A copy of the letter from the Commanding Officer, Naval Station Newport, is included in the docket for this rule.) In February 2012 the Corps of Engineers initiated the rulemaking process to remove the Restricted Area from the Code of Federal Regulations.

### Discussion of Comments and Changes

We received nine comments on the proposed rule. One letter, from the Office of Environmental Policy and Compliance, U.S. Department of the Interior (DOI), stated that DOI had no comment on the proposed rule.

The Coast Guard received no comments opposed to the section of this rule that disestablishes the obsolete naval explosives anchorage in Narragansett Bay.

The other comments were from private citizens, municipalities in the Narragansett Bay area, a Rhode Island state representative, and the Massachusetts Attorney General, among others. These comments expressed a generally consistent theme: Comments requested that the Coast Guard conduct a more thorough environmental impact analysis consistent with the National Environmental Policy Act (NEPA). Specifically, comments requested that the Coast Guard's NEPA analysis discuss the possible adverse impacts to the environment from potential use of the proposed anchorage by tankers that may deliver liquefied natural gas (LNG) to the proposed Weaver's Cove LLC import facility in Mt. Hope Bay, Massachusetts. Several comments requested a public meeting to discuss the NEPA issue vis à vis the Weaver's Cove LNG proposal.

At the time the Coast Guard published its March 2011 NPRM for this rulemaking, Weaver's Cove LLC was seeking approval from the Federal Energy Regulatory Commission (FERC) to build and operate a waterfront LNG facility in Fall River, Massachusetts. On June 20, 2011, Weaver's Cove LLC formally notified FERC that it was withdrawing its proposals. On July 6, 2011, FERC issued documentation vacating its July 15, 2005, authorization to Weaver's Cove for a waterfront facility in Fall River, Massachusetts, and terminating its (FERC's) processing of the Weaver's Cove application for an LNG offload facility in Mt. Hope Bay.

These two documents issued by FERC officially terminated the Weaver's Cove proposal. (Copies of the Weaver's Cove letter to FERC of June 20, 2011, and FERC's documentation issued on July 6, 2011, are included in the docket for this rule.) There are no other proposals before FERC to import LNG into Narragansett Bay or Mt. Hope Bay.

Because there are no proposals to import LNG into Narragansett Bay or Mt. Hope Bay, there are no LNG-related impacts to be analyzed. Some comments challenge the Coast Guard's use of and reliance upon its directives while other comments assert the Coast Guard must comply with other federal laws. Responses to those comments immediately follow. Additionally, the methodology used by the Coast Guard to conduct its environmental analysis in compliance with NEPA is discussed in the *Environment* section below.

With respect to a public meeting, the Coast Guard believes a public meeting is not necessary because all requests for a public meeting were made in connection with concern about a (now-withdrawn) plan for the creation of an LNG terminal in the Fall River area. Because there is no foreseeable plan for an LNG terminal in the Fall River area, the Coast Guard does not believe that a public meeting would aid this rulemaking. The Coast Guard contacted the Corporation Counsel for the city of Fall River, which was a leading opponent to the Weaver's Cove LNG proposal and had requested a public meeting, and learned that with the withdrawal of the Weaver's Cove LNG proposal, and there being no other LNG proposals pending or anticipated, Fall River believes there is no longer a need for a public meeting to discuss this anchorage regulation.

Even though the LNG-related concerns raised in the comments are no longer relevant, the Coast Guard wishes to clarify that it is incorrect to view the establishment of this anchorage as giving permission for vessels to anchor. Rather, commercial vessels of all kinds already can and do anchor in this area; the act of designating this anchorage is intended simply to reflect current practices for the purpose of promoting safety of navigation.

One comment, expressly adopted by the comments of four others, challenges the Coast Guard's use of categorical exclusion 34(f) in accordance with Section 2.B.2 and Figure 2–1 of the NEPA Implementing Procedures and Policy for Considering Environmental Impacts, Commandant Instruction M164175.1D, and Department of Homeland Security Management Directive 023–01.

We determined that reliance on the Coast Guard-specific categorical exclusion is proper despite the fact that at the time the NPRM was published, Department of Homeland Security Management Directive 023–01 did not contain unique categorical exclusions for the Coast Guard. However, that directive was updated on October 3, 2011, to reflect the Council on Environmental Quality-approved categorical exclusions for the Coast Guard.

The same comment also alleges that the Coast Guard action adding the anchorage is a piece of a larger action in contravention of Department of Homeland Security Management Directive 023–01.

We determined that the proposed action adding the anchorage is not a piece of a larger action. The designation by the Coast Guard of an anchorage that overlaps an obsolete U.S. Navy restricted area is not part of an action by the Army Corps of Engineers to remove the restricted area designation and vice versa. In its determination whether to designate the area as an anchorage, the Coast Guard contacted Commanding Officer, Naval Station Newport to verify that there are no unexploded devices that would pose a hazard to navigation. Commanding Officer, Naval Station Newport, confirmed that there are no unexploded devices and wrote a letter to Chief, Regulatory Division, U.S. Army Corps of Engineers to disestablish the restricted area as it is no longer used by the Navy. Thus, the Army Corps of Engineers' ability to remove the designation is not an integral part of nor required for the establishment of the anchorage area. A copy of Commanding Officer, Naval Station Newport's letter of 5 May 2011 is included in the docket for this rule.

One comment states that the Coast Guard failed to acknowledge the designation of the entire Narragansett Bay as an environmentally sensitive area and that the proposed impact on the entire bay area must be analyzed.

The Coast Guard acknowledges that Narragansett Bay is an environmentally sensitive area designated by the U.S. Environmental Protection Agency under the National Estuary Program. In conducting our Categorical Exclusion Determination, we identified the closest waterway location designated as an environmentally sensitive area. We determined that establishing an anchorage in this area would not affect the designated environmental area because the area is already used as an anchorage and our action is administrative in nature. Therefore, we concluded that if the proposed action did not affect the closest environmentally sensitive area, it would also not affect the other environmentally sensitive areas further from the proposed anchorage.

Four comments claimed that the Coast Guard action establishing the anchorage must undergo a NEPA Environmental Assessment (EA) before mariners would be regularly using the anchorage area.

We determined that we are not required to conduct an EA under this line of reasoning because mariners have historically used the area as an anchorage, and this usage was not the result of a Coast Guard action. The Coast Guard action of placing the existing anchorage area in the public notice and on navigation charts does not alter the current activity at that location. The Coast Guard action simply removes ambiguity and clarifies for mariners the preferred and safest area in which to anchor offshore when waiting to enter Narragansett Bay.

Two comments recommended the U.S. Fish and Wildlife Service determine whether the proposed action establishing the anchorage would have adverse impacts.

We determined that because the U.S. Department of the Interior under which the U.S. Fish and Wildlife Service operates responded that the Department has no comment on the proposed rulemaking, consultation with the U.S. Fish and Wildlife Service was not necessary.

One comment requested that we clearly state the size of the new anchorage. The new Brenton Point anchorage established by this rule is a parallelogram-shaped box approximately 4.98 nautical miles by 1.95 nautical miles, which produces an anchorage of approximately 9.7 square nautical miles. Designing the size and shape of anchorages is a subjective process that considers many factors, including type and number of vessels that may use the anchorage, water depth, bottom topography, nearby vessel traffic patterns, etc. All of those factors were considered in designing the Brenton Point anchorage. The size of this anchorage is considered to be the minimum necessary to safely accommodate the type and number of commercial vessels that may use it, and its size is consistent with or smaller than many other anchorages in the southeastern New England area.

**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.

**Executive Order 12866 and Executive Order 13563**

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect minimal additional cost impacts to the industry because this rule is not imposing fees, permits, or specialized requirements for the maritime industry to utilize this anchorage area. The effect of this rule is not significant as it removes one obsolete anchorage that is no longer used by the U.S. Navy, and documents and codifies another area that is currently used by commercial vessels. This improves safety for vessels using the anchorage grounds, facilitates the transit of deep draft vessels through the area, and improves safety for other vessels transiting in the vicinity of the new anchorage area.

**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 received no comments from the Small Business Administration on this rule.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels that have a need to anchor in Narragansett Bay or Rhode Island Sound at the entrance to Narragansett Bay.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule only codifies current navigation practices that are already in use by small entities in this area. The anchorage will not affect vessels' schedules or their ability to freely transit within these areas of Narragansett Bay or Rhode Island Sound. The anchorage imposes no monetary expenses on small entities since it does not require them to purchase any new equipment, hire additional crew, or make any other expenditures.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding this 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.

**Protest Activities**

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

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule does not result in such 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.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. The evaluation of the impact of LNG vessels on the anchorage is not required because the proposed LNG facility at Weaver's Cove has been withdrawn as documented above, and thus there are no reasonably foreseeable LNG-related impacts that need to be considered.

In accordance with the Coast Guard NEPA implementing Instruction, this rule is categorically excluded from further analysis and documentation under NEPA. Since this rule involves removal of an obsolete anchorage area and establishment of another, Categorical Exclusion (34)(f) under Figure 2–1 of the Instruction applies. The rule is no longer controversial. Public comments and input primarily addressed issues arising from the now-abandoned proposal to create an LNG facility at Weaver's Cove, Fall River, Massachusetts. The Coast Guard has no evidence to suggest that any other criteria noted in DHS D 023–01, Section V.F.12 or COMDTINST 16475.1D Chapter 2 B 2(b) would suggest an inquiry beyond the categorical exclusion. 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 110**

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

## PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Remove and reserve § 110.145(a)(2)(ii).

■ 3. Add § 110.149 to subpart B to read as follows:

**§ 110.149 Narragansett Bay, RI.**

(a) Brenton Point anchorage ground. An area bounded by the following coordinates: 41°22′37.1″ N, 71°14′40.3″ W; thence to 41°20′42.8″ N, 71°14′40.3″ W; thence to 41°18′24.1″ N, 71°20′32.5″ W; thence to 41°20′22.6″ N, 71°20′32.5″ W; thence back to point of origin.

(b) The following regulations apply in the Brenton Point anchorage ground.

(1) Prior to anchoring within the anchorage area, all vessels shall notify the Coast Guard Captain of the Port via VHF–FM Channel 16.

(2) Except as otherwise provided, no vessel may occupy this anchorage ground for a period of time in excess of 96 hours without prior approval of the Captain of the Port.

(3) If a request is made for the long-term lay up of a vessel, the Captain of the Port may establish special conditions with which the vessel must comply in order for such a request to be approved.

(4) No vessel in such condition that it is likely to sink or otherwise become a menace or obstruction to navigation or anchorage of other vessels shall occupy an anchorage except in cases where unforeseen circumstances create conditions of imminent peril to personnel and then only for such period as may be authorized by the Captain of the Port.

(5) Anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage area.

(6) The Coast Guard Captain of the Port may close the anchorage area and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety and security.

(7) Any vessel anchored in these grounds must be capable of getting underway if ordered by the Captain of the Port and must be able to do so within two hours of notification by the Captain of the Port. If a vessel will not be able to get underway within two hours of notification, permission must be requested from the Captain of the Port to remain in the anchorage. No vessel shall anchor in a ''dead ship'' status (propulsion or control unavailable for normal operations) without prior approval of the Captain of the Port.

(8) Brenton Point anchorage ground is a general anchorage area reserved primarily for commercial vessels waiting to enter Narragansett Bay.

(9) Temporary floats or buoys for marking anchors or moorings in place will be allowed in this area. Fixed mooring piles or stakes will not be allowed.

(10) All coordinates referenced use datum: NAD 83.

Dated: July 13, 2012.

**Daniel B. Abel,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 2012–18127 Filed 7–24–12; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2012–0635]**

**RIN 1625–AA00**

## Safety Zone; Flying Magazine Air Show, Lake Winnebago, Oshkosh, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Lake Winnebago in Oshkosh, Wisconsin. This safety zone is intended to restrict vessels from a portion of Lake Winnebago during the Flying Magazine Air show. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with an air show over water and associated fireworks display.

**DATES:** This rule will be effective between 5:45 p.m. until 10 p.m. on July 24, 2012.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2012–0635]. To view documents mentioned in this preamble as being available in the docket, go to *http://*

*www.regulations.gov,* type the docket number in the ''SEARCH'' box, and click ''Search.'' You may visit the Docket Management Facility, Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or email CWO Jon Grob, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7188, email *Jon.K.Grob@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

## Table of Acronyms

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

## A. Regulatory History and Information

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

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

## B. Basis and Purpose

Between 6:00 p.m. and 9:30 p.m. on July 24, 2012, an air show with associated pyrotechnics will be held over Lake Winnebago in Oshkosh WI. The Captain of the Port, Sector Lake Michigan, has determined that an aircraft executing acrobatic maneuvers with associated pyrotechnics proximate to a gathering of watercraft and personnel pose a significant risk to public safety and property. Such hazards include aircraft malfunctions and subsequent crash, premature and accidental detonations of pyrotechnics, dangerous projectiles, and falling or burning debris.

## C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port, Sector Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the air show. This zone will be effective and enforced from 5:45 p.m. until 10:00 p.m. on July 24, 2012. The zone will encompass all waters of Lake Winnebago bounded by a line drawn from 44°00′36″ N, 088°30′50″ W; then north to 44°01′26″ N, 088°30′50″ W; then east to 44°01′26″ N, 088°30′16″ W; then south to 44°00′36″ N, 088°30′16″ W; then west returning to the point of origin (NAD 83). Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

## D. Regulatory Analyses

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

### *1. Regulatory Planning and Review*

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

### *2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Lake Winnebago, Oshkosh, WI on the evening of July 24, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only four hours and fifteen minutes in the evening. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

### *3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

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

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

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

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

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

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

■ 2. Add § 165.T09–0635 to read as follows:

**§ 165.T09–0635 Safety Zone; Flying Magazine Air Show, Lake Winnebago, Oshkosh, WI.**

(a) *Location.* The safety zone will encompass all waters of Lake Winnebago, Oshkosh, Wisconsin bounded by a line drawn from 44°00′36″ N, 088°30′50″ W; then north to 44°01′26″ N, 088°30′50″ W; then east to 44°01′26″ N, 088°30′16″ W; then south to 44°00′36″ N, 088°30′'16″ W; then west returning to the point of origin (NAD 83).

(b) *Effective and Enforcement Period.* This regulation is effective and will be enforced on July 24, 2012 from 5:45 p.m. until 10:00 p.m.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan or his designated on-scene representative.

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

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

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Sector Lake Michigan or his on-scene

representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his on-scene representative.

Dated: July 5, 2012.

**M.W. Sibley,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.*

[FR Doc. 2012–18117 Filed 7–24–12; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 9 and 721

**[EPA–HQ–OPPT–2011–0577; FRL–9356–1]**

**RIN 2070–AB27**

## Significant New Use Rules on a Certain Chemical Substance; Removal of Significant New Use Rules

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

**ACTION:** Final rule.

**SUMMARY:** EPA is removing significant new use rules (SNURs) promulgated under the Toxic Substances Control Act (TSCA) for five chemical substances which were the subject of premanufacture notices (PMNs). EPA published these SNURs using direct final rulemaking procedures. EPA received notice of intent to submit adverse comments on the rules. Therefore, the Agency is removing these SNURs, as required under the expedited SNUR rulemaking process. EPA intends to publish in the near future proposed SNURs for these five chemical substances under separate notice and comment procedures.

**DATES:** This final rule is effective on July 25, 2012.

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

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

**SUPPLEMENTARY INFORMATION:**

### I. Does this action apply to me?

A list of potentially affected entities is provided in the **Federal Register** of April 27, 2012 (77 FR 25236) (FRL–9343–4). If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### II. What Rule is being removed?

In the **Federal Register** of April 27, 2012 (77 FR 25236), EPA issued several direct final SNURs, including SNURs for five chemical substances that are the subject of this removal. These direct final rules were issued pursuant to the procedures in 40 CFR part 721 subpart D. In accordance with § 721.160(c)(3)(ii), EPA is removing these rules issued for five chemical substance which were the subject of PMNs P–01–384, P–01–385, P–01–386, P–01–387, and P–01–388 because the Agency received notice of intent to submit adverse comments without sufficient time to respond prior to the effective date of the rule. EPA intends to publish proposed SNURs for these chemical substances under separate notice and comment procedures.

For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721, subpart D, and the **Federal Register** of July 27, 1989 (54 FR 31314). The record for the direct final SNUR for these chemical substances that are being removed was established at EPA–HQ–OPPT–2011–0577. That record includes information considered by the Agency in developing this rule and the notice of intent to submit adverse comments.

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

To access the electronic docket, please go to *http://www.regulations.gov* and follow the online instructions to access docket ID number EPA–HQ–OPPT–2011–0577. Additional information about the Docket Facility is provided under **ADDRESSES** in the **Federal Register** of April 27, 2012 (77 FR 25236). If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### IV. Statutory and Executive Order Reviews

This final rule removes existing regulatory requirements and does not contain any new or amended requirements. As such, the Agency has determined that this removal will not have any adverse impacts, economic or otherwise. The statutory and executive order review requirements applicable to the direct final rule were discussed in the **Federal Register** of April 27, 2012 (77 FR 25236). Those review requirements do not apply to this action because it is a removal and does not contain any new or amended requirements.

### V. Congressional Review Act

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

### List of Subjects

*40 CFR Part 9*

Environmental protection, Reporting and recordkeeping requirements.

*40 CFR Part 721*

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

Dated: July 16, 2012.

**Maria J. Doa,**

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

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

## PART 9—[AMENDED]

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

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

### § 9.1 [Amended]

■ 2. The table in § 9.1 is amended by removing the following sections under the undesignated center heading ''Significant New Uses of Chemical Substances'': §§ 721.10308, 721.10309, 721.10310, 721.10311, and 721.10312.

## PART 721—[AMENDED]

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

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

**§§ 721.10308, 721.10309, 721.10310, 721.10311, and 721.10312 [Removed]**

■ 4. Remove §§ 721.10308, 721.10309, 721.10310, 721.10311, and 721.10312.

[FR Doc. 2012–17897 Filed 7–24–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[EPA–HQ–OAR–2007–0956; FRL–9668–4]**

**RIN 2060–AO96**

## Final Rule To Implement the 1997 8-Hour Ozone National Ambient Air Quality Standard: Classification of Areas That Were Initially Classified Under Subpart 1; Revision of the Anti-Backsliding Provisions To Address 1-Hour Contingency Measure Requirements; Deletion of Obsolete 1-Hour Ozone Standard Provision

*Correction*

In rule document 2012–11232 appearing on pages 28424–28446 in the issue of Monday, May 14, 2012, make the following correction:

**§ 81.305 [Corrected]**

■ On page 28443, the table entitled ''CALIFORNIA—OZONE [8-Hour Standard]'' should read as set forth below:

CALIFORNIA—OZONE [8-HOUR STANDARD]

| Designated area | Designation [a] | | Category/classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| Amador and Calaveras Cos., CA: | | | | |
| (Central Mountain Cos.) | | | | |
| Amador County | | Nonattainment | 6/13/12 | Subpart 2/Moderate. |
| Calaveras County | | Nonattainment | 6/13/12 | Subpart 2/Moderate. |
| Chico, CA: | | | | |
| Butte County | | Nonattainment | 6/13/12 | Subpart 2/Marginal. |
| Kern County (Eastern Kern), CA. | | | | |
| Kern County (part) | | Nonattainment | 6/13/12 | Subpart 2/Moderate. |

CALIFORNIA—OZONE [8-HOUR STANDARD]—Continued

| Designated area | Designation [a] | | Category/classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| That portion of Kern County (with the exception of that portion in Hydrologic Unit Number 18090205—the Indian Wells Valley) east and south of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary. | | | | |
| * * * | * | * | * | * |
| Mariposa and Tuolumne Cos., CA: | | | | |
| (Southern Mountain Counties) | | | | |
| Mariposa County | | Nonattainment | 6/13/12 | Subpart 2/Moderate. |
| Tuolumne County | | Nonattainment | 6/13/12 | Subpart 2/Moderate. |
| San Diego, CA | | | | |
| San Diego County (part) | | | | |
| That portion of San Diego County that excludes the areas listed below: La Posta Areas #1 and #2,[b] Cuyapaipe Area,[b] Manzanita Area,[b] Campo Areas #1 and #2 [b]. | | Nonattainment | 6/13/12 | Subpart 2/Moderate. |
| * * * | * | * | * | * |
| Sutter County (part), CA: | | | | |
| Sutter County (part) | | | | |
| (Sutter Buttes) That portion of the Sutter Buttes mountain range at or above 2,000 feet in elevation. | | Nonattainment | 6/13/12 | Subpart 2/Marginal. |
| * * * | * | * | * | * |
| Nevada County (Western part), CA | | | | |
| Nevada County (part) | | | | |

CALIFORNIA—OZONE [8-HOUR STANDARD]—Continued

| Designated area | Designation [a] | | Category/classification | |
|---|---|---|---|---|
| | Date [1] | Type | Date [1] | Type |
| That portion of Nevada County, which lies west of a line, described as follows: beginning at the Nevada-Placer County boundary and running north along the western boundaries of Sections 24, 13, 12, 1, Township 17 North, Range 14 East, Mount Diablo Base and Meridian, and Sections 36, 25, 24, 13, 12, Township 18 North, Range 14 East to the Nevada-Sierra County boundary. | ..... | Nonattainment ..... | 6/13/12 | Subpart 2/Moderate. |
| * * * | * | * | * | * |

[a] Includes Indian Country located in each county or area, except as otherwise noted.
[b] The boundaries for these designated areas are based on coordinates of latitude and longitude derived from EPA Region 9's GIS database and are illustrated in a map entitled ''Eastern San Diego County Attainment Areas for the 8-Hour Ozone NAAQS,'' dated March 9, 2004, including an attached set of coordinates. The map and attached set of coordinates are available at EPA's Region 9 Air Division office. The designated areas roughly approximate the boundaries of the reservations for these tribes, but their inclusion in this table is intended for CAA planning purposes only and is not intended to be a federal determination of the exact boundaries of the reservations. Also, the specific listing of these tribes in this table does not confer, deny, or withdraw Federal recognition of any of the tribes so listed nor any of the tribes not listed.
[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. C1–2012–11232 Filed 7–24–12; 8:45 am]

BILLING CODE 1505–01–D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 141 and 142

**[Docket No. EPA–HQ–OW–2009–0090; FRL–9660–4]**

**RIN 2040–AF10**

### Revisions to the Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems

*Correction*

In rule document 2012–9978 appearing on pages 26072–26101 in the issue of Wednesday, May 2, 2012, make the following correction:

On pages 26072–26073, the table entitled

''EXHIBIT 1—APPLICABILITY OF UCMR 3 TO WATER UTILITIES BY SYSTEM TYPE AND SIZE'' should read as set forth below:

EXHIBIT 1—APPLICABILITY OF UCMR 3 TO WATER UTILITIES BY SYSTEM TYPE AND SIZE

**UCMR 3 Assessment Monitoring**

| System type | System size[1] | |
|---|---|---|
| | Serving >10,000 | Serving ≤10,000 |
| CWS & NTNCWS | Requires all systems to monitor for List 1 chemicals | Requires 800 randomly selected systems to monitor for List 1 chemicals. EPA will pay for the analysis of samples. |
| TNCWS | No requirements | No requirements. |

**UCMR 3 Screening Survey**

| System Type | System size [1] | |
|---|---|---|
| | Serving >10,000 | Serving ≤10,000 |
| CWS & NTNCWS | Requires all systems serving more than 100,000, and 320 randomly selected systems serving 10,001 to 100,000 to monitor for List 2 chemicals. | Requires 480 randomly selected systems to monitor for List 2 chemicals. EPA will pay for the analysis of samples. |
| TNCWS | No requirements | No requirements. |

**UCMR 3 Pre-Screen Testing**

| System type | System size[1] | |
|---|---|---|
| | Serving >1,000 | Serving ≤1,000 |
| CWS, TNCWS & NTNCWS | No requirements | Requires 800 randomly selected systems to permit EPA to sample and analyze List 3 microbes. The selected systems will be served by non-disinfecting ground water wells in vulnerable areas. EPA will pay for the analysis of samples. |

[1] Based on the retail population, as indicated by SDWIS/Fed on December 31, 2010.

[FR Doc. C2–2012–9978 Filed 7–24–12; 8:45 am]
**BILLING CODE 1505–01–D**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2011–0792; FRL–9352–8]**

## Acetamiprid; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of acetamiprid in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective July 25, 2012. Objections and requests for hearings must be received on or before September 24, 2012, 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:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0792, is available at *http://www.regulations.gov* or at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; email address: *ertman.andrew@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.*

*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–2011–0792 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 September 24, 2012. 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–2011–0792, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

### II. Summary of Petitioned-For Tolerance

In the **Federal Register** of November 9, 2011 (76 FR 69690) (FRL–9325–1), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1E7919) by Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.578 be amended by establishing tolerances for residues of the insecticide acetamiprid, *N* 1-[(6-chloro-3-pyridyl)methyl]- *N* 2-cyano- *N* 1-methylacetamidine, in or on asparagus at 0.8 ppm; *Brassica,* leafy greens, subgroup 5B at 15 parts per million (ppm); turnip greens at 15 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, forage at 10 ppm; corn, sweet, stover at 30 ppm; vegetable, fruiting, group 8–10 at 0.20 ppm; fruit, citrus, group 10–10 at 0.50 ppm; fruit, pome, group 11–10 at 1.0 ppm; and *Brassica,* head and stem, subgroup 5A at 1.20 ppm. It also requested that upon approval of the aforementioned tolerances, to remove the established tolerances in 40 CFR 180.578 for fruit, citrus, group 10 at 0.50 ppm; fruit, pome, group 11 at 1.0 ppm; vegetable, fruiting, group 8 at 0.20 ppm; and vegetable, *Brassica,* leafy, group 5 at 1.20 ppm. The fruit, citrus, group 10; fruit, pome, group 11; and vegetable, fruiting, group 8 tolerances will be superseded by the updated crop group tolerances. The vegetable, *Brassica,* leafy group 5 tolerance will be superseded by the *Brassica,* leafy greens, subgroup 5B and *Brassica,* head and stem, subgroup 5A tolerances. That

notice referenced a summary of the petition prepared by Nisso America, Inc., the registrant, which is available in the docket, *http://www.regulations.gov.* One comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is not establishing tolerances for sweet corn and its related commodities. 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 FFDCA section 408(b)(2)(D), and 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 for acetamiprid including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with acetamiprid 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.

Acetamiprid is moderately toxic in acute lethality studies via the oral route of exposure and is minimally toxic via the dermal and inhalation routes of exposure. It is not an eye or skin irritant, nor is it a dermal sensitizer. Acetamiprid does not appear to have specific target organ toxicity. Generalized toxicity was observed as decreases in body weight, body weight gain, food consumption and food efficiency in all species tested. Generalized liver effects were also observed in mice and rats (hepatocellular vacuolation in rats and hepatocellular hypertrophy in mice and rats); the effects were considered to be adaptive. Other effects observed in the oral studies include amyloidosis of multiple organs in the mouse oncogenicity study, tremors in high dose females in the mouse subchronic study, and microconcretions in the kidney papilla and mammary hyperplasia in the rat chronic/oncogenicity study. No effects were observed in a dermal toxicity study in rabbits.

In the rat developmental study, fetal shortening of the 13th rib was observed in fetuses at the same dose level that produced maternal effects (reduced body weight and body weight gain and increased liver weights). In the developmental rabbit study, no developmental effects were observed in fetuses at doses that reduced maternal body weight and food consumption. In the reproduction study, decreased body weight, body weight gain, and food consumption were observed in parental animals while significant reductions in pup weights were seen in the offspring in both generations. Also observed were reduction in litter size, and viability and weaning indices among $F_2$ offspring as well as significant delays in the age to attain vaginal opening and preputial separation. In the developmental neurotoxicity study, parental effects were limited to decreased body weight and body weight gains, while the offspring effects noted were decreased body weights and body weight gains, decreased pre-weaning survival (post-natal days (PNDs) 0–1), and decreased maximum auditory startle response in males on PNDs 20 and 60.

In the acute neurotoxicity study, male and female rats displayed decreased motor activity, tremors, walking and posture abnormalities, dilated pupils, coldness to the touch and decreased grip strength and foot splay at the highest dose tested (HDT). There was a decrease in the auditory startle response in male rats at the HDT in the developmental neurotoxicity study; additionally, tremors were noted in female mice at the HDT in the subchronic feeding study.

In four week immunotoxicity studies performed in both sexes of rats and mice, no effects on the immune system were observed up to the highest dose, although significant reductions in body weight and body weight gain were noted at that dose.

Based on acceptable carcinogenicity studies in rats and mice, EPA has determined that acetamiprid is ''not likely to be carcinogenic to humans.'' The classification is based on the absence of an increase in the incidence of tumors in a mouse carcinogenicity study; and in a rat chronic/carcinogenicity study, the absence of a dose-response and the lack of a statistically significant increase in the mammary adenocarcinoma incidence by pair-wise comparison of the mid- and high-dose groups with the controls (although the incidence exceeded the historical control data from the same laboratory, it was within the range of values from the supplier). There was no clear evidence of a mutagenic effect. Acetamiprid tested positive as a clastogen in an *in vitro* study but not in an *in vivo* study.

Specific information on the studies received and the nature of the adverse effects caused by acetamiprid 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 the document titled ''Acetamiprid: Human Health Risk Assessment for New Uses on Asparagus; *Brassica,* Leafy Greens, Subgroup 5B, and Turnip Greens; and Sweet Corn; and Updated Crop Group Definitions for Fruiting Vegetables, Citrus, and Pome Fruit'', pp. 35–40 in docket ID number EPA–HQ–OPP–2011–0792.

### *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) or aggregate risk index (ARI). 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 acetamiprid used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ACETAMIPRID 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) | NOAEL = 10 mg/kg/day $UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Acute RfD = 0.10 mg/kg/day<br>aPAD = 0.10 mg/kg/day | Co-critical studies.<br>Developmental Neurotoxicity in rat.<br>LOAEL = 45 mg/kg/day based on decreased early pup survival on PND 0–1, and decreased startle response on PND 20/60 in males.<br>Acute Neurotoxicity Study in rat.<br>LOAEL = 30 mg/kg/day based on decreased locomotor activity. |
| Chronic dietary (All populations). | NOAEL= 7.1 mg/kg/day<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | Chronic RfD = 0.071 mg/kg/day<br>cPAD = 0.071 mg/kg/day | Chronic Toxicity/Oncogenicity Study in rats.<br>LOAEL = 17.5 mg/kg/day based on decreased body weight and body weight gains in females and hepatocellular vacuolation in males. |
| Short- and Intermediate-Term Incidental Oral. (1–30 days and 1–6 months). | NOAEL= 10 mg/kg/day<br>$UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x | LOC for MOE = 100 | Developmental Neurotoxicity in rat.<br>LOAEL = 45 mg/kg/day based on decreased body weight and body weight gains in offspring, decreased early pup survival on PND 0–1, and decreased startle response on PND 20/60 in males. |
| Short- and Intermediate-term Dermal. (1–30 days, 1–6 months). | NOAEL= 10 mg/kg/day<br>Dermal Absorption Rate = 10%<br>$UF_A$= 10x<br>$UF_H$= 10x<br>FQPA SF = 1x | LOC for MOE = 100 | Developmental Neurotoxicity in rat. LI≤LOAEL = 45 mg/kg/day based on decreased body weight and body weight gains in offspring, decreased early pup survival on PND 0–1, and decreased startle response on PND 20/60 in males. |
| Short- and Intermediate-term Inhalation (1–30 days, 1–6 months). | Oral study NOAEL= 10 mg/kg/day. $UF_A$ = 10x<br>$UF_H$ = 10x<br>FQPA SF = 1x<br>$UF_{DB}$ = 10x | LOC for MOE = 1,000 | Developmental Neurotoxicity in rat.<br>LOAEL = 45 mg/kg/day based on decreased body weight and body weight gains in offspring, decreased early pup survival on PND 0–1, and decreased startle response on PND 20/60 in males. |

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. $UF_A$ = extrapolation from animal to human (interspecies). $UF_{DB}$ = to account for the absence of data or other data deficiency. $UF_H$ = potential variation in sensitivity among members of the human population (intraspecies). PND = post-natal day.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to acetamiprid, EPA considered exposure under the petitioned-for tolerances as well as all existing acetamiprid tolerances in 40 CFR 180.578. EPA assessed dietary exposures from acetamiprid 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. Such effects were identified for acetamiprid.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA performed the acute analysis based on tolerance level residues and assumed 100 percent crop treated (PCT). Empirical processing factors were used for processed commodities unless such data were not available, in which case dietary exposure evaluation model (DEEM) default processing factors from Version 7.81 were used.

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 performed the chronic analysis based on tolerance level residues and assumed 100 PCT. Empirical processing factors were used for processed commodities unless such data were not available, in which case DEEM default processing factors from Version 7.81 were used.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that acetamiprid 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 PCT information.* EPA did not use

anticipated residue and/or PCT information in the dietary assessment for acetamiprid. Tolerance level residues and/or 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 acetamiprid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of acetamiprid. 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 acetamiprid for surface water are estimated to be 95.2 parts per billion (ppb) for acute exposures and 26.6 ppb for chronic exposure. For ground water, the EDWC is 0.035 ppb.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 95.2 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 26.6 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).

Acetamiprid is currently registered for the following uses that could result in residential exposures: Indoor and outdoor residential settings, including crack and crevice and spray applications. Mattress treatments were also assessed as there is a pending application for this use. EPA assessed residential exposure using the following assumptions: Exposure for adults (from short-term dermal and inhalation exposure) applying crack and crevice and mattress treatments; and postapplication exposure for adults (from short- and intermediate-term dermal and inhalation exposure) and for children 3–6 years old (from short- and intermediate-term dermal, inhalation and hand-to-mouth exposure) following crack and crevice and mattress treatments.

Dermal, oral, and inhalation risks for short- and intermediate-term exposures were combined since the toxicological endpoints and points of departure were the same. However, due to the lack of the required inhalation toxicity study, the Agency has determined that a 10X FQPA factor must be retained as a database uncertainty factor for inhalation exposure only, raising the LOC to 1,000 for inhalation scenarios. As such, the level of concern (LOC) values were different (i.e. dermal and oral LOC = 100, while inhalation LOC = 1,000) and therefore, the respective risk estimates are combined using the aggregate risk index (ARI) approach. This approach reflects risk estimates resulting from exposure via the dermal, inhalation, and oral routes. An ARI of greater than 1 indicates risks that are not of concern.

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 acetamiprid to share a common mechanism of toxicity with any other substances, and acetamiprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that acetamiprid 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 pre- and postnatal toxicology database for acetamiprid includes rat and rabbit developmental toxicity studies, a 2-generation reproduction toxicity study in rats and a developmental-neurotoxicity study (DNT) study in rats. There was no evidence of quantitative or qualitative susceptibility of rat or rabbit fetuses following *in utero* exposure to acetamiprid in the developmental toxicity studies. However, both the developmental neurotoxicity and 2-generation reproduction studies showed an increase in qualitative susceptibility of pups to acetamiprid. Effects in pups in the reproduction study included delays in preputial separation and vaginal opening, as well as reduced litter size, decreased pup viability and weaning indices; offspring effects observed in the developmental neurotoxicity study included decreased body weight and body weight gains, decreased pup viability and decreased maximum auditory startle response in males. These effects were seen in the presence of less severe maternal toxicity (decreased body weight and body weight gain. No evidence of increased quantitative susceptibility was observed in the studies.

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 for dermal and oral exposure pathways. However, a 10X SF is being retained as a database uncertainty factor for assessing inhalation exposure and risk only. This decision is based on the following findings:

i. The toxicology data base is complete (with the exception of an inhalation study) and acceptable guideline studies for developmental, reproductive toxicity, neurotoxicity (including DNT) and immunotoxicity are available.

ii. Acetamiprid produced signs of neurotoxicity in the high dose groups in the acute and developmental neurotoxicity studies in rats and the subchronic toxicity study in mice. However, no neurotoxic findings were reported in the subchronic neurotoxicity study in rats. Additionally, there are clear NOAELs identified for the effects observed in the toxicity studies. The doses and endpoints selected for risk assessment are protective and account for all toxicological effects observed in the database.

iii. No quantitative or qualitative evidence of increased susceptibility of fetuses to *in utero* exposure to acetamiprid was observed in either the developmental toxicity study in rats or rabbits. Although increased qualitative susceptibility was seen in the reproduction toxicity and the DNT study, the degree of concern for the effects is low. There are clear NOAELs for the offspring effects and regulatory doses were selected to be protective of these effects. No other residual uncertainties were identified with respect to susceptibility. The endpoints and doses selected for acetamiprid are protective of adverse effects in both offspring and adults.

iv. Currently, inhalation exposure is being assessed using hazard information from the developmental neurotoxicity study, which is an oral study. In the absence of an inhalation study, there is uncertainty about potential portal of entry effects occurring via the inhalation route of exposure. Therefore, EPA is recommending a 28-day inhalation study and retaining a 10X FQPA factor as a database uncertainty factor for the inhalation route of exposure only, pending submission of the required study.

v. The exposure databases (dietary food, drinking water, and residential) are complete and the risk assessment for each potential exposure scenario includes all metabolites and/or degradates of concern and does not underestimate the potential risk to infants or children. The dietary exposure assessments were based on tolerance level residues and assumed 100 PCT. Empirical processing factors were used for processed commodities unless such data were not available, in which case DEEM default processing factors from Version 7.81 were used. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to acetamiprid 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 acetamiprid.

### *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 ARI exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to acetamiprid will occupy 52% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to acetamiprid from food and water will utilize 33% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of acetamiprid is not expected.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Acetamiprid is currently registered for uses that could result in short- and intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures to acetamiprid.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded the combined short- and intermediate-term food, water, and residential exposures result in aggregate ARIs of 3.41 for adults and 1.45 for children. Because EPA's level of concern for acetamiprid is an ARI of 1 or below, these ARIs are not of concern.

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

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology liquid chromatography/mass spectrometry mass spectrometry (LC/MS/MS), (Method #KP–216R0 and its variant #KP–216R1) 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; email address: *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 United Nations 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.

For the specific new use commodities associated with this tolerance petition, the Codex has not established a MRL for acetamiprid.

### *C. Response to Comments*

An anonymous citizen objected to the presence of any pesticide residues on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, the existing legal framework provided by section 408 of the FFDCA contemplates that tolerances greater than zero may be set when persons seeking such 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 the EPA has acted in violation of the statutory framework.

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

EPA has determined that the available data are insufficient for establishing the proposed tolerances on sweet corn. Five additional field trials are required to support this use.

## V. Conclusion

Therefore, tolerances are established for residues of acetamiprid, *N* 1-[(6-chloro-3-pyridyl)methyl]- *N* 2-cyano- *N* 1-methylacetamidine, in or on asparagus at 0.80 ppm; *Brassica,* leafy greens, subgroup 5B at 15 ppm; turnip greens at 15 ppm; vegetable, fruiting, group 8–10 at 0.20 ppm; fruit, citrus, group 10–10 at 0.50 ppm; fruit, pome, group 11–10 at 1.0 ppm; and *Brassica,* head and stem, subgroup 5A at 1.20 ppm.

Also, due to the tolerances established in this unit by this document, the following existing tolerances are removed as unnecessary: Fruit, citrus, group 10; fruit, pome, group 11; vegetable, fruiting, group 8; and vegetable, *Brassica,* leafy, group 5.

## VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) 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 FFDCA section 408(d), 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 FFDCA section 408(n)(4). 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: July 17, 2012.

**Daniel J. Rosenblatt,**

*Acting 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 180.578 is amended by removing the entries for ''fruit, citrus, group 10''; ''fruit, pome, group 11''; ''vegetable, fruiting, group 8''; and ''vegetable, *Brassica,* leafy, group 5'' and by alphabetically adding the following entries to the table in paragraph (a)(1) to read as follows:

**§ 180.578 Acetamiprid; tolerances for residues.**

(a) *General.* (1) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Asparagus | 0.80 |
| * * * * * | |
| *Brassica,* head and stem, subgroup 5A | 1.20 |
| Brassica, leafy greens, subgroup 5B | 15 |
| * * * * * | |
| Fruit, citrus, group 10–10 | 0.50 |
| Fruit, pome, group 11–10 | 1.0 |
| * * * * * | |
| Turnip greens | 15 |
| * * * * * | |
| Vegetable, fruiting, group 8–10 | 0.20 |
| * * * * * | |

* * * * *

[FR Doc. 2012–18059 Filed 7–24–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[EPA–HQ–SFUND–1987–0002; FRL–9703–4]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Fort Dix Landfill Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 2 is publishing a direct final Notice of Deletion of the Fort Dix Landfill Superfund Site (Site), located in Pemberton Township, New Jersey, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct

final deletion is being published by EPA with the concurrence of the State of New Jersey, through the NJ Department of Environmental Protection, because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** This direct final deletion is effective September 24, 2012 unless EPA receives adverse comments by August 24, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1987–0002, by one of the following methods:

- *http://www.regulations.gov* . Follow on-line instructions for submitting comments.
- *Email: karas.alida@epa.gov.*
- *Fax:* (212) 637–3256.
- *Mail:* Alida M. Karas, Remedial Project Manager, Federal Facilities Section, Emergency & Remedial Response Division, U.S. Environmental Protection Agency Region 2, 18th floor, 290 Broadway, New York, NY 10007.
- *Hand delivery:* U.S. EPA Records Center, 290 Broadway, 18th floor, New York, NY 10007.

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–SFUND–1987–0002. 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 email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*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 statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA Region 2 Records Center, 290 Broadway, 18th floor, New York, NY 10007 Hours: 9:00 a.m. to 5:00 p.m. Monday through Friday. Phone: 212–637–4308; and Burlington County Library, 5 Pioneer Boulevard, Westampton, New Jersey 08060.

*Hours:* Monday 9:00 a.m. to 9:00 p.m., Tuesday–Friday 10:00 a.m. to 9:00 p.m., Saturday 9:00 a.m. to 5:00 p.m., Sunday 1:00 p.m. to 5:00 p.m.; July and August: close at 5:00 p.m. on Fridays, closed on Sundays.

**FOR FURTHER INFORMATION CONTACT:** Alida M. Karas, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 18th floor, 290 Broadway, New York, NY 10007; email: *karas.alida@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

## I. Introduction

EPA Region 2 is publishing this direct final Notice of Deletion of the Fort Dix Landfill (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 24, 2012 unless EPA receives adverse comments by August 24, 2012. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent to Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Fort Dix Landfill Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

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

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the

environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

**III. Deletion Procedures**

The following procedures apply to deletion of the Site:

(1) EPA consulted with the state of New Jersey prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the New Jersey Department of Environmental Protection, has concurred on the deletion of the site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in the major local newspaper, the Burlington County Times. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

**IV. Basis for Site Deletion**

The following information provides EPA's rationale for deleting the Site from the NPL:

*Site Background and History*

The Fort Dix Landfill is now named the ''Dix Area Sanitary Landfill'' due to the formation of the Joint Base McGuire Dix Lakehurst (JBMDL). The Dix Area Sanitary Landfill is located in the southwest section of the JBMDL in Pemberton Township, Burlington County, New Jersey. The landfill covers approximately 126 acres and is located about 2,200 feet from the post boundary. Two streams flow near the landfill: Cannon Run is located on the east side of the landfill, and flows south into the North Branch of Rancocas Creek; and an unnamed stream is located northwest of the landfill, and flows to the west into the North Branch of Rancocas Creek. A swamp that drains into Budd's Run is located to the west of Pipeline Road. The area immediately surrounding the Dix Area Sanitary Landfill consists of a hardwood swamp and densely vegetated hardwood forest. The town of Browns Mills is immediately to the east of the Military Reservation. To the south of the Dix Area Sanitary Landfill are two abandoned farms, approximately 12 homes, several county buildings, the County Hospital, and the Burlington County Juvenile Detention Center and shelter. Pemberton Township municipal buildings, sewage disposal plant, public water supply wells, and several homes are located to the southwest of the landfill. The surficial aquifer consists of a fine to silty sand unit (Cohansey and Kirkwood Formations) that overlies the fine grained silts and clays of the Manasquan, Hornerstown, and Navesink Formations. The Cohansey and Kirkwood Formations form a single unconfined aquifer at the site. Groundwater flow in this aquifer is to the south and southwest. The underlying Manasquan, Hornerstown, and Navesink Formations form a confining layer that limits downward vertical groundwater flow from the landfill site.

The Dix Area Sanitary Landfill began operation in 1950; it was officially closed on July 6, 1984. Prior to landfill development, the area was used for Army training. Between 1950 and 1984, the landfill was used and operated by the Fort Dix Military Reservation. McGuire Air Force Base also used the landfill from 1968 until it was closed. Access to the landfill was not controlled until 1980; therefore, records of disposal practices, waste types, and quantities are incomplete. Wastes that have been reportedly disposed of at the landfill include domestic waste, paints and thinners, demolition debris, ash, and solvents.

An interim New Jersey Pollutant Discharge Elimination System (NJPDES) permit was issued for the Dix Area Sanitary Landfill on May 29, 1984. On July 6, 1984, the Army ceased the disposal of waste at the landfill in compliance with the landfill closure date. The landfill was proposed for inclusion on the NPL on October 15, 1984 (49 FR 40320). On September 16, 1985, the Army entered into an Administrative Consent Order (ACO) with the New Jersey Department of Environmental Protection (NJDEP). The ACO required the Army to conduct a Remedial Investigation/Feasibility Study (RI/FS) and to implement the selected remedial alternative approved by NJDEP and United States Environmental Protection Agency (USEPA). The Dix Area Sanitary Landfill Site was placed on the NPL on July 22, 1987 (52 FR 27620).

On July 19, 1991, the Army entered into an interagency agreement, under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 120, known as the Federal Facility Agreement (FFA) with USEPA. The FFA superseded the ACO and provided the formal basis for selection of the remedy and the implementation of the Record of Decision (ROD) at the Dix Area Sanitary Landfill Site at JBMDL.

*Remedial Investigation/Feasibility Study*

The Remedial Investigation/Feasibility Study (RI/FS) was completed in 1987. The RI/FS included a risk assessment to determine the potential for impact to public health and the environment, which may result if the contamination associated with the Dix Area Sanitary Landfill, was not controlled. In conducting this assessment, the focus was on the human health and environmental effects that could result from exposure to contaminants associated with the landfill in various media (air, surface water, sediment, soil, and groundwater). During the evaluation of site risks, chemicals detected at the site were

screened to select indicator chemicals for the Dix Area Sanitary Landfill site. These chemicals were selected as most representative of site conditions and expected to contribute the greatest risks to human health and the environment. The indicator chemicals for the site include: 1,2-dichloroethane, benzene, vinyl chloride, trichloroethylene, tetrachloroethylene, chlorobenzene, 2-butanone, toluene, trans-1,2-dichloroethylene, bis(2-ethylhexyl)phthalate, 1,4-dichloroethylene, 1,1,1-trichloroethane, ethylbenzene, nickel, mercury, cadmium, zinc, chromium, and manganese. Based on an evaluation of the data obtained during the RI, the ROD summarizes the following remedial objectives:

- To prevent contaminants migrating from the landfill from affecting drinking water supplies of the local population;
- To prevent landfill contaminant migration/exposure via Cannon Run and Budd's Run (swamp) from restricting State-designated downstream surface water uses on the North Branch of Rancocas Creek (i.e., fishing, swimming, and future water supply);
- To protect people who perform military-related or unauthorized recreational activities on the JBMDL property from potentially harmful effects due to landfill contaminants;
- To satisfy all appropriate local, State, and Federal requirements for landfill closure;
- To prevent significant adverse environmental impacts on the surrounding flora and fauna caused by contaminant release from the Dix Area Sanitary Landfill; and
- To satisfy all site-specific Applicable or Relevant and Appropriate Requirements (ARARs) as practicable.

*Selected Remedy*

The Record of Decision (ROD), signed on September 24, 1991, consists of the following requirements:

- Installation of a cap on the southern 53 acres of the landfill consisting of vegetative, drainage, and low-permeability layers. Maintenance of 2 ft of existing final cover on the remaining portion of the landfill.
- Installation of a landfill gas venting and air monitoring system to determine if methane gas and VOC emissions require treatment.
- Installation of a chain link fence around the perimeter of the landfill to restrict access.
- Implementation of landfill closure requirements in accordance with New Jersey Closure Requirements, New Jersey Administration Code (NJAC) 7:26–2A et seq., and Resource Conservation and Recovery Act (RCRA) guidance.
- Perform long-term groundwater, surface water, sediment and air monitoring (30 years) pursuant to the New Jersey State closure requirements. Perform a yearly statistical analysis on the chemical analysis results to determine the trend of the overall contamination levels.
- Long-term O&M to provide inspection of and repairs to the landfill cap.
- Implementation of ICs in the form of deed and water restrictions on future uses of the landfill and groundwater in the immediate vicinity of the landfill.
- Development and implementation of a Soil Erosion and Sediment Control Plan in accordance with the Soil Erosion and Sediment Control Act Regulations of 1975—New Jersey Statutes Annotated (NJSA) 4:24–40 et seq., and NJAC 2:90–1.1 et seq.
- Using the data obtained in the monitoring program, review the risk assessment and subsequently revise the risk assessment if the trend shows significant changes in water quality. These reviews and revisions will be performed within three years of commencement of a remedial action and at least every five years thereafter. Any changes in actual exposure scenarios will be addressed in the revised risk assessments. Risk assessments will use USEPA guidance and policy effective at the time of the review.
- Except for monitoring, no groundwater remedy was specified because the contaminant plume could not be defined beyond isolated ''hot spots''.

*Response Actions*

The U.S. Army Corps of Engineers (USACE) acted on behalf of the Army at Fort Dix for both phases of the project and supervised all engineering and construction contracts required for completion of the work. Professional engineering services' for both phases were provided by Law Engineering and Environmental Services, Inc. (Law Environmental).

Phase I encompassed the approximately 126 acre Landfill with a six-foot perimeter chain link fence and provided two feet of soil cover to the northernmost 73 acres, This was completed early in fiscal year (FY) 1992. The contractor for Phases I and II was the George Hanus Co.

Phase II included covering of the southernmost 50 acres with a multilayer impermeable cap. The contract for the construction requirements of Phase II Remedial Action was awarded on June 30, 1994. Construction was completed in FY 97. In September, 1997 Law Environmental provided a Construction Completion Report to USACE. It was prepared and certified by C. Keith Brasher, a Professional Engineer licensed in the State of New Jersey.

The remedial design, work plans, performance standards, construction quality control measures, O&M, and long-term monitoring plans (LTMPs) were submitted to and approved by USEPA and NJDEP. The Army, its design contractor, the USACE, NJDEP, and USEPA reviewed, monitored, and inspected all design and construction activities, and have determined all activities were completed in accordance with the approved documents. USEPA made a final inspection of the completed work on March 28, 1998.

Institutional Controls in the form of Master Plan Amendments that are equivalent to deed restrictions on future uses of the Dix Area Sanitary Landfill have been implemented since the property is under the control and ownership of the Federal government. The Dix Area Master Plan restricts Army use of the Dix Area Sanitary Landfill site including the surrounding impacted areas. In the event the landfill property were no longer under the control and ownership of the Federal Government, implementation of appropriate deed notices or additional remediation to meet non-restricted use standards would be required to ensure the remedy remains protective of human health and the environment. In addition to the Dix Area Master Plan, the site will be enrolled in the NJDEP Classification Exception Area (CEA) program upon deletion from the NPL. The CEA program is established as a groundwater land use control (LUC) that serves to restrict the use of groundwater until regulatory standards have been achieved.

*Cleanup Goals*

The 1991 ROD including long term monitoring for contaminated groundwater outside the landfill unit boundary. The indicator chemicals for the site include: 1,2-dichloroethane, benzene, vinyl chloride, trichloroethylene, tetrachloroethylene, chlorobenzene, 2-butanone, toluene, trans-1,2-dichloroethylene, bis(2-ethylhexyl)phthalate, 1,4-dichloroethylene, 1,1,1-trichloroethane, ethylbenzene, nickel, mercury, cadmium, zinc, chromium, and manganese. These contaminants were evaluated in groundwater samples and compared to EPA MCLs and state standards, as appropriate. The method used to determine the appropriate groundwater screening criteria is a

comparison of the NJDEP groundwater quality standards (NJGWQS) and the USEPA maximum contaminant level (MCL) values. The more stringent of the values is used.

Inorganic Groundwater Monitoring Results

Based on groundwater monitoring conducted to date, nutrient metals are the only analytes exceeding screening criteria and exhibiting increasing concentration trends according to the Mann-Kendall Analysis. These exceedances and increasing trends occur both upgradient and downgradient of the landfill. In reviewing historical analytical data for this site, it has been noted that nutrient metals have been consistently present at concentrations above screening criteria. In an effort to understand the geochemical make-up of the local hydrogeology, several studies were reviewed. Following this review, it was evident that several naturally-occurring characteristics of the local hydrogeology are contributing to the elevated concentrations of nutrient metals in groundwater.

Fresh, uncontaminated groundwater in the Kirkwood-Cohansey aquifer system has naturally-occurring low pH. During the groundwater sampling program, pH levels were measured between 3 and 6 at both upgradient and downgradient locations. In the Kirkwood-Cohansey aquifer, calcium and bicarbonate are usually dominant ions in solution, with smaller amounts of sodium, potassium, magnesium sulfate, manganese and chloride. The surficial aquifer underlying and adjacent to the Dix Area Sanitary Landfill exhibits persistent exceedances of calcium, magnesium, manganese, sodium, and potassium that are attributed to this naturally-occurring condition. In 1988, the USEPA determined that concentrations of iron and manganese present a problem near the water table because the groundwater tends to have a low pH. Elevated concentrations of manganese and iron are also attributed to reductive dissolution by metal reducing bacteria feeding on petroleum contaminants. The reduced form of both iron and manganese are more water soluble than their oxidized counterparts. During the Spring 2010 and Fall 2010 sampling events, water quality data collected indicated a sporadic distribution of anaerobic and aerobic groundwater conditions. The data show both acid leaching and anaerobic degradation of gasoline contamination that is a waste of concern at the landfill, leading to elevated concentrations of manganese and iron. As a result of these evaluations, the Addendum to the 2005 CERCLA Five-Year Review concluded that manganese is naturally occurring and was removed as a COC from the site.

Organics

In 1979 and 1982, a series of groundwater monitoring wells were installed around the perimeter of the landfill. Reports indicated volatile organic compounds (VOCs) were detected in many of the groundwater samples taken in 1982. The two major VOCs exceeding the NJDEP groundwater limits were methylene chloride and trichloroethylene. In December 1983, eight additional groundwater monitoring wells were installed to further define groundwater contamination. Eleven additional wells were installed in May 1984 as part of a groundwater investigation performed by the U.S. Army Engineers Waterways Experiment Station. VOCs and heavy metals were detected in the groundwater samples collected from wells located immediately to the south, southeast, and southwest of the landfill. These compounds included methylene chloride, dichloroethane, trichloroethane, trichloroethylene, tetrachloroethylene, methyl ethyl ketone, methyl isobutyl ketone, mercury, cadmium, and other heavy metals. Based on the 2010 five year review recommendations, eight sentinel wells were evaluated and established downgradient of the landfill cap. These groundwater monitoring locations were sampled for eight continuous quarters (September 2009 to July 2011) and groundwater was analyzed for all contaminants of concern (COCs). With the exception of manganese (which was removed as a site COC), the results show no screening criteria exceedances were observed downgradient of the landfill and that COCs are below screening criteria at the landfill unit boundary. After the evaluation of the proposed sentinel wells, JBMDL proposed nine alternative wells, closer to the landfill, that are currently in the LTMP, to make up the sentinel well network. Wells LTM–9, 10, 12, 13, 14, 17, 18, 34 & 36 are now designated as sentinel wells and shall be used for compliance determination.

Operation and Maintenance

In general, O&M of the Dix Area Sanitary Landfill consists of the collection and analysis of groundwater, sediment, and surface water samples; routine mowing; limiting erosion; and maintaining site security.

Air Monitoring

With concurrence from USEPA and NJDEP, the Dix Area Sanitary Landfill gas venting and air monitoring system is no longer sampled and analyzed after it was determined there was no longer a need to monitor for methane gas or VOC emissions. Approval to terminate the air monitoring was received by NJDEP and USEPA in 2000.

Surface Water Monitoring

The majority of the surface water location samples that exceed analyte concentrations contain nutrient metals that are not COCs for surface water at the Dix Area Sanitary Landfill.

As part of the five-year review process an Ecological Risk Assessment was completed evaluating surface water analytical data up to and including September 2009. With the exception of manganese and mercury, there have been no COC screening criteria exceedances at the landfill in the last three years. The Addendum to the 2005 CERCLA Five-Year Review (Plexus, 2009) concluded that manganese is naturally occurring and was removed as a COC from the program. During the Spring 2010 and Fall 2010 sampling events, mercury exceeded screening criteria at three surface water locations (SW–1, SW–2, and SW–9). All three of these locations are situated northwest of the Dix Area Sanitary Landfill, along Budd's Run and immediately downgradient of the PDO Landfill, where mercury is the main COC. The issue of mercury exceedances along Budd's Run (the body of water that contains these surface water locations) has been addressed in the 2005 CERCLA Five-year Review Addendum. The five year review addendum concluded that the mercury exceedances are attributed to a separate site upgradient of the Dix Area Sanitary Landfill. The results of the ERA illustrate that in September 2009 only one COC (zinc) at SW–2 exceeded ecological screening criteria (ESC). Since this ESC exceedance, the concentration of zinc at SW–2 has reduced in concentration below the ESC.

Sediment Monitoring

The majority of the sediment location samples that exceed analyte concentrations contain nutrient metals that are not COCs for sediment at the Dix Area Sanitary Landfill. As part of the five-year review process an Ecological Risk Assessment was completed evaluating sediment analytical data up to and including September 2009. With the exception of chlorobenzene, manganese and

mercury, there have been no COC screening criteria exceedances at the landfill in the last three years. Although chlorobenzene exceeds the screening criteria, it does not exceed its respective ecological benchmark. The Addendum to the 2005 CERCLA Five-Year Review (Plexus, 2009) concluded that manganese is naturally occurring and was removed as a COC from the program. Since April 2010 the only sample location that exceeds screening criteria is SD–9. SD–9 is situated northwest of the Dix Area Sanitary Landfill, along Budd's Run and immediately downgradient of the PDO Landfill, where mercury is the main COC. The issue of mercury exceedances along Budd's Run (the body of water associated with this sediment location) has been addressed in the 2005 CERCLA Five-year Review Addendum. The five year review addendum concluded that the mercury exceedance is attributed to a separate site upgradient of the Dix Area Sanitary Landfill.

Low-level pesticide exceedances of dichlorodiphenyldichloroethylene (DDE) and dichlorodiphenyltrichloroethane (DDT) occur at locations SD–5 and SD–6, but do not occur at the landfill boundary. DDE and DDT are ubiquitous to Fort Dix and are not considered COCs for the Dix Area Sanitary Landfill. The results of the ERA illustrate that in September 2009 only one COC (mercury) at SD–9 exceeded ESC. Since this ESC exceedance, the concentration of zinc at SW–2 has reduced in concentration below the ESC. The 2005 CERCLA Five-year Review Addendum concluded that the mercury exceedances at this location are attributed to a separate site upgradient of the Dix Area Sanitary Landfill.

Site Inspections

Site inspections are performed by a JB MDL representative every 30 days and after large rain events or episodes of severe weather. The O&M contractor also performs a separate inspection on a quarterly basis. A compilation of these quarterly inspection reports is submitted to the regulatory agencies for review on annual basis. For areas that do not have a landfill cap installed, visual observations are made to ensure run-on and runoff controls are performing as intended. Any exposed waste in these areas is covered with compacted soil.

Cap Maintenance

On the landfill cap, tree and brush growth is not allowed for protection of the cap's liner system. Areas of settlement and damage by burrowing animals are repaired as needed. The sediment and erosion control features are maintained by cleaning debris and accumulated sediment to maintain proper infiltration and prevent clogging of the outlet control structure and emergency spillway. Since the last Five-year Review, there has been evidence of minor burrowing activity; however, the effects of the burrowing activity have not impacted the landfill cap or the protectiveness of the remedy. When located, burrows are routinely destroyed during the inspection process.

NJDEP will assume lead regulatory responsibility for all future O&M, implementation of ICs, and ensuring that the remedy remains protective into the future. Site LUCs will continue under the current NJDEP CEA program for the site. Long Term Monitoring of groundwater, surface water and sediment will continue in accordance with Long-Term Monitoring Plan.

*Five-Year Review*

The third five year review was completed September 15, 2100. The technical assessment summary concluded that the remedy is functioning as intended and remains protective of human health and the environment. There were three issues highlighted in the review. Evidence of erosion along the western slope of the landfill was identified. This erosion was stabilized and vegetation cover was restored. A fallen tree along the northern boundary perimeter fence was removed, and the fence was restored. There was a lack of sentinel wells to delineate groundwater COCs. Sentinel wells have been selected or installed.

The next Five-year Review for the Dix Area Sanitary Landfill is required by September 2015.

*Community Involvement*

Public participation activities for this Site have been satisfied as required in CERCLA sections 113(k) and 117, 42 U.S.C. 9613 (k) and 9617. Throughout the removal and remedial process, EPA and the NJDEP have kept the public informed of the activities being conducted at the Site by way of public meetings, progress fact sheets, and the announcement through local newspaper advertisement on the availability of documents such as the RI/FS, Risk Assessment, ROD, Proposed Plan and Five-Year Reviews. Notices associated with these community relations activities were also mailed out to the area residents and other concerned parties on the mailing list for the Site.

*Determination That the Site Meets the Criteria for Deletion From the NCP*

The NCP specifies that EPA may delete a site from the NPL if ''responsible parties or other persons have implemented all appropriate response actions required '' as stated in 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence from the State of New Jersey, through NJDEP, dated May 3, 2012, believes that this criterion for deletion has been met. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site files.

The Site meets all the site completion requirements as specified in the ROD, and all of the remedial actions at the site have been implemented. The implemented remedy achieves the degree of clean-up and protection specified in the ROD for all pathways of exposure. Continued implementation of the ICs and LTMP will ensure the long-term protectiveness of the remedy. Currently, none of the COCs outlined in the ROD have migrated past the landfill unit boundary as evidenced by groundwater, surface water and sediment data collected.

No further Superfund response is needed to protect human health and the environment.

## V. Deletion Action

The EPA, with concurrence of the State of New Jersey through the NJ Department of Environmental Protection, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective September 24, 2012 unless EPA receives adverse comments by August 24, 2012. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

## List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances,

Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 9, 2012.

**Judith Enck,**

*Regional Administrator, Region 2.*

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

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

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

### Appendix B to Part 300 [Amended]

■ 2. Table 2 of Appendix B to part 300 is amended by removing ''Fort Dix (Landfill Site)'', ''Pemberton Township'' under NJ.

[FR Doc. 2012–18136 Filed 7–24–12; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 2

**[FCC 12–60]**

## Grantee Codes for Certified Radiofrequency Equipment

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document modifies the rules to remove the restriction that grantee codes must consist of only three characters. This action will permit the Commission to issue longer grantee codes, thus greatly increasing the supply of available codes and ensuring that it will continue to have new ones to assign to parties that wish to certify new equipment.

**DATES:** Effective August 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506, email: *hugh.vantuyl@fcc.gov*, TTY (202) 418–2989.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order,* FCC 12–60, adopted June 13, 2012 and released June 13, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.*

### Summary of the Order

1. The Commission operates an equipment authorization program for radiofrequency (RF) devices under part 2 of its rules. This program is one of the primary means that the Commission uses to ensure that the multitude of RF devices used in the United States operates effectively without causing harmful interference and otherwise complies with the rules. RF devices that are subject to the ''certification'' procedure of the equipment authorization program must be labeled with an FCC identifier (''FCC ID'') that is unique to the device. This FCC ID includes a Commission-issued code identifying the grantee of the certification (''grantee code''). By this action, the Commission modifies §§ 2.925 and 2.926 of the rules to remove the restriction that grantee codes must consist of only three characters. This action will permit the Commission to issue longer grantee codes, thus greatly increasing the supply of available codes and ensuring that it will continue to have new ones to assign to parties that wish to certify new equipment.

2. Authorized equipment must be labeled to show that it complies with the rules prior to being imported into or marketed within the United States. The label for a device subject to certification must include an FCC ID that conforms to a format defined in the rules. The FCC ID consists of two parts: a three-character alphanumeric grantee code assigned by the Commission to the party that applies for equipment authorization, and a one- to 14-character product code selected by the applicant. Once a party obtains a grantee code from the Commission, the party may use the same grantee code, but must use a different product code, each time it applies for a new equipment certification from the Commission or a TCB. The Commission adopted a three-character format for grantee codes in 1979 and codified that format in the rules.

3. Due to the large number of grantee codes that have already been assigned to manufacturers and other parties responsible for equipment compliance, the Office of Engineering and Technology anticipates that the Commission may run out of unassigned grantee codes in the near future. If that were to occur, parties that did not already have a grantee code would not be able to apply for certification of RF equipment. The Commission therefore finds it necessary to modify the rules to increase the supply of grantee codes to accommodate all parties that wish to obtain a grantee code and apply for equipment certification in the future.

4. Specifically, the Commission is eliminating the requirement in § 2.926(c) that grantee codes must consist of three alphanumeric characters, and it is replacing it with a requirement that grantee codes will consist of alphanumeric or other characters in a format specified by the Commission's Office of Engineering and Technology. The Commission is not codifying a particular grantee code format in the rules in order to allow the Office of Engineering and Technology the flexibility to modify the format in the future if necessitated by changing technology or other factors. The Commission also eliminated the text in § 2.925(a)(1) that shows an example of a three character grantee code.

5. While three characters was an adequate code length for grantee codes when the rules were originally adopted and for many years thereafter, the Commission finds that it is now necessary to permit longer codes to allow for a significantly greater number of possible combinations. In particular, the Commission notes that the Office of Engineering and Technology is planning to issue new five-character grantee codes in the format described in Appendix B of the *Order.* Using this code length and format, the Commission calculates that there will be approximately 8 million additional grantee codes. The Commission currently assigns approximately 1000 grantee codes per year, so even if the rate of assignment increases substantially in the future, the supply of five-character codes will last for many years. Parties that have been assigned three-character grantee codes may continue to use those codes indefinitely for future applications and for equipment that is already approved. The five-character codes will be assigned only to future applicants for grantee codes once the new rules are effective. The Commission is not changing the requirements for the product code format.

6. The changes adopted in the *Order* do not require prior notice and an opportunity for comment under the Administrative Procedure Act (APA). Section 553(b) of the APA establishes exceptions to the notice-and-comment requirement, and one of those exceptions is for cases in which the

Commission finds good cause for concluding that notice and comment are unnecessary. The rule changes adopted in the *Order* are minor in nature in that the Commission is changing the format of grantee codes that will be assigned in the future to prospective applicants for equipment certification, but is not changing any other requirements for equipment certification. Further, these changes will not have any effect on parties that have already been assigned three-character codes because they may continue to use them indefinitely. Thus, the Commission concludes that notice and comment are not necessary before changing the rules on grantee code format.

7. The Commission finds that the benefits of the rule changes are significant because the changes will enable it to continue to certify equipment from new parties, thus expanding the range of devices available to consumers. The Commission also finds that the costs of these rule changes are insignificant because it is not appreciably more burdensome for a party to apply for and use a five-character code than a three-character code. There will be no additional burden on parties that already have three-character codes assigned because they may continue to use them indefinitely. Thus, the Commission concludes that the benefits of the rule changes are greater than the costs.

8. The Commission is making the rule changes effective 30 days after date of publication of this *Order* in the **Federal Register**. The change in grantee code length necessitates a non-substantive change in the electronic FCC Form 731 that is used to apply for equipment certification. This change to the form does not require prior Office of Management and Budget (OMB) approval, but the Commission will provide OMB with a copy of the revised form for their records. The Commission plans to begin assigning grantee codes with the new format no earlier than 30 days after the revised Form 731 is available, and it will issue a public notice announcing the date on which it will begin issuing five-character grantee codes.

**Procedural Matters**

*Final Paperwork Reduction Act of 1995 Analysis*

9. This document makes non-substantive changes to previously approved information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for information purposes.

**Congressional Review Act**

10. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**Ordering Clauses**

11. Pursuant to the authority contained in sections 4(i), 302, 303(e), 303(f), and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302a, 303(e), 303(f), and 307 this *order is hereby adopted.*

12. Part 2 of the Commission's rules *is amended* as specified in Appendix A of the *Order,* and such rule amendments *shall be effective* August 24, 2012**.**

13. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center *shall send* a copy of the Order to the Government Accountability Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 2**

Communications equipment, Reporting and recordkeeping.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 2 to read as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.925 is amended by revising paragraph (a)(1) to read as follows:

**§ 2.925 Identification of equipment.**

(a) * * *

(1) FCC Identifier consisting of the two elements in the exact order specified in § 2.926. The FCC Identifier shall be preceded by the term FCC ID in capital letters on a single line, and shall be of a type size large enough to be legible without the aid of magnification.

* * * * *

■ 3. Section 2.926 is amended by revising paragraph (c) introductory text to read as follows:

**§ 2.926 FCC identifier.**

* * * * *

(c) A grantee code may consist of Arabic numerals, capital letters, or other characters. The format for this code will be specified by the Commission's Office of Engineering and Technology. A prospective grantee or its authorized representative may receive a grantee code electronically via the Internet at *http://www.fcc.gov/eas.* The code may be obtained at any time prior to submittal of the application for equipment authorization. However, the fee required by § 1.1103 of this chapter must be submitted and validated within 30 days of the issuance of the grantee code, or the code will be removed from the Commission's records and a new grantee code will have to be obtained.

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[FR Doc. 2012–18186 Filed 7–24–12; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 20

**[WC Docket No. 05–196; GN Docket No. 11–117; PS Docket No. 07–114; FCC 11–107]**

## Wireless E911 Phase II Location Accuracy Requirements

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's Wireless E911 Phase II Location Accuracy Requirements, Third Report and Order's 911 service rules. This notice is consistent with the *Order,* which stated that the *Order* would become effective 60 days after publication in the **Federal Register**, subject to OMB approval for new information collection requirements.

**DATES:** The amendment to 47 CFR 20.18 published at 76 FR 59916, September 28, 2011, is effective July 25, 2012.

**FOR FURTHER INFORMATION CONTACT:** Patrick Donovan, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418–2413, or email: *patrick.donovan@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This document announces that, on May 17, 2012, OMB approved, for a period of three years, the information collection requirements relating to the Wireless

E911 Phase II Location Accuracy Requirements contained in the Commission's *Order,* FCC 11–107, published at 76 FR 59916, September 28, 2011. The OMB Control Number is 3060–1147. The Commission publishes this notice as an announcement of the effective date of the rules. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1147, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

**Synopsis**

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on May 17, 2012, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR Part 20. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1147.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060–1147.

*OMB Approval Date:* May 17, 2012.

*OMB Expiration Date:* May 31, 2015.

*Title:* Wireless E911 Phase II Location Accuracy Requirements.

*Form Number:* N/A.

*Respondents:* Individuals and households; Business or other for-profit entities; Not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

*Number of Respondents and Responses:* 4,898 respondents; 9,514 responses.

*Estimated Time per Response:* 5.5867143 hours (average).

*Frequency of Response:* On-occasion reporting requirements and third party disclosure.

*Obligation to Respond:* Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154 and 332 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 53,152 hours.

*Total Annual Cost:* N/A.

*Nature and Extent of Confidentiality:* An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

*Needs and Uses:* The Commission adopted and released a Third Report and Order, *FCC 11–107,* PS Docket No. 07–114, which provides that new Commercial Mobile Radio Service (CMRS) providers, meeting the definition of covered CMRS providers in Section 20.18 and deploying networks subsequent to the effective date of the Third Report and Order that are not an expansion or upgrade of an existing CMRS network, must meet the handset-based location accuracy standard from the start. Consequently, the rule requires new CMRS providers launching new stand-alone networks during the eight-year implementation period for handset-based CMRS wireless licensees to meet the applicable handset-based location accuracy standard in effect of the time of deployment. Therefore, new rule § 20.18(h)(2)(iv) specifies that new CMRS providers must comply with paragraphs (h)(2)(i)–(iii) of § 20.18, which are the location accuracy requirements for handset-based carriers. OMB approved the information collection for those rule paragraphs, which the Second Report and Order adopted, on March 30, 2011, under OMB Control No. 3060–1147. The Commission announced OMB's approval and the effective date in 76 FR 23713, April 28, 2011, of the **Federal Register**.

As a result, under the new rule section adopted by Third Report and Order, all new CMRS providers, in delivering emergency calls for Enhanced 911 service, must satisfy the handset-based location accuracy standard at either a county-based or Public Safety Answering Point (PSAP)-based geographic level. Thus, in accordance with the new rule and under the paragraph provision of § 20.18(h)(2)(i), new CMRS providers must meet the following initial benchmark for the specified handset-based location accuracy requirements: ''[t]wo years from January 18, 2011, 50 meters for 67 percent of calls, and 150 meters for 80 percent of calls, on a per-county or per-PSAP basis.'' Similarly, in accordance with the new rule and under the paragraph provisions of § 20.18(h)(2)(i)–(iii), new CMRS providers may exclude up to 15 percent of the counties or PSAP areas they serve due to heavy forestation that limits handset-based technology accuracy in those counties or areas.

Therefore, new CMRS providers will be required to file a list of the specific counties where they are utilizing their respective exclusions. In its September 2010 Second Report and Order, 75 FR 70604, November 18, 2010, the Commission found that permitting this exclusion properly but narrowly accounts for the known technical limitations of handset-based location accuracy technologies, while ensuring that the public safety community and the public at large are sufficiently informed of these limitations.

When they have begun deploying their new networks, the new CMRS providers must submit initial reports, as the Commission will announce after OMB approval of this revised information collection, with a list of the areas that they are permitted to exclude from the handset-based location accuracy requirements. Accordingly, the Commission will specify the procedures for electronic filing into PS Docket No. 07–114, consistent with the current OMB approved information collection for handset-based carriers, and new CMRS providers must send copies of the exclusion reports to the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, and the National Association of State 9–1–1 Administrators.

Further, the rules adopted by the Commission's September 2010 Second Report and Order, 75 FR 70604, November 18, 2010, also require that, two years after January 18, 2011, wireless carriers provide confidence and uncertainty data on a per call basis to PSAPs. Because the new rule adopted by the Third Report and Order considers new CMRS providers as providers covered under the definition of CMR providers pursuant to section 20.18 of the Commission's rules, new CMRS providers will also be subject to the information collection requirement to provide this confidence and uncertainty data.

Additionally, in view of the amended location accuracy requirements and the timeframes and benchmarks for handset-based wireless carriers to comply with them, in its September 2010 Second Report and Order, 75 FR 70604, November 18, 2010, the

Commission recognized that the waiver process is suitable to address individual or unique problems, where the Commission can analyze the particular circumstances and the potential impact to public safety. Thus, similarly, the supporting statement for this information collection revision recognizes that new CMRS providers might file waiver requests and, therefore, be subject to a collection and reporting requirement.

The Third Report and Order found that requiring all new CMRS network providers to comply with the Commission's handset-based location accuracy standard is consistent with the regulatory principle of ensuring technological neutrality. Providers deploying new CMRS networks are free to use network-based location techniques, or to combine network and handset-based techniques, to provide 911 location information, provided that they meet the accuracy criteria applicable to handset-based providers. Given the long-term goal of universal support for one location accuracy standard, the Commission believed that such a mandate allows appropriate planning and ensures that new technology will comply with the most stringent location accuracy standard that applies to existing technology.

Section 20.18(h)(2)(iv) requires that providers of new CMRS networks that meet the definition of covered CMRS providers under paragraph (a) of this section must comply with the requirements of paragraphs (h)(2)(i)–(iii) of this section. For this purpose, a ''new CMRS network'' is a CMRS network that is newly deployed subsequent to the effective date of the Third Report and Order in PS Docket No. 07–114 and that is not an expansion or upgrade of an existing CMRS network.

The information provided by wireless carriers deploying new CMRS networks to report the counties or PSAP service areas where the carriers cannot provide E911 location accuracy at either the county or the PSAP level will furnish the Commission, affected PSAPs, state and local emergency agencies, public safety organizations and other interested stakeholders the supplementary data necessary for public safety awareness of those areas where it is most difficult to measure location accuracy during the benchmark periods for handset-based wireless carriers.

The provision of confidence and uncertainty data to PSAPs by the new CMRS providers and the SSPs responsible for transporting that data between them and PSAPs will enhance the PSAPs' ability to efficiently direct first responders to the correct location of emergencies to achieve the emergency response goals of the nation in responding expeditiously to emergency crisis situations and in ensuring homeland security.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2012–18181 Filed 7–24–12; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[CG Docket Nos. 12–38 and 03–123; FCC 12–71]**

### Misuse of Internet Protocol (IP) Relay Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts a measure that prohibits Internet-Protocol (IP) Relay providers from handling non-emergency calls made by new IP Relay registrants as guest users prior to taking reasonable measures to verify their registration information. The Commission's action is intended to eliminate abuse that has resulted from unauthorized users having access to IP Relay services prior to verification of their registration information.

**DATES:** Effective July 25, 2012.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2235 or email *Eliot.Greenwald@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Misuse of Internet Protocol (IP) Relay Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* First Report and Order (*Order*), document FCC 12–71, adopted on June 28, 2012 and released on June 29, 2012, in CG Docket Nos. 12–38 and 03–123. The full text of document FCC 12–71 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *www.bcpiweb.com.* Document FCC 12–71 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/dro/trs.html#orders.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

#### Paperwork Reduction Act of 1995 Analysis

Document FCC 12–71 does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, it 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. See 44 U.S.C. 3506(c)(4).

#### Synopsis

1. In document FCC 12–71, the Commission takes an important step to curb the misuse of IP Relay by prohibiting IP Relay providers from handling non-emergency calls made by new IP Relay registrants prior to taking reasonable measures to verify their registration information. In taking this action, the Commission underscores its ongoing commitment to ensuring that Internet-based telecommunications relay services (iTRS) provide the communication access intended by Congress in section 225 of the Communications Act, while eliminating fraud and abuse in this program. *See Structure and Practices of the Video Relay Service Program,* CG Docket No. 10–51, Second Report and Order, FCC 11–118; published at 76 FR 47469, August 5, 2011 and at 76 FR 47476, August 5, 2011 (*iTRS Certification Order*) (defining iTRS to mean all forms of telecommunications relay service (TRS) in which an individual with a hearing or speech disability uses an Internet connection with a communications assistant (CA) to make calls, including Video Relay Service (VRS), IP Relay, and IP captioned telephone service (IP CTS)). VRS uses video over a broadband Internet connection to allow a person who uses

sign language to communicate with another party through a CA.

2. IP Relay is a form of text-based TRS that uses the Internet to allow individuals with hearing and/or speech disabilities to communicate with other individuals. In 2006, the Commission initiated a rulemaking proceeding to address the misuse of IP Relay and VRS. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Misuse of Internet Protocol (IP) Relay Service and Video Relay Service,* CG Docket No. 03–123, Further Notice of Proposed Rulemaking, FCC 06–58; published at 71 FR 31131, 2006 (*2006 FNPRM*). The Commission took that action in part because of concerns that individuals without a hearing or speech disability were using the anonymity of the IP Relay service to call merchants and place orders using fake, stolen, or otherwise invalid credit cards. The *2006 FNPRM* sought comment on ways to curb fraudulent calls made via IP Relay, including requirements for user registration and rule changes that would permit relay providers to screen and terminate such calls.

3. Since the *2006 FNPRM,* the Commission has undertaken a number of measures to combat the misuse of iTRS. Most relevant to the instant proceeding, in June 2008, the Commission adopted a mandatory system requiring IP Relay and VRS users to be assigned ten-digit telephone numbers linked to the North American Numbering Plan and registered with their provider of choice (default provider). *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP–Enabled Service Providers,* CG Docket No. 03–123, WC Docket No. 05–196, Report and Order and Further Notice of Proposed Rulemaking, FCC 08–151; published at 73 FR 41286, July 18, 2008 and at 73 FR 41307, July 18, 2008 (*iTRS Numbering Order I*). The Commission explained that such registration and the requirement for each user to provide a ''Registered Location'' would reduce the misuse of IP Relay. The Commission also sought comment on whether additional steps were needed to curtail illegitimate calls made through this service.

4. In December 2008, the Commission adopted a second iTRS numbering Order in which it directed IP Relay and VRS providers to ''implement a reasonable means of verifying registration and eligibility information,'' including the consumer's name and mailing address, before issuing a ten-digit telephone number to new or existing users. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP–Enabled Service Providers,* CG Docket No. 03–123, WC Docket No. 05–196, Second Report and Order and Order on Reconsideration, FCC 08–275; published at 73 FR 79683, December 30, 2008 (*iTRS Numbering Order II*). The Commission provided the following examples of what such verification could include: ''(1) Sending a postcard to the mailing address provided by the consumer, for return to the default Internet-based TRS provider; (2) in-person or on-camera ID checks during registration; or (3) other verification processes similar to those performed by voice telephone providers and other institutions (such as banks and credit card companies).'' The Commission further directed providers to include in their verification procedures a requirement for consumers to self-certify that they have a medically recognized hearing or speech disability necessitating their use of TRS. The Commission expected that ''these measures [would] reduce the misuse of Internet-based TRS by those who may take advantage of the anonymity currently afforded users, particularly IP Relay users, without unduly burdening legitimate Internet-based TRS consumers seeking to obtain ten-digit telephone numbers.'' The Commission added, however, that ''to the extent technically feasible, Internet-based TRS providers must allow newly registered users to place calls immediately,'' even before completing the verification of such individuals. In permitting such temporary use of iTRS by new registrants, the Commission responded to comments by a coalition of consumer groups, who were concerned that legitimate IP Relay users would be cut off from service during the transition to the new ten-digit numbering and registration system. In order to enable users to make calls under this ''guest user'' procedure, providers have been giving users temporary ten-digit numbers and provisioning these numbers to the iTRS Directory. These numbers have been allowed to remain valid for the purpose of making IP Relay calls until such time that the users' identifying information is authenticated or rejected.

5. In October 2009, the Commission issued a Public Notice reminding iTRS providers of their obligation to implement the measures discussed above by November 12, 2009. *Consumer & Governmental Affairs Bureau Reminds Video Relay Service (VRS) and Internet Protocol (IP) Relay Service Providers of their Outreach Obligations and Clarifies their Call Handling Obligations for Unregistered Users after the November 12, 2009, Ten-Digit Numbering Registration Deadline,* CG Docket No. 03–123, WC Docket No. 05–196, Public Notice, DA 09–2261; 24 FCC Rcd 12877, October 21, 2009 (*iTRS Numbering Implementation Public Notice*). Because these were new requirements that would have a direct impact on consumer use of the IP Relay program, the *iTRS Numbering Implementation Public Notice* again directed each provider to handle calls from newly registered users immediately, even if the provider had not fully completed the process of verifying the caller's information, assigning the caller a new ten-digit number, and provisioning that number to the iTRS database. The *iTRS Numbering Implementation Public Notice* did not eliminate the requirement for providers to implement a reasonable process for verifying registration information provided by new users.

6. In April 2011, the Commission adopted several additional measures to combat IP Relay fraud and abuse, including a requirement for all TRS providers to submit to Commission-directed audits, a mandate for iTRS providers to retain, for five years, call detail records and other records supporting claims for payment, whistleblower protection rules for provider employees and contractors, and a requirement that a senior executive of a TRS provider certify, under penalty of perjury, to the validity of minutes and data submitted to the TRS Fund administrator. *Structure and Practices of the Video Relay Service Program,* CG Docket No. 10–51, Report and Order and Further Notice of Proposed Rulemaking, FCC 11–54; published at 76 FR 24393, May 2, 2011 and at 76 FR 24437, May 2, 2011 (*VRS Fraud Order*). The Commission followed these measures in July 2011 with the adoption of stricter certification rules for iTRS providers, authorization for on-site visits to the premises of applicants for iTRS certification and certified iTRS providers, revised notification requirements for providers to alert the Commission about substantive program changes, and a mandate for providers to certify, under penalty of perjury, as to the accuracy of their certification applications and their annual compliance filings to the Commission. *See* (*iTRS Certification Order*).

7. Notwithstanding the various measures noted above, concerns about

the continued abuse of the IP Relay system prompted the Consumer & Governmental Affairs Bureau (Bureau) to issue a *Refresh Public Notice* on February 13, 2012, to refresh the record initiated by the *2006 FNPRM* on matters pertaining to IP Relay misuse. *Consumer & Governmental Affairs Bureau Seeks to Refresh the Record Regarding Misuse of Internet Protocol Relay Service,* CG Docket Nos. 12–38 and 03–123, Public Notice, DA 12–208; published at 77 FR 11997, February 28, 2012 (*Refresh Public Notice*). Among other things, in the *Refresh Public Notice,* the Bureau expressed concern that current methods used by iTRS providers to verify registration and eligibility information submitted by IP Relay users may not be ''reasonable'' as required by the Commission's rules, and that the Commission ''may need to impose additional and more specific requirements * * * to curb IP Relay misuse.''

8. Among the issues raised in the *Refresh Public Notice* was whether the Commission should continue its procedure adopted in *iTRS Numbering Order II* of requiring IP Relay providers to permit newly registered users to place calls prior to the completion of a provider's user verification process, given the potential for misuse of IP Relay by unverified registrants. The Commission now concludes that the record in this proceeding supports the elimination of that procedure. Further, given the record evidence, the Commission now prohibits granting such temporary authorization for any IP Relay calls other than emergency calls to 911 services.

9. Parties responding to the *Refresh Public Notice* overwhelmingly agree that allowing new users to make IP Relay calls pending the provider's verification of the user's registration information contributes significantly to the misuse of IP Relay. Under this procedure, commenters report, large numbers of fraudulent users have easy access to the IP Relay system for extended periods of time before verification is complete and access can be denied. As noted above, this is because in order to make IP Relay calls as a guest user, the user is given a ten-digit number that remains a valid number in the iTRS database until such time that the user's identifying information is authenticated or rejected. The Consumer Groups do not oppose ending temporary authorization for unverified IP Relay non-emergency callers, but advocate that the verification process should be completed within 72 hours.

10. The Commission concludes that a prohibition against temporary authorization of IP Relay users is now necessary in order to curb the fraud and abuse that has resulted from provider misuse of this procedure. Specifically, although there may have been some value in allowing unverified users to make calls for a short period of time during the Commission's transition to the IP Relay registration system, the Commission is concerned that reliance on the guest user procedure has resulted in abuse of the IP Relay program by unauthorized IP Relay users. In addition, the Commission is concerned that unverified users have remained in the iTRS numbering directory—and made repeated IP Relay calls—for extended periods of time, despite the obligation of IP Relay providers to institute procedures to verify the accuracy of registration information.

11. Moreover, any rationale for initially permitting temporary user authorization—*i.e.,* to prevent the exclusion of users who were already using IP Relay service and were either unfamiliar with the Commission's new registration process or had not yet registered—is greatly diminished because considerable time has passed since the transition period for registering ended on November 12, 2009. Hamilton Relay, Inc. notes that the vast majority of legitimate users have already been registered, and the Commission is less concerned that legitimate users will be cut off from IP Relay service. At the same time, the Commission has significant concerns about the extent to which the IP Relay program has fallen prey to abuse. As noted above, IP Relay abuse has placed unnecessary costs on the TRS Fund and has resulted in businesses rejecting IP Relay calls from legitimate users. In weighing the Consumer Groups' interest in enabling legitimate new users to obtain reasonably prompt access to IP Relay Service against the record evidence of significant problems of misuse caused by the guest user procedure, the Commission believes that on balance, the clear and critical need to ensure the integrity of the IP Relay program by requiring that users are fully verified prior to receiving service outweighs any residual risk of harm from the temporary deferral of service to a small number of new legitimate users. With respect to the Consumer Groups' specific recommendation that the Commission eliminate the guest user procedure only if the Commission requires that the verification process be completed within 72 hours, the Commission believes that on balance, ensuring that users are fully and effectively verified is more critical to restoring the integrity of the IP Relay program than is placing a time limit on the verification process. The Commission also believes that without the option to register guest users, IP Relay providers will have a strong incentive to expeditiously complete their verification processes. Nevertheless, the Commission will continue to review the matter of timing as the Commission considers the adoption of more specific IP Relay verification requirements.

12. The prohibition against temporary authorization of IP Relay users that the Commission now adopts requires that until an IP Relay provider verifies a new IP Relay user in accordance with the Commission's standards as set forth in the Commission's rules and requirements, it will not be permitted to deem such user as ''registered'' for purposes of § 64.611(b) of the Commission's rules, and will be prohibited from: (1) Handling the user's IP Relay calls other than 911 emergency calls; (2) assigning the user a ten-digit number; or (3) provisioning such number to the iTRS Directory. The Commission further expects default providers to periodically review the ten-digit numbers that they place in the iTRS numbering directory, for the purpose of deleting numbers that have been assigned to users that ultimately are not ''registered'' or that are otherwise associated with fraudulent calling practices. Such actions will ensure that only verified users have active numbers and prevent ineligible users from using the services of other providers who are unaware of a default provider's ultimate decision to reject user authorization. The Commission's objective is to ensure that the IP Relay program serves only legitimate users. In addition, because there will be fewer calls from fraudulent callers, these actions will benefit legitimate users by reducing the incentive of recipients of IP Relay calls to reject these calls. The Commission notes that this is only one of a series of actions the Commission intends to take in this docket to curb IP Relay fraud and abuse. The Commission's overarching goal is to ensure that providers take the steps needed to curb IP Relay misuse, so that this service can remain a viable and valuable communication tool for Americans who need it.

**Effective Date**

13. The Administrative Procedure Act (APA) provides that a substantive rule cannot become effective earlier than 30 days after the required publication or service of the rule, except ''as otherwise provided by the agency for good cause

found and published with the rule.'' 5 U.S.C. 553(d). *See also* 47 CFR 1.427(a). As discussed above, the record in this proceeding, including the comments filed by IP Relay providers, has demonstrated the prevalence of misuse of IP Relay and supports the immediate implementation of a measure—the elimination of temporary user authorization for non-emergency calls—that could substantially reduce such misuse. This measure should produce the immediate benefit of reducing payments for illegitimate minutes from the TRS Fund. The Commission further expects that its action will have a minimal adverse impact, if any, on the provision of IP Relay service to legitimate users, given the considerable time that has passed since the transition period for registering ended on November 12, 2009. Rather, the measure the Commission adopts will benefit such users by reducing the incentive of recipients of IP Relay calls to reject calls from legitimate users because there will be fewer calls from fraudulent callers. With respect to the technical feasibility of instituting this measure immediately, the Commission notes that at least one provider has stated from its perspective, that ''a prohibition of 'guest access' could be implemented on an immediate basis, while another has urged the Commission to 'close the loophole immediately.' '' Accordingly, the Commission finds that good cause exists for making these measures effective immediately July 25, 2012.

14. In document FCC 12–71, the Commission takes action intended to immediately curb the misuse of IP Relay by prohibiting providers of IP Relay from providing service (other than handling emergency calls to 911 services) to new registrants until a new user's registration information is verified. It is the Commission's intention to adopt additional measures addressing misuse of IP Relay in future orders.

**Final Regulatory Flexibility Analysis**

15. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *2006 FNPRM.* The Commission sought comment on the proposal in the *2006 FNPRM,* including comment on the IRFA, of the possible significant economic impact on small entities by the policies and rules proposed in the *2006 FNPRM.* No comments were received on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. 5 U.S.C. 604.

16. Providers of TRS, mandated by Title IV of the Americans with Disabilities Act of 1990 (codified at 47 U.S.C. 225 of the Communications Act), relay telephone calls so that individuals who are deaf, hard of hearing, deaf-blind, or who have speech disabilities can engage in communication by wire or radio with other individuals in a manner that is functionally equivalent to the ability of hearing individuals who do not have speech disabilities to communicate using voice communication services by wire or radio. *See* 47 U.S.C. 225(a)(3). Because IP Relay Service offers consumers anonymity as the call is placed via the Internet, this service has become subject to abuse. Among other things, persons have been using IP Relay to purchase goods from merchants using stolen or fraudulent credit cards. Such misuse is harmful both to the merchant who is defrauded and to legitimate relay users who find that their relay calls are rejected by merchants. The Commission is also concerned that the rapid and steady increase in the size of the Interstate TRS Fund may in part be a result of such misuse of IP Relay.

17. The *2006 FNPRM* sought comment on ways to prevent the misuse of IP Relay, including among other things, a requirement to register IP Relay users. In June 2008, the Commission adopted a mandatory system in which users of iTRS, including IP Relay, are assigned ten-digit telephone numbers linked to the North American Numbering Plan and iTRS users with disabilities are registered with their provider of choice (default provider). The Commission also required IP Relay providers to handle calls from a newly registered user immediately, even if the provider had not completed the process of verifying the caller's information.

18. In the *Refresh Public Notice,* the Commission sought comment on whether it should prohibit temporary authorization for a user to place IP Relay calls, other than emergency calls, while verification of the caller is taking place.

19. Document FCC 12–71 is intended to curb the misuse of IP Relay by prohibiting providers of IP Relay from handling non-emergency IP Relay calls for new registrants until their registration information is verified. The Commission's decision today helps ensure that the iTRS program provides the communication services intended by Congress in section 225 of the Communications Act, while eliminating fraud and abuse. No party filing comments in this proceeding responded to the IRFA, and no party filing comments in this proceeding otherwise argued that the policies and rules proposed in this proceeding would have a significant economic impact on a substantial number of small entities.

20. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules. 5 U.S.C. 604(a)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. 15 U.S.C. 632.

21. As noted above, this document prohibits providers of IP Relay from providing service (other than handling emergency calls to 911) to new registrants until their registration information is verified. As a result, the Commission believes that the entities that may be affected by the proposed rules are only those TRS providers that offer IP Relay. Neither the Commission nor the SBA has developed a definition of ''small entity'' specifically directed toward IP Relay providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS Code 517110 (2007). Currently, there are five TRS providers that are authorized by the Commission to offer IP Relay. One or two of these entities may be small businesses under the SBA size standard.

22. Document FCC 12–71 does not impose any new reporting or record keeping requirements. Although this document requires IP Relay providers to refuse IP Relay service to individuals who are not deemed qualified to receive IP Relay service, IP Relay providers are already required to refuse IP Relay service to unqualified individuals. While the new requirements expand the circumstances under which individuals are to be denied IP Relay service initially, they do not impose new compliance requirements on small entities.

23. The RFA requires an agency to describe any significant alternatives, specific to small businesses, that it has considered in reaching its proposed approach, which may include the

following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.'' 5 U.S.C. 603(c)(1)–(4).

24. The Commission considers the requirements adopted in this document as a means of achieving the public policy goals of ensuring that TRS can provide functionally equivalent communication access and preventing the misuse of IP Relay. As noted above, although the impact of this document will be for IP Relay providers to refuse IP Relay service to new IP relay users who are not qualified to receive IP Relay service, IP Relay providers are already required to refuse this service to unqualified individuals. Since the new requirements change the application of existing compliance requirements, but do not impose new compliance requirements on small entities, the Commission finds that it has minimized significant economic impact on small entities. The alternatives of either retaining the requirement that providers of IP Relay handle non-emergency IP Relay calls for new registrants prior to verification of registration information or permitting the handling of such calls at the election of the provider, would not curb the misuse of IP Relay by new registrants whose registration information—due to the preexisting guest user procedure—still requires verification.

25. The Commission notes that by reducing the misuse of IP Relay, these new requirements will lessen an adverse economic impact on small businesses. Specifically, the new requirements will protect many small businesses that may be affected by illegitimate IP Relay calls. For instance, small businesses are more vulnerable to illegitimate IP Relay calls involving fraudulent credit card purchases because they often are not aware that the credit cards are being illegally used or are not equipped to verify the credit card numbers. Because these new requirements will prevent unqualified individuals from placing IP Relay calls, these requirements will have the additional effect of reducing the incidence of credit card fraud.

26. There are no Federal rules that may duplicate, overlap, or conflict with the new rules.

**Congressional Review Act**

27. The Commission will send a copy of document FCC 12–71 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A).

**Ordering Clauses**

28. Pursuant to sections 1, 4(i) and (j), 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 225, and 303(r), and § 1.427 of the Commission's rules, 47 CFR 1.427, document FCC 12–71 *is adopted.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2012–18093 Filed 7–24–12; 8:45 am]

**BILLING CODE 6712–01–P**

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### 48 CFR Part 9904

### Cost Accounting Standards: Cost Accounting Standards 412 and 413—Cost Accounting Standards Pension Harmonization Rule

**AGENCY:** Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget.

**ACTION:** Technical correcting amendments.

**SUMMARY:** The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board (Board), is publishing technical corrections to the final rule that revised Cost Accounting Standard (CAS) 412, ''Composition and Measurement of Pension Cost,'' and CAS 413, ''Adjustment and Allocation of Pension Cost'' for the CAS Pension Harmonization Rule, published on December 27, 2011. Some illustrations in that document are not consistent with their corresponding Table or text, or the text used in the two effective date provisions is not consistent with each other in the amendment language. This document corrects the final regulations by revising the applicable sections accordingly.

**DATES:** Effective August 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Eric Shipley, Project Director, Cost Accounting Standards Board (telephone: 410–786–6381).

**SUPPLEMENTARY INFORMATION:** These are the technical corrections to the final rule that revised Cost Accounting Standard (CAS) 412, ''Composition and Measurement of Pension Cost,'' and CAS 413, ''Adjustment and Allocation of Pension Cost'' for the CAS Pension Harmonization Rule. The final rule was published at 76 FR 81296 on December 27, 2011. Generally, the technical corrections make the following adjustment: (1) Revise the text of the illustrations to make them consistent with the contents in the corresponding Tables, (2) revise the text of the effective date provisions at 9904.412–63 and 9904.413–63 to make them consistent with each other and internally consistent for the CAS Pension Harmonization Rule, and (3) revise an illustration so that it is consistent with the rule. A brief description of each technical correction is as follows:

1. In 9904.412–60.1, in paragraph (b)(2)(i) (CAS Pension Harmonization Rule, Measurement of Pension Costs, Liabilities and Normal Costs), in Table 3—Actuarial Accrued Liabilities and Normal Costs as of January 1, 2017, delete a duplicate reference to Note 2 in the ''Notes'' column for ''Expense Load on Normal Costs;'' and in paragraph (c)(3)(ii) (CAS Pension Harmonization Rule, Assignment of Pension Costs, Measurement of Tax-Deductible Limitation on Assignable Pension Cost), after Note 6 to Table 10, correct the amounts of the 9904.412–50(c)(2)(iii) limitation in the text of the illustration so that they are consistent with the corresponding amounts in Table 10—CAS 412–50(c)(2)(iii) Tax-Deductible Limitation as of January 1, 2017.

2. In 9904.412–63(b) Effective date in the first sentence, replace ''receipt'' with ''award'' as that is the more common terminology for a contract award, and make the CAS 412 text consistent with the corresponding text at 9904.413–63(b) for a uniform Effective Date for the CAS Pension Harmonization Rule (which is comprised of changes to both CAS 412 and 413).

3. In 9904.412–64.1(c)(1)(i)(B) (Transition Method for the CAS Pension Harmonization Rule, Transition Illustration), correct the text of the illustration so that it is consistent with corresponding amounts in Table 1—Development of Transitional Minimum Actuarial Liability for Fourth Transition Period; and in 9904.412–64.1(c)(1)(i)(C), in Table 1—Development of Transitional Minimum Actuarial Liability for Fourth Transition Period, add a new label ''Actuarial Accrued Liability'' beneath the label ''Minimum Actuarial Liability.''

4. In 9904.413–60(b)(3) (Illustrations, Valuation of the assets of a pension plan) after the first sentence, correct the

text of the illustration so that it is consistent with the rule.

5. In 9904.413–63(b) Effective date in the first sentence, replace ''receipt'' with ''award'' as that is the more common terminology for a contract award, and make the CAS 413 text consistent with the corresponding text at 9904.412–63(b) for a uniform Effective Date for the CAS Pension Harmonization Rule (which is comprised of changes to both CAS 412 and 413).

**List of Subjects in 48 CFR Part 9904**

Government procurement, Cost accounting standards.

Accordingly, Chapter 99 of Title 48 of the Code of Federal Regulations is corrected by making the following correcting amendments:

## PART 9904—COST ACCOUNTING STANDARDS

■ 1. The authority citation for part 9904 continues to read as follows:

**Authority:** Pub. L. 111–350, 124 Stat. 3677, 41 U.S.C. 1502 [formerly Pub. L. 100–679, 102 Stat 4056, 41 U.S.C. 422].

### 9904.412–60.1 [Amended]

■ 2. Amend 9904.412–60.1 as follows:

■ a. In paragraph (b)(2)(i), Table 3, in the column labeled ''Notes,'' under the entry ''Expense Load on Normal Cost,'' remove the first ''2''.

■ b. In paragraph (c)(3)(ii), in the first sentence, remove ''$2,716,649'' and add ''$2,741,313'' in its place; and in the second sentence, remove ''$12,958,048'' and add ''$12,933,384 in its place.

■ 3. In 9904.412.63(b), revise the first sentence to read as follows:

### 9904.412–63 Effective Date.

* * * * *

(b) Following the award of a contract or subcontract subject to this Standard on or after the Effective Date, contractors shall follow this Standard, as amended, beginning with its next cost accounting period beginning after the later of the Implementation Date or the award date of a contract or subcontract to which this Standard is applicable. * * *

* * * * *

### 9904.412–64.1 [Amended]

■ 4. Amend 9904.412–64.1 as follows:

■ a. In paragraph (c)(1)(i)(B), in the second sentence, remove ''$14,115,200 ($14,087,750 + [75% × ($183,000)])'' and add ''$14,087,750 ($14,225,000 + [75% × ($183,000)])'' in its place; and

■ b. In paragraph (c)(1)(i)(C), in Table 1—Development of Transitional Minimum Actuarial Liability for Fourth Transition Period, add a new label ''Actuarial Accrued Liability'' beneath the label ''Minimum Actuarial Liability'' in the same format as the other labels, and on the same line as the entries ''(2,100,000)'' and ''(14,225,000)'' under the headings ''Segment1'' and ''Segments 2 through 7,'' respectively.

■ 5. In 9904.413.60(b)(3), revise the second, third, and fourth sentences to read as follows:

### 9904.413–60 Illustrations.

* * * * *

(b) * * *

(3) * * * Based on the contractor's assumed interest rate of 8% which complies with 9904.412–40(b)(2) and 9904.412.–50(b)(5), the contribution is discounted for the six-month period from January 1, 2017 to July 1, 2017. For contract cost accounting purposes, the contractor measures $96,225 as the present value (PV) of the $100,000 contribution on January 1, 2017 (discounted at 8% per annum for one half year using compound interest, i.e., Net PV = $100,000/$1.08^{0.5}$), and therefore recognizes $10,096,225 as the market value of assets as required by 9904.413–50(b)(6)(ii). The actuarial value of assets on January 1, 2017, must also reflect $96,225 as the present value of the July 1, 2017, contribution of $100,000.

* * * * *

■ 6. In 9904.413.63(b), revise the first sentence to read as follows:

### 9904.413–63 Effective Date.

* * * * *

(b) Following the award of a contract or subcontract subject to this Standard on or after the Effective Date, contractors shall follow this Standard, as amended, beginning with its next cost accounting period beginning after the later of the Implementation Date or the award date of a contract or subcontract to which this Standard is applicable. * * *

* * * * *

**Joseph G. Jordan,**

*Chair, Cost Accounting Standards Board.*

[FR Doc. 2012–17265 Filed 7–24–12; 8:45 am]

BILLING CODE 3110–01–P

# Proposed Rules

Federal Register

Vol. 77, No. 143

Wednesday, July 25, 2012

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

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 30, 31, 32, 40, and 70

**[NRC–2012–0074]**

**RIN 3150–AH91**

## Implementation of Requirements for Distribution of Byproduct Material

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Interim guidance; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations to make requirements for distributors of byproduct material clearer, less prescriptive, and more risk-informed and up to date. The rulemaking also redefines some categories of devices to be used under exemption from licensing requirements, adds explicit provisions regarding the sealed source and device registration process, and adds flexibility to the licensing of users of sealed sources and devices. This action was primarily intended to make licensing processes more efficient and effective. These changes will affect manufacturers and distributors of sources and devices containing byproduct material and future users of some products currently used under a general or specific license. The NRC has prepared interim guidance to address implementation of the final regulations. This document announces the availability of the implementation guidance document for public comment.

**DATES:** Submit comments by September 24, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** You may access information and comment submissions related to this document, which the NRC possesses and is publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0074. You may submit comments by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0074. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- Fax comments to: RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Shirley Xu, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7640, email: *Shirley.Xu@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Accessing Information and Submitting Comments

*A. Accessing Information*

Please refer to Docket ID NRC–2012–0074 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0074. Documents related to the rulemaking can be found by searching on Docket ID NRC–2008–0338.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The interim guidance is available in ADAMS under Accession No. ML112150558. NUREG–1556, Vol. 3, Rev. 1, ''Consolidated Guidance about Materials Licenses Applications for Sealed Source and Device Evaluation and Registration Final Report,'' is available in ADAMS under Accession No. ML041340618; NUREG–1556, Vol. 8, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Exempt Distribution Licenses,'' is available in ADAMS under Accession No. ML010370065; and NUREG–1556, Vol. 16, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Licenses Authorizing Distribution to General Licensees,'' is available in ADAMS under Accession No. ML010120151.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*B. Submitting Comments*

Please include Docket ID NRC–2012–0074 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

### II. Discussion

The NRC published a proposed rule in the **Federal Register** on June 24, 2010 (75 FR 36212), to amend its regulations

in parts 30, 31, 32, 40 and 70 of Title 10 of the *Code of Federal Regulations* (10 CFR) to make requirements for distributors of byproduct material clearer, less prescriptive, and more risk-informed and up to date. In that notice, the NRC also proposed to redefine categories of devices to be used under exemptions, add explicit provisions regarding the sealed source and device registration process, and add flexibility to the licensing of users of sealed sources and devices. The public comment period on the proposed rule closed on September 7, 2010. The NRC received 10 comments on the proposed rule.

The NRC considered these comments in developing a final rule [RIN 3150–AH91; Docket ID NRC–2008–0338], which is being published in the Rules and Regulations Section of this issue of the **Federal Register**. The final rule will affect manufacturers and distributors of certain products and materials containing source material and certain persons using source material under general license and under exemptions from licensing.

In conjunction with the final rule, the NRC has developed interim guidance. The interim guidance document provides guidance to a licensee or applicant for implementation of 10 CFR parts 30, 31, 32, 40 and 70, ''Requirements for Distribution of Byproduct Material.'' It is intended for use by applicants, licensees, Agreement States, and the NRC staff. The interim guidance describes methods acceptable to the NRC staff for implementing the revised regulations. The approaches and methods described in the guidance document are provided for information and use in implementing the revised regulations. Methods and solutions different from those described in the interim guidance are acceptable if they meet the requirements in 10 CFR parts 30, 31, 32, 40, and 70.

At this time, the NRC is announcing the availability for use of ''Interim Guidance for Implementation of the Final Rule, Requirements for Distribution of Byproduct Material in 10 CFR Parts 30, 31, 32, 40, and 70.'' The document provides guidance on implementing the revised provisions of 10 CFR parts 30, 31, 32, 40, and 70. The NRC is also requesting public comment on this interim guidance. Guidance on the revised regulations will be included in the next revision of the relevant volumes in NUREG–1556, ''Consolidated Guidance about Materials Licenses.'' Comments received on this interim guidance will be considered in the updating of those volumes of NUREG–1556.

Dated at Rockville, Maryland, this 25th day of June 2012.

For the Nuclear Regulatory Commission.

**Mark A. Satorius,**

*Director, Office of Federal and State Materials and Environmental Management Programs.*

[FR Doc. 2012–17710 Filed 7–19–12; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0724; Directorate Identifier 2012–NM–043–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc. Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) that applies to certain Bombardier, Inc. Model DHC–8–400 series airplanes. The existing AD currently requires a modification to trim the edge of the bumper plate, including performing an inspection for damage or cracks of the bumper plate and base fitting, and replacing any damaged or cracked part. That AD also currently requires, for certain airplanes, reidentifying the bumper plate. Since we issued that AD, we have determined that an operational check must be done after reidentifying the bumper plate to ensure the identified unsafe condition is addressed. This proposed AD would require, for airplanes on which the reidentification is done, an operational check of the alternate extension system of the main landing gear (MLG), and repair if necessary. We are proposing this AD to detect and correct failure of the MLG to extend and lock, which could adversely affect the safe landing of the airplane.

**DATES:** We must receive comments on this proposed AD by September 10, 2012.

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

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

For service information identified in this proposed 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; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced 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.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0724; Directorate Identifier 2012–NM–043–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each

substantive verbal contact we receive about this proposed AD.

## Discussion

On July 29, 2011, we issued AD 2011–17–04, Amendment 39–16768 (76 FR 50403, August 15, 2011). That AD required actions intended to address an unsafe condition on certain Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes.

Since we issued AD 2011–17–04, Amendment 39–16768 (76 FR 50403, August 15, 2011), we have determined that an operational check must be done after reidentifying the bumper plate to ensure the identified unsafe condition is addressed. This action is also included in Canadian Airworthiness Directive CF–2010–23, dated July 21, 2010 (referred to after this as ''the MCAI''). The MCAI states:

> One in-service incident has been reported on [a] DHC–8 Series 400 aeroplane in which the right hand main landing gear (MLG) failed to extend using the alternate gear extension system. Investigation determined that the tread on the outboard tire was catching on the bumper plate located on the outboard MLG door that prevented the MLG door to open following an extension attempt via the alternate extension system. Failure of [the] MLG to extend and lock could adversely affect the safe landing of the aeroplane.
>
> To prevent the potential jam condition between the bumper plate and the MLG tires, Bombardier Aerospace has developed a modification to trim the edge of the bumper plate to eliminate the possibility of interference [Bombardier Modsum 4–113645].

The Modsum includes performing a detailed visual inspection for damage or cracks of the bumper plate and base fitting and replacing any damaged or cracked part with a new part, if necessary. You may obtain further information by examining the MCAI in the AD docket.

## FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

## Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 65 products of U.S. registry.

The actions that are required by AD 2011–17–04, Amendment 39–16768 (76 FR 50403, August 15, 2011), and retained in this proposed AD take about 8 work-hours per product, at an average labor rate of $85 per work hour. Required parts would cost about $479 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 costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, the cost of the currently required actions is $1,159 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,525, or $85 per product.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this proposed AD.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

*For the reasons discussed above, I certify this proposed regulation:*

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–17–04, Amendment 39–16768 (76 FR 50403, August 15, 2011), and adding the following new AD:

**Bombardier, Inc.:** Docket No. FAA–2012–0724; Directorate Identifier 2012–NM–043–AD.

**(a) Comments Due Date**

We must receive comments by September 10, 2012.

**(b) Affected ADs**

This AD supersedes AD 2011–17–04, Amendment 39–16768 (76 FR 50403, August 15, 2011).

**(c) Applicability**

This AD applies to Bombardier, Inc. Model DHC–8–400, -401, and -402 airplanes, certificated in any category, having serial numbers 4001 through 4247 inclusive.

**(d) Subject**

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

**(e) Reason**

This AD was prompted by one in-service incident reported on a DHC–8–400 airplane in which the right hand main landing gear

(MLG) failed to extend using the alternate gear extension system. We are issuing this AD to detect and correct failure of the MLG to extend and lock, which could adversely affect the safe landing of the airplane.

**(f) Compliance**

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

**(g) Retained Actions for All Airplanes**

Within 2,000 flight hours after September 19, 2011 (the effective date of AD 2011–17–04, Amendment 39–16768 (76 FR 50403, August 15, 2011): Incorporate Bombardier Modsum 4–113645, including performing a detailed visual inspection for damage or cracks of the bumper plate and base fitting and replacing any damaged or cracked part, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010. Do all applicable replacements before further flight.

**Note 1 to paragraphs (g) and (h) of this AD:** Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010, includes an operational check of the alternate extension system of the MLG. If the operational check fails, guidance on doing corrective actions can be found in the Bombardier Q400 Dash 8 Aircraft Maintenance Manual.

**(h) Retained Actions for Airplanes Having Certain Bumper Plates**

For airplanes on which a bumper plate having part number 85424082–101 or 85424082–103 is installed on which the rework specified in Bombardier Repair Drawing 8/4–54–553 has been done: Within 1,000 flight hours after September 19, 2011 (the effective date of AD 2011–17–04, Amendment 39–16768 (76 FR 50403, August 15, 2011), reidentify the bumper plate, in accordance with paragraph 3.B., step (8) of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010.

**(i) Retained Credit for Previous Actions**

This paragraph provides credit for the modification required by paragraph (h) of this AD by incorporation of Bombardier Modsum 4–113645 before September 19, 2011 (the effective date of AD 2011–17–04, Amendment 39–16768 (76 FR 50403, August 15, 2011), if the modification was performed using Bombardier Service Bulletin 84–32–74, dated December 23, 2009; and provided the modification is done within the compliance time specified in paragraph (h) of this AD.

**(j) New Requirements of This AD: Operational Check for Airplanes on Which the Action Required by Paragraph (h) Is Done**

Concurrently with doing the actions required by paragraph (h) of this AD, or within 30 days after the effective date of this AD, whichever occurs later: Perform an operational check of the alternate extension system of the MLG, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010. If the operational check fails, before further flight, repair in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or the Transport Canada Civil Aviation (TCCA) (or its delegated agent).

**Note 2 to paragraph (j) of this AD:** If the operational check fails, guidance on doing the repair can be found in the Bombardier Q400 Dash 8 Aircraft Maintenance Manual.

**(k) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD, provided the operational check specified in paragraph (j) of this AD is done within the compliance time specified in paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever occurs later, using Bombardier Service Bulletin 84–32–74, dated December 23, 2009.

**(l) Other FAA AD Provisions**

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York 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 New York 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.

**(m) Related Information**

(1) Refer to MCAI Canadian Airworthiness Directive CF–2010–23, dated July 21, 2010; and Bombardier Service Bulletin 84–32–74, Revision A, dated May 17, 2010; for related information.

(2) For service information identified in this proposed 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; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 17, 2012.

**Michael Kaszycki,**

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

[FR Doc. 2012–18145 Filed 7–24–12; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0723; Directorate Identifier 2011–NM–137–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. This proposed AD was prompted by a report of cracks found in the skin at body station (STA) 540 just below stringer S–22L on a Model 737–700 series airplane. This proposed AD would require repetitive detailed and high frequency eddy current inspections for cracking of the skin around the eight fasteners common to the ends of the STA 540 bulkhead chords between stringers S–22 and S–23, left and right sides; and corrective actions and preventive modification if necessary. We are proposing this AD to detect and correct fatigue cracking in the skin, which can result in rapid decompression of the cabin.

**DATES:** We must receive comments on this proposed AD by September 10, 2012.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact Boeing

Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0723; Directorate Identifier 2011–NM–137–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

We received a report of cracks found in the skin at body station (STA) 540 just below stringer S–22L on a Model 737–700 series airplane. Subsequent investigation revealed that the design at the STA 540 bulkhead chords has insufficient load path where the chords meet between stringers S–22 and S–23 on both the left and right sides of the airplane. This condition, if not corrected, could result in fatigue cracking in the skin, which can result in rapid decompression of the cabin.

**Relevant Service Information**

We reviewed Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011. The service information describes procedures for repetitive detailed and high frequency eddy current (HFEC) inspections for cracking of the skin around the eight fasteners common to the ends of the STA 540 bulkhead chords between stringers S–22 and S–23, and corrective actions and preventive modification if necessary. The preventive modification includes doing an open-hole HFEC inspection for cracking of the skin and STA 540 bulkhead chords, installing a new chord splice plate, and repair if necessary. The corrective actions include repairing cracking, and doing preventive modifications on any side on which cracking is not found.

**FAA's Determination**

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

**Proposed AD Requirements**

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

**Differences Between the Proposed AD and the Service Information**

Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

**Clarification of Repetitive Inspections**

The Repeat Interval column of table 1 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, specifies repetitive detailed and HFEC inspections at intervals not to exceed 4,000 flight cycles, and the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, specify repetitive detailed inspections only. We have determined that doing both repetitive detailed and HFEC inspections is necessary to address the unsafe condition of this AD.

**Clarification of Post-Repair Inspections**

Paragraph (j), and Note 1 to paragraph (j), of this proposed AD clarify that the post-repair inspections specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, are not required by this proposed AD.

**Costs of Compliance**

We estimate that this proposed AD affects 903 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspection (left and right sides) .. | 3 work-hours × $85 per hour = $255 per inspection cycle. | $0 | $255 per inspection cycle ..... | $230,265 per inspection cycle. |

We estimate the following costs to do any necessary repairs and inspections that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Preventive modification (each side) | 6 work-hours × $85 per hour = $510 | $894 | $1,404. |
| Skin repair (each side) | 55 work-hours × $85 per hour = $4,675 | Up to $5,635 | Up to $10,310. |

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

*For the reasons discussed above, I certify this proposed regulation:*

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**The Boeing Company:** Docket No. FAA–2012–0723; Directorate Identifier 2011–NM–137–AD.

**(a) Comments Due Date**

We must receive comments by September 10, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes; certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011.

**(d) Subject**

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by a report of cracks found in the skin at body station (STA) 540 just below stringer S–22L. We are issuing this AD to detect and correct fatigue cracking in the skin, which can result in rapid decompression of the cabin.

**(f) Compliance**

Comply with this AD within the compliance times specified, unless already done.

**(g) Inspection and Corrective Action**

(1) Except as required by paragraphs (g)(2), (i)(2), (i)(3), and (i)(4) of this AD, at the applicable time specified in table 1 of paragraph 1.E. ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011: Do detailed and high frequency eddy current (HFEC) inspections of the skin for cracking in the area around the eight fasteners securing the STA 540 bulkhead chords between stringers S–22 and S–23, and do all applicable corrective actions, in accordance with Parts 1, 2, 3, 4, and 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, except as required by paragraph (i)(1) of this AD. If no cracking is found, repeat the detailed and HFEC inspections at the intervals specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, except as required by paragraph (g)(2) of this AD, until the optional preventive modification specified in paragraph (h) of this AD is done. Do all applicable corrective actions before further flight.

(2) For airplanes that have incorporated Boeing Business Jet Lower Cabin Altitude Supplemental Type Certificate (STC) ST01697SE (6,500 feet maximum cabin altitude in lieu of 8,000 feet), the flight-cycle related compliance times are different from those specified in Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011. All initial compliance times specified in total flight cycles or flight cycles must be reduced to half of those specified in Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011. All repetitive interval compliance times specified in flight cycles must be reduced to one-quarter of those specified in Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011.

**(h) Optional Preventive Modification**

Accomplishing the preventive modification, including an HFEC inspection for cracking of the skin and STA 540 bulkhead chords, and all applicable repairs, in accordance with paragraph 3.B, Part 2 or Part 4 (left side), and Part 3 or Part 5 (right side), of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, terminates the inspection requirements of paragraph (g) of this AD for the side on which the modification is done, except as required by paragraph (i)(1) of this AD.

**(i) Exceptions to Service Bulletin Specifications**

(1) If any cracking is found during any inspection required by this AD, and Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(2) Where Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, specifies to do the action after the original issue date of that service bulletin, this AD requires the compliance time after the effective date of this AD.

(3) Where the Condition column of table 1 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, specifies a condition as of the original issue date of that service bulletin, this AD specifies the condition as of the effective date of this AD.

(4) Note 1 of paragraph 3.A. of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, is to be disregarded when accomplishing the actions required by this AD.

**(j) Post-Repair Inspections**

The post-repair inspections, specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, are not required by this AD.

**Note 1 to paragraph (j) of this AD:** The damage tolerance inspections specified in Table 2 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, may be used in support of compliance with Section 121.1109(c)(2) or 129.109(c)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(c)(2)). The corresponding actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–53–1294, dated March 31, 2011, are not required by this AD.

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

(1) The Manager, Seattle ACO, 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 manager of the ACO, it may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle Aircraft Certification Office (ACO) to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

**(l) Related Information**

(1) For more information about this AD, contact Alan Pohl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6450; fax: 425–917–6590; email: *alan.pohl@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on July 17, 2012.

**Michael Kaszycki,**

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

[FR Doc. 2012–18147 Filed 7–24–12; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2012–0520; Directorate Identifier 2002–NE–43–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) that applies to all Turbomeca S.A. Arriel 1A, 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E, 1E2, 1K, 1K1, 1S, and 1S1 turboshaft engines. The existing AD currently requires initial and repetitive visual inspections for erosion caused by dust ingestion and, if necessary, cleaning of the gas generator (module M03). Since we issued that AD, in-service experience has shown that dust inside the gas generator hollow shaft may be found when the axial compressor wheel has less erosion than initially assessed. This proposed AD would require determining the engine history, a one-time visual inspection of the axial compressor for erosion, initial and repetitive cleaning of the gas generator hollow shaft, and replacement of the rear bearing if the amount of dust collected during cleaning exceeds 8 grams. This proposed AD also includes an optional terminating action. We are proposing this AD to prevent an unbalance of the gas generator rotating assembly, which may lead to gas generator rear bearing failure, and uncommanded engine shutdown.

**DATES:** We must receive comments on this proposed AD by September 24, 2012.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 05 59 74 40 00; fax: 33 05 59 74 45 15. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *rose.len@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0520; Directorate Identifier 2002–NE–43–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the

closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

On June 13, 2003, we issued AD 2003–12–14, Amendment 39–13199 (68 FR 36900, June 20, 2003), for all Turbomeca S.A. Arriel 1A, 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E, 1E2, 1K, 1K1, 1S, and 1S1 turboshaft engines. That AD requires initial and repetitive visual inspections for ingestive erosion and, if necessary, cleaning of the module M03. That AD resulted from reports from the manufacturer of an unbalance due to accumulation of dust in the gas generator hollow shaft. We issued that AD to prevent an unbalance of the gas generator rotating assembly, which may lead to deterioration of the gas generator rear bearing and uncommanded engine shutdown.

**Actions Since Existing AD Was Issued**

Since we issued AD 2003–12–14, Amendment 39–13199 (68 FR 36900, June 20, 2003), in-service experience has shown that dust inside the gas generator hollow shaft may be found when the axial compressor wheel has less erosion than initially assessed. Also, since we issued that AD, Turbomeca S.A. has developed an improvement of the gas generator hollow shaft (Modification TU360), which makes the engine less susceptible to dust ingestion. This proposed AD would have optional terminating action to the inspections and cleaning, by the incorporation of Modification TU360. Also, since we issued AD 2003–12–14, the European Aviation Safety Agency (EASA) issued AD 2012–0071, dated April 26, 2012, to address the conditions and improvements just described in the European Community. This proposed AD would remove Turbomeca S.A. Arriel 1E and 1K turboshaft engines from the applicability section of the AD. The 1E engine is no longer in service. The 1K engine is not an FAA validated engine and was incorrectly included in AD 2003–12–14.

**Relevant Service Information**

We reviewed Turbomeca S.A. Alert Mandatory Service Bulletin (MSB) No. A292 72 0230, Version C, dated February 29, 2012. The Alert MSB describes procedures for the determination of the engine history, a one-time visual inspection of the axial compressor for erosion, to define the initial cleaning of the gas generator hollow shaft, and the interval for repetitive cleaning of the shaft. The referenced service bulletin also describes the criteria for replacement of the rear bearing if dust is found.

**FAA's Determination**

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

**Proposed AD Requirements**

This proposed AD would require the following:

- Determining the engine history; and
- Performing a one-time visual inspection of the axial compressor for erosion, and initial and repetitive cleaning of the gas generator hollow shaft; and
- Replacing the gas generator rear bearing before further flight if the dust collected during any cleaning inside the gas generator hollow shaft exceeds 8 grams; and
- If there are any changes in accordance with paragraph 1.A.(1)(a)1.3 of Turbomeca S.A. Alert MSB No. A292 72 0230, Version C, dated February 29, 2012, within 50 engine hours time-in-service after such a change, accomplish the actions required by this AD; and
- After the effective date of the AD, do not install a module M03 on an engine unless it is in compliance with the requirements in this proposed AD.

**Costs of Compliance**

We estimate that this proposed AD would affect about 1,421 engines installed on helicopters of U.S. registry. We also estimate that it would take about 24 work-hours per engine to inspect and clean the gas generator module. The average labor rate is $85 per work-hour. A replacement gas generator rear bearing would cost about $4,128 per engine and take about 8 work-hours to replace. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $2,898,840.

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2003–12–14, Amendment 39–13199 (68 FR 36900, June 20, 2003), and adding the following new AD:

**Turbomeca S.A.:** Docket No. FAA–2012–0520; Directorate Identifier 2002–NE–43–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by September 24, 2012.

**(b) Affected ADs**

This AD supersedes AD 2003–12–14, Amendment 39–13199 (68 FR 36900, June 20, 2003).

**(c) Applicability**

This AD applies to all Turbomeca S.A. Arriel 1A, 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines that have not incorporated Turbomeca S.A. Modification TU360.

**(d) Unsafe Condition**

This AD was prompted by in-service experience showing that dust inside the gas generator hollow shaft may be found when the axial compressor wheel has less erosion than initially assessed. We are issuing this AD to prevent an unbalance of the gas generator rotating assembly, which may lead to deterioration of the gas generator rear bearing and uncommanded engine shutdown.

**(e) Compliance**

Comply with this AD within the compliance times specified, unless already done.

(1) Within 50 engine hours after the effective date of this AD, determine the engine history and perform the maintenance actions at the specified schedules. Use paragraphs 1.A. and 2.A. through 2.C. of Turbomeca S.A. Alert Mandatory Service Bulletin (MSB) No. A292 72 0230 Version C, dated February 29, 2012 to perform the maintenance actions and to establish the cleaning schedule.

(2) If during any of the cleanings, the dust weight collected inside the gas generator hollow shaft is more than 8 grams, replace the gas generator rear bearing before further flight.

(3) After the effective date of this AD, if there are any changes in accordance with paragraph 1.A.(1)(a)1.3 of Turbomeca S.A. Alert MSB No. A292 72 0230, Version C, dated February 29, 2012, within 50 engine hours time-in-service after such a change, accomplish the actions as specified in paragraph (e)(1) and (e)(2) in this AD.

(4) After the effective date of this AD, do not install any gas generator (module M03) on an engine unless it is in compliance with this AD.

(5) After the effective date of this AD, do not install any gas generator rear bearing that has operated on an engine with a hollow shaft that has been found to have a dust weight more than 8 grams.

**(f) Optional Terminating Action**

As optional terminating action to the repetitive actions in this AD, modify the engine by incorporating Turbomeca S.A. Modification TU360.

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

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

**(h) Related Information**

(1) For more information about this AD, contact Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *rose.len@faa.gov.*

(2) Refer to European Aviation Safety Agency AD 2012–0071, dated April 26, 2012, and Turbomeca S.A. Alert MSB No. A292 72 0230, Version C, dated February 29, 2012, for related information.

(3) For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 05 59 74 40 00; fax: 33 05 59 74 45 15. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on July 20, 2012.

**Peter A. White,**

*Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2012–18155 Filed 7–24–12; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0681; Directorate Identifier 2008–NE–13–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) that applies to all Turbomeca S.A. Arriel 1E2, 1S, and 1S1 turboshaft engines. The existing AD currently requires a one time inspection and torque check of a certain 3-way union plug installed on all fuel control units (FCUs). Since we issued that AD, the applicability has been reduced to certain FCUs and the referenced service bulletin has been updated with additional detailed information to identify the non-compliant ''red disk'' plug. This proposed AD would still require a one time inspection and torque check of the 3-way union plug, would require replacement of the plug before further flight if it is found to be non-compliant, and would prohibit installation of FCUs that have not passed the 3-way union plug inspection and torque check. We are proposing this AD to prevent fuel leaks, which could result in a fire and damage to the helicopter.

**DATES:** We must receive comments on this proposed AD by September 24, 2012.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 05 59 74 40 00; fax: 33 05 59 74 45 15. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

### Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *rose.len@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0681; Directorate Identifier 2008–NE–13–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory,

economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

On January 21, 2009, we issued AD 2009–03–04, Amendment 39–15805 (74 FR 7796, February 20, 2009), for all Turbomeca S.A. Arriel 1E2, 1S, and 1S1 turboshaft engines. That AD requires a one time inspection and torque check of a certain 3-way union plug installed on all FCUs. That AD resulted from Turbomeca S.A. informing the European Aviation Safety Agency (EASA) of a case of a ''red disk'' plug, adapted for bench testing, which was installed on the FCU on an engine and released for service operation. That engine experienced an in-service high pressure leak event (at the fuel pump outlet) due to cracking of this ''red disk'' plug. That leak could lead to in-flight flame-out and/or possibly a fire. We issued that AD to prevent fuel leaks, which could result in a fire and damage to the helicopter.

**Actions Since Existing AD Was Issued**

Since we issued AD 2009–03–04, Turbomeca S.A. has identified FCUs that are not affected, which are FCUs that have a manufacturing date indicated on the identification plate later than March 31, 2008 and/or that have a latest repair/overhaul date recorded on the FCU log card later than March 31, 2008.

**Relevant Service Information**

We reviewed Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 292 73 0817, Version D, dated February 29, 2012. The MSB describes procedures for performing a one time inspection and torque check of a certain 3-way union plug installed on certain FCUs.

**FAA's Determination**

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in a smaller population of products of the same type design.

**Proposed AD Requirements**

This proposed AD would retain all of the requirements of AD 2009–03–04, (74 FR 7796, February 20, 2009), including those requirements related to a one time inspection and torque check. However, this proposed AD would reduce the affected population of FCU 3-way union plugs, require plug replacement before further flight if it fails the inspection, and would prohibit installation of FCUs that have not passed the 3-way union plug inspection and torque check.

**Costs of Compliance**

Based on updated service information, we estimate that this proposed AD would affect about 179 engines installed on helicopters of U.S. registry. We also estimate that it would take about 0.5 work-hour per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $14 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $10,114. Our cost estimate is exclusive of possible warranty coverage.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, and

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–03–04, Amendment 39–15805 (74 FR 7796, February 20, 2009), and adding the following new AD:

**Turbomeca S.A.:** Docket No. FAA–2008–0681; Directorate Identifier 2008–NE–13–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by September 24, 2012.

**(b) Affected ADs**

This AD supersedes AD 2009–03–04, Amendment 39–15805 (74 FR 7796, February 20, 2009). This AD was prompted by Turbomeca S.A. informing us that FCUs manufactured, repaired, or overhauled after March 31, 2008, do not require inspection.

**(c) Applicability**

This AD applies to Turbomeca S.A. models Arriel 1E2, 1S, and 1S1 turboshaft engines with fuel control units (FCUs) manufactured, repaired, or overhauled on or before March 31, 2008.

**(d) Unsafe Condition**

Turbomeca S.A. informed the European Aviation Safety Agency (EASA) of a case of a ''red disk'' plug, adapted for bench testing, which was installed on the FCU on an engine and released for service operation. An engine experienced an in-service high pressure leak event (at the fuel pump outlet) due to cracking of this ''red disk'' plug. This leak could lead to in-flight flame-out and/or possibly a fire. This AD was prompted by Turbomeca S.A. informing us that FCUs manufactured, repaired, or overhauled after March 31, 2008, do not require inspection. We are issuing this AD to prevent fuel leaks, which could result in a fire and damage to the helicopter.

**(e) Compliance**

Comply with this AD within the compliance times specified, unless already done. Within 100 operating hours from the effective date of this AD, perform a one time inspection of the plug installed in the FCU 3-way union, part number 9 932 30 706 0.

(1) If the FCU 3-way union plug is unpainted, verify the plug is torqued to between 1.3 and 1.5 daN.m, in accordance with Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 292 73 0817, Version D, dated February 29, 2012, before further flight.

(2) If the FCU 3-way union plug has any red paint on it, replace it with a serviceable plug and torque the plug to between 1.3 and 1.5 daN.m, in accordance with Turbomeca S.A. MSB No. 292 73 0817, Version D, dated February 29, 2012, before further flight.

**(f) Installation Prohibition**

After the effective date of this AD, do not install any FCU manufactured, repaired, or overhauled on or before March 31, 2008, onto any Turbomeca S.A. model Arriel 1E2, 1S, and 1S1 turboshaft engine, unless the FCU 3-way union plug has passed the one time inspection and torque check required by this AD.

**(g) Credit for Previous Actions**

If you performed the inspections and corrective actions required by this AD using the original issue or any version up to and including Version D of Turbomeca S.A. MSB No. 292 73 0817 before the effective date of this AD, you have met the requirements of this AD.

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

The Manager, Engine Certification Office, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

**(i) Related Information**

(1) For more information about this AD, contact Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *rose.len@faa.gov.*

(2) For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 05 59 74 40 00; fax: 33 05 59 74 45 15. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on July 5, 2012.

**Peter A. White,**

*Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2012–18050 Filed 7–24–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2012–0191]**

**RIN 1625–AA11**

## Regulated Navigation Area; Columbus Day Weekend, Biscayne Bay, Miami, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a regulated navigation area on Biscayne Bay in Miami, Florida. The regulated navigation area will be enforced annually from Saturday of the second week through Monday of the third week in October (Columbus Day weekend). The regulated navigation area will include certain waters of Biscayne Bay between Rickenbacker Causeway Bridge and Coon Point on Elliot Key. All vessels within the regulated navigation area would be: required to transit the regulated navigation area at no more than 15 knots; subject to control by the Coast Guard; and required to follow the instructions of all law enforcement vessels in the area. This regulated navigation area is necessary to ensure the safe transit of vessels and to protect persons, vessels, and the marine environment within the regulated navigation area during the Columbus Day weekend.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 24, 2012. Requests for public meetings must be received by the Coast Guard August 14, 2012.

**ADDRESSES:** You may submit comments identified by docket number USCG–2012–0191 using any one of the following methods:

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

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Lieutenant Jennifer S. Makowski, Sector Miami Prevention Department, U.S. Coast Guard; telephone (305) 535–8724, email *Jennifer.S.Makowski@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

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

### A. Public Participation and Request for Comments

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

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0191), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to h*ttp://www.regulations.gov*, type the docket number (USCG–2012–0191) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and

electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the proposed rule based on your comments.

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2012–0191) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*3. Privacy Act*

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

*4. Public Meeting*

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

**B. Basis and Purpose**

The legal basis for the proposed rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the proposed rule is to ensure the safe transit of vessels and to protect persons, vessels, and the marine environment within the regulated navigation area during the Columbus Day weekend.

**C. Discussion of Proposed Rule**

The proposed rule would designate a regulated navigation area encompassing certain waters of Biscayne Bay between Rickenbacker Causeway Bridge and Coon Point on Elliot Key in Miami, Florida.

The regulated navigation area would be enforced from 12:01 p.m. on Saturday of the second week in October through 2 a.m. on Monday of the third week in October (Columbus Day weekend) each year. All vessels within the regulated navigation area would be: (1) Required to transit the area at no more than 15 knots; (2) subject to control by the Coast Guard; and (3) required to follow the instructions of all law enforcement vessels in the area.

The regulated navigation area is necessary to ensure the safety of the public. The close proximity of numerous vessels transiting that portion of Biscayne Bay encompassed within the proposed regulated navigation area during Columbus Day weekend poses a hazardous condition. The regulated navigation area would result in the transiting of vessels at a safer speed, thereby significantly reducing the threat of vessel collisions. Requiring vessels within the regulated navigation area to transit at no more than 15 knots would also enable law enforcement officials to identify, respond to, query, and stop operators who may pose a hazard to other vessels in the area. Nothing in this regulation would alleviate vessels or operators from complying with all other Federal, state, and local laws in the area, including manatee slow speed zones.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this proposed rule is not significant for the following reasons: (1) The regulated navigation area would be enforced for less than 28 hours each year; (2) although, during the enforcement period, vessels would be required to transit the area at no more than 15 knots, be subject to control by the Coast Guard, and be required to follow the instructions of all law enforcement vessels in the area, the regulated navigation area does not prohibit vessels from transiting the area; (3) vessels would still be able operate in surrounding waters that are not encompassed within the regulated navigation area without the restrictions imposed by the regulated navigation area; and (4) advance notification of the regulated navigation area would be made to the local maritime community via Local Notice to Mariners and Broadcast Notice to Mariners.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the regulated navigation area from 12:01 p.m. on Saturday of the second week in October through 2 a.m. on Monday of the third week in October (Columbus Day weekend) each year. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children From Environmental Health Risks*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule is categorically excluded under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. This proposed rule involves establishing a regulated navigation area, as described in paragraph 34(g) of the Commandant Instruction, which will be enforced for less than 28 hours each year. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**E. List of Subjects in 33 CFR Part 165**

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

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

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

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

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

2. Revise § 165.779 to read as follows:

**§ 165.779 Regulated Navigation Area; Columbus Day Weekend, Biscayne Bay, Miami, FL.**

(a) *Regulated Area.* The regulated navigation area encompasses all waters of Biscayne Bay between Rickenbacker Causeway Bridge and Coon Point, Elliot Key contained within an imaginary line connecting the following points: beginning at Point 1 in position 25°44′49″ N, 80°12′04″ W; thence southwest to Point 2 in position 25°30′00″ N, 80°15′48″ W; thence southeast to Point 3 in position 25°28′22″ N, 80°15′00″ W; thence east to Point 4 in position 25°28′23″ N, 80°12′53″ W; thence northeast to Point 5 in position 25°30′00″ N, 80°12′06″ W; thence west to Point 6 in position 25°30′00″ N, 80°13′17″ W; thence northwest to Point 7 in position 25°30′53″ N, 80°13′21″ W; thence northeast to Point 8 in position 25°43′57″ N, 80°10′01″ W; thence back to origin. All coordinates are North American Datum 1983.

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

(c) *Regulations.* (1) All vessels within the regulated area are required to transit

at no more than 15 knots, are subject to control by the Coast Guard, and must follow the instructions of designated representatives.

(2) At least 48 hours prior to each enforcement period, the Coast Guard will provide notice of the regulated area through advanced notice via Local Notice to Mariners and Broadcast Notice to Mariners. The Coast Guard will also provide notice of the regulated area by on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced from 12:01 p.m. on Saturday of the second week through 2 a.m. on Monday of the third week in October (Columbus Day weekend) each year.

Dated: June 20, 2012.

**William D. Baumgartner,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 2012–18151 Filed 7–24–12; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2012–0642]**

**RIN 1625–AA00**

## Safety Zone; Gilmerton Bridge Center Span Float-in, Elizabeth River; Norfolk, Portsmouth, and Chesapeake, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishing a safety zone on the navigable waters of the Elizabeth River in Norfolk, Portsmouth, and Chesapeake, VA. This action is necessary to provide for the safety of life on navigable waters during the Gilmerton Bridge Center Span Float-in and bridge construction of span placement. This action is intended to restrict vessel traffic movement to protect mariners from the hazards associated with the float-in and span placement.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 14, 2012.

**ADDRESSES:** You may submit comments identified by docket number USCG–2012–0642 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

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

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

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or email Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

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

### A. Public Participation and Request for Comments

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

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2012–0642), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number USCG–2012–0642 in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number USCG–2012–0642 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

*3. Privacy Act*

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

*4. Public Meeting*

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

**B. Basis and Purpose**

On September 5, 2012 through September 9, 2012 with inclement weather dates of September 10, 2012 through September 14, 2012, PCL Civil Construction, INC will facilitate removal of the existing bascule spans from the Gilmerton Bridge, transport of the new center span from the Eastern Branch of the Elizabeth River at the Campostella Bridge to the Southern Branch at the Gilmerton Bridge in Norfolk, Portsmouth, and Chesapeake, VA and the placement of the center span at the Gilmerton Bridge in Chesapeake, VA. Due to the need to protect mariners and the public transiting the Elizabeth River from hazards associated with the span move and construction of span placement, the Coast Guard proposes to establish a moving safety zone and an extended waterway closure at the Glimerton Bridge. Access to this area would be restricted for public safety purposes.

**C. Discussion of Proposed Rule**

The Coast Guard proposes to establish a temporary moving safety zone around the Gilmerton Bridge Center Span barge, restricting vessels operating in the navigable waters on the Elizabeth River from the Campostella Bridge located in the Eastern Branch of the Elizabeth River to the Gilmerton Bridge beginning. This movement is scheduled to begin at 6 a.m. on September 5, 2012, weather permitting. Because of the size of the barge and the width of the waterway, vessels will not be able to transit around the Barge, necessitating closure of the entire down river waterway to the Glimerton Bridge. Transit is expected to take approximately seven hours. This action is necessary to ensure the safety of PCL Construction and vessels immediately prior to, during, and following the transit of the span.

In addition to the moving safety zone, we propose to establish safety zone at the Gilmerton Bridge starting at 6 a.m. on September 5, 2012, weather permitting until work is completed on the placement of the center span on the Gilmerton Bridge, estimated closure of the waterway to all vessel traffic at the Gilmerton Bridge is until September 9, 2012, with inclement weather dates of September 10, 2012 through September 14, 2012. During the removal of the existing structures and installation of the new bridge span there is a danger of falling debris. Additionally, PCL Construction will be using construction equipment that will obstruct the waterway immediately under and adjacent to the Glimerton Bridge. This safety zone is proposed in the interest of public safety during span placement at the Gilmerton Bridge and will be enforced from 6 a.m. on September 5, 2012, weather permitted, until September 9, 2012, with inclement weather dates of September 10, 2012 through September 14, 2012. Access to the safety zone will be restricted during the specified dates. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone. Coast Guard Captain of the Port will give notice of the enforcement of the safety zone by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts. Marine information and facsimile broadcasts may also be made for these events, beginning 24 to 48 hours before the event.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the moving safety zone accompanying the Glimerton Bridge Span Barge and the safety zone at the Gilmerton Bridge beginning at 6 a.m. on September 5, 2012 through September 9, 2012, with inclement weather dates of September 10, 2012 through September 14, 2012. Although these regulations prevent traffic from transiting a portion of the Elizabeth River during these events, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. This regulation is designed to ensure such transit is conducted in a safe and orderly fashion.

*2. Impact Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Elizabeth River, in Virginia. The regulations would not have a significant impact on a substantial number of small entities for the following reasons: the restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas.

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

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, email *Hector.L.Cintron@uscg.mil*. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*4. Collection of Information*

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

*5. Federalism*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this proposed rule under that Order and have determined that it does not have implications for federalism.

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

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

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

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

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

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

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

2. Add § 165.T05–0642 to read as follows:

**§ 165.T05–0642 Safety Zone; Gilmerton Bridge Center Span Float-in, Elizabeth River; Norfolk, Portsmouth, and Chesapeake, Virginia.**

(a) *Regulated Area.* The following area is a safety zone:

Regulated Area 1—All waters of the Eastern Branch of the Elizabeth River within 400 feet behind the Gilmerton Bridge Center Span Barge extending to the entrance of the Southern Branch of the Elizabeth River and then continuing down river in the Southern Branch of Elizabeth River to the Gilmerton Bridge in the vicinity of Norfolk, Portsmouth and Chesapeake, VA. As the Gilmerton Bridge Center Span Barge transits through the waterway, the upriver portions of the waterway will reopen.

Regulated Area 2—All waters of the Southern Branch of the Elizabeth River within 400 feet of Gilmerton Bridge in the vicinity of Chesapeake, VA.

(b) *Definition:* For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band

radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period:* This regulation will be enforced starting at 6 a.m. on September 5, 2012 through September 9, 2012, with inclement weather dates of September 10, 2012 through September 14, 2012.

Dated: July 13, 2012.

**John K. Little,**

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

[FR Doc. 2012–18125 Filed 7–24–12; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Chapter III

### American Indian Vocational Rehabilitation Services Program; Proposed Waivers and Extensions of the Project Periods

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Proposed waivers and extensions.

CFDA Number: 84.250J.

**SUMMARY:** For 60-month projects initially funded in fiscal year (FY) 2007 under the American Indian Vocational Rehabilitation Services (AIVRS) Program, the Department proposes to waive the regulations that generally limit project periods to 60 months and that restrict project period extensions involving the obligation of additional Federal funds. The Department also proposes to extend the project period until September 30, 2013, for the AIVRS grantees whose awards are scheduled to expire on September 30, 2012. The proposed waivers and extensions would enable the eight AIVRS grantees in the FY 2007 funding cohort to request and continue to receive Federal funding beyond the 60-month limitation contained in the Department's regulations, so long as the grantees are meeting the AIVRS program and other applicable requirements. Further, if the proposed waivers and extensions are made final, the Department would not announce a new competition in FY 2012 or make new awards in FY 2012.

**DATES:** We must receive your comments on or before August 24, 2012.

**ADDRESSES:** Submit all comments on this notice to August Martin, United States Department of Education, 400 Maryland Avenue SW., Room 5049, Potomac Center Plaza (PCP), Washington, DC 20202–7241.

If you prefer to send your comments by email, use the following address: *august.martin@ed.gov*. You must include the term ''Proposed Waivers and Extensions for AIVRS'' in the subject line of your message.

**FOR FURTHER INFORMATION CONTACT:** August Martin. Telephone: (202) 245–7410, or by email: *august.martin@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

*Invitation to Comment:* We invite you to submit comments regarding this notice. We are particularly interested in comments on the effect these proposed waivers and extensions may have on the AIVRS program and on potential applicants for grant awards under any new AIVRS notice inviting applications, should there be one.

Eligible applicants for AIVRS are the governing bodies of Indian tribes (and consortia of those governing bodies) located on Federal and State reservations.

During and after the comment period, you may inspect all public comments about these proposed waivers and extensions for AIVRS in room 5105, (PCP), 550 12th Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week, except Federal holidays.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice of proposed waivers and extensions. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

### Background

The eight AIVRS grantees, selected based on the 2007 AIVRS notice inviting applications (2007 NIA) published on March 14, 2007 (72 FR 11851), provide vocational rehabilitation services to American Indians with disabilities who reside on or near Federal or State reservations as authorized by section 121 of the Rehabilitation Act of 1973, as amended (the Act) (29 U.S.C. 741).

The project period for the eight AIVRS grantees is scheduled to end September 30, 2012. Section 121(b)(3) of the Act provides that the Department has the authority to make an AIVRS grant effective for more than 60 months, pursuant to prescribed regulations. For these projects, the Department proposes to waive the requirements of 34 CFR 75.250 and 34 CFR 75.261(c)(2), which limit project periods to 60 months and restrict project period extensions that involve the obligation of additional Federal funds. The Department also proposes to extend the project period for the eight AIVRS grantees from October 1, 2012, through September 30, 2013. The proposed waivers and extensions would enable the eight AIVRS grantees to request and continue to receive Federal funds beyond the 60-month limitation set by 34 CFR 75.250.

The Department makes this proposal, consistent with the Department's commitment to excellence and continuous improvement, because a question was raised by the U.S. Government Accountability Office (GAO) in a report released on May 9, 2012, concerning the Department's practice for determining eligibility under the AIVRS program. The report is titled Federal Funding for Non-Federally Recognized Tribes, GAO–12–348, and can be found on the GAO Web site at *www.gao.gov/products/GAO-12-348.*

In the report, the GAO made a finding in which it noted that the Department's interpretation of reservation used in determining eligibility under the AIVRS program raised substantial questions for GAO about the eligibility of State-recognized tribes that are not located on State reservations, but rather are located on a defined and contiguous area of land where there is a concentration of tribal members and in which the tribe is providing structured activities and services, such as the tribal service areas identified in a tribe's grant application. The GAO recommended that the Secretary review the Department's practices with respect to eligibility requirements and take appropriate action with respect to grants made to tribes that do not have Federal or State reservations.

In order to comply with the GAO's recommendation, we believe it is advisable to maintain funding to existing AIVRS projects during the time period the Department is implementing the GAO recommendation and not to hold a new AIVRS competition in FY 2012. The Department has determined that it is not advisable to announce a new competition under which entities would be expected to have the burden of proceeding through the application process while the Department reviews

the eligibility requirements for this program.

Instead, we believe it is preferable in administering the AIVRS program for the Department to review requests for continuation awards from the eight grantees based on the 2007 NIA and, where appropriate, extend the currently-funded projects through September 30, 2013. The maintenance of the status quo while we conduct this review is in the public interest.

If these proposed waivers and extensions are made final for the eight AIVRS grantees selected based on the 2007 NIA, we will base our decisions regarding annual continuation awards on the program narratives, budgets, budget narratives, and program performance reports submitted by these eight AIVRS grantees, and on the requirements in 34 CFR 75.253. Any activities to be carried out during the year of continuation awards would have to be consistent with, or be a logical extension of, the scope, goals, and objectives of each grantee's application, as approved following the 2007 AIVRS competition. If we publish the proposed waivers and extensions as final, we would award continuation grants to each grantee that is making substantial progress performing its AIVRS grant activities.

The proposed waivers of 34 CFR 75.250 and 34 CFR 75.261(c)(2) and extensions of the project periods, would not exempt the eight AIVRS grantees from the appropriation account-closing provisions of 31 U.S.C. 1552(a), nor would they extend the availability of funds previously awarded to the eight AIVRS grantees past the five years provided for in 31 U.S.C. 1552(a). Under 31 U.S.C. 1552(a), appropriations available for a limited period may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the U.S. Treasury Department and is unavailable for restoration for any purpose (31 U.S.C. 1552(b)).

**Regulatory Flexibility Act Certification**

The Department certifies that the proposed waivers and extensions would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed waivers and extensions are the eight grantees selected based on the 2007 NIA currently receiving Federal funds and any other potential applicant for the estimated 8 or 9 awards for which there would have been a competition.

The Department certifies that the proposed waivers and extensions would not have a significant economic impact on these entities because the proposed waivers and extensions impose minimal compliance costs to extend projects already in existence, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

**Paperwork Reduction Act of 1995**

This notice of proposed waivers and extensions does not contain any information collection requirements.

*Intergovernmental Review:* The AIVRS program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 19, 2012.

**Alexa Posny,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 2012–18078 Filed 7–24–12; 8:45 am]

BILLING CODE 4000–01–P

## POSTAL SERVICE

## 39 CFR Part 111

## Proposed Eligibility Criteria for Bound Printed Matter Parcels

**AGENCY:** Postal Service™.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Postal Service is considering the adoption of a new criterion for eligibility of Bound Printed Matter (BPM) parcels by adding a physical density threshold for individual mailpieces.

**DATES:** Comments on this advance notice are due September 10, 2012.

**ADDRESSES:** Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 4446, Washington, DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC, by appointment only between the hours of 9 a.m. and 4 p.m., Monday through Friday. Call 1–202–268–2906 in advance for an appointment. Email comments, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov,* with a subject line of ''New Eligibility for BPM Parcels.'' Faxed comments are not accepted.

**FOR FURTHER INFORMATION CONTACT:** Kayla Dobbs at 202–268–6753, or Wm. Kevin Gunther at 202–268–7208.

**SUPPLEMENTARY INFORMATION:** BPM parcels is an economical ground-based product containing qualifying bound printed matter, weighing no more than 15 pounds and requiring postage payment by permit imprint. BPM is primarily used by commercial shippers who do not require expedited delivery. This product is not available for purchase at Post Office™ retail units and is not typically used by non-business mailers.

Statutory requirements under title 39, U.S. Code, require that each class of mail or type of mail service bear the direct and indirect costs attributable to that class or service. In this regard, the Postal Service expenses related to the BPM parcel product continues to exceed the revenues generated by its sales. In fiscal year 2011, BPM parcels realized a 98.8% cost coverage.

Greater efficiency in the packaging of BPM parcels will provide for more expedient handling of BPM parcels and will contribute to the cost coverage of the BPM product. To that end, the Postal Service is considering the implementation of a new minimum mailpiece density requirement for BPM parcels, with an effective date targeted for July, 2013.

Less densely prepared parcels also tend to result in a higher incidence of conveyance problems on automated

parcels processing equipment, increasing the need for extra handling.

If the Postal Service proceeds with its plan to adopt a new density eligibility requirement for BPM parcels, parcels will be required to meet or exceed the minimum physical density threshold to qualify for BPM parcel pricing. The proposed density requirement will not be applicable to Bound Printed Matter flats.

The principal intent of the Postal Service in proposing this new requirement is to provide guidance for mailers to improve the efficiency and effectiveness in the packaging of BPM parcels. The Postal Service also hopes to provide a mechanism for mailers to self-regulate the content of BPM parcels, as books and similar printed matter are naturally dense products.

To calculate density, first the length, height and width of each parcel is measured in inches, and then multiplied to obtain cubic inches. To determine the volume in cubic feet, the cubic inches product is then divided by 1,728 (cubic inches in a cubic foot). The weight of the mailpiece, in pounds, is then divided by the product of the prior calculation (the mailpiece volume in cubic feet) to yield a density value of the parcel, measured in pounds/cubic foot. For example, the density of a BPM parcel weighing 10 pounds and measuring 12 inches in length, 8 inches in height, 10 inches in width, would have a density of approximately 17.9 pounds/cubic foot, calculated as follows: $12 \times 8 \times 10 = 960$ cubic inches, 960/1728 = .56 cubic feet, 10/.56 = 17.9 pounds/cubic foot. If this standard is adopted, to be eligible for BPM pricing, parcels must demonstrate a density of at least 10.0 pounds/cubic foot. BPM parcels with densities under 10.0 pounds/cubic foot would not be eligible for BPM parcel pricing. When parcels intended for mailing at BPM prices are identified as falling below the minimum density threshold, the mailer will be provided with the option either to repackage the contents more efficiently to meet the minimum density requirement, or mail the item using another mail class as applicable.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2012–18085 Filed 7–24–12; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

[EPA–HQ–OPP–2012–0001; FRL–9353–6]

## Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

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

**ACTION:** Notice of filing of petitions and request for comment.

**SUMMARY:** This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before August 24, 2012.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), Mail Code: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** A contact person, with telephone number and email address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Biopesticides and Pollution Prevention Division (7511P) or Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

**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 at the end of the pesticide petition summary of interest.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available online at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

*New Tolerances*

1. *PP 2E8007.* (EPA–HQ–OPP–2012–0303). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide ethalfluralin, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine, in or on rapeseed, subgroup 20A at 0.05 parts per million (ppm), and sunflower, subgroup 20B at 0.05 ppm. Rapeseed/Canola—A residue method has been developed for the determination of ethalfluralin in rapeseed seed which utilizes capillary gas chromatography with mass selective detection (GC/MSD). Safflower—Adequate residue analytical methods are available for purposes of registration based upon the analytical method for sunflower. A GC method, Method I, with electron capture detection (ECD), is listed in the Pesticide Analytical Manual II (PAM, Vol. II, Section 180.416) for tolerance enforcement. Method I is applicable for analysis of ethalfluralin residues in/on sunflower seed. Contact: Sidney Jackson, (703) 305–7610, email address: *jackson.sidney@epa.gov.*

2. *PP 2E8011.* (EPA–HQ–OPP–2012–0304). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide trifluralin, (alpha, alpha, alpha-trifluoro-2,6-dinitro-*N,N*-dipropyl-*p*-toluidine), in or on oilseed, crop group 20 at 0.05 ppm. The reregistration requirements for residue analytical methods are fulfilled for plant commodities. Adequate methods are available for data collection and enforcement of tolerances for residues of trifluralin *per se* in/on plant commodities. The Pesticide Analytical Manual II (PAM, Vol. II, Section 180.207) lists four GC methods (designated as Methods I, II, III, and A) with ECD, as available for determination of trifluralin *per se* in/on plant commodities. Contact: Andrew Ertman, (703) 308–9367, email address: *ertman.andrew@epa.gov.*

3. *PP 2E8013.* (EPA–HQ–OPP–2012–0309). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide clopyralid, (3,6-dichloro-2-pyrindinecarboxylic acid), in or on teff, forage at 9.0 ppm; teff, grain at 3.0 ppm; teff, straw at 9.0 ppm; and teff, hay at 9.0 ppm. Dow AgroSciences Method No. ACR 79.5 can be utilized to determine residues of clopyralid in teff in support of the proposed tolerance. This method determines clopyralid as the methyl ester by GC/ECD. This method has been successfully validated by EPA and has been published in PAM II. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

4. *PP 2E8020.* (EPA–HQ–OPP–2011–0758). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]-methanesulfonamide) and its metabolites 3-hydroxymethyl-sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-hydroxymethyl-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl]methanesulfonamide) and 3-desmethyl sulfentrazone (*N*-[2,4-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-5-oxo-1*H*-1,2,4-triazol-1-yl]phenyl] methanesulfonamide), in or on soybean, vegetable, succulent (Edamame) at 0.15 ppm. The analytical method for sulfentrazone involves separate analyses for parent and its metabolites. The parent is analyzed by evaporation and reconstitution of the sample prior to analysis by LC/MS/MS GC/ECD. The metabolites samples were refluxed in the presence of acid and cleaned up with solid phase extraction prior to analysis by LC/MS/MS. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

5. *PP 2E8021.* (EPA–HQ–OPP–2012–0384). BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide imazapic (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-*H*-imidazol-2-yl]-5-methyl-3-pyridinecarboxylic acid, in or on sugarcane at 0.01 ppm. The proposed analytical method for detecting residues of imazapic and the metabolites M715H001 (CL 263,284) and M715H002 (CL 189,215) in sugarcane is an LC/MS/

MS method. The analytical method for analysis in meat and meat by-products is based on capillary electrophoreses with confirmation by LC/MS. The analytical method for analysis in milk and fat is based on determination by LC/MS with confirmation by LC/MS/MS. Contact: Mindy Ondish, (703) 605–0723, email address: *ondish.mindy@epa.gov.*

6. *PP 2E8029.* (EPA–HQ–OPP–2012–0420). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for the combined residues of the insecticide indoxacarb, (*S*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]-indeno[1,2e]-[1,3,4]oxadiazine-4a(3*H*)- carboxylate and its *R*-enantiomer (*R)*-methyl-7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]-indeno [1,2-e] [1,3,4] oxadiazine-4a(3*H*)- carboxylate in a 75:25 mixture (DPX–MP062), respectively, in or on bean, dry, seed at 0.07 ppm; bean, succulent at 0.64 ppm; bean, forage at 37 ppm; small fruit, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.0 ppm; and berry, low growing, except strawberry, subgroup 13–07H at 0.9 ppm. The plant residue enforcement method detects and quantitates indoxacarb in various matrices including sweet corn, lettuce, tomato, broccoli, apple, grape, cottonseed, tomato, peanut and soybean commodity samples by high performance liquid chromatography–ultraviolet (HPLC–UV). The limit of quantitation in the method allows monitoring of crops with indoxacarb residues at or above the levels proposed in these tolerances. Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

7. *PP 2E8035.* (EPA–HQ–OPP–2012–0429). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide quinclorac (3,7-dichloro-8-quinolinecarboxylic acid), in or on canola at 1.0 ppm. No tolerances are proposed for the processed commodities, meal and refined oil, as no concentration of quinclorac residues is expected in these commodities. An adequate analytical method for enforcement of the tolerances exists. The analytical method used for quantitative determinations was designed to measure quinclorac residues present as the parent compound. Contact: Erik Kraft, (703) 308–9358, email address: *kraft.eric@epa.gov.*

8. *PP 0F7777.* (EPA–HQ–OPP–2010–0889). Dow AgroSciences LLC, c/o Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide sulfoxaflor (1-(6-trifluoromethylpyridin-3-yl)ethyl](methyl)-oxido-λ4-sulfanylidenecyanamide), in or on Crop group 1, subgroup 1A, 1B. Root Vegetables at 0.05 ppm; (from carrot, roots at 0.05 ppm; beet, sugar, roots at 0.03 ppm; radish, roots at 0.03 ppm); carrot, juice at 0.15 ppm; beet, sugar, raw sugar at 0.04 ppm; beet, sugar, molasses at 0.3 ppm; beet, sugar, thick juice at 0.15 ppm; beet, sugar, dried pulp at 0.07 ppm; subgroup 1C, 1D. Tuberous and Corm Vegetables at 0.01 ppm; potato at 0.01 ppm; potato, wet peel at 0.02 ppm; potato, chips at 0.02 ppm; potato, dried at 0.02 ppm; potato, granules/flakes at 0.02 ppm; Crop group 2. Leaves of Root and Tuber Vegetables at 4 ppm; (from carrot, tops at 4 ppm; beet, sugar, tops at 3 ppm; radish, tops at 0.7 ppm); Crop group 3, subgroup 3–07A Bulb vegetables, Onion, bulb, subgroup at 0.01 ppm; (from onion, dry bulb at 0.01 ppm); subgroup 3–07B Bulb Vegetables, Onion, green, subgroup at 0.6 ppm; (from onion, green at 0.6 ppm); Crop group 4, subgroup 4A. Leafy Vegetables (except *Brassica*), Leafy greens, subgroup at 5 ppm; (from leafy greens at 1.6 ppm); subgroup 4B. Leafy Vegetables (except *Brassica*), Leafy petioles, subgroup at 1 ppm; (from celery at 1 ppm); Crop group 5, subgroup 5A. *Brassica* Leafy Vegetables, head and stem (except cauliflower) at 1 ppm; (from cauliflower at 0.08 ppm; broccoli at 0.45 ppm; cabbage at 1 ppm); subgroup 5B. *Brassica* Leafy Vegetables, (from mustard greens at 1.6 ppm); green bean, snap, succulent at 0.7 ppm; beans, dry at 0.25 ppm; Crop group 8. Fruiting Vegetables (except cucurbits, plus okra) at 1.2 ppm (from tomato at 0.45 ppm; pepper, bell and non-bell at 1.2 ppm); tomato, puree at 0.7 ppm; tomato, paste at 1.6 ppm; tomato, catsup at 0.8 ppm; Crop group 9. Cucurbit Vegetables (except squash) at 0.3 ppm; (from cucumber at 0.3 ppm; melon at 0.3 ppm); squash at 0.03 ppm; Crop group 10. Citrus Fruits at 0.6 ppm; (from orange at 0.6 ppm; lemon at 0.45 ppm; grapefruit at 0.25 ppm); citrus, peel at 1 ppm; citrus, dried pulp, at 0.9 ppm; Crop group 11. Pome Fruits at 0.4 ppm; (from apple at 0.3 ppm; pear at 0.4 ppm); apple, dried pomace at 1.3 ppm; Crop Group 12. Stone Fruits (except cherry) at 0.6 ppm; (from nectarine, pitted fruit at 0.3 ppm; peach, pitted fruit at 0.6 ppm; plum, pitted fruit at 0.25 ppm); cherry, pitted fruit at 2.5 ppm; cherry, dried cherry at 15 ppm; Crop group 13, subgroup 13–07F. Small Fruit Vine Climbing subgroup, (except fuzzy kiwifruit) at 1.3 ppm; (from grape at 1.3 ppm); grape, raisins at 5 ppm; subgroup 13–07G Low Growing Berry subgroup at 0.6 ppm; (from strawberry, fruit at 0.6 ppm); Crop group 14. Tree Nuts (plus pistachio) at 0.02 ppm; (from almond at 0.02 ppm; pistachio at 0.02 ppm; pecan at 0.01 ppm); almond, hulls at 4 ppm; Crop group 20, subgroup 20–A. Rapeseed subgroup at 0.25 ppm; (from canola, seeds at 0.25 ppm); canola, meal at 0.5 ppm; subgroup 20C. Cottonseed subgroup at 0.2 ppm; (from cotton, seed at 0.2 ppm); cotton, hulls at 0.4 ppm; cotton, gin byproducts at 8 ppm; cotton, aspirated grain fractions at 4.6 ppm; wheat, grain at 0.07 ppm; wheat, forage at 0.8 ppm; wheat, hay at 1.1 ppm; wheat, straw at 2 ppm; barley, grain at 0.15 ppm; barley hay at 0.8 ppm; barley straw at 1.5 ppm; barley malt sprouts at 0.2 ppm; soybean, seed at 0.2 ppm; soybean hay at 1.8 ppm; soybean, forage at 1.9 ppm; soybean hulls at 0.3 ppm; soybean, meal, toasted at 0.3 ppm; soybean, aspirated grain fractions at 18 ppm. Tolerances of unchanged parent, XDE–208 are also proposed for milk at 0.08 ppm; fat of cattle, goat, horse and sheep at 0.04 ppm; kidney of cattle, goat, horse and sheep at 0.2 ppm; meat of cattle, goat, horse and sheep at 0.1 ppm; meat byproducts of cattle, goat, horse and sheep at 0.25 ppm; fat and meat of hog at 0.01 ppm; meat byproducts of hog at 0.04 ppm; egg at 0.01 ppm; fat and meat of poultry at 0.01 ppm; meat byproduct of poultry at 0.03 ppm. The residue profile of sulfoxaflor is adequately understood and an acceptable analytical method is available for enforcement purposes. Analytical method 091116, ''Enforcement Method for the Determination of Sulfoxaflor (XDE–208) and its Main Metabolites in Agricultural Commodities using Offline Solid-Phase Extraction and Liquid Chromatography with Tandem Mass Spectrometry Detection'' was validated on a variety of plant matrices. Contact: Jennifer Urbanski, (703) 347–0156, email address: *urbanski.jennifer@epa.gov.*

9. *PP 2F7977.* (EPA–HQ–OPP–2012–0242). ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, Ohio 44077, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide fluazinam, in or on soybean, seed at 0.01 ppm; and soybean, hulls at 0.02 ppm. An analytical method using LC–MS/MS for the determination of fluazinam and

AMGT residues on soybeans has been developed and validated. The method involves solvent extraction followed by liquid-liquid partitioning and concentration prior to a final purification. Contact: Dominic Schuler, (703) 347–0260, email address: *schuler.dominic@epa.gov.*

10. *PP 2F7999.* (EPA–HQ–OPP–2012–0291). Makhteshim-Agan of North America, Inc., 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide novaluron, (*N* -[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy)ethoxy] phenyl]amino]carbonyl]-2,6-difluoroben zamide), in or on peanuts at 0.01 ppm; and soybean, seed at 0.06 ppm. An adequate analytical enforcement method, GC/ECD and a HPLC/UV for enforcing tolerances of novaluron residues in or on different matrices are available. Contact: Jennifer Gaines, (703) 305–5967, email address: *gaines.jennifer@epa.gov.*

11. *PP 2F8006.* (EPA–HQ–OPP–2012–0301). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide simazine: 6-chloro-N, N′-diethyl-1,3,5-triazine-2,4-diamine, in or on citrus fruits (Crop Group 10) at 0.05 ppm; pome fruits (Crop Group 11) at 0.03 ppm; stone fruits (Crop Group 12) at 0.10 ppm; and tree nuts (Crop Group 14, except almond hull) at 0.07 ppm. Analytical methods, AG–539 ''Determination of Simazine, G–28279, and G–28273 Residues in Vegetables, Fruit, Grains, and Crop Fractions using Capillary Gas Chromatography,''; AG–497 ''Determination of Simazine, C–28279 and G–28273 Residues in Milk (including Sour Milk) Using a Strong Cation Exchange Column Isolation and Cleanup''; and AG–540 ''Determination of Simazine, Atrazine, G–30033, G–28279 and G–28273 Residues in Beef Tissues, Poultry Tissues and Poultry Eggs Using Capillary Gas Chromatography'' are available for enforcement purposes with limits of detection that allows monitoring of food with residues at or above the levels set in these tolerances. For data submitted with this petition, the method used was based on the Syngenta Crop Protection Method entitled, ''Analytical Method GRM052.01A for the Determination of Simazine, G28273, and G28279 in Crops—Final Determination by LC–MS/MS''. Contact: Hope Johnson, (703) 305–5410, email address: *johnson.hope@epa.gov.*

12. *PP 2F8023.* (EPA–HQ–OPP–2012–0431). United Phosphorus, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide endothall, mono (N,N-dimethylalkylamine) salt of endothall, and the dipotassium salt of endothall, in or on apple at 0.05 ppm; and apple, pomace at 0.15 ppm. The samples were analyzed using GC/ECD with a DB–1701 column. In summary, the endothall residues in apples were extracted with acidified acetonitrile, purified on an HPLC column, derivatized with heptaflouro-p-tolylhydrazine (HFTH), cleaned up, then analyzed using GC/ECD. Additionally, an adequate method for purposes of enforcement of the proposed endothall tolerances is available. The method uses an HPLC/MSD system. An alternative enforcement method is listed as Method I in the PAM, Volume II for the determination of endothall in plant commodities. The commodities are extracted, derivatized, and analyzed with a GC with a nitrogen-specific detector. Contact: Grant Rowland, (703) 347–0254, email address: *rowland.grant@epa.gov.*

13. *PP 2F8026.* (EPA–HQ–OPP–2012–0439). K–I CHEMICAL U.S.A., INC., c/o Landis International, Inc., P. O. Box 5126, Valdosta, GA 31603–5126, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide pyroxasulfone (3-[(5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl) pyrazole-4-ylmethylsulfonyl]-4,5-dihydro-5,5-dimethyl-1,2-oxazole), in or on wheat, grain at 0.01 ppm; pyroxasulfone (3-[(5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl) pyrazole-4-ylmethylsulfonyl]-4,5-dihydro-5,5-dimethyl-1,2-oxazole) and its metabolites M–1 (5-difluoromethoxy-1-methyl-3-trifluoromethyl-1*H*-pyrazol-4-ylmethanesulfonic acid and M–25 (5-difluoromethoxy-3-trifluoromethyl-1*H*-pyrazol-4-yl)methanesulfonic acid) calculated as the stoichiometric equivalent of pyroxasulfone, in or on wheat, grain at 0.6 ppm; and pyroxasulfone (3-[(5-(difluoromethoxy)-1-methyl-3-(trifluoromethyl) pyrazole-4-ylmethylsulfonyl]-4,5-dihydro-5,5-dimethyl-1,2-oxazole) and its metabolites M–1 (5-difluoromethoxy-1-methyl-3-trifluoromethyl-1*H*-pyrazol-4-ylmethanesulfonic acid), M–3 (5-difluoromethoxy-1-methyl-3-trifluoromethyl-1*H*-pyrazol-4-carboxylic acid), and M–25 (5-difluoromethoxy-3-trifluoromethyl-1*H*-pyrazol-4-yl)methanesulfonic acid) calculated as the stoichiometric equivalent of pyroxasulfone in or on wheat, forage at 6.0 ppm and wheat, hay at 1.0 ppm. EPA has approved an analytical enforcement methodology including LC/MS/MS to enforce the tolerance expression for pyroxasulfone. Contact: Michael Walsh, (703) 308–2972, email address: *walsh.michael@epa.gov.*

*Amended Tolerances*

1. *PP 2E8029.* (EPA–HQ–OPP–2012–0420). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to amend the tolerances in 40 CFR 180.564 for the combined residues of the insecticide indoxacarb, (*S*)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]-indeno[1,2e]-[1,3,4]oxadiazine-4a(3*H*)- carboxylate and its R-enantiomer (R)-methyl-7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]-indeno [1,2-e] [1,3,4] oxadiazine-4a(3*H*)- carboxylate in a 75:25 mixture (DPX–MP062), respectively, by removing the following established tolerances in or on grape at 2.0 ppm and cranberry at 0.90 ppm, upon approval of the updated crop groups or subgroups listed under ''New Tolerance'' for *PP 2E8029.* Contact: Laura Nollen, (703) 305–7390, email address: *nollen.laura@epa.gov.*

2. *PP 1F7930.* (EPA–HQ–OPP–2012–0225). Bayer CropScience, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, requests to amend 40 CFR 180.555 by changing an existing tolerance for residues of the fungicide trifloxystrobin (benzeneacetic acid, (E,E)-α-(methoxyimino)-2-[[[[1-[3-(trifluoro methyl)phenyl]ethylidene]amino]oxy] methyl]-methyl ester) and the free form of its acid metabolite CGA–321113 ((*E,E*)-methoxyimino-[2-[1-(3-trifluoro methyl-phenyl)-ethylideneaminooxy methyl]-phenyl] acetic acid), in or on almond, hulls from 3.0 ppm to 9.0 ppm. A practical analytical methodology for detecting and measuring levels of trifloxystrobin in or on raw agricultural commodities has been submitted. The method is based on crop specific cleanup procedures and determination by GC with nitrogen-phosphorus detection (NPD). A newer analytical method is available employing identical solvent mixtures and solvent to matrix ratio (as the first method), deuterated internal standards, and LC/MS-MS with an electrospray interface, operated in the positive ion mode. Contact: Dominic Schuler, (703) 347–0260, email address: *schuler.dominic@epa.gov.*

3. *PP 1F7952.* (EPA–HQ–OPP–2012–0326). Bayer CropScience, 2 T.W.

Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, requests to amend 40 CFR 180.608 by changing existing tolerances for residues of the insecticide spirodiclofen (3-(2,4-dichlorophenyl)-2-oxo-1-oxaspiro[4.5]dec-3-en-4-yl 2,2-dimethylbutanoate), in or on apple, wet pomace from 2.0 ppm to 2.4 ppm; and grape, raisin from 4.0 ppm to 6.0 ppm. Bayer also requested that the currently established tolerance for grape juice at 2.4 ppm be deleted. Adequate analytical methodology using liquid chromatography with tandem mass spectrometry (LC/MS/MS) detection is available for enforcement purposes. Contact: Rita Kumar, (703) 308–8291, email address: *kumar.rita@epa.gov.*

4. *PP 2F7996.* (EPA–HQ–OPP–2012–0302). Monsanto Company, 1300 I Street NW., Suite 450 East, Washington DC 20005, (a member of the Acetochlor Registration Partnership, ARP), requests to amend the tolerances in 40 CFR 180.470 (d) by removing the exception for rice from two existing tolerances for indirect or inadvertent residues of the insecticide, acetochlor (2-chloro-2′-methyl-6′-ethyl-*N*-ethoxymethylacetanilide) and its metabolites containing either the 2-ethyl-6-methylaniline (EMA) or the 2-(1-hydroxyethyl)-6- methyl-aniline (HEMA) moiety, to be expressed as acetochlor equivalents, in or on the following raw agricultural commodities when present therein as a result of the application of acetochlor to soil or growing crops in paragraph (a) of 40 CFR 180.470, as: Grain, cereal, forage, fodder and straw, group 16, except corn, grain sorghum, and wheat, straw at 0.3 ppm; and Grain, cereal, group 15, except corn, grain sorghum, and wheat, grain at 0.05 ppm. An adequate enforcement method for residues of acetochlor in crops has been approved. Acetochlor and its metabolites are hydrolyzed to either EMA or HEMA, which are determined by high performance liquid chromatography- HPLC-OCED and expressed as acetochlor equivalents. Contact: Kable Davis, (703) 306–0415, email address: *davis.kable@epa.gov.*

5. *PP 2F8006.* (EPA–HQ–OPP–2012–0301). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC 27419–8300, requests to amend the tolerances in 40 CFR 180.213 for residues of the herbicide simazine: 6-chloro-*N, N′*-diethyl-1,3,5-triazine-2,4-diamine, in or on almond, hulls from 0.25 ppm to 3.0 ppm; and to remove individual tolerances in or on apple, hazelnut, peach, pecan, plum and walnut (established tolerances at 0.20 ppm); and almond, cherry, grapefruit, lemon, macadamia nut, orange and pear (established tolerances at 0.25 ppm). Analytical methods, AG–539 ''Determination of Simazine, G–28279, and G–28273 Residues in Vegetables, Fruit, Grains, and Crop Fractions using Capillary Gas Chromatography,''; AG–497 ''Determination of Simazine, C–28279 and G–28273 Residues in Milk (including Sour Milk) Using a Strong Cation Exchange Column Isolation and Cleanup''; and AG–540 ''Determination of Simazine, Atrazine, G–30033, G–28279 and G–28273 Residues in Beef Tissues, Poultry Tissues and Poultry Eggs Using Capillary Gas Chromatography'' are available for enforcement purposes with limits of detection that allows monitoring of food with residues at or above the levels set in these tolerances. For data submitted with this petition, the method used was based on the Syngenta Crop Protection Method entitled, ''Analytical Method GRM052.01A for the Determination of Simazine, G28273, and G28279 in Crops—Final Determination by LC-MS/MS''. Contact: Hope Johnson, (703) 305–5410, email address: *johnson.hope@epa.gov.*

*New Tolerance Exemptions*

1. *PP 2E7990.* (EPA–HQ–OPP–2012–0287). Arristec, Inc., 135 Old River Road, Milford, NJ 08848 requests to establish an exemption from the requirement of a tolerance for residues of Diisopropyl Naphthalene (DIPN) (CAS No. 38640–62–9) when used as a pesticide inert ingredient in pesticide formulations under 40 CFR 180.910 pre- and post-harvest, and 40 CFR 180.930 Animal Uses. Diisopropyl Naphthalene (DIPN) (CAS No. 38640–62–9) is already approved as a pesticide inert ingredient for non-food uses. The petitioner believes no analytical method is needed because it is not required for the establishment of a tolerance exemption for inert ingredients. Contact: Lisa Austin, (703) 305–7894, email address: *austin.lisa@epa.gov.*

2. *PP 2E7995.* (EPA–HQ–OPP–2012–0278). Stepan Company, 22 West Frontage Road, Northfield, IL 60093, requests to establish an exemption from the requirement of a tolerance for fatty acids, tall-oil, ethoxylated propoxylated (CAS No. 67784–86–5; 2009 amu) when used as a pesticide inert ingredient as a surfactant without limitations in pesticide formulations under CFR 180.960 in or on all raw agricultural commodities. Stepan Company is petitioning that fatty acids, tall-oil, ethoxylated propoxylated (CAS No.: 67784–86–5; 2009 amu) be exempt from the requirement of a tolerance based upon the definition of a low-risk polymer under 40 CFR 723.250. Therefore, an analytical method to determine residues on treated crops is not relevant. Contact: William Cutchin, (703) 305–7990, email address: *cutchin.william@epa.gov.*

3. *PP 2E8000.* (EPA–HQ–OPP–2012–0279). Stepan Company, 22 West Frontage Road, Northfield, IL 60093, requests to establish an exemption from the requirement of a tolerance for residues of α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene) (CAS No. 37251–69–7; Mn = 1889 Daltons) when used as a pesticide inert ingredient as a surfactant in pesticide formulations under CFR 180.960 in or on all raw agricultural commodities without limitations. Stepan Company is petitioning that α-(p -Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene) (CAS# 37251–69–7; Mn=1889 Daltons) be exempt from the requirement of a tolerance based upon the definition of a low-risk polymer under 40 CFR 723.250. Therefore, an analytical method to determine residues on treated crops is not relevant. Contact: William Cutchin, (703) 305–7990, email address: *cutchin.william@epa.gov.*

4. *PP 2F8014.* (EPA–HQ–OPP–2012–0389). Vestaron Corporation, 4717 Campus Drive, Suite 1200, Kalamazoo, MI 49008, requests to establish an exemption from the requirement of a tolerance for residues of the insecticide GS–U–ACTX–Hvla–SEQ2, in or on ornamental plants, turf and edible crops. The petitioner believes no analytical method is needed because it is expected that, when used as proposed, GS–U–ACTX–Hvla–SEQ2, would not result in residues that are of toxicological concern. Contact: Susanne Cerrelli, (703) 308–8077, Biopesticides and Pollution Prevention Division (7511P), email address: *cerrelli.susanne@epa.gov.*

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 17, 2012.

**Daniel J. Rosenblatt,**

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

[FR Doc. 2012–17899 Filed 7–24–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[EPA–HQ–SFUND–1987–0002; FRL–9703–3]**

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Fort Dix Landfill Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; notice of intent.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 2 is issuing a Notice of Intent to Delete the Fort Dix Landfill Superfund Site (Site) located in Pemberton Township, New Jersey, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New Jersey, through the NJ Department of Environmental Protection, have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** Comments must be received by August 24, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1987–0002, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *Email: karas.alida@epa.gov.*
- *Fax:* (212) 637–3256.
- *Mail:* Alida M. Karas, Remedial Project Manager, Federal Facilities Section, Emergency & Remedial Response Division, U.S. Environmental Protection Agency Region 2, 18th floor, 290 Broadway, New York, NY 10007.
- *Hand delivery:* U.S. EPA Records Center, 290 Broadway, 18th floor, New York, NY 10007. 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–SFUND–1987–0002. 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 email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

#### 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 the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

- U.S. EPA Region 2 Records Center, 290 Broadway, 18th floor, New York, NY 10007; Hours: 9 a.m. to 5 p.m. Monday through Friday. Phone: 212–637–4308.
- Burlington County Library, 5 Pioneer Boulevard, Westampton, NJ 08060.

*Hours:* Monday 9 a.m. to 9 p.m., Tuesday–Friday 10 a.m. to 9 p.m., Saturday 9 a.m. to 5 p.m., Sunday 1 p.m. to 5 p.m.; July and August: close at 5 p.m. on Fridays, closed on Sundays.

**FOR FURTHER INFORMATION CONTACT:** Alida M. Karas, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 18th floor, 290 Broadway, New York, NY 10007 email: *karas.alida@epa.gov*

**SUPPLEMENTARY INFORMATION:** In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Fort Dix Landfill Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the Rules section of this **Federal Register**.

#### List of Subjects in 40 CFR Part 300

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

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

Dated: July 9, 2012.

**Judith Enck,**

*Regional Administrator, Region 2.*

[FR Doc. 2012–18139 Filed 7–24–12; 8:45 am]

BILLING CODE P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2 and 95

**[ET Docket No. 08–59; FCC 12–54]**

### Medical Area Body Network

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comment on a number of issues related to the designation of Medical Body Area Network (''MBAN'') coordinator(s) for the 2360–2390 MHz band. Although the

Commission adopted a coordination requirement in the First Report and Order that was concurrently adopted in this proceeding, it also determined that additional notice and comment was required on key aspects related to the process and criteria for designating an MBAN coordinator.

**DATES:** Comments must be filed on or before September 10, 2012, and reply comments must be filed on or before September 28, 2012.

**FOR FURTHER INFORMATION CONTACT:** Brian Butler, Office of Engineering and Technology, (202) 418–0577, email: *Brian.Butler@fcc.gov,* TTY (202) 418–2989.

**ADDRESSES:** You may submit comments, identified by [docket number and/or rulemaking number], by any of the following methods:

▪ *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

▪ *Mail:* Brian Butler, Office of Engineering and Technology, Room 7–A125, Federal Communications Commission, 445 12th SW., Washington, DC 20554.

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Further Notice of Proposed Rule Making* (FNPRM), ET Docket No. 08–59, FCC 12–54, adopted May 24, 2012, and released May 24, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.*

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

▪ *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

▪ *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

## Summary of Further Notice of Proposed Rulemaking

1. This FNPRM seeks comment on whether the Commission should designate one or more MBAN coordinators, the term of service for an MBAN coordinator, the qualifying criteria that should guide our selection of an MBAN coordinator, and fees to register with an MBAN coordinator and to coordinate MBAN and aeronautical mobile telemetry (AMT) operations.

2. *Number of coordinators.* General Electric Healthcare (GEHC), Philips Healthcare Systems (Philips), and Aerospace and Flight Test Radio Coordinating Council (AFTRCC) (hereinafter ''the Joint Parties'') collectively have asked that only one MBAN coordinator be designated, arguing that MBAN coordination should be viewed as an extension of WMTS coordination for health care facilities. The American Society for Healthcare Engineering (ASHE), which is now the WMTS coordinator, has expressed its interest in being the MBAN coordinator as well. Philips and GEHC previously pointed out that the Commission has designated only one WMTS coordinator and one AMT coordinator, and a single MBAN coordinator would likewise simplify the coordination process, reduce costs and, expedite deployment of MBAN equipment. They assert that a process relying on multiple MBAN coordinators could delay coordination and compromise accuracy, as well as increase costs for users by, for example, requiring each coordinator to maintain its own proprietary database.

3. The Commission has proposed to select only one MBAN coordinator. Because the MBAN and AMT coordinators will have to mutually agree to coordination procedures, the Commission believes that it will be easier for a single MBAN coordinator to work with the AMT coordinator to develop these coordination procedures. Use of a single MBAN coordinator will also provide both the health care community and the AMT coordinator a single point of contact for obtaining all the information needed regarding potential frequency conflicts. As with WMTS, a single MBAN coordinator will simplify the registration process for the health care community and provide a single database of all registered MBAN equipment in the 2360–2390 MHz band. The Commission believes that using a model that is similar to WMTS will make it easier for the health care community to understand and comply with the MBAN rules that it is adopting. If we were to designate multiple coordinators, each would be expected to abide by jointly-crafted coordination procedures that specify the regular and timely sharing of information, such that each coordinator is capable of maintaining a complete registration database and providing consistent coordination results and services without undue delay. This would likely add costs that would have to be shared among the relatively small and specialized health care user community, and the Commission does not believe that the costs incurred by having multiple coordinators would spur a competitive environment that would provide sufficient benefits to offset these

costs. The Commission seeks comment on this proposal.

4. *Term of Service.* The Commission proposes to require that any designated MBAN coordinator agrees to serve a ten-year term, subject to renewal by the Commission. Further, in the event that the MBAN coordinator is unable to or chooses not to complete its term, it will have to transfer its MBAN database to another entity designated by the Commission. The Commission believes that a ten-year term is appropriate for several reasons. Because MBAN equipment might not be deployed for several years, a shorter term (e.g., five years) may not provide enough time for the user communities and the coordinators to develop a working relationship to facilitate MBAN deployment while protecting AMT operations. A ten-year term also will provide a substantial time period for the Commission to evaluate the coordinator's performance. The Commission seeks comment on this proposal.

5. *Qualifying Criteria.* The Commission proposes to establish minimum qualifying criteria for selecting an MBAN coordinator. These minimum qualifying criteria are intended to ensure that a designated coordinator can successfully accomplish the functions required by our rules. The Commission proposes to require that parties interested in being designated as an MBAN coordinator demonstrate that they meet the following criteria:

- Ability to register and maintain a database of MBAN transmitter locations and operational parameters;
- Knowledge of or experience with medical wireless systems in health care facilities (e.g., WMTS);
- Knowledge of or experience with AMT operations;
- Ability to calculate and measure interference potential between MBAN and AMT operations and to enter into mutually satisfactory coordination agreements with the AMT coordinator based on the requirements in § 95.1223(c);
- Ability to develop procedures to ensure that registered health care facilities operate an MBAN consistent with the requirements in § 95.1223.

6. Philips and GEHC suggested additional requirements for an MBAN coordinator which emphasize, for example, experience working with hospitals and medical device vendors; institutional knowledge of the health care industry; and having an MBAN user community as its core constituency. The Commission believes that these types of requirements may have been useful had it adopted certain elements of the joint parties' coordination plan, *e.g.,* the transition plan requirement, but they may not be necessary under the coordination rules the Commission adopted. The Commission seeks comment on the minimum qualifying criteria that should be established for selecting an MBAN coordinator, and whether those it proposed are sufficient. The Commission also seeks comment on whether it should require that service should be provided on a non-discriminatory basis.

7. ASHE, the WMTS coordinator, has expressed an interest in being designated the MBAN coordinator. ASHE contracts with Comsearch as its technical partner in providing WMTS coordination services. When the Commission designated ASHE as the WMTS coordinator, it found that ASHE's lack of frequency coordination experience and need to contract with a third party to provide technical and administrative support, was not a significant factor arguing against ASHE's selection because the WMTS coordinator would not have to resolve frequency conflicts. Since AMT is a primary service entitled to interference protection from MBAN operations, the MBAN coordinator will have broader responsibilities than the WMTS coordinator and will have to resolve frequency conflicts with the AMT coordinator. Thus, the Commission believes it is important for us to be confident that any designated MBAN coordinator can perform the required functions under the rules and will be directly responsible to the Commission if it has to intervene in resolving any coordination disputes that may arise. The Commission seeks comment on whether third party contractual arrangements should be permitted to qualify an entity for designation as an MBAN coordinator and, if so, what amount of disclosure of a contractual arrangement should the Commission require as part of the selection process.

8. *Fees for Service.* The Commission does not propose to prescribe fees for MBAN registration and coordination services and instead proposes to let an MBAN coordinator establish service fees. Nonetheless, the Commission recognizes that, if we choose to designate only one MBAN coordinator, fees for service will not be disciplined by competition from several coordinators. Philips and GEHC have asked that, we require that an entity be ''willing to operate the coordination process and MBANS database at cost, ideally on a non-profit basis.'' The Commission noted that it did not prescribe any service fees for WMTS coordination, allowing the designated WMTS coordinator ''to set the fee structure necessary to recoup costs.'' The Commission also seeks comment on whether it should adopt any fee requirements for MBAN registration and coordination, including, for example, whether service fees should only recoup costs and how such a requirement should be evaluated, and whether service fees should be reasonable and non-discriminatory.

9. AFTRCC has established coordination service fees for FCC licensees in the aeronautical services. The Joint Parties have asked that we codify, as part of the MBAN coordination rules, a requirement that health care facilities ''bear responsibility for reasonable costs incurred by the aeronautical telemetry coordinator in effecting the coordination.'' The Commission seeks comment on this request. It also seeks comment on how ''reasonable costs'' should be evaluated, and, if it were to codify this requirement, what oversight the Commission should exercise over AMT–MBAN coordination fees. Should the Commission require that service should be provided on a non-discriminatory basis and that fees should be reasonable and non-discriminatory? The Commission also seeks comment on the procedures that would apply to health care facilities that pay these costs. For example, would a health care facility apply to AFTRCC for coordination, or would it pay these fees to the MBAN coordinator who, in turn, would pass along the fees to AFTRCC? As discussed, AFTRCC coordinates Federal AMT operations, in conjunction with the Federal Government Area Frequency Coordinators for day-to-day scheduling of missions. Should service fees for MBAN coordination exclude costs that AFTRCC may incur for coordinating Federal AMT operations?

*MBAN Coordinator Selection*

10. Under the Commission's rules, the Wireless Telecommunications Bureau (WTB) has delegated authority to certify frequency coordinators for the services that it administers, including the Medical Device Radiocommunications (MedRadio) Service under part 95 of the Commission's rules. The Commission proposes that, under its delegated authority, WTB would select the MBAN coordinator using the same procedures that were implemented for selecting the WMTS coordinator. The WTB would issue a public notice to announce procedures for interested parties to submit applications for consideration as an MBAN coordinator. It would issue an Order to designate the MBAN

coordinator, and execute a Memorandum of Understanding with the selected coordinator that will set forth the coordinator's authority and responsibilities. The MBAN coordinator would assume its duties upon the execution of the Memorandum of Understanding. The Commission seeks comment on whether this process, which worked well for selecting the WMTS coordinator, would permit the Commission to complete the MBAN coordinator selection process in a timely and efficient manner.

**Initial Regulatory Flexibility Certification**

11. The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' [2] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

12. The FNPRM addresses a number of issues related to designating an MBAN coordinator for the 2360–2390 MHz band. The joint parties have asked that only one MBAN coordinator be designated. ASHE, who is now the WMTS coordinator, has expressed its interest in being the MBAN coordinator as well. Although the NPRM sought comment on coordination procedures and generated a record upon which we are able to adopt coordination requirements in the Report and Order, the NPRM did not address other issues that would guide the selection and designation of an MBAN coordinator. The Commission addressed those issues in this FNPRM. The Commission seeks comment on whether it should designate one or more MBAN coordinators, the terms of service for an MBAN coordinator, the qualifying criteria that should guide our selection of an MBAN coordinator, and fees to register with an MBAN coordinator and to coordinate MBAN and AMT operations.

13. Therefore, the Commission certifies that the proposals in this FNPRM, if adopted will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in the FNPRM require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the FNPRM, including a copy of this initial certification to the Chief Counsel for Advocacy of the SBA.[6]

14. Pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1) and 1.103(a), the Further Notice of Proposed Rulemaking *is adopted* and comments will be sought on these proposals.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2012–18098 Filed 7–24–12; 8:45 am]

**BILLING CODE 6712–01–P**

[1] The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law No. 104–121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[5] 15 U.S.C. 632.

[6] *See* 5 U.S.C. 605(b).

# Notices

Federal Register

Vol. 77, No. 143

Wednesday, July 25, 2012

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

## DEPARTMENT OF AGRICULTURE

### Council for Native American Farming and Ranching

**AGENCY:** Office of Tribal Relations, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a forthcoming meeting of The Council for Native American Farming and Ranching (CNAFR) a public advisory committee of the Office of Tribal Relations (OTR). Notice of the meetings are provided in accordance with section 10(a)(2) of the Federal Advisory Committee Act, as amended, (5 U.S.C. Appendix 2). This will be the inaugural meeting of the CNAFR and will consist of, but not limited to, election of officers, acceptance of committee by-laws, and overview of USDA farm programs. This meeting will be open to the public.

**DATES:** The meeting will be held on August 14, 2012 and August 15, 2012 from 8 a.m. to 5 p.m. The meetings are open to the public on both days. Note that a period for public comment will be held on August 15, from 10 a.m. to 12 p.m.

**ADDRESSES:** The meeting will be held at the Smithsonian's National Museum of the American Indian, 4th St and Independence Ave. SW., Washington, DC 20024. The meeting will be held in the Patrons Lounge.

*Written Comments:* Written comments may be submitted to: Joanna Mounce Stancil, Designated Federal Officer, Director, Office of Tribal Relations (OTR), 1400 Independence Ave. SW., Whitten Bldg., 500–A, Washington, DC 20250; by Fax: (202) 720–1058; or by email: *John.Lowery@osec.usda.gov.* All written comments must be received by July 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Questions should be directed to John Lowery, Management Analyst, OTR, 1400 Independence Ave. SW., Whitten Bldg., 500A, Washington, DC 20250; by Fax: (202) 720–1058 or email: *John.Lowery@osec.usda.gov.*

**SUPPLEMENTARY INFORMATION:** In accordance with the provisions of the Federal Advisory Committee Act (FACA) as amended (5 U.S.C. App. 2), USDA established an advisory Council for Native American farmers and ranchers. The Council is a discretionary advisory committee established under the authority of the Secretary of Agriculture, in furtherance of the settlement agreement in *Keepseagle* v. *Vilsack* that was granted final approval by the District Court for the District of Columbia on April 28, 2011.

The Council will operate under the provisions of the FACA and report to the Secretary of Agriculture. The purpose of the Council is (1) to advise the Secretary of Agriculture on issues related to the participation of Native American farmers and ranchers in USDA farm loan programs; (2) to transmit recommendations concerning any changes to FSA regulations or internal guidance or other measures that would eliminate barriers to program participation for Native American farmers and ranchers; (3) to examine methods of maximizing the number of new farming and ranching opportunities created through the farm loan program through enhanced extension and financial literacy services; (4) to examine methods of encouraging intergovernmental cooperation to mitigate the effects of land tenure and probate issues on the delivery of USDA farm loan programs; (5) to evaluate other methods of creating new farming or ranching opportunities for Native American producers; and (6) to address other related issues as deemed appropriate.

The Secretary of Agriculture selected a diverse group of members representing a broad spectrum of persons interested in providing solutions to the challenges of the aforementioned purposes. Equal opportunity practices were considered in all appointments to the Committee in accordance with USDA policies. The Secretary selected the members in May 2012. Interested persons may present views, orally or in writing, on issues relating to agenda topics before the council.

Written submissions may be submitted to the contact person on or before August 5, 2012. Oral presentations from the public will be scheduled between approximately 10:00 a.m. to 12:00 p.m. on August 15, 2012. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the issue they wish to present and the names and addresses of proposed participants. Each person giving public comment will have three (3) minutes. The contact person will notify interested persons regarding their request to speak by August 5, 2012. The deadline to submit comments is July 31, 2012.

OTR will also make all agenda topics available to the public via the OTR Web site: *http://www.usda.gov/wps/portal/usda/usdahome?navid=OTR* no later than 10 business days before the meeting and at the meeting. In addition, the minutes from the meeting will be posted on the OTR Web site. OTR welcomes the attendance of the public at the CNAFR meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact John Lowery, at least 10 business days in advance of the meeting.

Dated: July 19, 2012.

**Joanna Mounce Stancil,**

*Director Office of Tribal Relations.*

[FR Doc. 2012–18088 Filed 7–24–12; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Kern and Tulare Counties Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Call for Proposals and Announcement of Meetings.

**SUMMARY:** The Kern and Tulare Counties Resource Advisory Committee (RAC) will be accepting applications for projects that may be recommended for funding under Title II of the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343 as amended by H.R. 4348 ENR). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of

the Act. The application and other information is available for download from the Secure Rural Schools Web site: *http://www.fs.fed.us/r5/sequoia/projects/rural-schools/index.html* and can be submitted electronically, by mail, or in person.

**DATES:** Applications will be accepted electronically or by mail until September 6, 2012 or in person at the meetings to be held on August 23 and September 13, 2012. All meetings will begin at 5 p.m.

**ADDRESSES:** The August 23, 2012 meeting will be held at the Sequoia National Forest Headquarters, 1839 South Newcomb Street, Porterville, California 93257. The September 13 meeting will be held at the 3rd floor conference room of the County of Kern Administrative Office, 1115 Truxtun Avenue, Bakersfield, California 93301.

Applications should be sent to Penelope Shibley, Kern River Ranger District, P.O. Box 9, Kernville, CA 93238, or by email to *pshibley@fs.fed.us*. All applications, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may deliver applications to the Kern River Ranger District, 105 Whitney Road, Kernville CA. Visitors are encouraged to call ahead to 760–376–3781 to facilitate entry into the building and access to the record.

**FOR FURTHER INFORMATION CONTACT:** Penelope Shibley, RAC Coordinator, Kern River Ranger District; (760) 376–3781; or email: *pshibley@fs.fed.us*.

Individuals who use telecommunication devices for the deaf (TDD) may call 559–781–6650 between 8:00 a.m. and 4:30 p.m., Pacific Daylight Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed in For Further Information.

**SUPPLEMENTARY INFORMATION:** All meetings are open to the public. The following business will be conducted (1) introductions of all committee members and Forest Service personnel; (2) approve last meeting minutes; (3) hear updates on progress of past approved projects; (4) hear project presentations; and (5) vote to recommend projects for funding approval. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: July 19, 2012.

**Kevin B. Elliott,**

*Forest Supervisor.*

[FR Doc. 2012–18141 Filed 7–24–12; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Coastal and Estuarine Land Conservation, Planning, Protection, or Restoration.

*OMB Control Number:* 0648–0459.

*Form Number(s):* NA.

*Type of Request:* Regular submission (extension of a currently approved information collection).

*Number of Respondents:* 61.

*Average Hours Per Response:* Development of a plan, 120 hours; revision or update to a plan, 35 hours; project application and checklist, 15 hours; final application, 3 hours and 30 minutes; semiannual and annual reporting, 1 hour and 30 minutes.

*Burden Hours:* 1,405.

*Needs and Uses:* This request is for extension of a currently approved information collection. The FY 2002 Commerce, Justice, State Appropriations Act directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program (CELCP) to protect important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion, and to issue guidelines for this program delineating the criteria for grant awards. The guidelines establish procedures for eligible applicants who choose to participate in the program to use when developing state conservation plans, proposing or soliciting projects under this program, applying for funds, and carrying out projects under this program in a manner that is consistent with the purposes of the program. Guidelines for the CELCP can be found on NOAA's Web site at: *http://coastalmanagement.noaa.gov/* and/or may be obtained upon request via the contact information listed above.

The CELCP was reauthorized under Public Law 111–111, the Omnibus Public Lands Management Act, as a component of the Coastal Zone Management Act. NOAA also has, or is given, additional authority under the Coastal Zone Management Act, annual appropriations or other authorities, to issue funds to coastal states, localities or other recipients for planning, conservation, acquisition, protection, restoration, or construction projects. The required information enables NOAA to implement the CELCP, under its current or future authorization, and facilitate the review of similar projects under different, but related, authorities.

*Affected Public:* State, local or tribal governments.

*Frequency:* Annually, semiannually or on occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: July 20, 2012.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–18135 Filed 7–24–12; 8:45 am]

**BILLING CODE 3510–08–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 30–2011]**

### Foreign-Trade Zone 141—Rochester, NY, Application for Manufacturing Authority, Firth Rixson, Inc. d/b/a Firth Rixson Monroe, Comment Period on New Evidence

On April 29, 2011, an application was submitted by Monroe County, New York, grantee of FTZ 141, requesting authority on behalf of Firth Rixson, Inc. d/b/a Firth Rixson Monroe (Firth Rixson) to manufacture aircraft turbine components under FTZ procedures within FTZ 141 (76 FR 25300–25301, 5–4–2011). Currently, the FTZ Board is inviting public comment on new evidence submitted by Firth Rixson on June 19, 2012, on which there has not been an opportunity for public comment.

The comment period on the new evidence is open through August 24, 2012. Submissions shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002.

For further information, contact Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: July 19, 2012.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2012–18148 Filed 7–24–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Request for Applicants for Appointment to the United States Section of the United States-Turkey Business Council

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

**ACTION:** Notice.

**SUMMARY:** In December 2009, the Governments of the United States and Turkey agreed to establish a U.S.-Turkey Business Council. This notice announces membership opportunities for appointment as American representatives to the U.S. Section of the Council. The current U.S. Section term will expire on September 24, 2012.

**DATES:** Applications should be received no later than August 24, 2012.

**ADDRESSES:** Please send applications to Kristin Najdi and Ryan Barnes, Senior International Trade Specialists, Office of Europe, U.S. Department of Commerce, either by email at *Kristin.Najdi@trade.gov* and *Ryan.Barnes@trade.gov*, or by mail to U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 3319, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Kristin Najdi or Ryan Barnes, Senior International Trade Specialists, Office of Europe, U.S. Department of Commerce, telephone: 202–482–4915.

**SUPPLEMENTARY INFORMATION:** The Under Secretary for International Trade of the U.S. Department of Commerce and the Undersecretary for Foreign Trade of the Undersecretariat of the Prime Ministry for Foreign Trade of Turkey co-chair the U.S.-Turkey Business Council, pursuant to the Terms of Reference signed on May 25, 2010, by the U.S. and Turkish Governments, which set forth the objectives and structure of the Council. The Terms of Reference may be viewed at: *http://www.trade.gov/mac/terms-of-reference-us-turkey-business-council.asp.*

The Council is intended to facilitate the exchange of information and encourage bilateral discussions of business and economic issues, including promoting bilateral trade and investment and improving the business climate in each country. The Council brings together the respective business communities of the United States and Turkey to discuss such issues of mutual interest and to communicate their joint recommendations to the U.S. and Turkish Governments. The Council consists of the U.S. and Turkish co-chairs and a Committee comprised of private sector members. The Committee is composed of two Sections of private sector members, a U.S. Section and a Turkish Section, each consisting of approximately ten to twelve members, representing the views and interests of their respective private sector business communities. Each government will appoint the members to its respective Section. The Committee will provide joint recommendations to the two governments that reflect private sector views, needs, and concerns regarding creation of an environment in which the private sectors of both countries can partner, thrive, and enhance bilateral commercial ties that could form the basis for expanded trade and investment between the United States and Turkey.

The Department of Commerce is currently seeking applicants for membership on the U.S. Section of the Committee. Each applicant must be a senior-level executive of a U.S.-owned or controlled company that is incorporated in and has its main headquarters located in the United States and that is currently doing business in Turkey. Each applicant also must be a U.S. citizen, or otherwise legally authorized to work in the United States, and be able to travel to Turkey and locations in the United States to attend official Council meetings, as well as U.S. Section and Committee meetings. In addition, the applicant may not be a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended. Applicants may not be federally-registered lobbyists, and, if appointed, will not be allowed to continue to serve as members of the U.S. Section of the Committee if the member becomes a federally registered lobbyist.

Evaluation of applications for membership in the U.S. Section by eligible individuals will be based on the following criteria:

—A demonstrated commitment by the applicant's company to the Turkish market either through exports or investment.

—A demonstrated strong interest by the applicant's company in Turkey and its economic development.

—The ability by the applicant to offer a broad perspective on the business environment in Turkey, including cross-cutting issues that affect the entire business community.

—The ability by the applicant to initiate and be responsible for activities in which the Council will be active.

Members will be selected on the basis of who will best carry out the objectives of the Council as stated in the Terms of Reference establishing the U.S.-Turkey Business Council. In selecting members of the U.S. Section, the Department of Commerce will also seek to ensure that the Section represents a diversity of business sectors and geographical locations, as well as a cross-section of small, medium, and large-sized firms.

U.S. members will receive no compensation for their participation in Council-related activities. They shall not be considered as special government employees. Individual private sector members will be responsible for all travel and related expenses associated with their participation in the Council, including attendance at Committee and Section meetings. Only appointed members may participate in official Council meetings; substitutes and alternates may not be designated. Members will normally serve for two-year terms, but may be reappointed.

To apply for membership, please submit the following information as instructed in the **ADDRESSES** and **DATES** captions above:

1. Name(s) and title(s) of the applicant(s);
2. Name and address of the headquarters of the applicant's company;
3. Location of incorporation of the applicant's company;
4. Percentage share of U.S. citizen ownership in the company;
5. Size of the company in terms of number of employees;
6. Dollar amount of the company's export trade to Turkey;
7. Dollar amount of the company's investments in Turkey;
8. Nature of the company's investments, operations or interest in Turkey;
9. An affirmative statement that the applicant is a U.S. citizen or otherwise legally authorized to work in the United States;
10. An affirmative statement that the applicant is neither registered nor

required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended;

11. An affirmative statement that the applicant is not a federally-registered lobbyist, and that the applicant understands that if appointed, the applicant will not be allowed to continue to serve as a member of the U.S. Section of the Council if the applicant becomes a federally registered lobbyist;

12. An affirmative statement that the applicant meets all other eligibility requirements;

13. A brief statement of why the applicant should be considered;

14. A brief statement of how the applicant meets the four listed criteria, including information about the candidate's ability to initiate and be responsible for activities in which the Council will be active. Applications will be considered as they are received.

All candidates will be notified of whether they have been selected.

Dated: July 19, 2012.

**Jay A. Burgess,**

*Director of the Office of European Country Affairs (OECA).*

[FR Doc. 2012–18167 Filed 7–24–12; 8:45 am]

**BILLING CODE 3510–DA–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC125**

### Caribbean Fishery Management Council; Advisory Panel Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Caribbean Fishery Management Council's Advisory Panel will hold a meeting.

**DATES:** The meeting will be held on August 9, 2012, from 9:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Windward Passage Hotel, Veteran's Drive Water Front, Charlotte Amalie, St. Thomas, USVI.

**FOR FURTHER INFORMATION CONTACT:** Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926.

**SUPPLEMENTARY INFORMATION:** The Caribbean Fishery Management Council's Advisory Panel will hold a meeting to discuss the items contained in the following agenda:

- Call to Order
- Adoption of Agenda
- Proposed Management Measures for Seagrassess and Parrotfishes
- Scoping Process for Island-Specific Fishery Management Plan
- Other Business

The meeting is open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be subjects for formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: July 20, 2012.

**Tracey L. Thompson,**

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

[FR Doc. 2012–18140 Filed 7–24–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration (NOAA)

### National Climate Assessment and Development Advisory Committee (NCADAC); Open Meeting

**AGENCY:** Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice.

**SUMMARY:** This notice sets forth the schedule of a forthcoming meeting of the DoC NOAA National Climate Assessment and Development Advisory Committee (NCADAC).

*Time and Date:* The meeting will be held Wednesday, August 15, 2012 from 3:00–5:00 p.m. Eastern time.

*Place:* This meeting will be a conference call. Public access will be available at the office of the U.S. Global Change Research Program, Conference Room A, Suite 250, 1717 Pennsylvania Avenue NW., Washington, DC 20006. Please check the National Climate Assessment Web site for additional information at *http://www.globalchange.gov/what-we-do/assessment.*

*Status:* The meeting will be open to public participation with a 10-minute public comment period from 4:45–4:55 p.m. The NCADAC expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of two minutes. Written comments should be received in the NCADAC Designated Federal Officials (DFO) office by Friday, August 10, 2012, to provide sufficient time for NCADAC review. Written comments received by the NCADAC DFO after Friday, August 10, 2012, will be distributed to the NCADAC, but may not be reviewed prior to the meeting date.

*Special Accommodations:* These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12 p.m. on Friday, August 10, 2012, to Dr. Cynthia Decker, SAB Executive Director, SSMC3, Room 11230, 1315 East-West Hwy., Silver Spring, MD 20910.

*Matters To Be Considered:* Please refer to the Web page *http://www.nesdis.noaa.gov/NCADAC/index.html* for the most up-to-date meeting agenda, when available.

**SUPPLEMENTARY INFORMATION:** The National Climate Assessment and Development Advisory Committee was established in December 2010. The committee's mission is to synthesize and summarize the science and information pertaining to current and future impacts of climate change upon the United States; and to provide advice and recommendations toward the development of an ongoing, sustainable national assessment of global change impacts and adaptation and mitigation strategies for the Nation. Within the scope of its mission, the committee's specific objective is to produce a National Climate Assessment.

**FOR FURTHER INFORMATION CONTACT:** Dr. Cynthia Decker, Designated Federal Official, National Climate Assessment and Development Advisory Committee,

NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. Phone: 301–734–1156, Fax: 301–713–1459, Email: *Cynthia.Decker@noaa.gov.*

Dated: July 18, 2012.

**Terry Bevels,**

*Acting Chief Financial Officer/Acting Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 2012–18034 Filed 7–24–12; 8:45 am]

**BILLING CODE 3510–KD–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Department of Defense Wage Committee; Notice of Closed Meetings

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of closed meetings.

**SUMMARY:** Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meeting of the Department of Defense Wage Committee will be held.

**DATES:** Tuesday, September 4, 2012, at 10 a.m.

**ADDRESSES:** 4800 Mark Center Drive, Room 05K25, Alexandria, VA 22350–1100.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

**SUPPLEMENTARY INFORMATION:** Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: July 19, 2012.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2012–18097 Filed 7–24–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Department of Defense Wage Committee; Notice of Closed Meetings

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of closed meetings.

**SUMMARY:** Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meeting of the Department of Defense Wage Committee will be held.

**DATES:** Tuesday, September 18, 2012, at 10 a.m.

**ADDRESSES:** 4800 Mark Center Drive, Room 05K25, Alexandria, VA 22350–1100.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

**SUPPLEMENTARY INFORMATION:** Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: July 19, 2012.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2012–18112 Filed 7–24–12; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Intent To Prepare a Draft Environmental Impact Statement/Environmental Impact Report for the Proposed Ballona Wetlands Restoration Project at Ballona Creek Within the City and County of Los Angeles, CA

**AGENCY:** U.S. Army Corps of Engineers, Department of the Army, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) and the California Department of Fish and Game (CDFG) intend to jointly prepare a Draft Environmental Impact Statement/Environmental Impact Report (DEIS/EIR) for the proposed Ballona Wetlands Restoration Project. The proposed project is intended to return the daily ebb and flow of tidal waters, maintain freshwater circulation, and augment the physical and biological functions and services in the project area. Restoring the wetland functions and services would allow native wetland vegetation to be reestablished, providing important habitat for a variety of wildlife species. As a restored site, the Ballona Wetlands would play an important role to provide seasonal habitat for migratory birds. A restored, optimally functioning wetland would also benefit the adjacent marine environment and enhance the quality of tidal waters.

**DATES:** Submit comments on or before September 10, 2012.

**FOR FURTHER INFORMATION CONTACT:** Dr. Daniel P. Swenson at (213) 452–3414 (*daniel.p.swenson@usace.army.mil*), U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 532711, Los Angeles, CA 90053–2325.

**SUPPLEMENTARY INFORMATION:** The Corps intends to prepare a joint EIS/EIR to assess the environmental effects associated with the proposed project. CDFG is the state lead agency for the EIR pursuant to the California Environmental Quality Act (CEQA).

1. Background. The 600-acre Ballona Wetlands Ecological Reserve is located in the western portion of the City of Los Angeles (partially within unincorporated Los Angeles County), south of Marina Del Rey and north of Playa Del Rey. The project site is situated approximately 1.5 miles west of Interstate 405 and approximately ¼-mile east of Santa Monica Bay. The project site is owned by the State of California, and is bisected by and includes a channelized span of Ballona Creek, a component feature of a federal flood risk management project.

2. Project Purpose and Need. A substantial portion of California's historic coastal wetlands have been lost. Restoration of coastal wetlands is needed in order to increase available nursery and foraging habitat for wildlife and to provide recreational and educational opportunities to the public. The Ballona Wetlands ecosystem is one of the last remaining major coastal wetlands in Los Angeles County. It is estimated that historically the wetlands ecosystem spanned more than 2,000

acres in the vicinity of the site. Development occurring over the last century greatly reduced the Ballona wetland area, now estimated at approximately 600 acres. In addition, the wetland habitat and natural hydrological functions in the area have been substantially degraded. The project site provides habitat for a diversity of plant and wildlife species, but most on-site habitat exhibits relatively low physical and biological functions and services.

The proposed project is intended to return the daily ebb and flow of tidal waters, maintain freshwater circulation, and augment the physical and biological functions and services in the project area. Restoring the wetland functions and services would allow native wetland vegetation to be reestablished, providing important habitat for a variety of wildlife species. As a restored site, the Ballona Wetlands would play an important role to provide seasonal habitat for migratory birds. A restored, optimally functioning wetland would also benefit the adjacent marine environment and enhance the quality of tidal waters. The proposed project would provide the community with a valuable educational resource and access to a large wetland area.

The purpose of the project is to restore ecological functions of the site, in part, by enhancing tidal flow.

3. Proposed Action. CDFG is proposing a large-scale restoration of the Ballona Wetlands Ecological Reserve. The proposed project entails restoring, enhancing, and establishing native coastal wetland and upland habitats in the approximately 600-acre Ballona Wetlands Ecological Reserve. The reserve currently supports large expanses of previously filled and dredged coastal wetland and upland habitat that would be restored by increasing tidal flow throughout the project area, removing invasive species, and planting native vegetation.

The main components of the proposed project are:

- Habitat restoration of estuarine wetland and upland habitats connected to a realigned Ballona Creek.
- Removal of existing Ballona Creek levees and realignment of Ballona Creak to restore a more meandering channel.
- Construction of levees along the perimeter of the project area to allow restoration of tidally influenced wetlands in the project area while providing flood risk management for Culver Boulevard and surrounding developed areas.
- Installation of water control structures, including culverts with self-regulating tide gates or similar structures, to provide a full range of tides up to an elevation acceptable for flood risk management and storm drainage, while reducing the risk of damage from storm events.
- Maintenance of existing levels of flood risk management for areas surrounding the Ballona Wetlands site.
- Provision of erosion protection as an integral part of the restoration design.
- Modification of infrastructure and utilities as necessary to implement the restoration project.
- Improving public access by realigning existing trails, creating new trails, repairing existing fences, constructing overlook platforms, and providing other visitor-oriented facilities.
- Long-term operations and management activities including inspections, repairs, clean-up, vegetation maintenance, and related activities.

The proposed project requires a permit under section 404 of the Clean Water Act (CWA) and section 10 of the Rivers and Harbors Act to conduct dredge and fill activities in waters of the United States and for work and (or) structures in or affecting navigable waters of the United States associated with restoring wetlands and associated habitat within the project site. Dredge and fill activities in waters of the United States are proposed to construct new levees, form new tidal channels, modify existing tidal channels, re-contour areas to enhance tidal flow, and to create elevations conducive to establishing wetland habitat. Preliminary conservative estimates indicate the project would result in a balanced total of 1,782,000 cubic yards of excavation and 1,782,000 cubic yards of fill placement, not all of which would affect jurisdictional areas. Based on these preliminary estimates, the volumes and areas of fill are estimated as follows: Permanent discharge of fill within 43.5 acres of non-wetland waters of the U.S. (435,000 cubic yards) and within 65 acres of wetland waters of the U.S. (600,000 cubic yards), as well as temporary discharge of fill within 3.5 acres of non-wetland waters of the U.S. (30,000 cubic yards) and within 0.3 acres of wetland waters of the U.S. (structural fill).

The project will also require a permit from the Corps to the Los Angeles County Department of Public Works, as the non-Federal sponsor of the Los Angeles County Drainage Area (LACDA) project, pursuant to 33 U.S.C. section 408 (408 permit). A section 408 permit is required to alter/modify a completed Corps project. The Ballona Creek levees were constructed by the Corps in the 1930s as part of LACDA. This project proposes to remove levees, construct a larger levee reach around the perimeter of the proposed side, reconfigure the existing concrete-lined Ballona Creek flood-control channel and realign the creek. A permit for modification/alteration of this magnitude would require Corps Headquarters approval.

4. Alternatives Considered. The feasibility of several alternatives is being considered and will be addressed in the DEIS/EIR. The No Federal Action/No Project Alternative, as required by NEPA and CEQA, would maintain the status quo and would include no improvements or discharges of fill material in waters of the United States or work or structures in or affecting navigable waters of the United States. Other alternatives that may be considered include restoring smaller portions of the 600-acre site, alternative designs that would provide differing amounts of various habitats types, and alternative designs for enhancing tidal flow. Additional alternatives may be developed during scoping and will also be considered in the DEIS/EIR.

5. Scoping Process.

a. Affected federal, state and local resource agencies, Native American groups and concerned interest groups/individuals are encouraged to participate in the scoping process. Public participation is critical in defining the scope of analysis in the DEIS/EIR, identifying significant environmental issues in the DEIS/EIR, providing useful information such as published and unpublished data, and knowledge of relevant issues and recommending mitigation measures to offset potential impacts from proposed actions.

b. Potential impacts associated with the proposed project will be fully evaluated. Potential significant issues to be addressed in the DEIS/EIR include aesthetics, air quality and greenhouse gas emissions, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, noise, public services, recreation, sea-level rise, traffic, flood control, and utilities. Additional issues may be identified during the scoping process.

c. Individuals and agencies may offer information or data relevant to the environmental or socioeconomic impacts of the proposed project by submitting comments, suggestions, and requests to be placed on the mailing list for announcements to (see **FOR FURTHER INFORMATION CONTACT**) or the following email address: *Daniel.p.swenson@usace.army.mil.*

d. The Corps anticipates formally consulting with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act, the National Marine Fisheries Service under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and with the State Historic Preservation Officer under Section 106 of the National Historic Preservation Act. The CDFG, as the project proponent, will need to obtain a CWA section 401 water quality certification or waiver and a consistency certification from the California Coastal Commission in accordance with the Coastal Zone Management Act.

6. Scoping Meeting Date, Time, and Location. A public scoping meeting to receive input on the scope of the DEIS/EIR will be conducted on August 16, 2012, from 4:00–7:00 p.m. at the Fiji Gateway entrance to the Ballona Wetlands (13720 Fiji Way, Marina del Rey, CA 90292, across from Fisherman's Village and Los Angeles County Department of Beaches and Harbors).

7. Availability of the DEIS/EIR. The DEIS/EIR is expected to be published and circulated in late 2012. A public hearing will be held after its publication to field comments on the document.

**David J. Castanon,**

*Chief, Regulatory Division, Corps of Engineers.*

[FR Doc. 2012–18166 Filed 7–24–12; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Intent To Prepare an Environmental Impact Statement for the Proposed Westbrook Project, Corps Permit Application Number SPK–2005–00938

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers, Sacramento District, (Corps) received a Department of the Army permit application from Westpark S.V. 400, LLC (Applicant) to fill approximately 9.6 acres of waters of the United States to construct the proposed Westbrook Project in Placer County, CA, in June 2011. The Corps, as the lead agency responsible for compliance with the National Environmental Policy Act (NEPA), determined that the proposed project may result in significant impacts to the environment, and that the preparation of an Environmental Impact Statement (EIS) is required.

The Applicant proposes to implement a moderate scale, mixed-use, mixed-density master planned community. The Westbrook Project, as proposed, would include a mixture of land uses, including new residential neighborhoods, elementary school, parks and several neighborhood serving retail centers. The Westbrook Project would involve approximately 146 acres of low-density residential, 84 acres of medium-density residential, 28 acres of high-density residential and 43 acres of commercial land uses. Other proposed land uses include a 10-acre elementary school site, approximately 16 acres for three neighborhood parks, and approximately 37 acres of open space for the preservation of natural resources areas.

The proposed project site is approximately 400 acres and contains approximately 13 acres of waters of the United States. The project, as proposed, would result in direct impacts to approximately 9.6 acres of waters of the United States. These acreages do not include indirect impacts from the proposed action or impacts anticipated to result from offsite infrastructure that may be determined to be required as part of the project through the Environmental Impact Statement (EIS) process.

**ADDRESSES:** To submit comments on this notice or for questions about the proposed action and the Draft EIS, please contact James T. Robb, 1325 J Street, Room 1350, Sacramento, CA 95814. Please refer to Identification Number SPK–2005–00938 in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Mr. James T. Robb, (916) 557–7610, email: *DLL-CESPK-RD-EIS-Comments@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** Interested parties are invited to submit written comments on the permit application on or before September 3, 2012. Scoping comments should be submitted within the next 45 days, but may be submitted at any time prior to publication of the Draft EIS.

The USACE will evaluate alternatives including the no action alternative, the proposed action alternative, and other on-site and off-site alternatives. The proposed project and the alternatives to its proposed size, design, and location will be developed through the EIS process.

The proposed project would result in direct impacts to approximately 9.6 acres of waters of the United States and would avoid approximately 2.9 acres of these waters of the United States. Waters of the U.S. on-site include two intermittent streams, seasonal wetlands, wetland swales, and vernal pools.

The proposed site for the Westbrook community is in unincorporated Placer County, CA, immediately west of the City of Roseville's existing city limits. The proposed project site is approximately 6 miles west of Interstate 80 and State Route 65, 10 miles northeast of the City of Sacramento, 10 miles east of State Route 99, 5 miles west of downtown Roseville, and 4 miles east of the Sutter County line. The proposed project site is bordered on the west by Fiddyment Road and is approximately 1.2 miles north of Baseline Road. The property to the north was previously authorized for development under permit SPK–2002–00666 (Westpark/Fiddyment Ranch) or is under review in the case of Creekview (SPK–2006–00650). The property to the south, directly adjacent to Baseline Road, is currently under review (Sierra Vista Specific Plan, SPK–2006–01050 and Placer Vineyards, SPK–1999–00737). The proposed project site was once a part of the Sierra Vista Specific Plan area, but the landowners at the time withdrew their application for a Section 404 permit and the area was dropped from analysis under the Sierra Vista EIS in 2008. A new permit application was received for the proposed Westbrook project on June 9, 2011.

The Corps' public involvement program includes several opportunities to provide oral and written comments on the Westbrook project through the EIS drafting process. Affected federal, state, and local agencies, Indian tribes, and other interested private organizations and parties are invited to participate. Significant issues to be analyzed in depth in the EIS include impacts to waters of the United States, including vernal pools and other wetlands; agricultural resources; cultural resources; threatened and endangered species; transportation; air quality; surface water and groundwater; hydrology and water quality; socioeconomic effects; and aesthetics.

The applicant reports that the project area supports suitable habitat for certain federally-listed branchiopods, including the threatened vernal pool fairy shrimp (*Branchinecta lynchi*) and endangered Conservancy fairy shrimp (*Branchinecta conservatio*) and vernal pool tadpole shrimp (*Lepidurus packardi*). The suitable habitat for branchiopods within the project area includes vernal pools and depressional seasonal wetlands (including depressional areas within wetland swales).

The Applicant reports that there are historic properties within the Westbrook

project area. The Corps will review this information, determine eligibility and initiate the appropriate state and tribal consultations as required under Section 106 of the NHPA as outlined in the Corps' Interim Guidance to 33 CFR part 325 Appendix C.

It is anticipated that the Draft EIS will be made available to the public between November 2012 and May 2013.

Dated: July 11, 2012.

**William J. Leady,**

*Colonel, U.S. Army, District Engineer.*

[FR Doc. 2012–18130 Filed 7–24–12; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF EDUCATION

## Applications for New Awards; American Overseas Research Centers Program

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice.

### Overview Information

American Overseas Research Centers Program

Notice inviting applications for new awards for fiscal year (FY) 2012.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.274A.

*Dates:*

Applications Available: July 25, 2012.

Deadline for Transmittal of Applications: August 24, 2012.

### Full Text of Announcement

### I. Funding Opportunity Description

*Purpose of Program:* The American Overseas Research Centers (AORC) program provides grants to consortia of institutions of higher education (IHEs) to establish or operate an AORC that promotes postgraduate research, exchanges, and area studies.

AORC grants may be used to pay all or a portion of the cost of establishing or operating a center or program, including: The cost of operation and maintenance of overseas facilities; the cost of organizing and managing conferences; the cost of teaching and research materials; the cost of acquisition, maintenance, and preservation of library collections; the cost of bringing visiting scholars and faculty to the center to teach or to conduct research; the cost of faculty and staff stipends and salaries; the cost of faculty, staff, and student travel; and the cost of publication and dissemination of materials for the scholarly and general public.

*Priorities:* Under this competition we are particularly interested in applications that address the following priority.

*Invitational Priority:* For FY 2012, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this priority a competitive or absolute preference over other applications.

This priority is:

Projects that propose outreach and related activities designed to inform scholars and faculty at community colleges and minority-serving institutions of potential fellowship and other research and professional development opportunities at the Overseas Centers and encourage and facilitate the participation of these individuals in the Centers' programs.

*Program Authority:* 20 U.S.C. 1128a.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 86, 97, 98 and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

### II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $650,000.

*Estimated Awards:* $65,000.

*Estimated Average Size of Awards:* $65,000 per year.

*Maximum Award:* We will reject any application that proposes a budget exceeding $65,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

### III. Eligibility Information

1. *Eligible Applicants:* Consortia of United States institutions of higher education that receive more than 50 percent of their funding from public or private United States sources, have a permanent presence in the country in which the center is located, and are organizations described in section 501(c)(3) of the Internal Revenue Code of 1993, which are exempt from taxation under section 501(a) of such Code.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

### IV. Application and Submission Information

1. *Address to Request Application Package:* Cheryl E. Gibbs, U.S. Department of Education, 1990 K Street NW., room 6083, Washington, DC 20006–8521. Telephone: (202) 502–7634 or by email: *cheryl.gibbs@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 25 pages, using the following standards:

- A ''page'' is 8.5″ x 11″ on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract; the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (your complete response to the selection criteria).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 25, 2012.

Deadline for Transmittal of Applications: August 24, 2012.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/applicants/get_registered.jsp.*

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the American Overseas Research Centers program, CFDA number 84.274A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the American Overseas Research Centers program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.274, not 84.274A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-

modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under *For Further Information Contact* in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov,* along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

*Exception to Electronic Submission Requirement:* You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Cheryl E. Gibbs, U.S. Department of Education, 1990 K Street NW., room 6083, Washington, DC 20006–8521. FAX: (202) 502–7860.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.274A), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.274A), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

**Note for Mail or Hand Delivery of Paper Applications:** If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.209(a) and 75.210 in EDGAR, and are as follows:

(a) *Meets the purpose of the authorizing statute* (up to 20 points).

(1) The Secretary may establish selection criteria based on statutory provisions that apply to the authorized program.

(2) The Secretary evaluates an application by determining how well the project proposed by the applicant—

(i) Promotes postgraduate research, exchanges, and area studies;

(ii) Contributes to the development of a pool of international experts to meet national needs;

(iii) Promotes access to research and training overseas.

(b) *Need for project* (up to 15 points).

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers—

(i) The magnitude of the need for the services to be provided of the activities to be carried out by the proposed project;

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps and weaknesses;

(iii) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated.

(c) *Significance* (up to 10 points).

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers—

(i) The national significance of the proposed project;

(ii) The significance of the problem or issue to be addressed by the proposed project.

(d) *Quality of the project design* (up to 10 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers—

(i) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs;

(ii) The extent to which the proposed activities constitute a coherent, sustained program of training in the field;

(iii) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(iv) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

(e) *Quality of project services* (up to 10 points).

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers—

(i) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability;

(ii) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(f) *Quality of project personnel* (up to 10 points).

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers—

(i) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability;

(ii) The qualifications, including relevant training and experience, of key project personnel.

(g) *Adequacy of resources* (up to 10 points).

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers—

(i) The extent to which the budget is adequate to support the proposed project;

(ii) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(h) *Quality of the project evaluation* (up to 15 points).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers—

(i) The extent to which the methods of evaluation are appropriate to the context within which the project operates;

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must

ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under this competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). Annual performance reports and final reports for the AORC program must be submitted into the International Resource Information System (IRIS) online data and reporting system. You can view the performance report screens and instructions at *http://iris.ed.gov/iris/pdfs/AORC.pdf.*

4. *Performance Measures:* The American Overseas Research Centers program provides grants to consortia of United States institutions of higher education to establish or operate overseas research centers that promote postgraduate research, exchanges, and area studies. The Department will use the following measures to evaluate the extent to which the overseas research centers are successful in meeting the program objective:

*AORC Performance Measure:* Percentage of AORC participants employed in jobs where they utilize their language and/or area or international studies training.

*AORC Performance Measure:* Percentage of postgraduate research projects conducted that focus on the 78 priority languages or world regions as defined by the Secretary of Education in accordance with section 601(c)(1) of the HEA.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 108.8, and 110.23).

## VII. Agency Contact

*For Further Information Contact:* Cheryl E. Gibbs, International and Foreign Language Education (IFLE) office, U.S. Department of Education, 1990 K Street NW., room 6083, Washington, DC 20006–8521. Telephone: (202) 502–7634 or by email: *cheryl.gibbs@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.*

Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: July 19, 2012.

**David A. Bergeron,**

*Acting Assistant Secretary Postsecondary Education.*

[FR Doc. 2012–18084 Filed 7–24–12; 8:45 am]

**BILLING CODE 4000–01–P**

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# DEPARTMENT OF ENERGY

## Agency Information Collection Extension

**AGENCY:** U.S. Department of Energy.

**ACTION:** Submission of Office of Management and Budget (OMB) review; comment request.

**SUMMARY:** The Department of Energy (DOE) has submitted an information collection request to the OMB for an extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Environment, Safety and Health reporting requirements, OMB Control Number 1910–0300. This information collection request covers information necessary for the DOE to exercise management oversight and control over Management and Operating (M&O) contractors of the DOE's Government-Owned Contractor-Operated (GOCO) facilities, and offsite contractors. The contractor management oversight and control function concerns the ways in which the DOE's contractors provide goods and services for DOE organizations and activities in accordance with the terms of their contract(s); the applicable statutory, regulatory and mission support requirements of the DOE; and regulations in the functional area covered in this request.

**DATES:** Comments regarding this collection must be received on or before August 24, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

**ADDRESSES:** Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503, and to Felecia Briggs, U.S. Department of Energy, Office of Health, Safety and Security, HS–83/C–412, 1000 Independence Ave. SW., Washington, DC 20585–1290, (301) 903–8803, by fax at 301–903–5492 or by email at *felecia.briggs@hq.doe.gov.* Information about the collection instruments may be obtained at: *http://www.hss.doe.gov/pra.html.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed at the addresses listed above in **ADDRESSES**.

**SUPPLEMENTARY INFORMATION:** The information collection request contains the following: (1) *OMB No.:* 1910–0300; (2) *Information Collection Request Title:* Environment, Safety and Health; (3) *Type of Review:* Renewal; (4) *Purpose:* The collections are used by DOE to exercise management oversight and control over its contractors in the ways

in which the DOE's contractors provide goods and services for DOE organizations and activities in accordance with the terms of their contract(s); the applicable statutory, regulatory and mission support requirements of the Department. The collections are: Computerized Accident/Incident Reporting System (CAIRS); Occurrence Reporting and Processing System (ORPS); Noncompliance Tracking System (NTS); Radiation Exposure Monitoring System (REMS); Annual Fire Protection Summary Application; Safety Basis Information System; and Lessons Learned System; (5) *Annual Estimated Number of Respondents:* 2,164; (6) *Annual Estimated Number of Total Responses:* 99,693; (7) *Response Obligation:* Required, except for Noncompliance Tracking System (see Statutory Authority section below); (8) *Annual Estimated Number of Burden Hours:* 44,860; (9) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0.

**Statutory Authority:** Section 641 of the Department of Energy Organization Act, codified at 42 U.S.C. 7251, and the following additional authorities:

Computerized Accident/Incident Reporting System (CAIRS): DOE Order 231.1B (June 27, 2011).

Occurrence Reporting and Processing System (ORPS): DOE Order 232.2 (August 30, 2011).

Noncompliance Tracking System (NTS): 10 CFR Part 820; 10 CFR Part 851.

Radiation Exposure Monitoring System (REMS): 10 CFR Part 835; DOE Order 231.1B (June 27, 2011).

Annual Fire Protection Summary Application: DOE Order 231.1B (June 27, 2011).

Safety Basis Information System: 10 CFR part 830; DOE O 231.1B (June 27, 2011).

Lessons Learned System: DOE Order 210.2A (April 8, 2011).

Issued in Washington, DC, on July 18, 2012.

**Stephen A. Kirchhoff,**

*Director, Office of Resource Management, Office of Health, Safety and Security.*

[FR Doc. 2012–18170 Filed 7–24–12; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Paducah

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Thursday, August 16, 2012 6 p.m.

**ADDRESSES:** Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

**FOR FURTHER INFORMATION CONTACT:** Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

*Tentative Agenda:*

- Call to Order, Introductions, Review of Agenda
- Administrative Issues
- Public Comments (15 minutes)
- Adjourn

Breaks Taken As Appropriate

*Public Participation:* The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Reinhard Knerr as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

*Minutes:* Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2011Meetings.html.*

Issued at Washington, DC, on July 19, 2012.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2012–18169 Filed 7–24–12; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### DOE Response to Recommendation 2012–1 of the Defense Nuclear Facilities Safety Board, Savannah River Site Building 235–F Safety

**AGENCY:** Department of Energy.

**ACTION:** Notice.

**SUMMARY:** On May 8, 2012, the Defense Nuclear Facilities Safety Board submitted Recommendation 2012–1, concerning *Savannah River Site Building 235–F Safety,* to the Department of Energy. In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the following represents the Secretary of Energy's response to the Recommendation.

**ADDRESSES:** Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Petras, Nuclear Engineer, Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC, on July 10, 2012.

**Mari-Josette Campagnone,**

*Departmental Representative, to the Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security.*

July 10, 2012

The Honorable Peter S. Winokur
Chairman
Defense Nuclear Facilities Safety Board
625 Indiana Avenue NW, Suite 700
Washington, DC 20004

Dear Mr. Chairman:

The Department of Energy (DOE) acknowledges receipt of Defense Nuclear Facilities Safety Board (Board) Recommendation 2012–1, Savannah River

Site Building 235–F Safety, issued on May 9, 2012, and I accept the Recommendation.

DOE agrees with the Board that action must be taken to reduce the hazards associated with the material at risk that remains as residual contamination within Building 235–F.

The Board acknowledged in its letter that DOE has taken action to de-inventory Building 235–F of special nuclear material. DOE has also taken action to remove the transient combustible material within Building 235–F and to limit access. In developing an Implementation Plan (IP), DOE will address all sub-recommendations with the ultimate goal of reducing, to the extent feasible, the radiological hazards from residual contamination and the fire hazards due to excessive combustible materials and electrical ignition sources. Operability and safety basis related concerns on fire detection and alarm systems will be addressed in the IP. Emergency response posture predicated on a potential radiological release from Building 235–F will also be evaluated to ensure its adequacy, including improvements in conducting drills necessary to demonstrate the overall effectiveness.

DOE is committed to the safe design and operation of its nuclear facilities consistent with the principles of Integrated Safety Management, and values the Board's input on how DOE can improve its activities. We look forward to working with the Board as we work to reduce the hazards posed by Building 235–F.

I have assigned Dr. David C. Moody, Manager, Savannah River Operations Office, to be the Department's responsible manager for this Recommendation. He can be reached at (803) 952–9468.

Sincerely,

Steven Chu

[FR Doc. 2012–18176 Filed 7–24–12; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13011–003]**

### Shelbyville Hydro LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* 13011–003.

c. *Date filed:* October 28, 2011.

d. *Applicant:* Shelbyville Hydro LLC (Shelbyville Hydro), a wholly-owned subsidiary of Symbiotics LLC.

e. *Name of Project:* Lake Shelbyville Dam Hydroelectric Project.

f. *Location:* On the Kaskaskia River, in Shelby County, Illinois at an existing dam owned and operated by the U.S. Corps of Engineers (Corps). The project would occupy 3.24 acres of federal lands managed by the Corps.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, Chief Operating Officer, Symbiotics LLC 371 Upper Terrace, Suite 2, Bend, OR 97702; Telephone (541)–330–8779.

i. *FERC Contact:* Lesley Kordella, (202) 502–6406 or *Lesley.Kordella@ferc.gov.*

j. *Deadline for filing comments, terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance 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* 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 and Procedures 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 ready for environmental analysis.

l. *Project Description:* The project would be located at an existing dam owned and operated by the Corps (St. Louis District). The existing Lake Shelbyville Dam was constructed in 1963 for the purposes of flood control, recreation development, water supply, navigation release, and fish and wildlife conservation. In August of 1970, the Corps closed the gates to start the initial filling of the lake. The West Okaw and Kaskaskia rivers were inundated for 17 miles upstream of the dam.

The Lake Shelbyville Dam is an earthen embankment with an elevation of 643 feet above mean sea level (MSL). The dam is 3,025 feet long and rises 108 feet above the river bed. The concrete spillway is located at 593 feet MSL and is topped by three Tainter gates that are approximately 45 feet wide by 37 feet high. The two regulating outlet structures release water through the face of the spillway. The impoundment above the Lake Shelbyville Dam, referred to as Lake Shelbyville, varies according to flood control operations controlled by the Corps. Lake Shelbyville has a maximum storage capacity of 684,000 acre-feet. Of the 684,000 acre-feet of storage, 474,000 acre-feet have been designated for flood control. The average depth of the reservoir is 16 feet and the maximum is 67 feet.

The proposed Lake Shelbyville Project would consist of: (1) A trash rack with 4-inch spacing integrated into the Corps' existing west intake structure; (2) a steel liner installed in the Corps' existing west outlet chamber transitioning to a bifurcation; (3) a 13-foot-diameter bifurcation and a river release valve installed at the west outlet structure; (4) a 13-foot-diameter penstock at the bifurcation after which it reduces to a 12-foot-diameter, 575-foot-long steel penstock; (5) a 60-foot-long, 50-foot-wide, 68-foot-high concrete powerhouse containing a 6.8-megawatt Kaplan turbine-generator with a flow of 130 to 1,500 cubic feet per second (cfs) at a net head of 33 to 77 feet; (6) an approximately 24.5-foot-wide, 30-foot-long, 6.7-foot-tall draft tube; (7) a 25 to 105-foot-wide, 49-foot-long tailrace; (8) a 12.47-kilovolt, 407-foot-long buried transmission line connecting the project to an existing Shelby Electric Cooperative substation located 900 feet downstream of the dam; and (9) appurtenant facilities. The project boundary would include 3.24 acres of federal lands owned by the Corps. The annual average energy production is estimated to be 20.3 gigawatt-hours.

The project would operate in a run-of-release mode utilizing releases from Lake Shelbyville as they are dictated by the Corps, with no proposed change to the Corps' facility operation. Power generation would be seasonally variable as flow regimens and pool levels are set forth by the Corps. The project would generate power using flows between 130 and 1,500 cfs. When flows are below 130 cfs, all flows would be passed through the Corps' existing outlet

structure and the project would then be offline. When flows are greater than 1,500 cfs, excess flow would be passed through the existing outlet structure.

m. 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. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''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 submitting the filing; 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. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: July 18, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–18103 Filed 7–24–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG12–89–000.
*Applicants:* Mehoopany Wind Energy LLC.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Mehoopany Wind Energy LLC.
*Filed Date:* 7/17/12.
*Accession Number:* 20120717–5064.
*Comments Due:* 5 p.m. ET 8/7/12.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES12–47–000.
*Applicants:* ISO New England Inc.
*Description:* Application of ISO New England Inc. under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Securities.
*Filed Date:* 7/17/12.
*Accession Number:* 20120717–5094.
*Comments Due:* 5 p.m. ET 8/7/12.

*Docket Numbers:* ES12–48–000.
*Applicants:* ISO New England Inc.
*Description:* Application of ISO New England Inc. under Section 204 of the FPA For An Order Authorizing the Issuance of Securities.
*Filed Date:* 7/17/12.
*Accession Number:* 20120717–5095.
*Comments Due:* 5 p.m. ET 8/7/12.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF12–447–000.
*Applicants:* LAFOURCHE SUGARS, LLC.
*Description:* Form 556—Notice of Self-Certification for Qualifying Cogeneration Facility Status of LAFOURCHE SUGARS, LLC.
*Filed Date:* 7/17/12.
*Accession Number:* 20120717–5137.
*Comments Due:* 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 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 18, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–18116 Filed 7–24–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL12–85–000]**

### Notice of Complaint; Keryn Newman v. Potomac-Appalachian Transmission Highline, LLC

Take notice that on July 18, 2012 pursuant to Rules 206 and 218 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 and 385.218 and section 206 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), Keryn Newman (Complainant) filed a formal complaint against Potomac-Appalachian Transmission Highline, LLC (Respondent) alleging that Respondent violated its Formula Rate Implementation Protocols by refusing to provide information properly requested by an Interested Party in accordance with Section VI of the Protocols.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on August 7, 2012.

Dated: July 19, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–18162 Filed 7–24–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP12–479–000]**

## Southern Star Central Gas Pipeline, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line V Pipeline Retirement Project and Request for Comments On Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line V Pipeline Retirement Project involving abandonment of facilities by Southern Star Central Gas Pipeline, Inc. (Southern Star) in Logan and Oklahoma Counties, Oklahoma. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on August 17, 2012.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Southern Star provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

### Summary of the Proposed Project

Southern Star proposes to abandon 16.14 miles of 20-inch-diameter natural gas pipeline, known as Line V, in Logan and Oklahoma Counties, Oklahoma. Southern Star states that due to the age of Line V and the use of coupled pipe, Line V cannot meet the inspection requirement of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration. Line V has been looped with a 20-inch-diameter line and no longer provides service to domestic customers.[1] Southern Star would abandon in-place approximately 13.18 miles of pipe, and would abandon by removal the remaining 2.96 miles of pipe as requested by landowners. Abandonment of the proposed facilities would disturb about 49 acres of land during construction for pipeline removal, extra workspace, access roads, and staging areas. The general location of the project facilities is shown in appendix 1.[2]

### The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

### Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline.

[2] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, 1501.6.

106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before August 17, 2102.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP12–479–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP12–479). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: July 18, 2012.

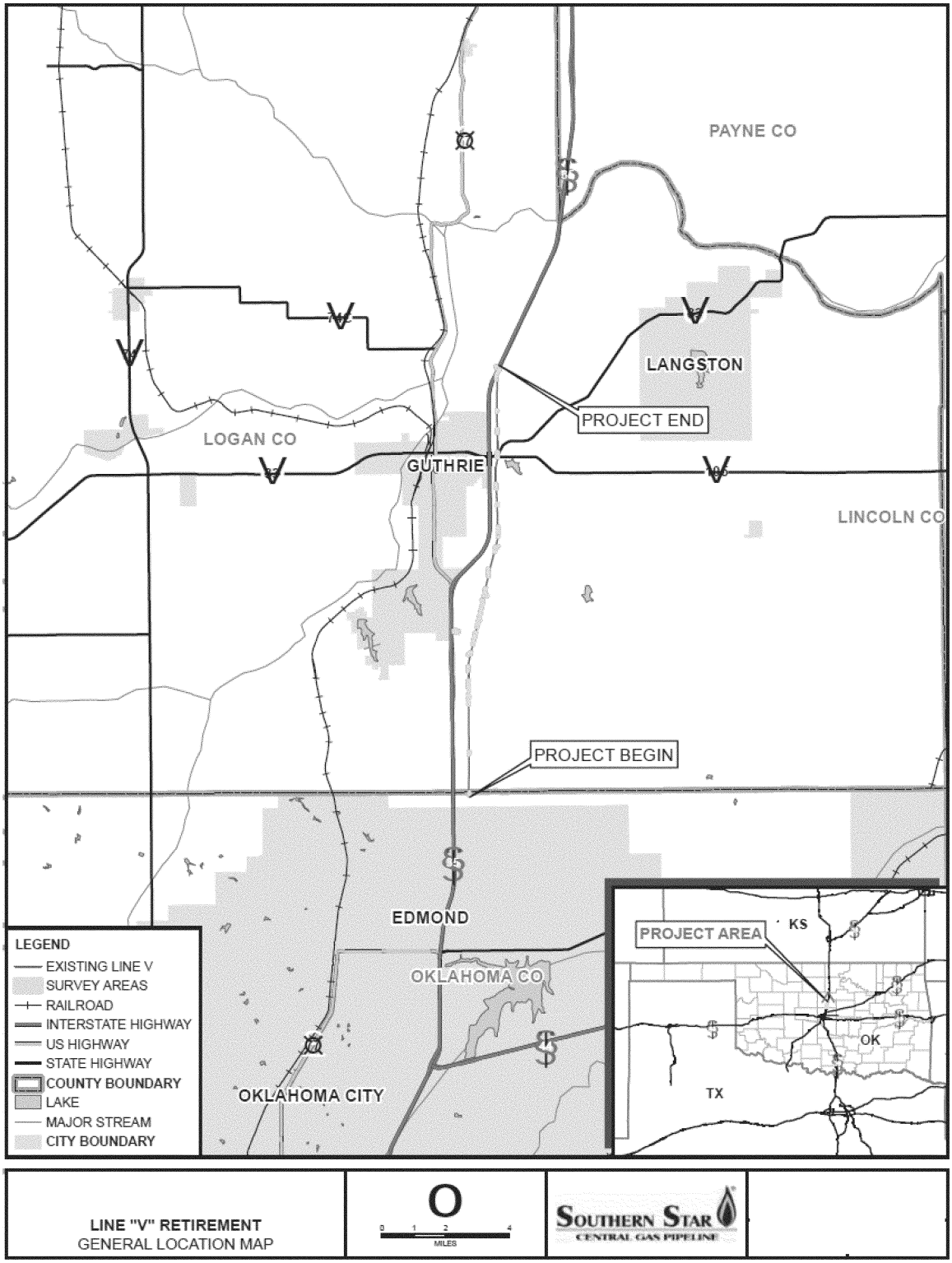
**Kimberly D. Bose,**

*Secretary.*

BILLING CODE 6717–01–P

**Appendix 1**

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.




BILLING CODE 6717–01–C

**Appendix 2**

**INFORMATION REQUEST**

**Line V Retirement Project**

Name _____

Agency _____

Address _____

City_____ State____ Zip Code____

☐ Please send me a paper copy of the published NEPA document

☐ Please remove my name from the mailing list

FROM _____

_____

_____

_____

ATTN: OEP—Gas 1, PJ—11.1, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

(Docket No. CP12–479–000 Line V Retirement Project)

**Staple or Tape Here**

[FR Doc. 2012–18102 Filed 7–24–12; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PF11–2–000]**

### Freeport LNG Development, L.P., Freeport LNG Expansion, L.P., FLNG Liquefaction LLC; Supplemental Notice of Intent To Prepare an Environmental Impact Statement for the Planned Liquefaction Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

As previously noticed on August 11, 2011, and supplemented herein, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Liquefaction Project (Project) involving construction and operation of facilities proposed by Freeport LNG Development, L.P., Freeport LNG Expansion, L.P, and FLNG Liquefaction LLC (collectively referred to as Freeport) in Brazoria County, Texas. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public interest.

Changes to the proposed facilities and the scope of our review have occurred since issuance of the Commission's initial notice of intent (NOI) for the Project. Staff has determined that review of the Project will require an EIS. This Supplemental NOI addresses these changes summarized in the Summary of Planned Project section of this notice and announces the opening of a scoping period the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues need to be evaluated in the EIS. Please note that the scoping period will close on August 20, 2012.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meeting scheduled as listed on page 2.

**FERC Public Scoping Meeting**

*Freeport Liquefaction Project 7:00 p.m.—August 9, 2012*

Lake Jackson Civic Center, 333 Highway 332 E, Lake Jackson, TX 77566, (979) 415–2600.

This notice is being sent to the Commission's current environmental mailing list for the Project. State and local government representatives are asked to notify their constituents of this planned Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

**Summary of the Planned Project**

Freeport plans to add natural gas liquefaction and exportation capabilities to its existing liquefied natural gas (LNG) import terminal on Quintana Island in Brazoria County, Texas. Since the original notice was issued, the proposed facilities have been modified to include a natural gas Pretreatment Facility as a jurisdictional facility based on public input, the location of the Pretreatment Facility has been changed. The Project would consist of the construction and installation of facilities to be used for liquefaction and export of domestic natural gas.

The planned facilities would consist of the following components:

- Three natural gas liquefaction refrigerant units at the Quintana Island Terminal;
- Expansion of existing Quintana Island Terminal Facilities, including a construction dock and fire water intake structure;
- Natural gas Pretreatment Facility, about 2.5 miles north of the Quintana Island Terminal. It parallels and is located west of County Road (CR) 690, about 0.7 mile north of the intersection of CR 690 and State Highway 332; and
- Several pipelines (boil-off gas, natural gas, natural gas liquids, nitrogen) and utility lines (electric, fiber optic, water) that collectively form a route system between the Terminal, the Pretreatment Plant, Freeport LNG's Stratton Ridge meter station, Freeport LNG's Stratton Ridge underground gas storage facility, and interconnects with other industrial entities.

In addition, a second ship berthing area, third LNG storage tank, and additional LNG vaporization and natural gas send-out facilities that were previously authorized under FERC Docket CP05–361–000 but never constructed would be repurposed to meet the needs of the Project.

Freeport indicates that the Project would produce about 13.2 million metric tons per year of LNG. This would allow Freeport to convert domestically produced natural gas to LNG for storage and export. Freeport LNG expects to be ready to commence LNG exports in late 2015.

The general location of the project facilities is shown in Figure 1 in Appendix 1.[1] Alternative sites for Freeport's proposed site for the Pretreatment Facility (Site F) that will be considered in our review are identified in Figure 2 of Appendix 1.

**Land Requirements for Construction**

The Table below details the land requirements of the proposed Project. Construction of all of the planned facilities would disturb about 610.7 acres of land at or adjacent to the existing Quintana Island Terminal, pretreatment facility and associated jurisdictional and nonjurisdictional pipelines, utilities and access roads.

Following construction, about 215.1 acres would be maintained for permanent operation of the Project facilities; the remaining acreage may be restored and allowed to revert to former uses.

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

FREEPORT LNG LIQUEFACTION PROJECT

[Summary of land requirements for proposed liquefaction project]

| Facilities | Permanent facility footprint (acres) | Temporary workspace (acres) | Total |
|---|---|---|---|
| **FERC JURISDICTIONAL FACILITIES** | | | |
| Liquefaction Plant and Associated Facilities | 109.2 | 79.9 | 189.1 |
| Pretreatment Facility and Associated Facilities | 104.2 | 112.9 | 217.1 |
| Pretreatment Facility—Off-site Access Road Segments | 1.6 | 1.3 | 2.9 |
| Pipeline/Utility Line System (FERC Jurisdictional Facilities and Non-Jurisdictional Pipelines/ Utility Lines)—South of Pretreatment Facility | 0.0 | 44.6 | 44.6 |
| Off-site Storage & Laydown Area for Liquefaction Plant | 0.0 | 74.8 | 74.8 |
| Jurisdictional Total | 215.0 | 313.5 | 528.5 |
| **FERC NONJURISDICTIONAL [1] FACILITIES** | | | |
| Pipeline/Utility Line System (FERC Nonjurisdictional Facilities without Electric Line)—North of Pretreatment Facility | 3.3 | 74.7 | 74.7 |
| Electric Line at Pretreatment Facility | 6.0 | 7.3 | 7.3 |
| Appurtenant Facilities beyond Terminal Site and Pretreatment Facility site and not included in Pipeline/Utility Line System Footprint Totals | 0.1 | 0.1 | 0.2 |
| Nonjurisdictional Total | 0.1 | 82.1 | 82.2 |
| Liquefaction Project Total | 215.1 | 395.6 | 610.7 |

[1] Nonjurisdictional facilities are associated facilities that do not come under the jurisdiction of FERC.

**The EIS Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of an LNG authorization. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to be addressed in the EIS. All comments received will be considered during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the planned Project under these general headings:

- Geology and soils;
- Water resources, and fisheries;
- Vegetation and wildlife;
- Cultural resources;
- Socioeconomics;
- Land use;
- Air quality and noise;
- Cumulative environmental impacts; and
- Reliability and public safety.

We will also evaluate possible alternatives to the planned Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 6.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the United Stated Department of Energy has expressed its intention to participate as a cooperating agency in the preparation of the EIS to satisfy its NEPA responsibilities related to this Project.

**Consultations Under Section 106 of the National Historic Preservation Act**

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Texas State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific area of potential effects (APE) in consultation with the SHPO as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance. Our EIS for this Project will document our findings on

[2] "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

the impacts on historic properties and summarize the status of consultations under section 106.

**Currently Identified Environmental Issues**

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Freeport. This preliminary list of issues may be changed based on your comments and our analysis.

- Air quality;
- Noise and vibration impacts;
- Socioeconomic impacts;
- Geologic hazards;
- Wetlands and waterbodies;
- Threatened and endangered species; and
- Public safety.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before August 20, 2012.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number PF11–2–000 with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister*.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may mail a paper copy of your comments to the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

**Environmental Mailing List**

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Indian tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned Project.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

**Becoming an Intervenor**

Once Freeport files its application with the Commission, you may want to become an ''intervenor'', which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until a formal application for the Project is filed with the Commission.

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF11–2). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: July 19, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–18158 Filed 7–24–12; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP12–483–000]**

### Tri-State Financial Co., LLC, (d/b/a North Country Ethanol), Red River Energy, LLC; Notice of Filing

Take notice that on July 10, 2012, Tri-State Financial Co., LLC, d/b/a North Country Ethanol (Tri-State), and Red River Energy, LLC (Red River) filed an application, pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA), requesting authorization for Tri-State to abandon by sale, its certificate of public convenience and necessity issued on March 31, 2005, in Docket No. CP05–75–000, and for Red River to acquire and operate Tri-State's facilities located in Roberts County, South Dakota and Richland County, North Dakota. In addition, Red River requests temporary certificate authorization to continue operating Tri-State's facilities. This filing 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Tri-State requests authorization to abandon its certificate authorizing Tri-State to operate an approximately 10.5 miles long pipeline from an interconnect with the interstate pipeline facilities of Alliance Pipeline L.P. in Richland County, North Dakota, to the Tri-State's ethanol facility near Rosholt, in Roberts County, South Dakota (the Delivery Line). Red River requests a new certificate authorizing Red River to own and operate the Delivery Line on the same terms and conditions as the certificate previously issued to Tri-State. Since Red River acquired and commenced service through the Delivery Line on December 12, 2011, Red River also requests a temporary certificate, retroactively effective on December 12, 2011.

Any questions regarding the application are to be directed to William F. Demarest, Jr., Husch Blackwell LLP, 750 17th St. NW., Suite 900, Washington, DC 20006; phone number (202) 378–2310; email: *William.demarest@huschblackwell.com.*

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments 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 under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: August 8, 2012.

Dated: July 18, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–18101 Filed 7–24–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL12–52–001]**

### System Energy Resources, Inc.; Notice of Filing

Take notice that on July 18, 2012, System Energy Resources, Inc. (System Energy Resources), submitted a supplement to its petition filed on March 28, 2012 (March 28 petition) requesting the Federal Energy Regulatory Commission issue a declaratory order determining that System Energy Resources' payment of distributions out of common stock or paid-in capital to its parent and sole shareholder, Entergy Corporation, under the circumstances and conditions identified in the petition, will not violate section 305(a) of the Federal Power Act. In its supplement, System Energy Resources supplements its March 28 petition to provide additional information and clarification.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5:00 p.m. Eastern Time on July 30, 2012.

Dated: July 19, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–18161 Filed 7–24–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12690–003]**

### Public Utility District No. 1 of Snohomish County, WA; Notice of Technical Meeting

a. *Date, Time and Place of Meeting:* Monday, August 6, 2012 starting at 9 a.m. Pacific Time (12 noon Eastern Time) at the Washington Department of Ecology's Northwest Regional Office, 3190 160th Ave. SE., Bellevue, WA 98008–5452.

b. *FERC Contact:* David Turner, (202) 502–6091 or *david.turner@ferc.gov*

c. *Purpose of Meeting:* Explore solutions to issues raised by PC Landing and the Federal Communications Commission regarding the proximity of the proposed Admiralty Inlet Tidal Project to PC Landing's fiber optic communication cable, and discuss the implications and information needs for possible alternative site locations for the hydrokinetic turbines.

d. To obtain the phone number and passcode to participate by telephone, please contact David Turner via email by no later than 5:00 p.m. Eastern Time on Wednesday, August 1, 2012.

Dated: July 19, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–18160 Filed 7–24–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 620–024]**

### Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene; NorQuest Seafoods, Inc.; City of Chignik

On June 21, 2012, NorQuest Seafoods, Inc. (transferor) and the City of Chignik (transferee) filed an application for the transfer of license for the Chignik Hydroelectric Project (FERC No. 620), located in Chignik Bay, Alaska.

Applicants seek Commission approval to transfer the license for the Chignik Hydroelectric Project from the transferor to the transferee.

Applicants' Contact: Transferor: President, NorQuest Seafoods, Inc., c/o Trident Seafoods Corporation, Attention: Mr. Bob Nelson, General Counsel, 5303 Shilshole Avenue NW., Seattle, WA 98107–4000, email: *bobn@tridentseafoods.com*. Transferee: Mr. Richard Sharpe, City Manager, City of Chignik, P.O. Box 110, Chignik, AK 99564–0110, email *dick.sharpe@yahoo.com*.

*FERC Contact:* Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov*.

Deadline for filing comments and motions to intervene: *30 days* from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *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. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–602) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: July 19, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–18159 Filed 7–24–12; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2012–0019; FRL–9355–4]**

### Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

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

**ACTION:** Notice.

**SUMMARY:** EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period January 1 to March 31, 2012, to control unforeseen pest outbreaks.

**FOR FURTHER INFORMATION CONTACT:** See each emergency exemption for the name of a contact person. The following information applies to all contact persons: Team Leader, Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8050.

**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 at the end of the emergency exemption of interest.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0019, is available at *http://www.regulations.gov* or at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

#### II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific.

Under FIFRA section 18, EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.
2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.
3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues,

EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

**III. Emergency Exemptions**

*California*

Department of Pesticide Registration

*Specific exemption:* EPA authorized the use of mancozeb on walnuts to control bacterial blight (*Xanthomonas campestris pv. Juglandis*) on walnuts; February 17, 2012 to June 15, 2012. *Contact:* Libby Pemberton.

*Delaware*

Department of Agriculture

*Specific exemptions:* EPA authorized the use of hop beta acids in beehives to control varroa mite; January 12, 2012 to December 31, 2012. *Contact:* Stacey Groce.

*Specific exemption:* EPA authorized the use of thiabendazole on mushroom spawn and supplement to control green mold (*Trichoderma aggressivum*); February 13, 2012 to January 13, 2013. *Contact:* Andrea Conrath.

*Florida*

Department of Agriculture and Consumer Services

*Crisis exemption:* EPA authorized the use of spirotetramat on watercress to control aphids; February 2, 2012 to June 30, 2012. *Contact:* Keri Grinstead.

*Specific exemptions:* EPA authorized the use of metconazole on sugarcane to control Orange Rust (*Puccinia kuehnii*); January 11, 2012 to January 11, 2013. *Contact:* Libby Pemberton.

EPA authorized the use of pyraclostrobin on sugarcane to control Orange Rust (*Puccinia kuehnii*); January 11, 2012 to January 11, 2013. *Contact:* Libby Pemberton. *Quarantine exemption:* EPA authorized the use of naled in a bait treatment to eradicate non-native and invasive Tephritid fruit flies which are responsive to the attractant, methyl eugenol; March 6, 2012 to March 6, 2015. *Contact:* Debra Rate.

*Georgia*

Department of Agriculture

*Specific exemption:* EPA authorized the use of hop beta acids in beehives to control varroa mite; February 17, 2012 to December 31, 2012. *Contact:* Stacey Groce.

*Hawaii*

Department of Agriculture

EPA authorized the use of hop beta acids in beehives to control varroa mite; January 20, 2012 to December 31, 2012. *Contact:* Stacey Groce.

*Idaho*

Department of Agriculture

*Specific exemptions:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips and Iris Yellow Spot Virus; January 27, 2012 to September 15, 2012. *Contact:* Keri Grinstead.

EPA authorized the use of linuron on lentils to control dog fennel and prickly lettuce; March 2, 2012 to June 30, 2012. *Contact:* Andrea Conrath.

*Kentucky*

Department of Agriculture

*Specific exemptions:* EPA authorized the use of hop beta acids in beehives to control varroa mite; February 1, 2012 to December 31, 2012. *Contact:* Stacey Groce.

*Louisiana*

Department of Agriculture and Forestry

*Specific exemptions:* EPA authorized the use of anthraquinone on corn, field and sweet, seed, to repel blackbird species and cowbirds; February 22, 2012 to February 24, 2013. *Contact:* Stacey Groce.

EPA authorized the use of hop beta acids in beehives to control varroa mite; March 16, 2012 to December 31, 2012. *Contact:* Stacey Groce.

EPA authorized the use of pyraclostrobin on sugarcane to control Brown Rust (*Puccinia melanocephala*); March 22, 2012 to June 30, 2012. *Contact:* Libby Pemberton. *Quarantine exemptions:* EPA authorized the use of pyraclostrobin on sugarcane to control Orange Rust (*Puccinia kuehnii*); March 27, 2012 to December 31, 2014. *Contact:* Libby Pemberton.

EPA authorized the use of metconazole on sugarcane to control Orange Rust (*Puccinia kuehnii*); March 27, 2012 to December 31, 2014. *Contact:* Libby Pemberton.

*Maryland*

Department of Agriculture

*Specific exemptions:* EPA authorized the use of thiabendazole on mushroom spawn and supplement to control green mold (Trichoderma aggressivum); February 17, 2012 to January 13, 2013. *Contact:* Andrea Conrath.

EPA authorized the use of hop beta acids in beehives to control varroa mite; February 17, 2012 to December 31, 2012. *Contact:* Stacey Groce.

*Michigan*

Department of Agriculture

*Specific exemptions:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips and Iris Yellow Spot Virus; February 3, 2012 to March 31, 2012. *Contact:* Keri Grinstead.

EPA authorized the use of anthraquinone on corn, field and sweet, seed, to repel sandhill crane; February 8, 2012 to February 8, 2013. *Contact:* Stacey Groce.

EPA authorized the use of kasugamycin on apples to control fire blight; March 9, 2012 to May 31, 2012. Since the applicant proposed the use of a new chemical which has not been registered by EPA, a notice of receipt was published in the **Federal Register** on January 6, 2012 (77 FR 791) (FRL–9331–6). The rationale for the emergency approval of this use is that kasugamycin is needed to control streptomycin-resistant strains of *Erwinia amylovora,* the causal pathogen of fire blight, due to the lack of available alternatives and effective control practices. Without the use of kasugamycin and if weather conditions are present which favor a fire blight epidemic, it is likely that Michigan apple growers could suffer yield losses of 50% or more. *Contact:* Keri Grinstead.

*Minnesota*

Department of Agriculture

*Specific exemptions:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips and Iris Yellow Spot Virus; January 27, 2012 to September 15, 2012. *Contact:* Keri Grinstead.

EPA authorized the use of hop beta acids in beehives to control varroa mite; February 1, 2012 to December 31, 2012. *Contact:* Stacey Groce.

*Mississippi*

Department of Agriculture

*Specific exemption:* EPA authorized the use of anthraquinone on corn, field and sweet, seed, to repel blackbird species and cowbirds; March 13, 2012 to March 13, 2013. *Contact:* Stacey Groce.

*Missouri*

Department of Agriculture

*Specific exemption:* EPA authorized the use of hop beta acids in beehives to control varroa mite; March 7, 2012 to

December 31, 2012. *Contact:* Stacey Groce.

*Nebraska*

Department of Agriculture

*Specific exemption:* EPA authorized the use of hop beta acids in beehives to control varroa mite; February 1, 2012 to December 31, 2012. *Contact:* Stacey Groce.

*Nevada*

Department of Agriculture

*Specific exemption:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips and Iris Yellow Spot Virus; February 17, 2012 to September 30, 2012. *Contact:* Keri Grinstead.

*New York*

Department of Environmental Conservation

*Specific exemption:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips and Iris Yellow Spot Virus; January 17, 2012 to September 15, 2012. *Contact:* Keri Grinstead.

*Oklahoma*

Department of Agriculture

*Specific exemption:* EPA authorized the use of hop beta acids in beehives to control varroa mite; March 22, 2012 to December 31, 2012. *Contact:* Stacey Groce.

*Oregon*

Department of Agriculture

*Specific exemptions:* EPA authorized the use of fenoxyprop-p-ethyl on grasses grown for seed to control various grassy weeds; February 17, 2012 to September 15, 2012. In accordance with 40 CFR 180.24, a notice of receipt published in the **Federal Register** on January 18, 2012, to allow for public comment since the request proposed a use which is IR–4-supported, has been requested in 5 or more previous years, and a petition for tolerance has not been submitted to the Agency. The public comment period ended on February 2, 2012. No substantial comments were received. The rationale for emergency approval of this use is that no suitable herbicides are available to control grassy weeds in grass seed production and significant economic losses will occur if these weeds are not controlled. *Contact:* Andrea Conrath.

EPA authorized the use of spirotetramat on dry bulb onions to control thrips and Iris Yellow Spot Virus; February 17, 2012, to September 15, 2012. *Contact:* Keri Grinstead.

EPA authorized the use of bifenthrin on orchardgrass to control the orchardgrass billbug; March 14, 2012 to November 15, 2012. *Contact:* Andrea Conrath.

*Pennsylvania*

Department of Agriculture

*Specific exemption:* EPA authorized the use of thiabendazole on mushroom spawn and supplement to control green mold (*Trichoderma aggressivum*); January 13, 2012 to January 13, 2013. *Contact:* Andrea Conrath.

*South Dakota*

Department of Agriculture

*Specific exemptions:* EPA authorized the use of anthraquinone on sunflower, seed to repel ring-necked pheasant; February 17, 201, to March 3, 2013. Contact: Stacey Groce.

EPA authorized the use of anthraquinone on corn, field and sweet, seed, to repel ring-necked pheasant; February 28, 2012 to March 4, 2013. *Contact:* Stacey Groce.

*Texas*

Department of Agriculture

*Specific exemptions:* EPA authorized the use of flutriafol on cotton to control cotton root rot caused by *Phymatotrichum omnivorum;* maximum 288,000 acres; February 2, 2012 to December 31, 2012. *Contact:* Debra Rate.

EPA authorized the use of hop beta acids in beehives to control varroa mite; February 3, 2012 to December 31, 2012. *Contact:* Stacey Groce.

EPA authorized the use of dinotefuran on rice to control rice stink bug (Oebalus pugnax); March 1, 2012 to October 30, 2012. *Contact:* Libby Pemberton.

*Utah*

Department of Agriculture and Food

*Specific exemptions:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips and Iris Yellow Spot Virus; February 17, 2012 to September 1, 2012. *Contact:* Keri Grinstead.

EPA authorized the use of hop beta acids in beehives to control varroa mite; March 16, 2012 to December 31, 2012. *Contact:* Stacey Groce.

*Washington*

Department of Agriculture

*Specific exemptions:* EPA authorized the use of spirotetramat on dry bulb onions to control thrips and Iris Yellow Spot Virus; February 13, 2012 to October 31, 2012. *Contact:* Keri Grinstead.

EPA authorized the use of linuron on lentils to control dog fennel and prickly lettuce; March 2, 2012 to June 30, 2012. *Contact:* Andrea Conrath.

*West Virginia*

Department of Agriculture

*Specific exemption:* EPA authorized the use of hop beta acids in beehives to control varroa mite; February 3, 2012 to December 31, 2012. *Contact:* Stacey Groce.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: July 16, 2012.

**Daniel J. Rosenblatt,**

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

[FR Doc. 2012–18066 Filed 7–24–12; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2010–0014; FRL–9356–7]**

## Product Cancellation Order for Certain Pesticide Registrations

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a January 11, 2012 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the January 11, 2012 notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180 day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received comments on the notice but none merited its further review of the requests. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

**DATES:** The cancellations are effective July 25, 2012.

**FOR FURTHER INFORMATION CONTACT:** Katie Weyrauch, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0166; fax number: (703) 308–8005; email address: *weyrauch.katie@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. 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 copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0014, is available at *http://www.regulations.gov* or at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. 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 OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

## II. What action is the agency taking?

This notice announces the cancellation, as requested by registrants, of 36 products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

| EPA registration No. | Product name | Active ingredients |
|---|---|---|
| 000264–00438 | Bronate Herbicide | MCPA, 2-ethylhexyl ester Bromoxynil octanoate. |
| 000264–00477 | Buctril + Atrazine Herbicide | Bromoxynil octanoate Atrazine. |
| 000264–00586 | Sedagri Batril 20W Herbicide | Bromoxynil octanoate. |
| 000264–00699 | Rhino Brand Herbicide | MCPA, 2-ethylhexyl ester Bromoxynil octanoate Heptanoic acid, 2,6-dibromo-4-cyanophenyl ester. |
| 000264–00799 | Weco Max Brand Herbicide | 2,4-D, 2-ethylhexyl ester Heptanoic acid, 2,6-dibromo-4-cyanophenyl ester Bromoxynil octanoate. |
| 000264–01071 | Wolverine Power Pak | Heptanoic acid, 2,6-dibromo-4-cyanophenyl ester Bromoxynil octanoate Pyrasulfotole Technical Fenoxaprop-p-ethyl. |
| 000279–03104 | Commence EC | Trifluralin Clomazone. |
| 000279–03232 | Command Xtra Herbicide | Clomazone Sulfentrazone. |
| 001043–00060 | T.B.Q. Germicidal Detergent | Alkyl dimethyl benzyl ammonium chloride (50%C14, 40%C12, 10%c16). |
| 002217–00426 | Formec 80 Turf & Ornamental Fungicide | Mancozeb. |
| 010324–00053 | Maquat 2.5% | 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride. |
| 010324–00054 | Maquat-4.5% | 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride. |
| 010324–00055 | Septin CS | Alkyl dimethyl benzyl ammonium chloride (60%C14, 30%C16, 5%C18, 5%C12); Alkyl*dimethyl ethylbenzyl ammonium chloride *(68%c12, 32%c14). |
| 010324–00106 | Q-14 Disinfectant | Alkyl dimethyl benzyl ammonium chloride (50%C14, 40%C12, 10%C16); 1-Octanaminium, N,N-dimethyl-N-octyl-, chloride; 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride; 1-Decanaminium, N,N-dimethyl-N-octyl-, chloride. |
| 010324–00145 | Maquat FP | Alkyl dimethyl ethylbenzyl ammonium chloride (68%C12, 32%C14) Alkyl dimethyl benzyl ammonium chloride (60%C14, 30%C16, 5%C18, 5%C12). |
| 010807–00449 | Country Vet Flea & Tick Carpet Spray with Growth Inhibitor. | Phenothrin, Tetramethrin, Pyriproxyfen. |
| 053883–00084 | Pendimethalin 3.3 Herbicide | Pendimethalin. |
| 053883–00086 | Pendimethalin 0,66% + Fertilizer | Pendimethalin. |
| 053883–00138 | Permethrin 3.2 Ag II | Permethrin. |
| 075341–00012 | Hollow Heart CF | Copper naphthenate, Sodium fluoride. |
| 075341–00013 | COP–R–Plastic II Wood Preserving Compound | Copper naphthenate, Sodium fluoride. |
| CA110009 | Ethylene | Ethylene. |
| GA080007 | Ridomil Gold Copper | Copper hydroxide D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester. |
| GA080011 | Safari 20 SG Insecticide | Dinotefuran. |
| ID060014 | Prozap Zinc Phosphide Pellets | Zinc phosphide (Zn3P2). |
| KY080024 | Safari 20 SG Herbicide | Dinotefuran. |
| MI000003 | Captan 50 Wettable Powder | Captan. |
| MI060004 | Dual Magnum | S-Metolachlor. |
| MT950003 | Zinc Phosphide Oat Bait | Zinc phosphide (Zn3P2). |
| NV040003 | Zinc Phosphide Oat Bait | Zinc phosphide (Zn3P2). |
| NV060007 | Prozap Zinc Phosphide Pellets | Zinc phosphide (Zn3P2). |
| NV080003 | Endura Fungicide | Boscalid. |
| SD070001 | Zinc Phosphide Oat Bait | Zinc phosphide (Zn3P2). |

TABLE 1—PRODUCT CANCELLATIONS—Continued

| EPA registration No. | Product name | Active ingredients |
|---|---|---|
| VA080007 | Ridomil Gold Copper | Copper hydroxide D-Alanine, N-(2,6-dimethylphenyl)-N-(methoxyacetyl)-, methyl ester. |
| VA080009 | Safari 20 SG Insecticide | Dinotefuran. |
| WA060011 | Tristar 70 WSP Insecticide | Acetamiprid. |

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

| EPA company No. | Company name and address |
|---|---|
| 264 | Bayer Crop Science LP, 2 T.W. Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709. |
| 279 | FMC Corp. Agricultural Products, 1735 Market St., Rm. 1978, Philadelphia, PA 19103. |
| 1043 | Steris Corporation, P.O. Box 147, St. Louis, MO 63166–0147. |
| 2217 | PBI/Gordon Corp., 1217 West 12th St., Kansas City, MO 64101–0090. |
| 10324 | Mason Chemical Co., 721 W. Algonquin Rd., Arlington Heights, IL 60005. |
| 10807 | Amrep, Inc., Agent: Lewis & Harrison LLC, 122 C St. NW., Washington, DC 20001. |
| 53883 | Control Solutions, Inc., 5903 Genoa-Red Bluff Rd., Pasadena, TX 77507–1041. |
| 75341 | Osmose Utilities Services, Inc., 980 Ellicott St., Buffalo, NY 14209. |
| CA110009 | Airgas Specialty Gases, Inc., 2530 Sever Rd., Suite 300, Lawrenceville, GA 30043. |
| GA080007, MI060004, VA080007 | Syngenta Crop Protection, LLC, D/B/A Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27149–8300. |
| GA080011, KY080024, VA080009 | Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200 Walnut Creek, CA 94596. |
| ID060014, MT950003, NV040003, NV060007, SD070001 | Hacco, Inc. 110 Hopkins Dr., Randolph, WI 53956–1316. |
| MI000003 | Arysta Lifescience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513. |
| NV080003 | BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709–3528. |
| WA060011 | Nippon Soda Co. Ltd., Agent: Nisso America Inc., 45 Broadway, Suite 2110, New York, NY 10006. |

## III. Summary of Public Comments Received and Agency Response to Comments

The Agency received comments on the notice but none merited its further review of the requests. The comments received were general comments on pesticide regulation and were not specific to the products in this order. For this reason, the Agency does not believe that the comments submitted during the comment period merit further review or a denial of the requests for voluntary cancellation.

## IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are cancelled. The effective date of the cancellations that are the subject of this notice is July 25, 2012. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

## V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** issue of January 11, 2012 (77 FR 1679) (FRL–9328–3). The comment period closed on July 9, 2012.

## VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until July 25, 2013, which is 1 year after the publication of the Cancellation Order in the **Federal Register.** Thereafter, the registrants are prohibited from selling or distributing products

listed in Table 1, except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II. until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: July 18, 2012.

**Richard P. Keigwin, Jr.,**

*Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2012–18132 Filed 7–24–12; 8:45 am]

**BILLING CODE 6560–50–P**

## EXPORT-IMPORT BANK OF THE U.S.

**[Public Notice 2012–0345]**

### Agency Information Collection Activities: Comment Request

**AGENCY:** Export-Import Bank of the U.S.

**ACTION:** Submission for OMB review and comments request.

*Form Title:* Annual Competitiveness Report Survey of Exporters and Bankers.

**SUMMARY:** The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Our customers will be able to submit this form electronically.

Ex-Im Bank plans to invite approximately 300 U.S. exporters and commercial lending institutions that have used Ex-Im Bank's short-, medium-, and long-term programs over the previous calendar year with an electronic invitation to participate in the online survey. The proposed survey, modified from the previous survey to account for new policies and programs, will ask participants to evaluate the competitiveness of Ex-Im Bank's programs and how the programs compare to those of foreign credit agencies. Ex-Im Bank will use the responses to develop an analysis of the Bank's competitiveness.

The survey form can be viewed at *www.exim.gov/pub/EIB00-02.pdf.*

**DATES:** Comments should be received on or before (60 days after publication) to be assured of consideration.

**ADDRESSES:** Comments may be submitted through *WWW.Regulations.Gov* or mailed to Piper Moffatt, Export Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

**SUPPLEMENTARY INFORMATION:**

*Titles and Form Number:* EIB 00–02 Annual Competitiveness Report Survey of Exporters and Bankers.

*OMB Number:* 3048–0004.

*Type of Review:* Renewal.

*Need and Use:* This information will be used to fulfill the statutory mandate (Export-Import Bank Act of 1945, as amended, 12 U.S.C. 635) which directs Ex-Im Bank to report annually to the U.S. Congress any action taken toward providing export credit programs that are competitive with those offered by official foreign export credit agencies. The Act further stipulates that the annual report on competitiveness should include the results of a survey of U.S. exporters and U.S. commercial lending institutions which provide export credit to determine their experience in meeting financial competition from other countries whose exporters compete with U.S. exporters.

*Affected Public:* This form affects entities involved in the export of U.S. goods and services.

*Annual Number of Respondents:* 300.

*Estimated Time per Respondent:* 1.5 hours.

*Government Burden Hours:* 275 hours.

*Estimate Government Burden Cost:* $10,648.00.

*Frequency of Reporting or Use:* Yearly.

Dated: July 19, 2012.

**Sharon A. Whitt,**

*Agency Clearance Officer.*

[FR Doc. 2012–18124 Filed 7–24–12; 8:45 am]

**BILLING CODE 6690–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[IB Docket No. 04–286; DA 12–1154]**

### First Meeting of the Advisory Committee for the 2015 World Radiocommunication Conference

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the initial meeting of the WRC–15 Advisory Committee will be held on August 9, 2012, at the Federal Communications Commission. The purpose of the meeting is to begin preparations for the 2015 World Radiocommunication Conference.

**DATES:** August 9, 2012; 9 a.m.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Room TW–C305, Washington DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Alexander Roytblat, Designated Federal Official, WRC–15 Advisory Committee, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

**SUPPLEMENTARY INFORMATION:** As it initiates preparations for the next World Radiocommunication Conference that has been preliminarily scheduled for the year 2015 (WRC–15), the Federal Communications Commission (FCC) has amended the charter of its Advisory Committee for the 2012 Radiocommunication Conference. The Advisory Committee has been renamed the Advisory Committee for the 2015 Radiocommunication Conference (or simply, WRC–15 Advisory Committee), and its scope of activities have been amended to address issues contained in the agenda for WRC–15. The Federal Communications Commission (FCC) established the WRC–15 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2015 World Radiocommunication Conference (WRC–15).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the first meeting of the WRC–15 Advisory Committee. Additional information regarding the WRC–15 Advisory Committee is available on the Advisory Committee's Web site, *http://www.fcc.gov/wrc-15*. The meeting is open to the public.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice; last minute requests will be accepted, but may not be possible to accommodate.

The proposed agenda for the first meeting is as follows:

**Agenda**

**First Meeting of the WRC–15 Advisory Committee**

Federal Communications Commission, 445 12th Street SW., Room TW–C305, Washington, DC 20554, August 9, 2012; 9:00 a.m.

1. Opening Remarks
2. Approval of Agenda
3. Advisory Committee Structure
4. WRC–15 Preparatory Process Timeline
5. Other Business

Federal Communications Commission.

**Mindel De La Torre,**

*Chief, International Bureau.*

[FR Doc. 2012–18184 Filed 7–24–12; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreement are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 010071–039.

*Title:* Cruise Lines International Association Agreement.

*Parties:* AMA Waterways; American Cruise Lines, Inc.; Avalon Waterways; Azamara Cruises; Carnival Cruise Lines; Celebrity Cruises, Inc.; Costa Cruise Lines; Crystal Cruises; Cunard Line; Disney Cruise Line; Holland America Line; Hurtigruten, Inc.; Louis Cruises; MSC Cruises; NCL Corporation; Oceania Cruises; Paul Gauguin Cruises; Pearl Seas Cruises; Princess Cruises; Regent Seven Seas Cruises; Royal Caribbean International; Seabourn Cruise Line; SeaDream Yacht Club; Silversea Cruises, Ltd.; Uniworld River Cruises, Inc.; and Windstar Cruises.

*Filing Party:* Christine Duffy, President; Cruise Lines International Association; 910 SE 17th Street, Suite 400; Fort Lauderdale, FL 33316.

*Synopsis:* The amendment reorganizes the terms of the agreement governing membership, organization, and funding of CLIA.

By Order of the Federal Maritime Commission.

Dated: July 20, 2012.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2012–18173 Filed 7–24–12; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

AGS Cargo USA, Inc (NVO), 3640 NW 115th Avenue, Doral, FL 33178, Officers: Nathalie Diaz, Secretary, (Qualifying Individual), Alexandre Gulla Da Silva, President, Application Type: New NVO License.

Albarq Shipping Services Inc. (NVO), 8151 Electric Avenue, Stanton, CA 90680, Officers: Denise E. Scott, President, (Qualifying Individual), Khalid Elbarq, Vice President, Application Type: New NVO License.

Always Affordable Shipping LLC (NVO), 16 Angela Circle, Hazlet, NJ 07730, Officer: Christopher L. Loux, Member, (Qualifying Individual), Application Type: New NVO License.

Ameripack Services, Inc. (NVO & OFF), 4696 NW 74 Avenue, Miami, FL 33166, Officers: Willians J. Herrera, President, (Qualifying Individual), Leopoldo Herrera, Vice President, Application Type: Add OFF Service & QI Change.

Brian Hsu dba The Filipino Cargo International (NVO), 1273 Industrial Parkway West, #420, Hayward, CA 94544, Officer: Brian Hsu, Sole Proprietor, (Qualifying Individual), Application Type: New NVO License.

Brookfield Relocation Inc. (OFF), Two Corporate Drive, Suite 440, Shelton, CT 06484, Officers: Thomas W. Weimer, Assistant Vice President, (Qualifying Individual), Richard Schwartz, Director, Application Type: New OFF License.

Brox Logistics USA, LLC (NVO,) 244 5th Avenue, V–280, New York, NY 10001, Officers: Vladimir Eremin, Managing Member, (Qualifying Individual), Application Type: New NVO License.

C&F Worldwide Agency Corporation(NVO), Cerretera 848 KM 3.2, Saint Just, Carolina, PR 00983, Officers: Jose E. Del Cueto Gonzalez, President, (Qualifying Individual), Thomas D. Torcomian, General Manager, Application Type: Transfer of License to LEL Caribe, LLC, dba C&F Worldwide Agency Corporation, dba C&F Worldwide Logistics.

Cargois Inc. dba Star Vision Logis (NVO), 2700 Coyle Avenue, Elk Grove Village, IL 60007, Officers: Souck-Sin Lee, Treasurer, (Qualifying Individual), Jong H. Kwon, President, Application Type: Change Trade Name to SV Logis Inc & Add OFF Service.

Chemlogix Global LLC dba Vistalogix Global (NVO & OFF), 1777 Sentry Parkway West, Abington Hall 300, Blue Bell, PA 19422, Officers: Marc A. Lombardi, Vice President, (Qualifying Individual), John S. Hamilton, Chairman, Application Type: QI Change.

CMA CGM Logistics USA LLC (NVO & OFF), 1 Meadowlands Plaza, Suite 201, East Rutherford, NJ 07073, Officers: Simon Preisler, General Manager, (Qualifying Individual), Frank J. Baragona, Director, Application Type: QI Change. Frank Obeng dba First Class Exporters (OFF), 1147 Wilingham, East Point, GA 30344, Officer: Frank Obeng, Sole Proprietor, (Qualifying Individual), Application Type: New OFF License.

Logistics International Parcel Shipping Transport LLC (NVO), 182 West Melrose Avenue, #2, South Elgin, IL 60177, Officers: Marilou Pedres, Operation Manager, (Qualifying Individual), Jroel G. Pedres, President, Application Type: New NVO License.

Movage, Inc. (NVO), 135 Lincoln Avenue, Bronx, NY 10454, Officers: Traveler Schinz-Devico, Vice President, (Qualifying Individual), Bajo Vujovic, President, Application Type: Add Trade Name of Movage International.

Platinum Cargo Logistics Inc. (NVO & OFF), 1520 Commerce Drive, Elgin, IL 60123, Officers: Andrew R. Mancione, Vice President, (Qualifying Individual), Kelli Spiri, President, Application Type: QI Change.

Sincere Shipping LLC (OFF), 85 Brown Pelican Drive, Savannah, GA 31419, Officer: Megan Leggett, Member, (Qualifying Individual), Application Type: New OFF License.

The Relocation Freight Corporation of America (OFF), Two Corporation Drive, Suite 440, Shelton, CT 06484,

Officers: Thomas W. Weimer, Assistant Vice President, (Qualifying Individual), Earl Lee, President, Application Type: New OFF License.

Trans Atlantic Logistics Inc (OFF), 87–02 168th Place, Jamaica, NY 11432, Officer: Khalid Mahmud, President, (Qualifying Individual), Application Type: New OFF License.

Transportation Management Inc. (NVO & OFF), 13111 Atlantic Blvd., #1, Jacksonville, FL 32225, Officers: Mitchell D. Swanson, Vice President, (Qualifying Individual), Larry Berry, President, Application Type: New NVO & OFF License.

Warehouse Division of World Terminal and Distributing Corporation dba WTDC (NVO & OFF), 2801 NW. 74 Avenue, #100, Miami, FL 33122, Officer: Ralph Gazitua, President, (Qualifying Individual), Application Type: New NVO & OFF License.

By the Commission.

Dated: July 20, 2012.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2012–18177 Filed 7–24–12; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been reissued pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101).

*License No.:* 016201N.

*Name:* Delta Line International, Inc.

*Address:* 7970 NW 56th Street, Miami, FL 33166.

*Date Reissued:* June 14, 2012.

*License No.:* 017267NF.

*Name:* Just In Time Services, Inc.

*Address:* 11380 NW 34th Street, Suite 100, Doral, FL 33178.

*Date Reissued:* June 21, 2012.

**Vern W. Hill,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2012–18178 Filed 7–24–12; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary license has been revoked pursuant to section 40901 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

*License No.:* 016914N.

*Name:* Air Sea Cargo Network, Inc.

*Address:* 6345 Coliseum Way, Oakland, CA 94621.

*Date Revoked:* June 6, 2012.

*Reason:* Voluntary surrender of license.

**Vern W. Hill,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2012–18179 Filed 7–24–12; 8:45 am]

**BILLING CODE 6730–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0001]**

### Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Cardiovascular and Renal Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on September 13, 2012, from 8 a.m. to 5 p.m.

*Location:* FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

*Contact Person:* Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Avenue, WO31–2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *CRDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), to find out information regarding FDA advisory committee information. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

*Agenda:* During the morning session, the committee will discuss new drug application (NDA) 203009, lixivaptan, submitted by Cardiokine Biopharma, LLC, for the proposed indication of the treatment of symptomatic hypervolemic and euvolemic hyponatremia associated with heart failure and syndrome of inappropriate antidiuretic hormone (SIADH), respectively.

During the afternoon session, the committee will discuss NDA 203826, phenylephrine hydrochloride injection, USP, submitted by West-Ward Pharmaceutical Corp., to increase blood pressure in acute hypotensive states, such as shock and peri-operative hypotension.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 29, 2012. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m., and 3:30 p.m. to 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 21, 2012. Time allotted for each presentation may be limited. If

the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 22, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 19, 2012.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2012–18095 Filed 7–24–12; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–N–0001]**

### Risks and Benefits of Hydroxyethyl Starch Solutions; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled: ''Risks and Benefits of Hydroxyethyl Starch Solutions.'' The purpose of this public workshop is to discuss new information on the risks and benefits of FDA-approved hydroxyethyl starch (HES) solutions.

The public workshop has been planned in partnership with the Department of Defense and the National Heart, Lung and Blood Institute, National Institutes of Health, and will include presentations and panel discussions with experts from academia, regulated industry, government, and other stakeholders.

*Date and Time:* The public workshop will be held on September 6, 2012, from 8:00 a.m. to 5:30 p.m., and September 7, 2012, from 8:30 a.m. to 1:00 p.m.

*Location:* The public workshop will be held at the Masur Auditorium, National Institutes of Health, 10 Center Dr., Bldg. 10, Clinical Center, Bethesda, MD 20892.

*Contact Person:* Jennifer Scharpf, Center for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, Phone: 301–827–6128, FAX: 301–827–2843, email: *CBEROBRRWorkshops@fda.hhs.gov*.

*Registration:* Mail, fax, or email your registration information (including name, title, firm or organization name, address, telephone and fax numbers, and email address) to Jennifer Scharpf (see *Contact Person*) by August 15, 2012. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:00 a.m. If you need special accommodations due to a disability, please contact Jennifer Scharpf (see *Contact Person*) at least 7 days in advance.

**SUPPLEMENTARY INFORMATION:** HES solutions are synthetic colloids administered intravenously to patients to maintain or expand plasma volume when clinically indicated. Currently, three such products are approved by FDA. HES solutions are indicated for the treatment of hypovolemia (low blood volume) that may result from trauma, sepsis, burns, or anaphylaxis. These products are used in the prehospital and hospital environment in both military and civilian settings. This public workshop will serve as a forum for discussing new information on the potential effects of HES solutions on hemostasis and on the renal system.

The first day of the public workshop will include presentations and panel discussions on the following topics: (1) The risks and benefits associated with HES solutions in different clinical settings and (2) the findings of two recent major clinical studies conducted on HES solutions.

The second day of the public workshop will include a summary discussion and presentations concerning the overall safety profile of HES solutions and a discussion of future clinical research for the evaluation of HES solutions.

*Transcripts:* Please be advised that as soon as possible after a transcript of the public workshop is available, it will be accessible at: *http://www.fda.gov/BiologicsBloodVaccines/NewsEvents/WorkshopsMeetingsConferences/TranscriptsMinutes/default.htm*. Transcripts of the public workshop may also be requested in writing from the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857.

Dated: July 17, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–18110 Filed 7–24–12; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Novel Analogues of the Asthma Drug Fenoterol as Liver and Brain Cancer Therapeutic Agents**

*Description of Technology:* Available for licensing are specific fenoterol analogues, such as MNF, that inhibit the growth of various types of cancers, including brain, liver, colon, and lung tumors. MNF acts as an agonist of the

GPRSS cannabinoid (CB) receptor and, as such, represents one of the first potential drugs directed at this target. MNF crosses the blood brain barrier and initial toxicity studies indicate that it has few off-target effects. These new analogues can be used to treat CB receptor related disorders and diseases, and in particular GRPSS-related disorders and diseases, including brain and liver cancers for which there are no current effective treatments.

*Potential Commercial Applications:*

- A new class of compounds that can be used to treat cannabinoid receptor related disorders and diseases.
- Treatments for liver, brain, colon, and lung cancers.

Competitive Advantages:

- Able to cross the blood:brain barrier.
- Few side-effects.
- Broad range of therapeutic activity.
- Can be formulated for oral administration.

*Development Stage:*

- Pre-clinical.
- *In vitro* data available.
- *In vivo* data available (animal).

*Inventors:* Irving Wainer, Michel Bernier, Rajib Paul (all of NIA).

*Publications:*

1. Paul RK, *et al.* Cannabinoid receptor activation correlates with the pro-apoptotic action of the beta2-adrenergic agonist (R,R')-4'-methoxy-1-naphthylfenoterol. J Pharmacol Exp Ther., in press.
2. Paul RK, *et al.* Negative regulation of GPR–55-mediated ligand uptake and cellular motility by (R,R')-4'-methoxy-1-napthylfenoterol. Br J Pharmacol., in preparation.
3. Paul RK, *et al.* The role of GPR55 and apoptotic signalling pathways in (R,R')-4'-methoxy-1-naphthyfenoterol. Cancer Res., in preparation.

*Intellectual Property:* HHS Reference No. E–139–2012/0—U.S. Provisional Application No. 61/651,961 filed 25 May 2012.

*Licensing Contact:* Patrick McCue, Ph.D.; 301–435–5560; *mccuepat@mail.nih.gov.*

*Collaborative Research Opportunities:* The IRP/NIA/LCI is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize (R,R')-4'-methoxy-1-naphthylfenoterol for the treatment of brain, liver and colon carcinomas. For collaboration opportunities, please contact Nicole Guyton, Ph.D. at *darackn@mail.nih.gov.*

**High-Affinity Mouse Monoclonal Antibodies to Glypican-3 (GPC3) for Research Use**

*Description of Technology:* Liver cancer is the fifth most common cancer in the world, with hepatocellular cancer (HCC) representing the preponderance of these liver cancers. As with many cancers, positive prognosis for a patient diagnosed with HCC correlates with the early detection of the disease. Unfortunately, HCC is usually detected at a late stage in its development, leading to poor prognosis for most patients. As a result, there is great interest and value in developing new agents which can detect the presence of HCC in a patient at an early stage.

Glypican-3 (GPC3) is a cell surface heparan sulfate glycoprotein that is expressed on the vast majority of HCC cells. The correlation between GPC3 expression and HCC makes GPC3 an attractive candidate for studying the disease progression and treatment of HCC. The presence, progression and treatment of this disease can potentially be monitored by tracking the level of expression of GPC3 on cells. This can be accomplished using monoclonal antibodies which recognize only GPC3, particularly the cell surface domain of the protein. This invention concerns the generation of several monoclonal antibodies that are specific for the cell surface domain of GPC3 (YP6, YP7, YP8, YP9 and YP9.1), and which can be used as research reagents for studying the role of GPC3 in HCC.

*Potential Commercial Applications:* Antibodies for use as research materials, including:

- Detection of cells that express GPC3 for monitoring HCC disease progression and treatment.
- Immunostaining for tumor imaging.
- ELISA and immunohistochemistry applications.
- Any other antibody-related research use, including immunoprecipitation, western blot analysis, etc.

*Competitive Advantages:*

- Higher binding affinity (subnanomolar levels) than commercially available GPC3 antibodies such as 1G12.
- Recognition of cells with low levels of GPC3 expression.
- Able to bind to wild-type GPC3 (conjugated to heparan sulfate) better than the GPC3 core protein (lacking heparan sulfate).

*Development Stage:*

- Early-stage.
- *In vitro* data available.

*Inventors:* Mitchell Ho et al. (NCI).

*Publications:*

1. Ho M, Kim H. Glypican-3: a new target for cancer immunotherapy. Eur J Cancer. 2011 Feb; 47(3):333–338. [PMID 21112773]
2. Ho M. Advances in liver cancer antibody therapies: a focus on glypican-3 and mesothelin. BioDrugs. 2011 Oct 1; 25(5):275–284. [PMID 21942912]

*Intellectual Property:* HHS Reference No. E–136–2012/0—U.S. Provisional Application No. 61/654,232 filed 01 Jun 2012.

*Related Technology:* HHS Reference No. E–130–2011/0 — U.S. Provisional Application No. 61/477,020 filed 19 Apr 2011; PCT Application No. PCT/US2012/034186 filed 19 Apr 2012.

*Licensing Contact:* David A. Lambertson, Ph.D.; 301–435–4632; *lambertsond@mail.nih.gov.*

*Collaborative Research Opportunity:* The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize cancer diagnostics, isolation of circulating tumor cells, humanization and/or immunoconjugates. For collaboration opportunities, please contact John Hewes, Ph.D. at *hewesj@mail.nih.gov.*

**Self-Assembled Ferritin Nanoparticles Expressing Hemagglutinin as an Influenza Vaccine**

*Description of Technology:* NIH inventors at the Vaccine Research Center have developed a novel influenza virus hemagglutinin (HA)-ferritin nanoparticle influenza vaccine that is easily manufactured, potent, and elicits broadly neutralizing influenza antibodies against multiple strains of influenza. This novel influenza nanoparticle vaccine elicited two types of broadly neutralizing, cross-protective antibodies, one directed to the highly conserved HA stem and a second proximal to the conserved receptor binding site (RBS) of the viral HA, providing a new platform for universal and seasonal influenza. In addition, HA-ferritin nanoparticles can be easily produced from simple expression vectors and without the production of infectious virus in eggs, and will facilitate influenza preparedness in the face of emerging epidemics.

This technology exploits ferritin, a ubiquitous iron storage protein, that self-assembles into spherical nanoparticles and could serve as a scaffold to express a heterologous protein, such as influenza HA, so it mimics a physiologically relevant trimeric viral spike. Immunization with the HA-ferritin nanoparticle elicited neutralizing antibody titers that were >10-fold higher than a matched inactivated vaccine. The immune sera raised by HA-ferritin nanoparticles

expressing a 1999 HA neutralized seasonal H1N1 viruses from 1934 to 2007 and protected ferrets from an unmatched 2007 H1N1 virus challenge. This extended neutralization coverage is partially explained by the presence of both type of antibodies, antibodies directed to the conserved HA stem and against the RBS region. Finally, this ferritin nanoparticle vaccine platform has significant advantages in the ability to utilize specific multimerized spikes and it may be applicable to other viral proteins.

*Potential Commercial Applications:* The ferritin nanoparticles as a vaccine platform can be used to deliver vaccines, such as influenza vaccines, with enhanced magnitude and breadth of the neutralizing antibody responses. This vaccine platform may be applicable to other viral proteins.

*Competitive Advantages:*

- Forms an octahedron consisting of 24 subunits, allowing for greatly increased presentation of heterologous protein on the ferritin nanoparticles surface, compared to other vaccine platforms.
- *In vivo* data in multiple animal models demonstrated induction of broader and more potent antibody responses.
- Vaccine stimulated broadly neutralizing antibodies against the highly conserved epitope on the HA stem region and against the RBS, thus targeting two independent sites of vulnerability on HA.
- Multivalent influenza HA ferritin vaccines have been tested in animal models.
- Ferritin is extremely stable to temperature ranges, pH, detergent and other factors.
- Easily manufactured, will facilitate influenza preparedness in the face of emerging epidemics.

*Development Status:*

- Preclinical.
- *In vitro* data available.
- *In vivo* data available (animal).

*Inventors:* Gary Nabel, Masaru Kanekiyo, Jeffrey C. Boyington, Patrick McTamney (all of NIAID).

*Publication:* Kanekiyo M, et al. A Self-Assembling Influenza Nanoparticle Vaccine Elicits Two Types of Broadly Neutralizing and Cross-protective Antibodies. Manuscript submitted.

*Intellectual Property:*

- HHS Reference No. E–293–2011/0 — U.S. Provisional Application No. 61/538,663 filed 23 Sep 2011.
- HHS Reference No. E–293–2011/1 — U.S. Provisional Application No. 61/661,209 filed 18 Jun 2012.

*Licensing Contact:* Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301–435–4507; *ThalhamC@mail.nih.gov.*

**Salen-Manganese Compounds for Therapy of Viral Infections**

*Description of Technology:* Salen-manganese compounds are synthetic, stable, low toxicity, low cost agents that may provide protection from immune reaction-related oxidative cell damage associated with many illnesses. In particular, oxidative cell damage has been associated with many viral infections including influenza. This invention demonstrates that treating mice with salen-manganese compounds, after lethal pandemic influenza virus infection, significantly enhances survival. Salen-manganese treatment also reduces lung pathology and also improved cellular recovery and repair. Because oxidative damage is observed in many viral infections, administration of salen-manganese compounds may have therapeutic relevance to a wide range of viral infections, in addition influenza. Existing viral therapeutics merely target the infectious viral agent and not the damage caused by the immune system reaction related to infection. Because, salen-manganese treatments target the untapped therapeutic space of infection-induced, immune system-related pathology and have favorable safety and cost profiles, such therapies are ideal candidates for development.

*Potential Commercial Applications:* Viral therapeutics.

*Competitive Advantages:* Synthetic, stable, low toxicity, low cost, untapped therapeutic target space.

*Development Stage:*

- Early-stage.
- Pre-clinical.
- *In vivo* data available (animal).

*Inventors:* John Kash (NIAID), Jeffrey Taubenberger (NIAID), Rodney Levine (NHLBI), Susan Doctrow (Boston University).

*Publications:*

1. Doctrow SR, et al. Salen Manganese Complexes: Multifunctional Catalytic Antioxidants Protective in Models for Neurodegenerative Diseases of Aging. In: Medicinal Inorganic Chemistry, ACS Symposium Series, Vol. 903, Chapter 18, pp 319–347; August 25, 2005. [DOI: 10.1021/bk–2005–0903.ch018.]
2. Schwarz KB. Oxidative stress during viral infection: a review. Free Radic Biol Med. 1996; 21(5):641–9. [PMID 8891667]

*Intellectual Property:* HHS Reference No. E–281–2011/0—U.S. Provisional Application No. 61/558,137 filed 10 Nov 2011.

*Licensing Contact:* Tedd Fenn, J.D.; 301–435–5031; *Tedd.Fenn@nih.gov.*

*Collaborative Research Opportunity:* The NIAID Laboratory of Infectious Diseases, Viral Pathogenesis and Evolution Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact Maryann Puglielli at 301–594–6656.

Dated: July 18, 2012.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2012–18054 Filed 7–24–12; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* September 25, 2012.

*Time:* 8:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Rockville, MD 20852, (Telephone Conference Call).

*Contact Person:* Beata Buzas, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Room 2081, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research

and Research Support Awards, National Institutes of Health, HHS)

Dated: July 18, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–18172 Filed 7–24–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(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 Advisory Council on Alcohol Abuse and Alcoholism.

*Date:* September 19–20, 2012.

*Closed:* September 19, 2012, 5:00 p.m. to 7:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, T–508, Rockville, MD 20852.

*Open:* September 20, 2012, 8:30 a.m. to 2:00 p.m.

*Agenda:* Presentations and other business of the council.

*Place:* National Institutes of Health, 5635 Fishers Lane, T–508, Rockville, MD 20852.

*Contact Person:* Abraham P. Bautista, Ph.D., Executive Secretary, National Institute on Alcohol Abuse & Alcoholism National Institutes of Health, 5635 Fishers Lane, Room 2085, Rockville, MD 20852, 301–443–9737, *bautista@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.niaaa.nih.gov/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: July 18, 2012.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–18171 Filed 7–24–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases (NIAID); Notice of Workshop

**SUMMARY:** The National Institute of Allergy and Infectious Diseases (NIAID), a component of the National Institutes of Health; the Food and Drug Administration (FDA); the Transformational Medical Technologies (TMT); and Biomedical Advanced Research and Development Authority (BARDA) are holding an Animal Model Development Workshop to explore the scientific and regulatory challenges of developing medical countermeasures (MCM) under the ''Animal Rule'' (21 CFR 314.600 for drugs; 21 CFR 601.90 for biological products). The goals of this workshop are to highlight the significant progress made in animal model development for MCMs, review recent case studies of products under development using animal models, and capture lessons learned to inform future animal model development efforts. In addition, the workshop will provide a forum to discuss current challenges and identify potential solutions or mitigation strategies.

**DATES:** The workshop will be held on September 17–18, 2012, at 8 a.m. EST. Participants must register by September 10, 2012.

**ADDRESSES:** The workshop will be held at the NIH Natcher Conference Center, Building 45, 45 Center Drive, Bethesda, Maryland 20892.

**SUPPLEMENTARY INFORMATION:** During the past decade, much progress has been made in the development of candidate medical products to prevent, treat, or diagnose the health effects of exposure to chemical, biological, radiological, and nuclear (CBRN) agents. With the convergence of scientific progress in medical countermeasures (MCMs) development, improvements in containment laboratory infrastructure, technological advances, and additional regulatory guidance, the stage is set for tangible progress in our ability to advance MCMs for CBRN agents. The effects of these efforts were evident in several recent FDA Advisory Committee meetings: *anthrax vaccines (2010), smallpox therapeutics (2011),* and *plague antimicrobials (2012).* Especially promising is the recent emphasis on cooperation among government agencies to leverage resources (scientific, human, and fiscal) in an effort to advance the development of animal models.

A solid regulatory and policy framework for fostering development of well-characterized animal models now exists. The Animal Rule laid the foundation for current efforts. FDA's draft guidance on *Animal Models—Essential Elements to Address Efficacy Under the Animal Rule* (January 2009) built upon that foundation and is currently undergoing substantial revision. More recently, the draft guidance on *Qualification Process for Drug Development Tools* (October 2010) outlined a concrete process for qualifying animal models. However, multiple scientific and regulatory challenges remain in animal model development.

This workshop is designed to explore the unique challenges being faced with the development of animal models for the evaluation of medical countermeasures for CBRN agents, including, but not limited to, the following crosscutting issues:

- Missing or limited data on the pathophysiological mechanisms of disease development in humans, especially with:
  - No recent outbreaks in humans, or outbreaks occur only in remote locations with limited infrastructure and capabilities
  - Altered virulence or other properties of the natural agent
  - A difference between the normal route of exposure and the route likely to be used in a bioterrorism event
- Use of mortality as an endpoint, particularly when case fatality of naturally occurring disease in humans is less than 100 percent
- Incorporation and importance of biomarkers
- Correlates of disease progression
- Definition of supportive care and implementation given:
  - Adequate veterinary care
  - Intervention necessary for model development
  - Intervention to mimic human clinical care
- Acceptability of euthanasia criteria and early study endpoints
- Reproducibility of models

If you are interested in attending, please register at the following link: *https://respond.niaid.nih.gov/conferences/AMDW/Pages/default.aspx* by September 10, 2012. There is no registration fee for the workshop. Early registration is recommended because seating is limited. If you need special accommodations due to a disability, please contact Dr. Judy Hewitt (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the workshop.

**FOR FURTHER INFORMATION CONTACT:** Dr. Judy Hewitt, Office of Biodefense Research Affairs, Division of Microbiology and Infectious Diseases, NIAID, at telephone 301–402–4197 or telefax 301–480–1263 or email *AMworkshopSep2012@mail.nih.gov* (Subject line: Animal Model Workshop).

Dated: July 18, 2012.

**Lawrence A. Tabak,**

*Deputy Director, NIH.*

[FR Doc. 2012–18168 Filed 7–24–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biology.

*Date:* August 14, 2012.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Charles Morrow, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *morrowcs@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Healthcare Delivery and Methodologies.

*Date:* August 28, 2012.

*Time:* 2 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Melinda Jenkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–437–7872, *jenkinsml2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 2012.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–18055 Filed 7–24–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: Use of Glucocerebrosidase Activators for the Treatment of Gaucher Disease and Central Nervous System Proteinopathies, Including Parkinson's Disease

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive evaluation option license to Lysosomal Therapeutics, Inc., a company having a place of business in Boston, Massachusetts, to practice the inventions embodied in U.S. Provisional Patent Application No. 61/420,946, filed December 8, 2010 (HHS Ref. No. E–257–2010/0–US–01) and PCT Patent Application No. PCT/US2011/063928, filed December 8, 2011 (HHS Ref. No. E–257–2010/0–PCT–02), both entitled ''Substituted Pyrazolopyrimidines as Glucocerebrosidase Activators.'' The patent rights in these inventions have been assigned to the United States of America. The prospective exclusive evaluation option license territory may be ''worldwide'', and the field of use may be limited to ''Treatment of Gaucher disease and human central nervous system proteinopathies, including without limitation Parkinson's disease.'' Upon the expiration or termination of the exclusive evaluation option license, Lysosomal Therapeutics, Inc. will have the right to execute an exclusive patent commercialization license which will supersede and replace the exclusive evaluation option license with no greater field of use and territory than granted in the evaluation license.

**DATES:** Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before August 9, 2012 will be considered.

**ADDRESSES:** Requests for copies of the patent application(s), inquiries, and comments relating to the contemplated exclusive license should be directed to: Tara L. Kirby, Ph.D., Senior Licensing and Patenting Manager, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4426; Facsimile: (301) 402–0220; Email: *tarak@mail.nih.gov.* A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published or issued by the United States Patent and Trademark Office or the World Intellectual Property Organization.

**SUPPLEMENTARY INFORMATION:** Gaucher disease is a rare lysosomal storage disease caused by mutations in the glucocerebrosidase (GCase) gene; GCase is localized in the lysosome and is responsible for the breakdown of glucocerebroside, an intermediate in glycolipid metabolism. This technology provides small molecule activators of GCase that facilitate the proper folding of GCase and its transport to the lysosome, without inhibiting its activity in the lysosome. Thus, these compounds are extremely promising candidates for the development of a small molecule drug to treat Gaucher disease. Mutations in the GCase gene have also been associated with the development of Parkinson's disease, and therefore, these compounds may also be useful for the treatment of Parkinson's disease. It is also possible that these compounds could be utilized to treat other proteinopathy-based diseases.

The prospective exclusive evaluation option license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive evaluation option license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written

evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Only applications for a license in the field of use set forth in this notice and filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 18, 2012.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2012–18053 Filed 7–24–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2011–0022]**

### Preliminary Damage Assessment for Individual Assistance Operations Manual (9327.2–PR)

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice of availability.

**SUMMARY:** This document provides notice of the availability of the final *Preliminary Damage Assessment for Individual Assistance Operations Manual* (9327.2–PR). The Federal Emergency Management Agency (FEMA) published a notice of availability and request for comment for the proposed policy on October 13, 2011.

**DATES:** This manual is effective July 18, 2012.

**ADDRESSES:** This final manual is available online at *http://www.regulations.gov* and on FEMA's Web site at *http://www.fema.gov.* The proposed and final manual, all related **Federal Register** Notices, and all public comments received during the comment period are available at *http://www.regulations.gov* under docket ID FEMA–2011–0022. You may also view a hard copy of the final manual at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street SW., Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Grimm, Individual Assistance Director, Individual Assistance Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–212–1000.

**SUPPLEMENTARY INFORMATION:** The *Preliminary Damage Assessment for Individual Assistance Operations Manual* (PDA Manual) was developed to create uniform procedures for performing Individual Assistance (IA) Preliminary Damage Assessments (PDAs), nationwide, in response to an impacted State's request. The primary purpose for conducting IA PDAs is to identify the impact, type, and extent of disaster damages and to determine the impact on individuals and communities while identifying the resources needed for the community to recover.

The PDA is an important first step in the disaster declaration process. The information collected during a PDA will be used by the State to determine if the response and recovery actions will require Federal support. If the Governor determines that the State does not have adequate resources to respond and recover from the disaster, and supplemental Federal assistance is required, the Governor may request a Presidential emergency or major disaster declaration under sections 401 and 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5170 and 5191). The PDA information, along with the Governor's request, is included with the *Regional Administrator's Validation and Recommendation* and is forwarded to FEMA for review. FEMA then prepares a recommendation to the President based on the PDA information and the *Regional Administrator's Validation and Recommendation.* Establishing a single set of PDA procedures ensures that regardless of the location, type of disaster, or FEMA regional office involved, the assessment of damages will be consistent, thorough, and well coordinated.

The PDA Manual supersedes FEMA Manual 9327.1 PR, *Preliminary Damage Assessment for Individual Assistance Operations Manual,* dated April 2005. It incorporates procedures developed and used by individual FEMA regional offices in the course of conducting PDAs throughout the United States in a variety of disasters over several years. It reflects FEMA's extensive experience working with State and local governments. The PDA Manual is intended to set the standard for defining and recording levels of damage, as well as to establish uniformity in the composition of teams and the means by which data is collected.

FEMA received 10 comments on the draft PDA Manual and made revisions accordingly. This final PDA Manual does not have the force or effect of law.

**Authority:** The PDA Manual is consistent with and supports the current plans and procedures of the National Response Framework for implementation of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121 *et seq.* and its implementing regulations in Title 44, Chapter I of the Code of Federal Regulations.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–18133 Filed 7–24–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control No. 1615–0072]**

### Agency Information Collection Activities: Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100, NACARA), Form I–881; Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 30-Day Notice.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 18, 2012, at 77 FR 23271, allowing for a 60-day public comment period. USCIS did not receive comments in response to this information collection notice.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 24, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Coordination

Division, Office of Policy and Strategy, Clearance Office, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov.* When submitting comments by email, please make sure to include the OMB Control Number 1615–0072 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2008–0077.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**Note:** The address listed in this notice should *only* be used to submit comments concerning the extension of the Form I–881. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105–100, NACARA).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–881; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* Form I–881 is used by a nonimmigrant to apply for suspension of deportation or special rule cancellation of removal. The information collected on this form is necessary in order for USCIS to determine if it has jurisdiction over an individual applying for this release as well as to elicit information regarding the eligibility of an individual applying for release.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6,272 responses (I–881) at 12 hours per response and 4,329 responses in connection with the biometrics collection at .167 hours (10 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 75,987 annual burden hours.

If you need a copy of the information collection instrument, please visit the Federal eRulemaking Portal Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020; Telephone 202–272–1470.

Dated: July 19, 2012.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2012–18143 Filed 7–24–12; 8:45 am]

BILLING CODE 9111–97–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[OMB Control No. 1615–0104]**

### Agency Information Collection Activities: Petition for U Nonimmigrant Status, Form I–918, and Supplements A and B Form I–918, Extension of a Currently Approved Information Collection; Comment Request

**ACTION:** 30-day notice.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on May 9, 2012, at 77FR 27241, allowing for a 60-day public comment period. USCIS received a comment in connection with that information collection notice.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 24, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Coordination Division, Office of Policy and Strategy, Clearance Office, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted to DHS via email at *uscisfrcomment@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov.* When submitting comments by email, please make sure to include the OMB Control Number 1615–0104 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2010–0004.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking

Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

**Note:** The address listed in this notice should *only* be used to submit comments concerning the extension of the Form I–881. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition for U Nonimmigrant Status; and Supplement A and B.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–918; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* This application permits victims of certain qualifying criminal activity and their immediate family members to apply for temporary nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–918—16,768 responses at 5 hours per response; Supplement A—10,033 responses at 1.5 hour per response; Supplement B—16,768 responses at 1 hour per response, as well as 25,000 biometric-related responses at .167 hours (10 minutes)

(6) *An estimate of the total public burden (in hours) associated with the collection:* 119,833 annual burden hours. If you need a copy of the information collection instrument, please visit the Federal eRulemaking Portal Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Coordination Division, Office of Policy and Strategy, 20 Massachusetts Avenue NW., Washington, DC 20529; Telephone 202–272–1470.

Dated: July 19, 2012.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2012–18144 Filed 7–24–12; 8:45 am]

**BILLING CODE 9111–97–P**

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[Form I–485 and Supplements A, C, and E; OMB Control Number 1615–0023]**

### Agency Information Collection Activities: Application to Register Permanent Residence or Adjust Status; Revision of a Currently Approved Collection.

**ACTION:** 60-day notice of information collection under review.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 24, 2012.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Office of Policy and Strategy, Laura Dawkins, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2009–0020.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

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

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application to Register Permanent Residence or Adjust Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–485 and Supplements A, C, and E; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary*: Individuals or Households. The information collected is used to determine eligibility to adjust status under section 245 of the Immigration and Nationality Act.

USCIS will be combining The Haitian Refugee Immigration Fairness Act (HRIFA) Instructions for Form I–485, Supplement C; OMB Control No. 1615–0024, in Form I–485 instructions under OMB Control No. 1615–0023.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form I–485—614,921 responses at 6 hours and 15 minutes (6.25) per response; Supplement A—3,888 responses at 13 minutes (.216) per response; Supplement C—2,000 responses at 30 minutes (.50) per response; Supplement E—31,000 responses at one hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,876,095 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov*. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW, Washington, DC 20529, Telephone number 202–272–1740.

Dated:July 19, 2012.

**Laura Dawkins,**

*Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2012–18092 Filed 7–24–12; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Notice of Cancellation of Customs Broker Licenses

**AGENCY:** U.S. Customs and Border Protection, U.S. Department of Homeland Security.

**ACTION:** General Notice.

**SUMMARY:** Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.53), the following Customs broker license and all associated permits are suspended effective July 23, 2012, for a duration of 30-months.

| Name | License # | Issuing port |
|---|---|---|
| Kathleen Ann Cataldi | 14043 | Los Angeles. |

Dated: July 18, 2012.

**Richard F. DiNucci,**

*Acting Assistant Commissioner, Office of International Trade.*

[FR Doc. 2012–18183 Filed 7–24–12; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R6–ES–2012–N113; FF06E24000–123–FXES11130600000D2]**

### Endangered and Threatened Wildlife and Plants; Incidental Take Permit Application; Draft Environmental Assessment and Draft San Luis Valley Regional Habitat Conservation Plan, Colorado

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received applications from the Rio Grande Water Conservation District; Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache Counties; the municipalities of Alamosa, Monte Vista, Del Norte, and South Fork; and the State of Colorado Department of Natural Resources (hereafter collectively referred to as ''the applicants'') for incidental take permits under the Endangered Species Act of 1973, as amended (ESA). We are considering issuing the permits in association with implementation of a regional habitat conservation plan (HCP) in the San Luis Valley, Colorado. Pursuant to the ESA and the National Environmental Policy Act, we announce the availability of the draft HCP and draft environmental assessment for review and comment by the public and Federal, Tribal, State, and local governments.

**DATES:** Written comments must be submitted by September 24, 2012.

**ADDRESSES:** Send written comments by mail to Patty Gelatt, Western Colorado Supervisor, Ecological Services, U.S. Fish and Wildlife Service, 764 Horizon Drive, Building B, Grand Junction, CO 81506, or via email to *sanluisvalleyhcp@fws.gov*. You also may send comments by facsimile to (970) 245–6933. The draft HCP and EA are available on our Colorado Ecological Services Web site at *http://www.fws.gov/coloradoES/SLV-HCP.html*. You also may review copies of these documents during regular business hours at the Western Colorado Ecological Services Office (WCESO) (see **ADDRESSES** above). If you do not have access to the Web site or cannot visit our office, you may request copies by telephone at (970) 243–2778 or by letter to WCESO.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry Ireland, U.S. Fish and Wildlife Service (see **ADDRESSES** above), (970) 243–2778 extension 16.

**SUPPLEMENTARY INFORMATION:** The applicants have submitted permit applications to us for incidental take of the federally endangered southwestern willow flycatcher (*Empidonax traillii extimus*) (flycatcher) and western U.S. distinct population segment of the yellow-billed cuckoo (*Coccyzus americanus*) (cuckoo), a candidate for listing under the ESA (16 U.S.C. 1531 *et al.*). The permits would cover routine activities concerning agriculture, small community infrastructure, and riparian conservation and restoration in the San Luis Valley. The HCP provides a regional conservation strategy to minimize and mitigate the impacts of the potential incidental take.

This notice is provided pursuant to section 10(c) of the ESA and National

Environmental Policy Act (NEPA) regulations (40 CFR 1506.6; 43 CFR part 46). We are requesting comments on the proposed HCP and our consideration as to whether the draft HCP meets the permit issuance criteria under section 10(a)(1)(B) of the ESA (16 U.S.C. 1531 *et seq.*). We also have prepared a draft EA to comply with NEPA (42 U.S.C. 4321 *et seq.*), and will evaluate whether the proposed action, issuance of permits to the Applicants, and other alternatives in the draft EA will cause significant impacts to the quality of the human environment and whether the EA is adequate to support a Finding of No Significant Impact (FONSI), or whether an Environmental Impact Statement (EIS) is necessary.

**Background**

Section 9 of the ESA and its implementing Federal regulations prohibit ''take'' of species listed as threatened and endangered. Take is defined under the ESA to include actions that harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 U.S.C. 1538). Harm includes significant habitat modifications or degradation where it actually kills or injures wildlife by significantly impairing behavioral patterns, such as breeding, feeding, or sheltering (50 CFR 17.3). Under specified circumstances, the Service may issue permits to take listed species incidental to, and not the purpose of, carrying out otherwise lawful activities. Section 10(a)(1)(B) of the ESA and regulations at 50 CFR 17.22 and 17.32 contain provisions for issuing permits to non-Federal entities for incidental take of listed species, provided that an HCP is prepared and the Service determines the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such take;
- The applicant will develop an HCP and ensure that adequate funding for the HCP will be provided;
- The take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will implement any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

As part of the applications for permits to authorize incidental take, the District has submitted a draft HCP on its own behalf and on behalf of the other applicants. The proposed activities covered by the draft HCP include operation, maintenance, and construction of diversions, ditches, canals, roads, bridges, and utility lines; livestock grazing and agricultural practices; tamarisk and noxious weed control; and floodplain maintenance near towns and cities. Rather than individual landowners seeking their own permits for these activities on a case-by-case basis to avoid liability for take under the ESA, the draft HCP is designed as a regional conservation plan that proposes to cover landowners for the suite of activities throughout the San Luis Valley for a 30-year permit term. The District proposes to coordinate implementation of the HCP's comprehensive conservation strategy for the plan area, and individual permits would be issued to each of the applicants. Each of the counties would pass HCP-enabling land-use ordinances that would address implementation of the HCP's conservation measures and authorization of take for landowners. The counties would ensure compliance with HCP covered activities through these ordinances. The HCP includes measures to mitigate the habitat impacts of the covered activities through riparian habitat conservation, enhancement, and management measures. As the HCP administrator, the District would be responsible for implementation of the mitigation measures. Habitat monitoring is proposed to ensure that the habitat quality of mitigation lands is sufficient to offset impacts and would track long-term trends. This regional conservation approach is intended to provide increased efficiency and effectiveness in the long-term protection and conservation of the flycatcher and cuckoo and their habitat while streamlining ESA compliance for the continuation of agricultural and other economic activities in the San Luis Valley.

The draft HCP's area comprises the entire San Luis Valley within Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache Counties. The plan area boundary follows the lower edge of U.S. Forest Service lands in most places or county lines. The size of the plan area is about 2.9 million acres and includes about 250 miles of streams in the Rio Grande watershed.

**National Environmental Policy Act**

We published a notice of intent to prepare an EA or EIS for the proposed San Luis Valley HCP in the **Federal Register** on January 7, 2005 (70 FR 1457), seeking comment on the scope of issues and alternatives for an EA or EIS. We also conducted a public scoping meeting in Alamosa, Colorado, on January 13, 2005. We considered public input from this process during development of the draft HCP and draft EA. We received four comment letters during the public scoping period: One each from the Colorado Division of Water Resources, the Alamosa Mosquito Control District, the San Luis Valley Water Conservancy District, and the Alamosa River Restoration Project. Commenters provided information on their activities for consideration to be covered by the HCP. The letters were in support of developing the HCP or were neutral. Comments made during the scoping meeting addressed the HCP process and implications for property owners. We determined that preparing a draft EA was appropriate because we do not anticipate significant impacts to the human environment that would require an EIS.

In compliance with the NEPA, we analyzed the impacts of implementing the HCP, issuance of the permits, and a reasonable range of alternatives in the draft EA. Based on these analyses and any new information resulting from public comment on the proposed action, we will determine if issuance of the permits would cause any significant impacts to the human environment. After reviewing public comments, we will evaluate whether the proposed action and alternatives in the draft EA are adequate to support a FONSI under the NEPA. We now make the draft EA available for public inspection online or in person at the Service's WCESO (see **ADDRESSES**).

The NEPA requires that a range of reasonable alternatives to the proposed action be described. The draft EA analyzes three alternatives that were derived from discussions with the District during the development of the HCP. We analyzed the following three alternatives in the draft EA:

- *No Action.* In this alternative, we would not issue permits to the applicants. Rather, the status quo for ESA compliance would remain, whereby landowners would choose to apply for individual permits for specific projects and ongoing activities in the San Luis Valley on a case-by-case basis.
- *Public Land Mitigation HCP.* This alternative is similar to the proposed alternative in that it would provide a single regional HCP covering the same activities and providing the same permitting structure. However, this alternative shifts emphasis of habitat restoration and enhancement to public lands, coupled with voluntary measures to minimize impacts on private lands.
- *San Luis Valley Regional HCP.* This is currently identified as the proposed alternative and is described in Background.

**Next Steps**

We will evaluate the submitted comments and revise the HCP and EA, as appropriate. In compliance with section 7(a)(2) of the ESA, we will analyze whether issuance of the permits would jeopardize listed, proposed, or candidate species or adversely modify any designated or proposed critical habitat. We will then determine whether the permit applications meet the requirements of section 10(a) of the ESA. We will use the results of all these analyses in a final findings document to determine whether to issue the permits. Pursuant to section 10(a)(1)(b) of the ESA, we will issue the permits to the applicants if the requirements are met.

**Public Comments**

We invite the public to comment on the proposed HCP and draft EA during a 60-day public comment period ending on the date specified above in **DATES**. Comments can be submitted to the WCESO (see **ADDRESSES**). All comments received, including names and addresses, will become part of the administrative record and may be made available to the public. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may request at the top of your document that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 3, 2012.

**Bridget F. Fahey,**

*Acting Assistant Regional Director—Ecological Services, Mountain-Prairie Region, Denver, Colorado.*

[FR Doc. 2012–18137 Filed 7–24–12; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–923–1310–FI; WYW156551]**

### Proposed Reinstatement of Terminated Oil and Gas Lease WYW156551, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from EnCana Oil & Gas (USA) for competitive oil and gas lease WYW156551 for land in Natrona County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. 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 lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW156551 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

**Julie L. Weaver,**

*Chief, Fluid Minerals Adjudication.*

[FR Doc. 2012–18022 Filed 7–24–12; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–923–1310–FI; WYW174754]**

### Proposed Reinstatement of Terminated Oil and Gas Lease WYW174754, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Hot Springs Resources, Ltd., for competitive oil and gas lease WYW174754 for land in Natrona County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. 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 lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW174754 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

**Carmen E. Lovett,**

*Land Law Examiner.*

[FR Doc. 2012–18027 Filed 7–24–12; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–923–1310–FI; WYW154148]**

### Proposed Reinstatement of Terminated Oil and Gas Lease WYW154148, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Marshall & Winston, Inc., for competitive oil and gas lease WYW154148 for land in Carbon County, Wyoming. The petition was filed on time and was accompanied

by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. 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 lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW154148 effective October 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

**Julie L. Weaver,**

*Chief, Branch of Fluid Minerals Adjudication.*

[FR Doc. 2012–18029 Filed 7–24–12; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–923–1310–FI; WYW172987]**

### Proposed Reinstatement of Terminated Oil and Gas Lease WYW172987, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Tyler Rockies Exploration, LTD, for competitive oil and gas lease WYW172987 for land in Natrona and Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. 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 lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW172987 effective August 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

**Debra A. Olsen,**

*Land Law Examiner.*

[FR Doc. 2012–18024 Filed 7–24–12; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–923–1310–FI; WYW179184]**

### Proposed Reinstatement of Terminated Oil and Gas Lease WYW179184, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Legacy Energy, Inc., for competitive oil and gas lease WYW179184 for land in Park County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. 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 lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW179184 effective May 1, 2012, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

**Carmen Lovett,**

*Land Law Examiner.*

[FR Doc. 2012–18025 Filed 7–24–12; 8:45 am]

**BILLING CODE 4310–22–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–776]**

### Certain Lighting Control Devices Including Dimmer Switches and Parts Thereof (IV); Decision To Review-In-Part an Initial Determination Granting In-Part Complainant's Motion for Summary Determination of Violation of Section 337, and on Review To Vacate All Portions of the Initial Determination Relating to U.S. Patent No. 5,248,919; Request for Submissions

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part an initial determination (''ID'') (Order No. 18) of the presiding administrative law judge (''ALJ'') granting in-part complainant's motion for summary determination of violation of section 337. The Commission has determined on review to vacate all portions of his ID relating to U.S. Patent

No. 5,248,919 (''the '919 patent'') as moot due to the expiration of the patent on March 31, 2012. The Commission also requests written submissions regarding remedy, bonding, and the public interest, relating to U.S. Patent No. 5,637,930 (''the '930 patent'').

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on June 15, 2011, based on a complaint filed by Lutron Electronics Co., Inc. (''Lutron'') of Coopersburg, Pennsylvania. 76 *FR* 35015–16. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 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 lighting control devices including dimmer switches and parts thereof by reason of infringement of certain claims of the '930 and '919 patents. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following respondents: American Top Electric Corp. (''American Top'') and Big Deal Electric Corp. (''Big Deal''), both of Santa Ana, California; Zhejiang Lux Electric Co. Ltd. (''Zhejiang Lux''), Zhejiang Yuelong Mechanical and Electrical Co. (''Zhejiang Yuelong''), and Wenzhou Huir Electric Science & Technology Co. Ltd. (''Wenzhou Huir''), all of Zhejiang, China; Westgate Manufacturing, Inc. (''Westgate'') of Vernon, California; Elemental LED, LLC (''Elemental'') and Diode LED (''Diode'') both of Emeryville, California; Pass & Seymour, Inc. (''Pass & Seymour'') of Syracuse, New York; and AH Lighting of Los Angeles, California.

On September 9, 2011, the Commission issued notice of its determination not to review the ALJ's ID (Order No. 9) granting Lutron's motion to amend the complaint and notice of investigation to substitute Elemental d/b/a Diode LED (''Elemental'') as a respondent in place of Elemental and Diode. On November 22, 2011 and February 27, 2012, respectively, the Commission issued notices of its determinations not to review the ALJ's IDs (Order Nos. 10 and 15) terminating Pass & Seymour and AH Lighting from the investigation based on consent orders.

On December 12, 2011, the ALJ issued an ID (Order No. 11) finding Elemental in default under Commission rule 210.16(b)(3) based on its own election. On January 17, 2012, the Commission issued notice of its determination to review the ID, and on review to find Elemental in default under Commission rules 210.16(a)(2), (b)(2). Also, on January 17, 2012, Westgate filed a notice electing to default. On March 5, 2012, the ALJ issued an ID (Order No. 17) finding Westgate in default under Commission rules 210.16(a)(2), (b)(2). In the same ID, the ALJ found respondents Big Deal, American Top, Wenzhou Huir, Zhejiang Yuelong, and Zhejiang Lux in default under Commission rule 210.16 for failing to respond to the complaint and notice of investigation, and for failing to respond to his show cause order issued on February 8, 2012 (Order No. 14). On March 21, 2012, the Commission issued notice of its determination not to review his ID finding these six respondents in default.

On January 20, 2012, Lutron filed a motion for summary determination of violation of section 337 pursuant to Commission rule 210.16(c)(2) and requested entry of a general exclusion order with respect to the '930 patent. Lutron also requested entry of a limited exclusion order with respect to the '919 patent directed against the accused products of all defaulting respondents. Lutron further requested cease and desist orders with respect to both asserted patents against all defaulting respondents, except for Westgate. The Commission investigative attorney (''IA'') filed a response supporting much of the motion.

The ALJ issued the subject ID on June 7, 2012, granting in-part the motion for summary determination. The ALJ found that all defaulting respondents met the importation requirement and that complainant satisfied the domestic industry requirement. *See* 19 U.S.C. 1337(a)(1)(B), (a)(2). He found that each of the defaulting respondents' accused products infringe one or more of the asserted claims of the '930 patent, except for one accused product with respect to claim 178. He found that the defaulting respondents infringe the asserted claims of the '919 patent in accordance with Commission rule 210.16(c). The ID also contained the ALJ's recommended determination on remedy and bonding. Specifically, the ALJ did not recommend issuance of a general exclusion order with respect to the '930 patent, and recommended issuance of a limited exclusion order with respect to all defaulting respondents for the asserted claims of both asserted patents. Also, he recommended cease and desist orders directed against respondents Big Deal, American Top, and Elemental with respect to the asserted claims of both asserted patents. The ALJ further recommended that the Commission set a bond of 100 percent of the entered value of the covered products during the period of Presidential review. No petitions for review of the subject ID were filed.

Having examined the record of this investigation, including the ALJ's ID, the Commission has determined to review-in-part the ID. The '919 patent expired on March 31, 2012, which terminated the Commission's jurisdiction as to this patent. *See* 19 U.S.C. § 1337(a)(1)(B)(i). The Commission has therefore determined on review to vacate all portions of the ALJ's ID relating to the '919 patent as moot including his finding of a violation of section 337 with respect to the '919 patent based on infringement. The Commission has determined not to review the remainder of the ID.

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. 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: 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 recommended determination by the ALJ on remedy and bonding.

Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to state the date that the '930 patent expires 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 August 2, 2012. Reply submissions must be filed no later than the close of business on August 9, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to Commission rule 210.4(f), 19 CFR 210.4(f). Submissions should refer to the investigation number (''Inv. No. 337–TA–776'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*).

Any person desiring to submit a document (or portion thereof) 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 section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. 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: July 19, 2012.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2012–18052 Filed 7–24–12; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that on July 13, 2012, a proposed consent decree in *United States, et al.* v. *Chevron U.S.A. Inc., et al.,* Civil Action No. 12–4328 (FSH), was lodged with the United States District Court for the District of New Jersey.

The proposed consent decree will settle claims by the United States and the State of New Jersey relating to alleged violations of Sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414, and the regulations promulgated thereunder pertaining to leak detection and repair (''LDAR'') for hazardous air pollutants, 40 CFR Part 63, Subparts A, H and CC, at an asphalt petroleum refinery owned and operated by Chevron U.S.A. Inc. and Chevron U.S.A. Inc. d/b/a Chevron Products Company in Perth Amboy, New Jersey. The proposed consent decree requires the payment of a $463,750 civil penalty. In addition, although the plant has not refined asphalt since 2008, Chevron agrees to implement an enhanced LDAR program in the event refinery operations restart within the three year time frame of the proposed consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *Chevron U.S.A. Inc., et al.,* D.J. Ref. 90–5–2–1–09627.

During the public comment period, the proposed consent decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy''(*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $11.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

**Maureen Katz,**

*Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2012–18096 Filed 7–24–12; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on July 3, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301

*et seq.* (''the Act''), Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Encompass Digital Media, Stamford, CT; and Vidispine, Kista, SWEDEN, have been added as parties to this venture.

Also, SGI Japan, Tokyo, JAPAN; StorerTV, Mequon, WI; Synthetic Aperture, San Juan Capistrano, CA; Francois Abbe (individual member), Montpellier Cedex, FRANCE; John Luff (individual member), Sewickly, PA; Gary Olson (individual member), New York, NY; and Duane Solem (individual member), Atlanta, GA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notification disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on March 27, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 2012 (77 FR 23754).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2012–18111 Filed 7–24–12; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Sematech, Inc. D/B/A International Sematech

Notice is hereby given that, on June 29, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Sematech, Inc. d/b/a International Sematech (''SEMATECH'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Solid State Equipment LLC, Horsham, PA; and Kumho Petrochemical Co., Ltd., Seoul, REPUBLIC OF KOREA, have been added as parties to this venture. Also, Advanced Semiconductor Engineering, Inc. (''ASE''), Kaoshiung, TAIWAN, has withdrawn as a party to this venture.

In addition, the following have been added as members to International SEMATECH Manufacturing Initiative, Inc. (''ISMI''): Vishay Semiconductor (''Vishay''), Malvern, PA; and Hewlett-Packard Company (''HP''), Palo Alto, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SEMATECH intends to file additional written notifications disclosing all changes in membership.

On April 22, 1988, SEMATECH filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 1988 (53 FR 17987).

The last notification was filed with the Department on March 16, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 13, 2012 (77 FR 22347).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2012–18115 Filed 7–24–12; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on June 28, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Logic Instrument USA, Inc., Owings Mills, MD, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on April 12, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 14, 2012 (77 FR 28405).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2012–18114 Filed 7–24–12; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on June 26, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 31 new standards have been initiated and 17 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/about/sba/feb2012.html, http://standards.ieee.org/about/sba/mar2012.html* and *http://standards.ieee.org/about/sba/may2012.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section

6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on January 10, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 3, 2012 (77 FR 5573).

**Patricia A. Brink,**

*Director of Civil Enforcement, Antitrust Division.*

[FR Doc. 2012–18113 Filed 7–24–12; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Office of Disability Employment Program, National Technical Assistance and Demonstration Center on Preparing Youth With Disabilities for Employment

**AGENCY:** Office of Disability Employment Policy, Department of Labor.

*Announcement Type:* New Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Cooperative Agreements. The full announcement is posted on *http://www.grants.gov*.

*Funding Opportunity Number:* SGA 12–06.

*Key Dates:* The closing date for receipt of applications is August 17, 2012.

**Funding Opportunity Description**

The U.S. Department of Labor (DOL or Department), Office of Disability Employment Policy (ODEP) announces the availability of approximately $1.1 million to fund a cooperative agreement to manage and operate its National Technical Assistance and Demonstration Center on Preparing Youth with Disabilities for Employment (Center). The Center will continue to build upon the work of ODEP's previously funded youth technical assistance center, the National Collaborative on Workforce and Disability for Youth (NCWD/Y).

The Center will provide technical assistance, training, and information to Workforce Investment Act (WIA)-funded youth programs and current and former DOL grantees to aid them in integrating evidence-based effective practices for improving transition results for young people with disabilities enrolled in these programs. The Center will use the Guideposts for Success as a transition framework and recognize that youth, families, educators, workforce professionals and other stakeholders must work together to increase employment expectations for youth with disabilities. The Center will build capacity within and across both generic and disability-specific youth service delivery systems to improve employment and post-secondary education outcomes for youth with disabilities. To accomplish this goal the Center will focus on the following three areas:

- *Career Exploration, Management and Planning:* Providing technical assistance around strategies to improve pathways to further education and careers for youth with disabilities;
- *Youth Development and Leadership:* Increasing the knowledge and leadership skills of youth receiving services from a variety of systems, enabling youth to become engaged stakeholders and skilled contributors to youth serving systems;
- *Professional Development:* Working to increase the capacity of youth-serving systems to provide quality training to staff, which will result in improved services and better outcomes for all youth, including those with disabilities.

The Center will work in collaboration with Federal, state and local agencies across multiple systems including education, workforce, juvenile justice, foster care, transportation, mental health, vocational rehabilitation and others on effective practices and other issues related to the transition of youth. To improve outcomes for youth ages 12 to 24, the Center will utilize social media and other electronic tools to influence its target audience of youth as they transition to adulthood and the people who support them, including their peers, families, educators, workforce professionals, and policymakers. The Center will maintain an accessible Web site containing online resources and publications and will conduct trainings both in person and electronically. The Center will conduct outreach and establish and maintain effective working relationships and collaborations with a broad range of entities with the goal of sharing knowledge and promoting the adoption and implementation of policies and effective practices that improve transition outcomes. The Center will contribute to ODEP's annual performance measures through the development of policies and effective practices, the dissemination of this information, and the promotion of their adoption and implementation.

Funding of up to $1.1 million will be awarded through a competitive process for a 12-month period of performance, with the possibility of up to 4 option years of funding depending on the availability of funds and satisfactory performance.

This solicitation provides background information, describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and outlines the evaluation criteria used as a basis for selecting the grantee.

The full Solicitation for Grant Applications is posted on *http://www.grants.gov* under U.S. Department of Labor/ODEP. Applications submitted through *http://www.grants.gov* or hard copy will be accepted. If you need to speak to a person concerning these grants, you may telephone Cassandra Mitchell at 202–693–4570 (not a toll-free number). If you have issues regarding access to the *http://www.grants.gov* Web site, you may telephone the Contact Center Phone at 1–800–518–4726.

Signed in Washington, DC, this 19th day of July 2012.

**Cassandra R. Mitchell,**

*Grant Officer.*

[FR Doc. 2012–18090 Filed 7–24–12; 8:45 am]

**BILLING CODE 4510–FT–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2012–0019]**

### National Advisory Committee on Occupational Safety and Health (NACOSH)

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

**ACTION:** Request for nominations to serve on NACOSH.

**SUMMARY:** The Assistant Secretary of Labor for Occupational Safety and Health requests nominations for membership on NACOSH. The terms of four NACOSH members will expire on December 8, 2012.

**DATES:** Nominations for NACOSH must be submitted (postmarked, sent or received) by September 10, 2012.

**ADDRESSES:** You may submit nominations for NACOSH, which must include the docket number for this **Federal Register** notice (Docket No. OSHA–2012–0019), by one of the following methods:

*Electronically:* You may submit nominations, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on-line for submitting nominations.

*Facsimile:* If your nomination, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

*Mail, express delivery, hand delivery, messenger or courier service:* Submit your nomination to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). 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.–4:45 p.m., e.t, weekdays.

**FOR FURTHER INFORMATION CONTACT:** *For press inquiries:* Mr. Francis Meilinger, OSHA, Office of Communications, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov*.

*For general information:* Ms. Deborah Crawford, OSHA, Directorate of Evaluation and Analysis, Room N3641, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1932; fax (202) 693–1641; email *crawford.deborah@dol.gov.*

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary of Labor for Occupational Safety and Health invites interested individuals to submit nominations for membership on NACOSH. Section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) authorizes NACOSH to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in accordance with the OSH Act, the Federal Advisory Committee Act (5 U.S.C. App. 2), and regulations issued pursuant to those laws (29 CFR Part 1912a, 41 CFR Part 102–3).

NACOSH is comprised of 12 members, all of whom the Secretary of Labor appoints. Nominations will be accepted for four vacancies. The composition of the Committee and categories of new members to be appointed are as follows:

- Four public representatives—one will be appointed;
- Two management representatives—one will be appointed;
- Two labor representatives—none will be appointed;
- Two occupational safety professional representatives—one will be appointed; and
- Two occupational health professional representatives—one will be appointed.

Pursuant to 29 CFR 1912a.2, the Secretary of Health and Human Services (HHS) will designate one of the occupational health professional representatives for appointment by the Secretary of Labor. Therefore, OSHA will provide to HHS all nominations and supporting materials for that membership category.

NACOSH members serve for staggered two-year terms, unless the member becomes unable to serve, resigns, ceases to be qualified to serve, or is removed by the Secretary of Labor. If a vacancy occurs before a term expires, the Secretary may appoint a new member who represents the same interest as the predecessor to serve the remainder of the unexpired term. The Committee meets at least two times a year (29 CFR 1912a.4).

Any interested person or organization may nominate one or more qualified persons for membership on NACOSH. Nominations must include the nominee's name, occupation or current position, and contact information. The nomination also must identify the category that the candidate is qualified to represent, and include a resume of the nominee's background, experience, and qualifications. In addition, the nomination must state that the nominee is aware of the nomination and is willing to serve on NACOSH for a two-year term.

The Secretary of Labor will appoint NACOSH members on the basis of their experience and competence in the field of occupational safety and health (29 CFR 1912a.2). The information received through this nomination process, in addition to other relevant sources of information, will assist the Secretary of Labor in appointing members to serve on NACOSH. In appointing NACOSH members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals.

The U.S. Department of Labor is committed to equal opportunity in the workplace and seeks broad-based and diverse NACOSH membership. The Department will conduct a basic background check of nominees before their appointment using publicly available, Internet-based sources.

## Public Participation—Submission of Nominations and Access to Docket

You may submit nominations (1) electronically at *http://www.regulations.gov,* 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 docket number for this **Federal Register** notice (OSHA Docket No. OSHA–2012–0019). You may supplement electronic nominations by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit them to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic nomination by name, date, and docket number so OSHA can attach them to your nomination.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of nominations. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office (see **ADDRESSES**).

OSHA posts submissions without change at *http://www.regulations.gov*. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birth dates. 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 *http://www.regulations.gov*. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* to submit comments and access the docket is available on that Web site. Contact the OSHA Docket Office for information about materials not available through that Web site and for assistance in using the internet to locate docket submissions.

Electronic copies of this **Federal Register** document also are available at *http://www.regulations.gov*. This document, as well as news releases and other relevant information, are available at OSHA's Web site at *http://www.osha.gov*.

## Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), the Federal Advisory Committee Act (5 U.S.C. App. 2); 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor's Order No. 1–2012 (77 FR 3912, 1/25/2012).

Signed at Washington, DC on July 20, 2012.

**David Michaels,**

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

[FR Doc. 2012–18174 Filed 7–24–12; 8:45 am]

**BILLING CODE 4510–26–P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Sunshine Act Meetings; OPIC Annual Public Hearing

**TIME AND DATE:** 2:00 p.m., Thursday, September 6, 2012.

**PLACE:** Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

**STATUS:** Hearing OPEN to the Public at 2:00 p.m.

**PURPOSE:** Annual Public Hearing to afford an opportunity for any person to present views regarding the activities of the Corporation.

**Procedures**

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5:00 p.m., Wednesday, August 29, 2012. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5:00 p.m., Wednesday, August 29, 2012. Such statement must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

**CONTACT PERSON FOR INFORMATION:** Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via email at *connie.downs@opic.gov,* or via facsimile at (202) 408–0297.

**SUPPLEMENTARY INFORMATION:** OPIC is a U.S. Government agency that provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for environmentally sound projects that confer positive developmental benefits upon the project country while creating employment in the U.S. OPIC is required by section 231A(c) of the Foreign Assistance Act of 1961, as amended (the ''Act'') to hold at least one public hearing each year.

Dated: July 23, 2012.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 2012–18261 Filed 7–23–12; 4:15 pm]

**BILLING CODE 3210–01–P**

## RAILROAD RETIREMENT BOARD

### Sunshine Act Meetings

Notice is hereby given that the Railroad Retirement Board will hold a meeting on August 8, 2012, 10:00 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

**Portion Open to the Public**

(1) Executive Committee Reports.

(2) Proposal to Coordinate Additional Fact-Finding with Social Security Administration.

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312–751–4920.

Dated: July 20, 2012.

**Martha P. Rico,**

*Secretary to the Board.*

[FR Doc. 2012–18262 Filed 7–23–12; 4:15 pm]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67468; File No. SR–NASDAQ–2012–062]**

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To Modify Its Corporate Governance Rules

July 19, 2012.

**I. Introduction**

On May 17, 2012, The NASDAQ Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify an exception to Nasdaq Rule 5605 that allows a non-independent director of a listed company to serve on its audit committee, compensation committee or nominations committee under exceptional and limited circumstances.[3] The proposal was published for comment in the **Federal Register** on June 5, 2012.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

**II. Description of the Proposal**

Nasdaq's listing rules generally require that a listed company's audit, compensation and nominations committees consist of ''independent directors,'' [5] as defined in Nasdaq Rule 5605(a)(2). A director is specifically prohibited from being considered independent under certain circumstances.[6] For example, a director who is currently, or during the prior three years was, employed by the company, or a director who is a family member of an individual who is, or at any time during the prior three years was, employed as an executive officer [7] by the company, may not be considered independent.[8]

Nasdaq's listing rules also include an exception (''Exception'') to permit a listed company, under exceptional and limited circumstances, with proper disclosure, and under specified conditions to allow one non-independent director to serve on the audit, compensation, or nominations committee for up to two years.[9] Currently, a listed company may not utilize the Exception for a non-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 9 and accompanying text.

[4] *See* Securities Exchange Act Release No. 67076 (May 30, 2012), 77 FR 33261 (SR–NASDAQ–2012–062) (''Notice'').

[5] *See* paragraphs (c)(2)(A), (d), and (e)(1)(B) of Nasdaq Rule 5605.

[6] *See* Nasdaq Rule 5605(a)(2).

[7] ''Executive Officer'' means those officers covered in Rule 16a–1(f) under the Act, 17 CFR 240.16a–1(f). *See* Nasdaq Rule 5605(a)(1).

[8] A director is not, however, barred from being independent if he or she has a family member employed by the company, provided that the family member is not an executive officer of the company. *See* Nasdaq Rule 5605(a)(2)(C).

[9] *See* paragraphs (c)(2)(B), (d)(3) and (e)(3) of Nasdaq Listing Rule 5605. The Exception, however, does not permit a listed company to appoint to its audit committee a director who does not meet the independence criteria set forth in Section 10A(m)(3) of the Exchange Act, 15 U.S.C. 78j–1(m)(3), and Rule 10A–3 thereunder, 17 CFR. 240.10A–3(b)(1). *See also* Nasdaq Rule 5605(c)(2)(B)(ii).

independent director who would otherwise qualify if that director has a family member who is an employee of the listed company, even if that family member is not an executive officer of the company. Nasdaq notes, however, that the same family relationship would not otherwise preclude a director from being considered independent.[10] Nasdaq cites to the example of a director who, until one year ago, was employed by a listed company and who has a son who is a non-executive employee of the company. The director, under ordinary circumstances, cannot be considered independent until three years after the end of the director's employment.[11] Nasdaq notes that it is the director's own prior employment relationship that precludes the director from being considered independent. The son's employment does not preclude the director from being considered independent. Thus, three years after the end of the director's employment, the company's board of directors (''board'') may determine that the director is independent, even if the director's son is still a non-executive employee of the company at that time. Nonetheless, under the current rule, if the listed company sought to appoint this same director to its audit, compensation, or nominations committee pursuant to the Exception prior to the expiration of the three-year lookback period, it would be unable to do so solely because of the son's employment.

Nasdaq believes that this distinction in its listing rules is incongruous. If employment of a director's family member, other than as an executive officer, does not disqualify a director from being considered independent, the Exchange states that it sees no reason to preclude a listed company from relying on the Exception for that same director where the listed company's board determines that the director's membership on the relevant committee is required by the best interests of the company and its shareholders.[12]

Nasdaq proposes to amend paragraphs (c)(2)(B), (d)(3), and (e)(3) of Nasdaq Rule 5605 to allow a director who is a family member of a non-executive employee of a listed company to serve on the listed company's audit committee, compensation committee, or nominations committee under exceptional and limited circumstances as long as the listed company's board concludes that the director's membership on the relevant committee is required by the best interests of the company and its shareholders. Under the proposed rule change, the board would still be required, as under the current version of the Exception, to make an affirmative determination that the non-independent director's membership on a committee is required by the best interests of the company and its shareholders. Nasdaq states that it expects the board, in making such a determination, to consider any family relationship between the non-independent director and a non-executive employee of the company.[13]

Under the proposed rule change, a listed company, other than a foreign private issuer, that relies on the Exception for an audit committee member would continue to be required to comply with the disclosure requirements set forth in Item 407(d)(2) of Regulation S–K.[14] A foreign private issuer that relies on the Exception for an audit committee member would continue to be required to disclose in its next annual report (*e.g.,* Form 20–F or 40–F) the nature of the relationship that makes the committee member not independent and the reasons for the board's determination to rely on the Exception.[15]

Similarly, a listed company that relies on the Exception for a compensation or nominations committee member would continue to be required to disclose either on or through the company's Web site or in the proxy statement for the next annual meeting of the company (or, if the company does not file a proxy, in its Form 10–K or 20–F), the nature of the relationship that makes the committee member not independent and the reasons for the determination to rely on the Exception.[16] A listed company that relies on the Exception for a compensation or nominations committee member also would continue to be required to provide any disclosure required by Instruction 1 to Item 407(a) of Regulation S–K regarding its reliance on the Exception.[17]

Finally, the proposed rule change would replace the term ''officer'' with the defined term ''Executive Officer'' in paragraphs (c)(2)(B), (d)(3), and (e)(3) of Nasdaq Rule 5605. Nasdaq notes that it has always interpreted these terms in the same manner.[18]

## III. Discussion and Commission Findings

After carefully reviewing the proposed rule change, 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.[19] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[20] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[21]

As the Exchange notes, in ordinary circumstances, when a family member of a director is employed by the listed company, but not as an executive officer, the director may still be deemed independent. The Exchange believes that it is incongruous for the same relationship to preclude a company from relying on the Exception where the requirements of the Exception otherwise

[10] *See* paragraphs (a), (c)(2)(B), (d)(3) and (e)(3) of Nasdaq Rule 5605.

[11] *See* Nasdaq Rule 5605(a)(2)(A), which provides that a director who is, or at any time during the past three years was, employed by a listed company may not be considered independent.

[12] *See* Notice, *supra* note 4.

[13] Under both the current and proposed versions of the Exception, a listed company could not rely on the Exception for a director who has a family member who is an executive officer of the listed company. In addition, under both the current and proposed versions of the Exception for audit committees, a listed company could not rely on the Exception for a director who does not meet the criteria in Section 10A(m)(3) of the Act and the rules thereunder to allow the director to serve on the audit committee. *See* 15 U.S.C. 78j–1(m)(3) and 17 CFR 240.10A–3(b)(1).

[14] *See* Nasdaq Rule 5605(c)(2)(B).

[15] *Id.*

[16] *See* paragraphs (d)(3) and (e)(3) of Nasdaq Rule 5605.

[17] *Id.*

[18] *See* Notice, *supra* note 4.

[19] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] The Commission notes that it recently adopted new Rule 10C–1 under the Act, relating to the independence of compensation committees of listed issuers. *See* Securities Exchange Act Release No. 67220 (June 20, 2012), 77 FR 28422 (June 27, 2012). In accordance with Section 10C of the Act, which was added by Section 952 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, new Rule 10C–1 directs each national securities exchange to establish listing standards that, among other things, require each member of a listed issuer's compensation committee to be a member of the board of directors and to be ''independent,'' as defined in the listing standards of the exchange adopted in accordance with Rule 10C–1. The exchanges must file with the Commission, no later than September 25, 2012, proposed rule changes that comply with the requirements of Rule 10C–1, and must have final rules or rule amendments that comply with Rule 10C–1 approved by the Commission no later than June 27, 2013. The Commission expects that, in submitting a proposed rule change in compliance with Rule 10C–1, Nasdaq will discuss whether and how its proposed rule change would relate to the Exception and the Exchange's instant proposed rule change with respect to compensation committees.

are satisfied. The Commission believes that the Exchange's view is not unreasonable. In approving the proposed rule change, the Commission notes that in any instance in which a listed company relies on the Exception, the company's board would continue to be required under the proposal to affirmatively determine that the director does not have any relationship which, in the opinion of the board, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.[22]

The Commission further notes that a listed company is permitted to use the Exception only if its board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its shareholders. Moreover, the Commission notes that any time an issuer relies on the Exception, it is required to make the public disclosures indicated above.

Finally, the Commission believes that replacing the undefined term ''officer'' with the defined term ''Executive Officer,'' in keeping with the Exchange's longstanding interpretation of its listing rules, clarifies the applicability of the listing rules.

For the reasons discussed above, the Commission finds that the rule change is consistent with the Act.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NASDAQ–2012–062), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–18106 Filed 7–24–12; 8:45 am]

**BILLING CODE 8011–01–P**

[22] *See* Nasdaq Rule 5605(a)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67471; File No. SR–FINRA–2012–26]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to the Handling of Stop and Stop Limit Orders

July 19, 2012.

On May 24, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA's rules relating to the handling of stop and stop limit orders. The proposed rule change was published for comment in the **Federal Register** on June 6, 2012.[3] The Commission received four comment letters regarding the proposal.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is July 21, 2012. The Commission is extending the 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on this proposed rule change. In particular, extension of time will ensure the Commission has sufficient time to consider the Exchange's proposal in light of, among other things, the comments received on the proposal. The extension of time also will allow the Commission sufficient time to consider any responses to the comments.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates September 4, 2012, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, this proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–18108 Filed 7–24–12; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67085 (May 31, 2012), 77 FR 33537.

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission, from Ann L. Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated June 26, 2012; Gary J. Sjostedt, Director, Order Routing and Sales, TD Ameritrade, Inc., dated June 27, 2012; Virgil F. Liptak, dated July 3, 2012; and Christopher Nagy, President, KOR Trading LLC, dated July 9, 2012. The comment letters received by the Commission are available at *http://www.sec.gov/comments/sr-finra-2012-026/finra2012026.shtml.*

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67470; File No. SR–NYSEArca–2012–28]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether To Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the JPM XF Physical Copper Trust Pursuant to NYSE Arca Equities Rule 8.201

July 19, 2012.

### I. Introduction

On April 2, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of JPM XF Physical Copper Trust (''Trust'') pursuant to NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on April 20, 2012.[3] The Commission initially received one comment letter on the proposed rule change.[4] On May 30, 2012, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 66816 (April 16, 2012), 77 FR 23772 (''Notice'').

[4] *See* letter from Vandenberg & Feliu, LLP (''V&F''), received May 9, 2012 (''V&F Letter''). The V&F Letter is available at *http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228.shtml.* In a second comment letter, V&F identified itself as a U.S. law firm that represents RK Capital LLC, an international copper merchant, and four end-users of copper: Southwire Company, Encore Wire Corporation, Luvata, and

Commission extended the time period for Commission action to July 19, 2012.[5] On June 19, 2012, NYSE Arca submitted a response to the V&F Letter.[6] On July 13, 2012, V&F submitted a second comment letter.[7] Additionally, on July 16, 2012, United States Senator Carl Levin submitted a comment letter on the proposed rule change.[8]

This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change. The institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved, nor does it mean that the Commission will ultimately disapprove the proposed rule change. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

## II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.201, which governs the listing and trading of commodity-based trust shares. J.P. Morgan Commodity ETF Services LLC is the sponsor of the Trust (''Sponsor'').[9] J.P. Morgan Treasury Securities Services, a division of JPMorgan Chase Bank, National Association, is the administrative agent of the Trust (''Administrative Agent''). Wilmington Trust Company is the trustee of the Trust (''Trustee''). The Henry Bath Group is the warehouse-keeper of the Trust (''Warehouse-keeper'').[10] Metal Bulletin Ltd., an independent, third-party valuation agent that is not affiliated with the Sponsor, is the valuation agent of the Trust (''Valuation Agent'').

The Trust's investment objective is for the value of the Shares to reflect, at any given time, the value of the copper owned by the Trust at that time, less the Trust's expenses and liabilities at that time. The Trust would not be actively managed and would not engage in any activities designed to obtain a profit from, or to prevent losses caused by, changes in the price of copper.

The Trust would invest in Grade A copper[11] in physical form from a source refinery that has had its brand registered with the London Metal Exchange (''LME'') (an ''Acceptable Delivery Brand'').[12] The Trust would hold only copper and would not trade in copper futures. While the Trust would store its copper in both LME-approved warehouses and non-LME-approved warehouses that are maintained by the Warehouse-keeper, none of the copper held by the Trust would be on LME warrant, and therefore would not be subject to regulation by the LME.[13] Initially, the permitted warehouse locations would be in the Netherlands (Rotterdam), Singapore (Singapore), South Korea (Busan and Gwangyang), China (Shanghai), and the United States (Baltimore, Chicago, and New Orleans). Although the Trust may hold copper in warehouses in any of these locations (or other locations that may be determined by the Sponsor from time to time), the locations at which copper actually is held would depend on (i) the warehouse locations at which authorized participants have actually delivered copper to the Trust and (ii) the warehouse locations from which copper is or has been delivered pursuant to the Trust's redemption procedures.[14]

The Administrative Agent will calculate the net asset value (''NAV'') of the Trust as promptly as practicable after 4:00 p.m. EST on each Business Day.[15] As part of this calculation, the Administrative Agent will determine the value of the trust's copper using the LME Settlement Price[16] and information provided by the Valuation Agent.[17]

NYSE Arca anticipates requiring that a minimum of 100,000 Shares be outstanding at the start of trading,[18] which represents 1,000 metric tons of copper. The Trust seeks to register

AmRod. V&F states that these companies collectively comprise about 50% of the copper fabricating capacity of the United States. *See* V&F Letter II, *infra* note 7, at 1.

[5] *See* Securities Exchange Act Release No. 67075, 77 FR 33258 (June 5, 2012).

[6] *See* letter from Janet McGinness, General Counsel, NYSE Markets, to Elizabeth Murphy, Secretary, Commission, dated June 19, 2012 (''Arca's Response''). Arca's Response is available at *http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228.shtml.*

[7] *See* letter from Robert B. Bernstein, V&F, to Elizabeth M. Murphy, Secretary, Commission, dated July 13, 2012 (''V&F Letter II''). This letter is available at *http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228-5.pdf.*

[8] *See* letter from U.S. Senator Carl Levin to Elizabeth M. Murphy, Secretary, Commission, dated July 16, 2012 (''Sen. Levin Letter''). The Sen. Levin Letter is available at *http://www.sec.gov/comments/sr-nysearca-2012-28/nysearca201228-6.pdf.*

[9] Additional details regarding the Trust are set forth in the Registration Statement for the Trust on Amendment No. 5 to Form S–1, filed with the Commission on July 12, 2011 (No. 333–170085) (''Registration Statement'').

[10] Each of Henry Bath & Son Limited, Henry Bath LLC, Henry Bath Singapore Pte Limited, Henry Bath Italia Sr1, and Henry Bath BV is a member of the Henry Bath Group of companies and a wholly owned subsidiary of J.P. Morgan Ventures Energy Corporation, and is an affiliate of the Sponsor. *See* Notice, *supra* note 3, 77 FR at 23773 n.10

[11] According to the Exchange, the LME trades, promotes, and maintains the standards of quality, shape, and weight of Grade A Copper, a commonly accepted standardized form of copper cathode. Grade A Copper currently must conform to the standard BS EN 1978:1998 (Cu-CATH–1), which specifies the allowed source, shape, and chemical composition of the cathode. Most copper cathodes are 99.95% to 99.99% pure copper. The chemical composition, and impurities, in the cathode depend largely on the source of the copper and whether the metal has been processed from copper sulfide ore or copper oxide ore. Copper oxide ore has a smaller number of residual chemical elements in the cathode. *See* Notice, *supra* note 3, 77 FR at 23777.

[12] Currently, there are 79 brands that are Acceptable Delivery Brands. Some refineries have more than one smelting and refining process, so a refinery may register more than one brand, reflecting, among other factors, the different chemical composition, size, origins, and bundling of the copper cathodes. The LME has the authority to deregister brands from the LME from time to time. Generally, copper that is not of an Acceptable Delivery Brand is worth less than copper that is of an Acceptable Delivery Brand because of the perceived lower liquidity associated with that brand of metal. *See* Notice, *supra* note 3, 77 FR at 23777–78.

[13] *See* Notice, *supra* note 3, 77 FR at 23778.

[14] Similar to other exchange traded products that hold physical metals, the Sponsor, the Trust, and persons or entities engaging in transactions in Shares would need to seek exemptions from, or interpretative or no-action advice, regarding Rules 101 and 102 of Regulation M under the Securities Exchange Act of 1934 in order to create or redeem Shares. *See, e.g.,* letters from James A. Brigagliano, Assistant Director, Division of Market Regulation, (i) to Kathleen Moriarty, Esq., Carter Ledyard & Milburn, dated November 17, 2004, with respect to the trading of StreetTRACKS Gold Trust, (ii) to David Yeres, dated January 27, 2005, with respect to the trading of the iShares COMEX Gold Trust, and (iii) to David Yeres, dated April 27, 2006, with respect to the trading of iShares Silver Trust.

[15] A Business Day is a day that the Exchange is open for regular trading and that is not a holiday in London, England. *See* Notice, *supra* note 3, 77 FR at 23775, n.18.

[16] The ''LME Settlement Price'' is, with respect to any Business Day, the official cash sellers price per metric ton of Grade A Copper on the LME, stated in U.S. dollars, as determined by the LME at the end of the morning's second ring session (12:35 p.m. London time) for copper on each day that the LME is open for trading. The LME Settlement Price is made publicly available in real-time through third-party vendors such as Bloomberg and Reuters (on Bloomberg, it is currently displayed on Bloomberg page ''LOCADY <comdty>''). It is also made publicly available on a delayed basis on the LME's Web site at approximately 10:00 p.m. London time. *See* Notice, *supra* note 3, 77 FR at 23775 n.17.

[17] The value of copper depends in part on its location, *i.e.,* copper stored in a location that is low in supply and high in demand carries a higher premium than copper that is stored in a location where supply is high and demand is low. To assist in valuing the Trust's copper, by 9:00 a.m. EST, the Valuation Agent will provide the Administrative Agent the locational premia for the locations at which the trust is permitted to hold copper. The locational premium for a warehouse location for a Business Day will be calculated as an amount expressed in U.S. dollars that is equal to the average value of copper per metric ton in such location minus the LME Settlement Price of copper on such Business Day. *See* Notice, *supra* note 3, 77 FR at 23779.

[18] *See* Notice, *supra* note 3, 77 FR at 23786.

6,180,000 Shares,[19] which represents 61,800 metric tons of copper.

The Exchange states that it intends to utilize its existing surveillance procedures applicable to derivative products (including commodity-based trust shares) to monitor trading in the Shares, and represents that such procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[20] In discussing its ability to obtain information relevant to trading of the Shares on its facilities, the Exchange states that it is able to obtain information: (1) regarding trading in physical copper, the Shares, and other copper derivatives by ETP Holders registered as Exchange market makers, pursuant to NYSE Arca Equities Rule 8.201(g); (2) from the LME, with which the Exchange has a comprehensive surveillance sharing agreement; and (3) via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG, such as Commodity Exchange, Inc. (''COMEX'').

The Notice and in the Registration Statement include additional information about: the Trust; the Shares; the Trust's investment objectives, strategies, policies, and restrictions; fees and expenses; creation and redemption of Shares; the physical copper market; availability of information; trading rules and halts; and surveillance procedures.[21]

## III. Summary of the Comments Received and the Exchange's Response

The two commenters on the proposal (collectively, ''Commenters'') oppose the proposed rule change.[22] According to the Commenters, the issuance by the Trust of all of the Shares covered by the Registration Statement within a short period of time would result in a material reduction in the immediately available supply of global copper.[23] They also assert that this reduction in short-term supply would increase both volatility in the copper market and the price of copper, which would in turn significantly harm the U.S. economy.[24] The Commenters further state that the decrease in copper available for immediate delivery would make the physical copper market more susceptible to manipulation.[25]

In its response letter, NYSE Arca states that V&F's arguments either are based on incorrect information or are unsubstantiated.[26] The Exchange's response, as discussed in further detail below, addresses in particular V&F's conclusions about the impact of the Trust on the price of physical copper.[27] In its second letter, V&F responds to the Exchange's arguments by reiterating some of its positions and providing additional information.

### *A. Adverse Copper Market Impact*

#### 1. Impact on Supply of Copper Available for Immediate Delivery

V&F states that almost all of the copper produced worldwide is delivered pursuant to long-term contracts to copper fabricators, and that at any given time, there is only a limited supply of copper available for immediately delivery.[28] V&F further states that this copper, which generally is stored in LME warehouses, usually is deposited by producers with excess supply or by copper merchants looking for purchasers and is sold to traders seeking to close out short positions or to fabricators in sudden need of additional supply.[29]

V&F states that the only ''visible'' copper available to satisfy the Trust's requirements for copper to be delivered to the Trust to create shares is copper stored in LME warehouses.[30] V&F estimates that, if the Trust sells all of the 6,180,000 Shares it seeks to register, creation of the Trust could result in as much as 61,800 metric tons of copper being removed from LME warehouses, which is more than 30% of the 200,000 metric tons currently available for immediate delivery.[31]

V&F believes the Trust is likely to acquire copper from locations with the lowest premiums.[32] According to V&F, based on the present level of demand, locational premiums for copper in the U.S. are at least ten times lower than they are in Europe and Asia.[33] Accordingly, V&F predicts that much of the copper used to fund the Trust will come from the immediately available supply in the U.S.[34]

In response to these concerns raised by V&F, the Exchange points out that the Trust will hold only copper that is not under LME warrant.[35] NYSE Arca states that the Sponsor of the Trust does not believe that ''huge quantities'' of LME warranted copper will be removed from the LME system, as V&F predicts, because of: (1) The cost and time that would be required to take copper off warrant; and (2) the availability of large supplies of non-warranted physical copper to create Shares.[36] NYSE Arca provides data from the Sponsor of the Trust indicating that the amount of non-warranted copper is approximately ten times larger than the amount of LME warranted copper.[37]

NYSE Arca further states that the Trust will not immediately remove from the market as much as 61,800 metric tons of copper.[38] According to the Exchange, the Trust seeks to register 6,180,000 Shares but, like the other physical metal exchange-traded products, the Trust seeks to register significantly more Shares than it intends to sell initially.[39] NYSE Arca notes that the number of Shares that will be issued will depend on investor demand for the Shares and the extent to which authorized participants seek to fulfill such demand by ordering additional creation units from the Trust.[40]

In its second letter, V&F reiterates its view that ''the only substantial source of copper available to meet the Trust's requirements * * * is warranted copper in LME warehouses.''[41] V&F states that

[19] *See* Registration Statement, *supra* note 9.

[20] *See* Notice, *supra* note 3, 77 FR at 23787.

[21] *See* Notice and the Registration Statement, *supra* notes 3 and 9, respectively.

[22] *See supra* notes 4, 7, and 8. One of the Commenters, V&F, identified itself as a U.S. law firm that represents an international copper merchant and four U.S. copper fabricators. *See supra* note 4.

[23] *See* V&F Letter, *supra* note 4, at 3, 6 and Sen. Levin Letter, *supra* note 8, at 1, 4.

[24] *See* V&F Letter, *supra* note 4, at 5–7 and Sen. Levin Letter, *supra* note 8, at 1, 7.

[25] *See* V&F Letter, *supra* note 4, at 1, 10 and Sen. Levin Letter, *supra* note 8, at 7.

[26] *See* Arca's Response, *supra* note 6, at 1.

[27] *See id.* at 4–5.

[28] *See* V&F Letter, *supra* note 4, at 3.

[29] *See id.*

[30] *See id.*

[31] *See id.* at 1, 3.

[32] *See id.* at 4.

[33] *See id.*

[34] V&F states that the total amount of copper available in New Orleans and Chicago (two of the three U.S. warehouses proposed to be used by the Trust) is 45,000 and 25,000 metric tons respectively and, as mentioned above, the Trust may acquire as much as 61,800 tons of copper in connection with the initial offering of Shares. V&F predicts that the removal of large quantities of copper from LME warehouses in the U.S. also will result in the emptying out of substantial quantities of copper from COMEX warehouses. V&F believes that this copper either would be delivered to LME warehouses, where the demand is greatest, or it would be shipped to fabricators in other parts of the U.S. that are no longer able to get copper for immediate delivery from the LME. *See id.*

[35] *See* Arca's Response, *supra* note 6, at 1–2.

[36] *See id.* at 3. The Exchange states that the Sponsor expects that the initial Shares will be created using 10,185 metric tons of copper, none of which will be taken off LME warrant for the creation. *See id.* at 4.

[37] *See id.* at 3.

[38] *See id.* at 4.

[39] The Exchange states that currently the Sponsor expects that the value of the initial creation units will not exceed $75 million, which corresponds to approximately 10,185 metric tons, or approximately 407 lots of copper in the current cheapest-to-deliver location for the Trust as of June 6, 2012. *See id.*

[40] *See id.*

[41] *See* V&F Letter II, *supra* note 7, at 1.

the fact that the Trust will hold only copper that is not warranted does not mean, as NYSE Arca concludes, that copper will not be taken off LME warrant and held by the Trust.[42] V&F also challenges the Exchange's assertion about the availability of a large supply of off-warrant copper that may be used to create Shares, and argues that the copper not on LME warrant actually is largely unavailable for Share creation.[43] For example, V&F states that the overall physical copper stocks include copper that is subject to long-term contracts, and is generally held in the normal course by producers and consumers as buffer stocks to ensure smooth running of their logistics and to meet contingencies.[44] V&F further states that there is no evidence that any of the non-registered copper stocks would be available for the Trust to purchase, and concludes that the only copper available to create Shares would be the copper in the LME and COMEX warehouses.[45] In addition, V&F states its view that the potential size of the Trust is large relative to the size of market for copper available for immediate delivery.[46] Specifically, V&F asserts that the Trust could remove as much as 21.3% of copper available for immediate delivery on the LME and COMEX markets combined.[47] Senator Levin also comments that there is ample evidence that the proposed commodity-based exchange traded product (''CB–ETP'') will disrupt the supply of copper by removing from the market a substantial percentage of the copper available for immediate delivery.[48]

With respect to the number of shares registered by the Trust and the size of the Trust, V&F states that there is no assurance that the Exchange-required minimum will have any bearing on the ultimate size of the offering.[49] V&F points to the Trust's registration statement, which contains an estimate that the number of shares under the registration statement is roughly equivalent to the holding of approximately 61,800 metric tons of copper by the Trust.[50] V&F also notes that the Trust Agreement places no limit on the amount of copper the Trust may hold; thus the Trust may issue an unlimited number of shares, subject to registration requirements, and may, in theory, acquire an unlimited amount of copper.[51]

In response to NYSE Arca's statement that the sponsor of the Trust believes that LME warranted copper will not be removed from the LME system because of the cost and time that would be required to take copper off warrant, V&F states its view that, although an authorized participant can obtain LME grade copper available for immediate delivery from owners of LME grade copper in LME warehouses by purchasing long positions on the LME and taking delivery, the authorized participant would have no guarantee of the location of its copper, creating a risk that the authorized participant's copper is at a location (or locations) that might be too expensive to transfer to a Trust warehouse.[52] V&F further states that, in comparison, an authorized participant can create Shares at little or not cost by purchasing LME warrants for copper in LME warehouses with the lowest location cost premiums.[53]

V&F believes that investors' ability to redeem Shares for the Trust's physical copper would not limit the impact of removing substantial quantities of copper from the market.[54] According to V&F, most investors in a copper-backed CB–ETP would not have any real economic incentive to redeem their Shares for physical delivery as investors would benefit from a rise in the price of copper and can do so through sale of the Shares on the Exchange without having to assume any risk of delivery.[55] In its response, NYSE Arca points out that Share creations may be offset by Share redemptions, which result in copper being released from the Trust and becoming available to the physical markets.[56] V&F reiterates in its second letter its views expressed in its first comment letter on the Exchange's assertion that copper may return to the market through redemptions.[57]

Additionally, both Commenters reference another proposed CB–ETP, the iShares Copper Trust. In a separate proposed rule change, NYSE Arca proposes to list and trade shares of the iShares Copper Trust, which would also hold physical copper.[58] V&F states that this CB–ETP:

> would remove as much as 120,000 metric tons of copper from the market. And like JPM, BlackRock also intends to acquire LME-grade copper from the LME warehouses where the location premiums being charged are the lowest. Thus, approval of this rulemaking could lead to the removal of all or nearly all of the LME and Comex supply of copper available for immediate delivery.[59]

V&F further states that the collective effect of the Trust and the iShares Copper Trust (collectively, ''Copper

[42] *See id.* at 2. V&F further states that the Trust would have to take the copper off-warrant because otherwise the holding of such warranted copper in an LME warehouse would subject the Trust to the LME's lending obligations and the draft registration statement makes clear that, consistent with its intent to take the Trust's copper off-market, the Trust does not intend to be subject to any of the LME's rules, including rules that would require the Trust to lend any of its copper. *See id.*

[43] *See id.* at 2–4.

[44] *See id.* at 3. V&F further states that ''[o]ther such stocks consist of stock [sic] in bonded warehouses outside China* * *which are destined for the Chinese market,'' none of which is available for purchase by authorized participants to create Shares. *See id.* V&F also states that they have heard it is usual for both producers and consumers to have a considerable holding of copper stock, but at present this is not the case because consumers, in particular, have drawn down inventories to the bare minimum in order to reduce working capital requirements at a time of high copper prices. *See id.* at 4.

[45] *See id.* at 2–4. V&F states that the Exchange compounds misinformation about the availability of copper stocks by including a table it obtained from the Sponsor of the Trust purporting to break down registered and non-registered market stocks as of May 2012. *See id.* at 3. V&F states that the use of the term ''market'' by the Exchange in reference to total non-registered stocks suggests that such tonnage is actually available for purchase at market, but V&F believes that there is no evidence that any of the non-registered stocks would be available for the Trust to purchase. *See id.* To support its statements about the tightness of the supply of immediately available copper, V&F submitted portions of a report prepared by Bloomsbury Minerals Economics Ltd. for RK Capital Management LLP. *See id.* Exhibit A.

[46] *See id.* at 8.

[47] *See id.* at 8–9. V&F states that the size of the market for copper available for immediate delivery is relatively small in that there is only 230,000 metric tons available on the LME, with an additional 60,000 metric tons available on the COMEX. *See id.* at 8. V&F further states that therefore, the Trust proposes to remove as much as 61,800 metric tons, or about 21.3% of the copper available for immediate delivery. *See id.*

[48] *See* Sen. Levin Letter, *supra* note 8, at 1. For example, Senator Levin notes that ''it appears that most of the remaining copper stocks available for immediate delivery are on the LME and [COMEX].'' *See id.* at 5.

[49] *See* V&F Letter II, *supra* note 7, at 7.

[50] *See id.* at 8.

[51] *See id.*

[52] *See id.* at 6.

[53] *See id.*

[54] *See* V&F Letter, *supra* note 4, at 5.

[55] *See id.*

[56] *See* Arca's Response, *supra* note 6, at 3.

[57] *See* V&F Letter II, *supra* note 7, at 7. V&F states that while fabricators may purchase Shares and redeem them whenever they need supply, doing so: (1) Would add cost and risk to fabricators who otherwise would simply purchase available stocks from LME warehouses; (2) may not have any appreciable effect on price or supply in a rising market with tight supply; and (3) would be an inefficient and perhaps impracticable way of obtaining copper because the copper delivered by the Trust may be warehoused in an unhelpful location (*e.g.,* a fabricator in Alabama may need copper in New Orleans, not Shanghai) or of an unacceptable brand or quality. *See* V&F Letter, *supra* note 4, at 5–6.

[58] *See* Securities Exchange Act Release No. 67237 (June 22, 2012), 77 FR 38351 (June 27, 2012) (SR–NYSEArca–2012–66) (''iShares Notice''). BlackRock Asset Management International Inc. is the sponsor of this trust. See the iShares Notice and Pre-Effective Amendment No. 4 to Form S–1 for iShares Copper Trust, filed with the Commission on September 2, 2011 (No. 333–170131) for a detailed description of the iShares Copper Trust and the Exchange's proposal to list and trade the iShares Copper Trust.

[59] *See* V&F Letter, *supra* note 4, at 6.

Trusts'') would be ''far-reaching and potentially devastating to the U.S. and world economies,'' including ''shortages of copper, higher prices to consumers, and increased volatility.'' [60] Senator Levin also states that, if the Commission approves the listing and trading of the Shares and shares of the iShares Copper Trust, the trusts would hold approximately 34% of the copper stocks available for immediate delivery and would remove from the U.S. market over 55% of the available copper.[61]

2. Impact on Copper Prices

According to V&F, removing large amounts of copper from LME warehouses would disrupt the supply of copper available for immediate delivery and thereby cause a substantial rise in near-term copper prices.[62] V&F argues that this also would cause an immediate spike in the cash-to-three-month spread price of copper, as near-term prices for delivery accelerate compared to prices for delivery later in time.[63] V&F is concerned that manufacturers and fabricators that rely on the supply of copper available in LME warehouses would be forced to pay substantially higher prices in the short term, and, in turn, manufacturers and fabricators would pass these price increases on to their customers.[64] V&F predicts that the price increases both for copper and copper products will be especially dramatic in the U.S., where copper currently is relatively inexpensive.[65] Additionally, V&F asserts that the supply of copper generally is inelastic and that supply, therefore, will not increase fast enough to account for the increased demand unleashed by the creation and growth of the Trust.[66]

V&F characterizes the physical copper market as currently volatile, and believes that the successful creation and growth of the Trust would create a bubble, and the bursting of the bubble would result in increased price volatility in the physical copper market.[67] V&F states that, with

> the risk of an ETF removing indefinitely all or substantially all of the copper available for immediate delivery, the risk of price volatility becomes enormous. This is because the greater amount of copper artificially kept off-the-market, the greater the chance that investors will eventually no longer keep propping up the price with further purchases, and the greater the likelihood that the bubble will burst, thus flooding the market with surplus copper, and severely depressing the price.[68]

V&F further states that investors in a copper CB–ETP would benefit immediately from any increase in the price of copper because the more copper removed from the market to satisfy the demand for the copper CB–ETP, the higher the price not only of copper, but of the copper CB–ETP itself.[69] V&F notes that, like all bubbles, as investor demand for this product wanes, the bubble will burst, leaving in its wake a glut of physical copper that the Trust will be forced to dump on the market, causing prices to plummet, and leaving in its wake unsuspecting investors who will have lost the value of their investment.[70] Senator Levin also makes statements about the potential effect of the Shares, stating that the ''supply disruption is likely to affect the cash and futures market for copper, increasing volatility and driving up [the Share] price to create a bubble and burst cycle.'' [71]

V&F further believes that investors in the Trust would be able to measure how much impact their collective removal of copper from the supply available for immediate delivery would have on copper prices each day, and could adjust their purchasing strategies accordingly.[72] V&F questions, therefore, whether the increased market transparency that the Exchange asserts will result from the formation and operation of the Trust will be in the public interest.[73]

The Exchange, in its response letter, states that V&F's concerns about price volatility are speculative and misplaced.[74] NYSE Arca asserts that, because of the arbitrage mechanism common to all types of CB–ETPs, CB–ETP share prices generally follow the price of the underlying asset(s), rather than drive the price as V&F predicts.[75] The Exchange agrees that, in theory, if extremely high demand for shares of a CB–ETP caused it to grow very rapidly relative to the size of the market for the underlying asset, such demand could place upward pressure on the price of the underlying asset.[76] The Exchange states that Share redemptions would be able to drive down the price of copper only if the size of the redemptions is extremely large relative to the size of the physical copper markets and those redemptions occurred over a very short period of time.[77] The Exchange acknowledges that this is a theoretical possibility, but states that V&F has not provided any evidence to support its prediction.[78] According to NYSE Arca, given the anticipated size of the Trust relative to the size and depth of the physical copper markets, the Sponsor of the Trust has informed the Exchange that it does not expect the Trust to cause a spike in copper prices.[79]

In response to the Exchange, V&F reiterates its concern that the Trust, if launched, could trigger an increase in the price of copper.[80] Senator Levin also voices a concern that the Trust, if launched, would have an impact on the price of copper.[81] V&F and Senator Levin refer to language in the Trust's Registration Statement in which the issuer discusses the potential for the growth of the Trust to impact the price of copper and the Shares. Specifically, the Commenters reference statements from the Registration Statement that: (1) because there is no limit on the amount of copper that the Trust may acquire, the Trust, as it grows, may have an impact on the supply and demand for copper that ultimately may affect the price of the Shares in a manner unrelated to other factors affecting the global markets for copper; and (2) if the amount of copper acquired by the Trust were large enough in relation to global copper supply and demand, in-kind creations and redemptions of Shares could have an impact on the supply and demand for copper unrelated to other factors affecting the global markets for copper, which in turn could affect the price at which Shares are traded on the Exchange.[82] V&F also states that because the potential size of the Trust is large relative to the size of the market for copper available for immediate delivery, even modest investor demand for the Shares could place upward pressure on the price of copper.[83]

[60] *See id.* at 10.

[61] *See* Sen. Levin Letter, *supra* note 8, at 5–6.

[62] *See* V&F Letter, *supra* note 4, at 5.

[63] *See id.*

[64] *See id.*

[65] *See id.* at 4–5.

[66] *See id.* at 5. According to V&F, it is difficult for copper producers to increase supply, sometimes taking 15 years or longer to open a new mine, and even in areas where copper is considered plentiful, political instability can keep a mine from producing. *See id.* Moreover, V&F states that U.S. producers do not have surplus product to deliver. *See id.* Therefore, V&F asserts that once copper stored in warehouses disappears, it likely will not be replenished any time soon. *See id.* Senator Levin concurs that the copper market is inelastic. *See* Sen. Levin Letter, *supra* note 8, at 3.

[67] *See* V&F Letter, *supra* note 4, at 2, 9.

[68] *See id.* at 5.

[69] *See id.*

[70] *See id.* at 2.

[71] *See* Sen. Levin Letter, *supra* note 9, at 1.

[72] *See* V&F Letter, *supra* note 4, at 9.

[73] *See id.* at 10.

[74] *See* Arca's Response, *supra* note 6, at 4.

[75] *See id.*

[76] *See id.* at 5.

[77] *See id.*

[78] *See id.*

[79] *See id.*

[80] *See* V&F Letter II, *supra* note 7, at 8.

[81] *See* Sen. Levin Letter, *supra* note 8, at 5.

[82] *See* V&F Letter II, *supra* note 7, at 8 and Sen. Levin Letter, *supra* note 8, at 5–6.

[83] *See* V&F Letter II, *supra* note 7, at 8–9.

3. Increased Likelihood of Copper Market Manipulation

V&F asserts generally that the tightened supply of copper it believes would be caused by fully funding the Trust would render the physical copper market more susceptible to manipulation.[84] V&F compares the possible effect of funding the Trust to the conspiracy (described in the V&F Letter) between Sumitomo Corporation and a U.S. trader to squeeze the price of copper on the LME in the U.S. by, among other things, removing 100% of the copper from the LME warehouse in Long Beach, California.[85]

NYSE Arca, in its response letter, highlights several structural features of the Trust and the Shares that are intended to prevent fraudulent and manipulative practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and in general, protect investors and the public interest, including that:

- The Trust may hold copper in multiple global locations, which is intended to provide a larger, more liquid supply of copper than would be available if creations and redemptions were only permitted using copper held in a single location;[86]
- The Trust would be transparent, publishing information about its holdings and operations through its Web site;[87]
- The Trust would utilize a consistent, transparent, non-discretionary, rules-based, and fully disclosed selection protocol for redemptions;[88] and
- The Trust's copper would be valued by a recognized, independent valuation agent.[89]

In response, V&F states that, although the Trust may hold its copper in various locations worldwide, the Trust makes clear that it intends to acquire copper from locations where the premiums are the lowest, and that is in the United States.[90] Senator Levin also states that it is likely that the Trust's copper will come from LME warehouses in the United States since the Trust will likely acquire its initial copper holdings from the location with the lowest locational premia, and the United States currently is the country with the lowest locational premia.[91]

V&F further responds to Arca's statements about the structure of the Trust by stating that the transparency of the Trust's holdings will provide market participants with critical information about ''how much copper needs to be removed on any given day in order to artificially inflate [copper] prices and thus the price of the Trust's shares.'' [92]

Senator Levin states that approval of the proposed rule change would make the copper market more susceptible to squeezes and corners by speculators.[93] According to Senator Levin, market participants could use the Shares to remove copper from the available supply with the intent to artificially inflate the price of copper, and this activity would go undetected by the LME because CB–ETPs currently are not subject to any form of commodity regulations.[94] Senator Levin states that, by holding physical copper rather than LME warrants, the Trust can control more of the available supply of copper without triggering LME reporting or rules.[95] Senator Levin further states the view that creating this market condition would be inconsistent with the requirements in Section 6(b)(5) of the Act that exchange rules be designed to prevent manipulative acts and protect investors and the public interest.[96]

Finally, V&F questions whether NYSE Arca's surveillance procedures are adequate to prevent fraudulent and manipulative trading in the Shares.[97] According to V&F, NYSE Arca's surveillance procedures are not adequate because they are the kind of garden-variety measures that are always in place to prevent collusion and other forms of manipulation by traders.[98]

In response, NYSE Arca asserts that it will be able to obtain information regarding trading in the Shares and the underlying copper, copper futures contracts, options on copper futures, or any other copper derivative.[99] NYSE Arca further states that it can obtain trading information via the ISG from other exchanges that are members of the ISG, including the New York Mercantile Exchange, of which COMEX is a division.[100] The Exchange also notes that it has entered into a comprehensive surveillance sharing agreement with the LME that applies with respect to trading in copper.[101]

*B. Comparison to Other Commodity-Based Trusts*

V&F distinguishes the Trust from prior commodity-based trusts whose shares have been approved for listing and trading by the Commission.[102] According to V&F, gold, silver, platinum, and palladium are all precious metals that have traditionally been held for investment purposes and are currently used as currency.[103] As a result, there are ample stored sources available to back physical CB–ETPs holding precious metals, and the introduction of such CB–ETPs had virtually no impact on the available supply.[104] In contrast, V&F states that copper generally is not held as an investment, but rather is used exclusively for industrial purposes, with the annual demand generally exceeding the available supply.[105]

NYSE Arca states that: (1) The Trust will not be the first CB–ETP to hold a metal that is used primarily for industrial purposes; (2) NYSE Arca is unaware of empirical evidence demonstrating that the launches of CB–ETPs that hold a metal that is used primarily for industrial purposes (*e.g.,* platinum and palladium) have disrupted the markets for the underlying physical commodities or caused those commodity prices to increase; and (3) V&F has not provided any evidence that a copper-based CB–ETP would have such effects.[106]

In its second letter, V&F states in response that platinum and palladium are used for both industrial and investment purposes and that, unlike copper, there is enough of a supply of platinum and palladium available in storage and being produced that the introduction of CB–ETPs backed by these metals did not cause the kind of disruption to the market that a copper-backed CB–ETPs would cause.[107] Specifically, V&F states that: (1) In recent years, there has been a surplus in palladium due to the Russian

[84] *See* V&F Letter, *supra* note 4, at 1, 10.

[85] *See id.* at 6, 10 (describing the conspiracy).

[86] *See* Arca's Response, *supra* note 6, at 5.

[87] *See id.*

[88] *See id.*

[89] *See id.* at 6.

[90] *See* V&F Letter II, *supra* note 7, at 9. V&F states its view that the most cost-efficient manner to create Shares would be to acquire warrants for copper held in the New Orleans warehouse where the Trust's copper may be stored and take that copper off warrant; by doing so, an authorized participant would avoid transportation costs and pay the lowest premium for the copper. *See id.* at 6.

[91] *See* Sen. Levin Letter, *supra* note 8, at 6.

[92] *See* V&F Letter II, *supra* note 7, at 10.

[93] *See* Sen. Levin Letter, *supra* note 8, at 7.

[94] *See id.*

[95] *See id.*

[96] *See id.* at 1, 7.

[97] *See* V&F Letter, *supra* note 4, at 10.

[98] *See id.*

[99] *See* Arca's Response, *supra* note 6, at 6.

[100] *See id.*

[101] *See id.*

[102] *See* V&F Letter, *supra* note 4, at 2–3.

[103] *See id.* at 2.

[104] *See id.*

[105] *See id.* at 2–3. V&F states that the consensus among experts is that copper is in deficit, has been in deficit for the past three years, and is expected to remain in deficit for at least the next couple of years. *See id.* at 3.

[106] *See* Arca's Response, *supra* note 6, at 6.

[107] *See* V&F Letter II, *supra* note 7, at 11.

government's sell-off of its stockpile; (2) there is about a year's supply of platinum reserves above ground; and (3) there is only a 1–2 week supply of copper available on the LME.[108] Senator Levin states that gold, silver, platinum, and palladium are substantially different than copper because these four metals are the only precious metals that are currently treated as world currencies and commonly held for investment purposes, and as a result there are substantial existing supplies of these metals that could be acquired to back an CB–ETPs without affecting the world market price in these metals.[109] Senator Levin observes that copper is not currently held for investment purposes because it is very expensive to store and difficult to transport, and there is not the same existing supply of copper for the Trust to acquire to back its CB–ETP, and concludes that holding copper for investment purposes will have a significantly greater impact on the copper market than CB–ETPs holding platinum, palladium, silver, or gold had on their respective markets and the broader economy.[110]

## IV. Proceedings To Determine Whether to Approve or Disapprove SR–NYSEArca–2012–28 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[111] to determine whether this proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. As noted above, the institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B),[112] the Commission is providing notice of the grounds for disapproval under consideration. The Commission believes that questions remain about whether the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[113] which requires that the rules of an exchange be designed, among other things, 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 a national market system and, in general, to protect investors and the public interest.

As discussed above, the Commission received comment letters from two parties opposing the proposed rule change. The Commenters assert that the successful creation of the Trust would materially reduce the supply of copper available for immediate delivery, which would increase the price of copper and volatility in the copper market, and, in turn, would harm the U.S. economy.[114] In addition, the Commenters argue that, by decreasing the amount of copper available for immediate delivery, the Trust will make the copper market more susceptible to manipulation.[115] V&F also believes the Exchange's surveillance procedures are inadequate to prevent fraudulent and manipulative trading in the Shares.[116]

In response, the Exchange believes V&F's arguments either are based on incorrect information or are unsubstantiated,[117] and disputes V&F's conclusions regarding the Trust's impact on the copper market.[118] NYSE Arca states different expectations regarding the source and amount of copper that would be used to create Shares of the Trust, as well as the potential impact on the price of copper.[119]

In light of the comments received and the Exchange's response, the Commission is soliciting further comments on the proposed rule change, including comments regarding the issues already commented upon.

## V. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any others they may have regarding the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. The Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[120]

Interested persons are invited to submit written data, views and arguments regarding whether the proposed rule change should be disapproved by August 24, 2012. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 10, 2012.

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change and the comments received, in addition to any other comments they may wish to submit about the proposed rule change. The Commission requests that commenters support their responses to the questions below with empirical data sufficient to inform the Commission's decision making. In particular, the Commission seeks comment on the following:

1. In light of the comments received, the Commission is soliciting further comments regarding copper usage and supply trends. For example:

○ What was the world mine production capacity in each of the past 10 years? What data is available regarding projected world mine production over the next 3 to 5 years? What factors impact the ability to increase or decrease mine production?

○ What was the refined production in each of the past 10 years? How much of the refined production was from primary and secondary sources? What was the world refinery capacity in each of the past 10 years? What data is available regarding projected refined production over the next 3 to 5 years? What factors impact the ability to increase or decrease refinery production?

○ What was the world refined usage in each of the past 10 years? What data is available regarding projected usage over the next 3 to 5 years?

[108] *See id.*

[109] *See* Sen. Levin Letter, *supra* note 8, at 6–7.

[110] *See id.* at 7.

[111] 15 U.S.C. 78s(b)(2)(B). Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. *Id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding. *Id.*

[112] *Id.*

[113] 15 U.S.C. 78f(b)(5).

[114] *See* V&F Letter, *supra* note 4, at 5–7 and Sen. Levin Letter, *supra* note 8, at 1, 7.

[115] *See* V&F Letter, *supra* note 4, at 1, 10 and Sen. Levin Letter, *supra* note 8, at 7.

[116] *See* V&F Letter, *supra* note 4, at 10.

[117] *See* Arca's Response, *supra* note 6, at 1.

[118] *See id.* at 4.

[119] *See id.* at 2–4.

[120] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

○ How much copper has been held for investment purposes over the past 10 years? How much of this copper was taken off LME warrant? How much of this copper has been eligible to be placed on LME warrant?

2. According to the International Copper Study Group (''ICSG'), world refined usage of copper exceeded world refined production by approximately 417,000 tons in 2010 and 231,000 tons in 2011, and world refined stocks decreased by 161,000 tons in 2010 and increased by 13,000 tons in 2011.[121] What factors account for refined stocks decreasing less than the deficit amount (or even increasing) in 2010 and 2011? Are there any factors with respect to the supply of copper available for immediate delivery that the Commission should consider in evaluating the market's ability to meet demand for copper? When a deficit occurs, are copper fabricators and other end users able to access copper to meet excess demand? If so, what are the sources of that copper? How much copper is available for immediate delivery that is not on LME warrant?

3. The Commenters state that a material reduction in the supply of copper available for immediate delivery will increase the price of copper and volatility in the copper market, and, in turn, would harm the U.S. economy.[122] The Commission requests comment on whether commenters agree or disagree with these concerns, and why or why not. For example:

○ Do commenters believe creation of the Trust will have an impact on the supply of copper? If so, what will that impact be? If not, why not?

○ How does a change in the supply of copper impact the price of copper? To what extent do copper stocks need to be reduced or increased to impact the price of copper?

○ To what extent is the LME Settlement Price affected by the amount of copper on LME warrant? To what extent must copper on LME warrant be reduced to impact the LME Settlement Price? To what extent, if at all, is the LME Settlement Price affected by the supply of copper ineligible to be placed on LME warrant?

○ How does a change in the supply of copper impact volatility in the physical copper and copper derivatives markets?

○ Is there empirical evidence that creation of the Trust will impact copper prices and volatility? What impact, if any, will creation of the Trust have on the US economy?

4. V&F and Senator Levin state that the Trust and the proposed iShares Copper Trust,[123] collectively, will remove from the market a substantial percentage of the copper available for immediate delivery, with Senator Levin stating that the Copper Trusts would hold approximately 34% of the copper stocks available for immediate delivery and would remove from the U.S. market over 55% of the available copper.[124] V&F further states that the collective effect of the Trust and the iShares Copper Trust would be ''far-reaching and potentially devastating to the U.S. and world economies,'' including ''shortages of copper, higher prices to consumers, and increased volatility.'' [125] Do commenters agree or disagree with these statements? If so, why or why not?

5. V&F states that the only ''visible'' copper available to satisfy the Trust's requirements is copper stored in LME warehouses.[126] NYSE Arca represents that it has been informed by the Sponsor that overall physical copper stocks, including stocks that are immediately available for sale, are substantially larger than V&F would suggest.[127] V&F responded, arguing that the copper stocks identified in Arca's Response mainly consist of metal in the supply chain, which would not be generally available for creation of Shares.[128] The Commission is soliciting further comments regarding physical copper stocks. For example:

○ How much copper is currently held in LME warehouses? How much of the copper currently held in LME warehouses is on warrant? How much copper in LME warehouses is available for investment purposes?

○ How much copper is held in COMEX, Shanghai Futures Exchange (''SHFE''), and Multi Commodity Exchange of India (''MCX'') warehouses? How much copper held in COMEX, SHFE, and MCX warehouses is eligible to be placed on LME warrant (*i.e.,* is of a brand registered with the LME)? How much of this LME warrant-eligible copper is available for investment purposes? Where is this copper located?

○ What quantity of copper stock, if any, is held in other locations that would be eligible to be placed on LME warrant (if it were located at an LME warehouse)?

○ How accessible are stocks of copper eligible to be placed on warrant that are not held in LME warehouses?

○ Are commenters aware of any activities involving the stockpiling of copper? If so, how much copper has been stockpiled? Where is such copper located? How accessible is such copper? How much of this stock was taken off LME warrant? How much of this copper is eligible to be placed on LME warrant?

6. The Trust will store copper in warehouses that are maintained by the Warehouse-keeper. Initially, the permitted warehouse locations are in the Netherlands (Rotterdam), Singapore (Singapore), South Korea (Busan and Gwangyang), China (Shanghai), and the United States (Baltimore, Chicago, and New Orleans) (each an ''Approved Warehouse'' and, collectively, the ''Approved Warehouses'').[129] What is the locational premium at each of the Approved Warehouses? What impact would changes in locational premia have on supply and demand for copper at each of the Approved Warehouses? How much copper is held at each of the Approved Warehouses? How much of the copper held at each of the Approved Warehouses is on LME warrant? How much is eligible to be placed on LME warrant? How much copper eligible for LME warrant is available for investment purposes? How much is not eligible to be placed on LME warrant?

7. V&F states that Shares will be created by acquiring LME-warranted copper and taking it off warrant to be deposited in the Trust.[130] NYSE Arca represents that it has been informed by the Sponsor that the economics do not support this suggestion, given the large supply of non-warranted physical copper and the cost and time that would be required in order to take LME warranted copper off warrant solely for the purposes of creating Shares.[131] V&F responded, arguing that taking copper off LME warrant would involve little or no cost if LME warrants are purchased for copper that is already stored at the Approved Warehouses.[132] The Commission requests comment on these opposing views. Specifically:

○ What costs are involved in taking copper off LME warrant? What costs are involved in putting copper on LME warrant?

○ How long does it take to take copper off LME warrant? How long does it take to put copper on LME warrant?

[121] Press Release, ICSG, Copper: Preliminary Data for February 2012 (June 20, 2012), *available at http://www.icsg.org/index.php?option=com_content&task=view&id=63&Itemid=64.*

[122] *See* V&F Letter, *supra* note 4, at 5–7 and Sen. Levin Letter, *supra* note 8, at 1.

[123] *See* iShares Notice, *supra* note 58 (describing the iShares Copper Trust).

[124] *See* V&F Letter, supra note 4, at 6 and Sen. Levin Letter, supra note 8, at 5–6.

[125] *See* V&F Letter, supra note 4, at 10.

[126] *See id.* at 3.

[127] *See* Arca's Response, *supra* note 6, at 3.

[128] *See* V&F Letter II, *supra* note 7, at 5.

[129] *See* Notice, *supra* note 3, at 23779.

[130] *See* V&F Letter, *supra* note 4, at 3.

[131] *See* Arca's Response, *supra* note 6, at 3.

[132] *See* V&F Letter II, *supra* note 7, at 6.

○ How does the cost and time required to take copper off warrant compare to the cost and time to ship copper to an Approved Warehouse?

8. The Commission understands that ETFS Physical Copper securities currently trade on the London Stock Exchange. How much copper did ETFS Physical Copper hold following the initial creation? How much copper does ETFS Physical Copper currently hold? What change, if any, was there in the price of copper following creation of ETFS Physical Copper? Did the creation of ETFS Physical Copper result in an observable impact on the copper market? Has ETFS Physical Copper engaged in the lending of copper?

9. The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 of other issues of CB–ETPs backed by gold, silver, platinum, and palladium (collectively ''precious metals''). While these precious metals are often held for investment purposes, the Commission understands they are also used for various industrial purposes. V&F asserts that copper is used exclusively for industrial purposes and is not generally held for investment.[133] The Commission requests information regarding the production and use of precious metals. How much gold, silver, platinum, and palladium has been produced in each of the last 10 years? How much gold, silver, platinum, and palladium has been used for investment purposes in each of the last 10 years? How much gold, silver, platinum, and palladium has been used for industrial purposes in each of the last 10 years? Are there any other uses of gold, silver, platinum, and palladium relevant to understanding utilization of these precious metals? What are the current and historic stocks of gold, silver, platinum, and palladium? Is there any empirical evidence that the listing of CB–ETPs backed by gold, silver, platinum, or palladium impacted prices in these markets?

10. V&F estimates that creation of the Trust could result in the immediate removal of up to 61,800 metric tons of copper from LME warehouses.[134] NYSE Arca states its understanding that the Sponsor currently expects that the value of the initial creation units to be issued by the Trust would not exceed 10,185 metric tons.[135] Further, while the Trust is seeking to register 6,180,000 Shares, the Exchange states that like the other CB–ETPs, the Trust is seeking to register significantly more Shares than it intends to sell initially.[136] What is the likelihood that the Trust will sell all registered Shares initially? What is the likelihood that the Trust will sell all registered Shares in the three months after the registration goes effective? How quickly did the CB–ETPs backed by gold, silver, platinum, and palladium sell the shares registered in the first registration statement?

11. V&F argues that, by decreasing the amount of copper available for immediate delivery, the Trust will make the copper market more susceptible to manipulation.[137] Specifically, V&F states that ''the drawing down of stocks in LME and Comex warehouses'' resulting from the listing and trading of the Shares ''will make it much easier and cheaper for [copper market] speculators to engage in temporary market squeezes and corners.'' [138] Senator Levin also argues that approval of the proposed rule change would make the copper market more susceptible to squeezes and corners by speculators.[139] The Commission requests comment on these concerns, as well as whether commenters agree or disagree with the comments and why or why not. For example:

○ Will creation of the Trust impact the ability to manipulate the physical copper or copper derivatives markets? If so, how? If not, why not?

○ Has there been any increased manipulative behavior due to the reduction of copper available for immediate delivery that resulted from the prior years' deficits in copper production versus copper consumption?

○ Are there any structural aspects of the copper market that render it more or less susceptible to manipulation?

○ Is there empirical evidence that the creation of CB–ETPs backed by gold, silver, platinum, and palladium has led to manipulation of the physical markets for those precious metals? If so, please describe.

12. Both Commenters discuss concerns about the potential impact of the Trust on the copper market, and how that potential impact could, in turn, affect the Shares. V&F states that, with

> the risk of an ETF removing indefinitely all or substantially all of the copper available for immediate delivery, the risk of price volatility becomes enormous. This is because the greater amount of copper artificially kept off-the-market, the greater the chance that investors will eventually no longer keep propping up the price with further purchases, and the greater the likelihood that the bubble will burst, thus flooding the market with surplus copper, and severely depressing the price.[140]

V&F further states that investors in a copper CB–ETP would benefit immediately from any increase in the price of copper because the more copper removed from the market to satisfy the demand for the copper CB–ETP, the higher the price not only of copper, but of the copper CB–ETP itself.[141] V&F notes that, like all bubbles, as investor demand for this product wanes, the bubble will burst, leaving in its wake a glut of physical copper that the Trust will be forced to dump on the market, causing prices to plummet, and leaving in its wake unsuspecting investors who will have lost the value of their investment.[142] Senator Levin also makes statements about the potential effect on the Shares, stating that the ''supply disruption is likely to affect the cash and futures market for copper, increasing volatility and driving up…[the Share] price to create a bubble and burst cycle.'' [143]

Do commenters agree or disagree with these comments? If so, why or why not? Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2012–28 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–28. These file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[133] *See* V&F Letter, *supra* note 4, at 2–3.

[134] *See id.* at 1, 3.

[135] *See* Arca's Response, *supra* note 6, at 4.

[136] *See id.*

[137] *See* V&F Letter, *supra* note 4, at 1, 10.

[138] *See id.* at 9.

[139] *See* Sen. Levin Letter, *supra* note 8, at 7.

[140] *See* V&F Letter, *supra* note 4, at 5.

[141] *See id.*

[142] *See id.* at 2.

[143] *See* Sen. Levin Letter, *supra* note 9, at 1.

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the Exchanges. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–28 and should be submitted on or before August 24, 2012. Rebuttal comments should be submitted by September 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[144]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–18107 Filed 7–24–12; 8:45 am]

**BILLING CODE 8011–01–P**

[144] 17 CFR 200.30–3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67466; File No. SR–Phlx–2012–93]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Managed Data Solution for PHLX Top of Options

July 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder[2] notice is hereby given that on July 6, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx proposes to establish a program for Managed Data Solutions for PHLX Top of Options data offered by Distributors externally distributing data to clients and/or client organizations that are using the TOPO information internally. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com,* at Phlx's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

PHLX is proposing to create a new data distribution model (a Managed Data Solution) to further the distribution of the Top of PHLX Options datafeed (''TOPO''). The Managed Data Solution offers a new delivery method to firms seeking simplified market data administration. The Managed Data Solution may be offered by Distributors externally distributing data to clients and/or client organizations that are using the TOPO information internally. This new pricing and administrative option is in response to industry demand, as well as due to changes in the technology used to distribute market data. Distributors offering Managed Data Solutions continue to be fee liable for the applicable distributor fees for the receipt and distribution of TOPO data.

A Managed Data Solution is a delivery option that will assess a new, innovative fee schedule to Distributors of TOPO that provide datafeed solutions such as an Application Programming Interface (API) or similar automated delivery solutions to recipients with only limited entitlement controls (*e.g.,* usernames and/or passwords) (''Managed Data Recipients''). However, the Distributor must first agree to reformat, redisplay and/or alter the TOPO data prior to retransmission, but not to affect the integrity of TOPO data and not to render it inaccurate, unfair, uninformative, fictitious, misleading, or discriminatory. A Managed Data Solution is any retransmission data product containing PHLX TOPO offered by a Distributor where the Distributor manages and monitors, but does not control, the information. However, the Distributor does maintain contracts with the Managed Data Recipients and is liable for any unauthorized use by the Managed Data Recipients under a Managed Data Solution. The Recipient of a Managed Data Solution may use the information for internal purposes only and may not distribute the information outside of their organization.

Currently, the Exchange does not distinguish between Managed Data Recipients and a recipient of an uncontrolled data product. Some Distributors believe that the Managed Data Solution is a viable alternative to an uncontrolled data product. Some Distributors have even held-off on deploying new PHLX TOPO offerings, pending the initiation of Managed Data Solutions. Thus, offering a Managed Data Solution fee schedule would not only result in PHLX offering lower fees for existing Managed Data Recipients utilizing a Managed Data Solution, but will allow new Distributors to deliver Managed Data Solutions to new clients, thereby increasing transparency of the market. PHLX proposes to establish two fees for Distributors that adopt the Managed Data Solution to Distributors, a monthly Managed Data Solution Administration fee of $1,500 and a monthly Subscriber fee of $250. The proposed monthly License fee would be in addition to the monthly Distributor fee of $2,500 (for external usage) currently set forth in Section IX of the PHLX Fee Schedule, and the $250 monthly Subscriber fee would be assessed for each Subscriber of a Managed Data Solution.

2. Statutory Basis

PHLX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers and Recipients of PHLX data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[5]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Exchange Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

PHLX believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a ''due, fee or other charge imposed by the self-regulatory organization,'' the Commission adopted a policy and subsequently a rule stipulating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. PHLX believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned not-for-profit corporations into for-profit investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, we believe that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoaltion,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

PHLX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. PHLX believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post

[5] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little. Without trade executions, exchange data products cannot exist. Data products are valuable to many end Subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decrease, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platform may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including nine existing SRO markets (plus two more expected this year) [sic], as well as various forms of alternative trading systems (''ATSs''). Each SRO market competes to produce transaction reports via trade executions. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, CBOE, ISE, NYSE Amex, and NYSEArca.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end Subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end Subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers

proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. PHLX and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, BATS Trading and Direct Edge.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the court's view, the Commission had not adequately demonstrated that the proprietary data at issue in the case is used to attract order flow. PHLX believes, however, that evidence not then before the court clearly demonstrated that availability of data attracts order flow.

Competition among platforms has driven PHLX continually to improve its platform data offerings and to cater to customers' data needs. For example, PHLX has developed and maintained multiple delivery mechanisms (IP, multi-cast, and compression) that enable customers to receive data in the form and manner they prefer and at the lowest cost to them. PHLX has created new products like Depth Data, TOPO and TOPO Plus Orders, because offering data in multiple formatting allows PHLX to better fit customer needs. PHLX offers data via multiple extranet providers, thereby helping to reduce network and total cost for its data products. PHLX has developed an online administrative system to provide customers transparency into their datafeed requests and streamline data usage reporting.

Despite these enhancements and a dramatic increase in message traffic, PHLX's fees for market data have remained flat. In fact, as a percent of total Subscriber costs, PHLX data fees have fallen relative to other data usage costs—including bandwidth, programming, and infrastructure—that have risen. The same holds true for execution services; despite numerous enhancements to PHLX's trading platform, absolute and relative trading costs have declined. Platform competition has intensified as new entrants have emerged, constraining prices for both executions and for data.

The vigor of competition for proprietary information is significant and the Exchange believes that this proposal itself clearly evidences such competition. PHLX is offering a new pricing model in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. PHLX continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with PHLX or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this proprietary information is highly competitive and continually evolves as products develop and change.

*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.[6] 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.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an *email to rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–93 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–93. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2012–93 and should be submitted on or before August 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority. [7]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–18163 Filed 7–24–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67469; File No. SR–Phlx–2012–92]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rules 1014, 1051, and OFPA F–2

July 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on July 6, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Exchange Rules 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders, and 1051, General Comparison and Clearance Rule, and Options Floor Procedure Advice (''OFPA'') F–2, Allocation, Time Stamping, Matching and Access to Matched Trades, to delete obsolete and unnecessary provisions in the Rules and OFPA concerning ticket matching and trade reporting requirements for options trades executed in open outcry.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* 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 modify unnecessary or obsolete provisions currently contained in Exchange Rules 1014(g)(vi), 1051, and OFPA F–2 that set forth ticket matching and trade reporting requirements for members executing transactions on the Exchange. The proposed rule change is intended to adopt rules that reflect the current process for matching and reporting options trades executed in open outcry on the floor of the Exchange.

The matching and trade reporting requirements in the current rules apply to trades that are executed in open outcry, which may require the participants to submit written paper trade tickets for reporting. Portions of the Rules and OFPA apply to electronically executed trades, which are matched and reported to the consolidated tape automatically by the Exchange's automated options trading system, PHLX XL® [3]. The vast majority of options trades that are executed on the Exchange are reported to the consolidated tape and to the participants in the trade automatically. In certain instances, however, trades are executed in open outcry in the trading crowd without the use of electronic connectivity to PHLX XL (such as a verbal trade between market makers). The Exchange proposes to modify the Rules and OFPA to reflect the current procedures for reporting such trades.

Current Rules

Rule 1051(b) currently requires that all Exchange options transactions be reported at the time of execution to the Exchange for comparison of trade information at the specialist's post. Currently, not ''all'' options trades are executed in open outcry. In fact, the majority of option trades executed on the Exchange are executed electronically via PHLX XL. Upon the electronic execution of an options trade, PHLX XL sends an immediate report of the trade to the Options Price Reporting Authority (''OPRA''), the Options Clearing Corporation (''OCC''), and to the participants in the trade. Therefore, trades executed electronically via PHLX XL require no trade reporting action by participants.

Some trades still occur verbally in the trading crowd, such as when market makers trade with one another, or in very rare instances where there is a malfunction of the Exchange's system or the Options Floor Broker Management System (''FBMS,'' described below). In such instances, participants in the verbal trade are required to produce written trade tickets. Current Rule 1014(g)(vi) and OFPA F–2 require participants to allocate, match and time stamp executed trades as well as to submit the matched trade to the appropriate person at the respective specialist post. Once a trade has been matched and submitted for reporting at the post, current OFPA F–2(d) states that the respective Specialist Unit must preserve the matched tickets for a period of not less than three years.

Current Rule 1051(a) and OFPA F–2(b) require a member or member organization initiating an options transaction, whether acting as principal or agent, to report or ensure that the transaction is reported within 90 seconds of the execution to the tape, except that, when an order represented by a Floor Broker is executed against a limit order on the book, the Specialist must report or ensure that the portion of

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PHLX XL, formerly known as ''AUTOM,'' is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of Exchange-listed equity options, index options and U.S. dollar-settled foreign currency options orders to the Exchange trading floor. *See* Exchange Rule 1080(a). This proposal refers to ''PHLX XL'' as the Exchange's automated options trading and reporting system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as ''Phlx XL II.'' *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from ''AUTOM'' and ''Phlx XL II'' to ''PHLX XL'' for branding purposes.

the transaction represented by such Specialist is reported to the tape.

The Proposal

The Exchange proposes to: (i) Amend Rule 1014(g)(vi) to require matched tickets in manually executed trades to be submitted to an Exchange Data Entry Technician (''DET'') located on the options trading floor immediately upon execution; (ii) to delete from Rules 1014(g)(vi) and 1051(b), the provision that currently states that all Exchange options transactions shall be reported at the time of execution to the Exchange for comparison of trade information at the specialist's post;[4] (iii) delete from Rule 1051(a) and OFPA–2(b) the provision stating that when an order represented by a Floor Broker is executed against a limit order on the book, the Specialist must report or ensure that the portion of the transaction represented by such Specialist is reported to the tape (the Floor Broker now has the capability of electronically executing limit orders on the limit order book using the FBMS;[5] and (iv) delete from OFPA–2(d) the provision requiring specialists to keep matched tickets for a minimum of three years, and replace that provision with rule text requiring the respective parties to the manually executed trade to preserve the matched tickets for a three-year period. If the specialist is a party to such a trade, the specialist would be included as a party required to preserve the matched tickets. The specialist would not be required to keep matched trade tickets from a manually executed trade to which the specialist is not a party.

The vast majority of trades on the Exchange are now executed and reported electronically via PHLX XL. The advent of electronic trading has in most cases obviated the need for trade tickets, except in the few instances where trades are executed in open outcry.[6] As a result, Exchange DETs are no longer positioned behind the specialist's post. Instead, Exchange DETs are located at a specific location on the Exchange's Options Floor, and not behind any particular specialist's trading post. The Exchange therefore proposes to amend Rule 1014(a)(vi) and OFPA F–2(a) by requiring the responsible person to submit the matched trade tickets to an Exchange DET located on the trading floor immediately upon execution. Additionally, because reporting of trades executed in open outcry to the Exchange is not currently done at the specialist's post, the Exchange proposes to delete this requirement from Rule 1051(b).

The Exchange also proposes to delete the provision from Rule 1051(a) and OFPA F–2(b) stating that when an order represented by a Floor Broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape. Floor Brokers have the capability and the requirement to enter orders to trade against limit orders on the limit order book using the FBMS.[7]

At the time of the initial deployment of the FBMS, when a floor broker initiated a transaction and executed all or a portion of the transaction against a contra-side limit order on the limit order book, the specialist executed the booked limit order on the system by matching the booked limit order against the order represented by the floor broker. The rule requires that when an order represented by a floor broker is executed against a limit order on the book, the specialist must report or ensure that the portion of the transaction represented by such specialist is reported to the tape. The purpose of this provision was to address the situation in which an order represented by a floor broker executes a booked limit order was executed by the specialist. The floor broker in this situation was not required to report that portion of the transaction on the system, despite the fact that the floor broker involved may have in fact ''initiated'' the transaction.

Subsequently, the Exchange made changes to the PHLX XL system and created PHLX XL II, which was rolled out over a 12-week period (the ''rollout'').[8] Upon completion of the rollout, specialists could no longer match orders in the trading crowd, including those submitted via FBMS, with orders on the book. The PHLX XL system now matches and reports all trades submitted electronically against limit orders on the book.[9] The instant proposed rule change is intended to reflect that the specialist no longer has the capability to match or report such trades. If the specialist is a party to such a trade, the portion of the transaction represented by such specialist is reported to the tape automatically. Therefore, the Exchange is proposing to delete this requirement from Rule 1051 and OFPA F–2 because it is obsolete.

Rule 1014(g)(vi) and OFPA F–2(a) currently require persons identified in the Rule and OFPA to allocate, match and time stamp manually executed trades as well as to submit the matched trade tickets to the appropriate person at the respective specialist post immediately upon execution.[10] At the time of the adoption of this requirement, most trades on the Exchange were executed in open outcry and reported by the ''appropriate person at the respective specialist post,'' an Exchange DET, who was located behind the specialist post. The responsible person would submit the matched trade tickets to the DET through a chute that would dispense the tickets at the DET's terminal. The DET would then enter the trade ticket and clearing information onto the Exchange's system and report the trade to the consolidated tape. The matched trade tickets were kept by the

[4] Manually executed trades are currently reported to DETs located on the Exchange floor; electronically executed trades are submitted to the Exchange through PHLX XL.

[5] The Options Floor Broker Management System is a component of the Exchange's system designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trial provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Exchange Rule 1080, Commentary .06.

[6] For example, an Exchange market maker trading directly with another market maker in open outcry would still require paper tickets, and trade tickets would be used in the event of a system malfunction.

[7] *See* Exchange Rules 1063(e) and (f).

[8] *See supra* note 3.

[9] The Exchange is a member of OPRA under the Limited Liability Company Agreement of Options Price Reporting Authority, LLC (''the OPRA Plan''). Section 5.2 of the OPRA Plan, entitled ''Collection and Dissemination of Options Last Sale Reports and Quotation Information,'' requires each of the Members to collect and promptly transmit to the OPRA System by means of its own facilities all Last Sale Reports relating to its respective market. For this purpose, each of the Members is required to use its best efforts to transmit such reports to the OPRA System, properly sequenced, within two minutes of the time of execution. Such reports shall be sequenced and transmitted in the appropriate format conforming to the specifications prescribed by OPRA (which may be reflected in contractual agreements between OPRA and persons providing data processing services to OPRA). Except as otherwise provided by OPRA, such reports shall identify: (i) The options series; (ii) The number of contracts in each transaction; (iii) The price at which the contracts were sold; (iv) The market of execution; and (v) Through appropriate codes and messages, late or out of sequence trades, cancels, spread transactions, opening ranges, trading halts and suspensions, and similar matters.

PHLX XL performs these functions for automatically executed transactions. PHLX XL also provides Exchange members who participate in electronic trades with immediate electronic reports. Manually executed trades are transmitted by DETs.

[10] *See* Securities Exchange Act Release No. 33512 (January 24, 1994), 59 FR 4739 (February 1, 1994) (SR–Phlx–93–08).

DET and given to the specialist at the end of the trading session. The Exchange proposes to delete this requirement because the DET is no longer located at the specialist's post.

Currently, OFPA F–2(d) currently requires specialists to keep all matched trade tickets in their possession for a period of three years, whether or not the specialist participated or acted as agent in any such trade. At the time this requirement was adopted, the Exchange relied primarily on matched trade tickets in carrying out its important surveillance and operations functions and stated, at the time,

> [O]nce a trade has been processed for trade dissemination and clearing, it is then left in the possession of the attendant specialist. Accordingly, the Phlx is proposing to not only limit access to these tickets, but also to require specialists to keep all matched trade tickets in their possession for a period of three years, whether or not the specialist participated or acted as agent in any such trade. [11]

Because the matched trade tickets are no longer left in the possession of the attendant specialist, the Exchange proposes to delete the requirement that specialists keep matched tickets for a minimum of three years, and replace that provision with text requiring the respective parties to the trade to preserve the matched tickets, or copies thereof, for that period.

The Exchange represents that the instant proposed rule change will not require any changes in, or modifications to, its current system of surveillance for the submission of trade tickets, or for trade reporting in general.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(5) of the Act [13] 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.

Specifically, the proposal modernizes the Exchange's rules to reflect current practices and systems on the Exchange and in the marketplace as a whole. The requirement that specialists retain trade tickets for trades that are executed manually in the specialist's crowd in situations where the specialist is not a participant in the trade is obviated due to the fact that the specialist does not match tickets for, or report, such trades. The Exchange believes the deletion of this requirement serves to remove impediments to and perfect the mechanism of a free and open market and a national market system, updating on-floor practices to reflect new technologies and procedures on the Exchange's options trading floor.

Additionally, the proposed rule change takes into account the fact that there are no DETs located at the specialist's post; the mechanism by which manually executed trades are reported is more perfected by requiring in the rules that participants in manually executed trades submit matched tickets to a DET located on the options trading floor immediately upon execution. The proposed rule change clarifies and streamlines the current procedures in the rules respecting the submission of matched trade tickets, which the Exchange believes results in more efficient reporting of manually executed trades, to the benefit of investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition 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**

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) [14] of the Act and Rule 19b–4(f)(6)(iii) thereunder [15] because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–92 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–92. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

[11] *Id.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2012–92 and should be submitted on or before August 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–18165 Filed 7–24–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–67467; File No. SR–NYSE–2012–28]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing a Fee for Television Distribution of the NYSE Trades Data Product

July 19, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 13, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a fee for television distribution of the NYSE Trades data product. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to establish a fee for television distribution of the NYSE Trades data product.

In 2009, the Commission approved the NYSE Trades data product and its fees.[4] NYSE Trades is a NYSE-only market data service that allows a vendor to redistribute on a real-time basis the same last sale information that the Exchange reports under the Consolidated Tape Association (''CTA'') Plan for including in the Plan's consolidated data streams and certain other related data elements (''NYSE Last Sale Information''). The Exchange currently charges the datafeed recipients (a) an access fee of $1,500 per month (the ''Access Fee''), and (b) at the election of the vendor, either (i) a device fee for professional subscribers of $15.00 per month or (ii) a fee based on the number of ''Subscriber Entitlements''[5] (the latter two fees together, ''User Fees'').

The Exchange proposes to add a new fee category for NYSE Trades to provide television broadcasters[6] with an alternative enterprise fee (the ''Broadcast Fee''). For the receipt of access to and the ability to display the datafeeds of the NYSE Trades service by a television broadcaster, the Exchange proposes to charge a flat fee of $40,000 per month.[7] Broadcasters will not be required to track the number of viewers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act'')[8] in general and with Section 6(b)(4) and 6(b)(5) of the Act[9] in particular in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers. The proposed Broadcast Fee is reasonable, equitable, and not unfairly discriminatory because it will provide a convenient and easy-to-administer way for a television broadcaster to display real-time NYSE-only data on television, thereby providing public investors and other market participants who watch the broadcaster's channel with another means to obtain current market data. The Exchange believes that the Broadcast Fee will be attractive to television broadcasters because it will enable them to provide market data to their viewers that will complement the broadcasters' news reporting services without the added administrative burden and cost of keeping track of the number of viewers of the datafeed. The proposed distribution method differs, however, from other distribution methods in that the data will be available in temporary, view-only mode on television screens.[10] Other available distribution methods for NYSE Trades and alternative data products may allow the end-user to download and analyze last sale data in order to make trading decisions. For these reasons, the Exchange believes that establishing a different pricing scheme for television broadcasters is justified. The Exchange also believes that its pricing is reasonable in light of other similar products. By way of comparison, for example, the television ticker display fee for CTA Network A market data (i.e., consolidated last sale data for securities listed on the New York Stock Exchange) is based on the number of viewers of the ticker, and is capped at $125,000 month, and the television ticker display fee for NASDAQ securities, similarly based on the number of households reached by the broadcaster, is capped at $50,000. Both of these products require the broadcaster to track the number of viewers of the ticker.[11]

The existence of alternatives to the NYSE Trades data product, including real-time consolidated data, free delayed consolidated data, and proprietary last

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 59606 (Mar. 19, 2009); 74 FR 13293 (Mar. 26, 2009) (SR–NYSE–2009–04) (the ''2009 Release'').

[5] *See* the 2009 Release at n. 5 and Securities Exchange Act Release No. 62038 (May 5, 2010), 75 FR 26825 (May 12, 2010) (SR–NYSE–2010–22).

[6] Television broadcast can be through cable, satellite, or traditional means.

[7] Although the Broadcast Fee will not vary based on the amount of time that the datafeed is displayed during the day or the number of channels the broadcaster utilizes, it will be prorated if a television broadcaster initiates the service during the middle of a month.

[8] 15 U.S.C. 78f(b) (sic).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] A television broadcaster could elect to combine for broadcast the NYSE Trades data with other data available to it for broadcast.

[11] The Network A Rate Schedule is available at *http://www.nyxdata.com/CTA. See also* NASDAQ Rule 7039, which sets forth fees for the distribution of NASDAQ Last Sale Data Products via Television.

sale data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), upheld the Commission's reliance upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary market data:

> In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.'

*NetCoalition* at 15 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [12]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.[13]

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach, and the Exchange incorporates by reference into this proposed rule change its affiliate's analysis of this topic in another recent rule filing.[14]

For these reasons, the Exchange believes that the proposed fee is reasonable, equitable, and not unfairly discriminatory.

*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. An exchange's ability to price its datafeed products is constrained by (1) Competition among exchanges and other trading platforms that compete with one another in a variety of dimensions, (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

It is common for broker-dealers to further exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. As a recent Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume * * * dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.'' [15]

Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. The U.S. Department of Justice recently acknowledged the aggressive competition among exchanges. In announcing the abandoned bid for NYSE Euronext by NASDAQ OMX Group Inc. and IntercontinentalExchange Inc., Assistant Attorney General Christine Varney stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.'' [16]

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality, and price and distribution of its data products. Without trade executions, exchange data products cannot exist.

Further, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions. The Exchange notes in that respect that making the NYSE Trades service available on television at a more economical and easier to administer fee would encourage more television broadcasters to choose to offer the datafeed and thereby benefit public investors and other market participants who follow market developments through that medium by providing them with a convenient way to track price trends while watching news programs during the course of the trading day, thereby complementing NYSE Trades offerings through other means.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange.

Similarly, in the case of products that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to certain end users. Vendors impose price restraints based upon their

[12] *NetCoalition* at 16.

[13] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

[14] *See* Securities Exchange Act Release No. 63291 (Nov. 9, 2010), 75 FR 70311 (Nov. 17, 2010) (SR–NYSEArca–2010–97).

[15] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 22, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598.

[16] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at *http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Similarly, television broadcasters will not elect to display NYSE Trades unless they believe it will help them attract or maintain viewers.

Other market participants have noted that the liquidity provided by the order book, trade execution, core market data, and non-core market data are joint products of a joint platform and have common costs.[17] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[18]

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint product. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 equities self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE MKT, NYSE Arca, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, BDs, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. Because market data users can thus find suitable substitutes for most proprietary market data products (in this case both a CTA product and a NASDAQ proprietary product are direct alternatives), a market that overprices its market data products stands a high risk that users may substitute another source of market information for its own.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products. The Exchange notes that its Broadcast Fee for NYSE Trades is substantially less than the fee for a similar CTA product.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TrackECN, BATS Trading and Direct Edge. Today, BATS and Direct Edge provide data at no charge on their Web sites in order to

[17] *See* Securities Exchange Act Release No. 62887 (Sept. 10, 2010), 75 FR 57092, 57095 (Sept. 17, 2010) (SR–Phlx–2010–121); Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110); and Securities Exchange Act Release No. 62908 (Sept. 14, 2010) (SR–NASDAQ–2010–111), 75 FR 57321, 57324 (Sept. 20, 2010) (''all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''); *see also* August 1, 2008 Comment Letter of Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ OMX Group, Inc., Statement of Janusz Ordover and Gustavo Bamberger (''because market data is both an input to and a byproduct of executing trades on a particular platform, market data and trade execution services are an example of 'joint products' with 'joint costs.'''), attachment at pg. 4, available at *www.sec.gov/comments/34-57917/3457917-12.pdf.*

[18] *See generally* Mark Hirschey, *Fundamentals of Managerial Economics*, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. * * * Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F. W. Taussig, ''A Contribution to the Theory of Railway Rates,'' *Quarterly Journal of Economics* V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

attract more order flow, and use market data revenue rebates from resulting additional executions to maintain low execution charges for its users.[19]

In establishing the Broadcast Fee for the NYSE Trades service, the Exchange considered the competitiveness of the market for data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's product, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives. Accordingly, the Exchange believes that the acceptance of datafeed products in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[20] of the Act and subparagraph (f)(2) of Rule 19b-4[21] thereunder, because it establishes a due, fee, or other charge imposed by NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–28 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–28, and should be submitted on or before August 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

[19] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b-4(f)(2).

[22] 17 CFR 200.30–3(a)(12).

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA 2011–0090]**

## Privacy Act of 1974, as Amended; Computer Matching Program (Social Security Administration (SSA)/ Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA))—Match Number 1008

**AGENCY:** SSA.

**ACTION:** Notice of a renewal of an existing computer matching program that expired on May 10, 2012.

**SUMMARY:** In accordance with the provisions of the Privacy Act, as amended, this notice announces a renewal of an existing computer matching program that we are currently conducting with VA/VBA.

**DATES:** We will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Oversight and Government Reform of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

**ADDRESSES:** Interested parties may comment on this notice by either telefaxing to (410) 966–0869 or writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** The Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, as shown above.

**SUPPLEMENTARY INFORMATION:**

### A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) amended the Privacy Act (5 U.S.C. 552a) by describing the conditions under which computer matching involving the Federal government could be performed and adding certain protections for persons applying for, and receiving,

Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such persons.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain approval of the matching agreement by the Data Integrity Boards of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating, or denying a person's benefits or payments.

**B. SSA Computer Matches Subject to the Privacy Act**

We have taken action to ensure that all of our computer matching programs comply with the requirements of the Privacy Act, as amended.

**Dawn S. Wiggins,**

*Acting Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.*

**Notice of Computer Matching Program, SSA With the Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA)**

*A. Participating Agencies*

SSA and VA/VBA.

*B. Purpose of the Matching Program*

The purpose of this matching program is to establish the conditions under which VA will disclose VA compensation and pension payment data to us for the purpose of identifying certain Supplemental Security Income (SSI) and Special Veterans Benefit (SVB) recipients under titles XVI and VIII of the Social Security Act (Act), respectively, who receive VA-administered benefits. This disclosure will also enable us to identify income limits of certain individuals in order to determine their potential eligibility for the Medicare Savings Program to implement a Medicare outreach program mandated by section 1144 of title XI of the Act.

*C. Authority for Conducting the Matching Program*

The legal authorities for us to conduct this computer matching are sections 806(b), 1144, and 1631(e)(1)(B) and (f) of the Act (42 U.S.C. 1006(b), 1320b–14, and 1383(e)(1)(B) and (f)).

The legal authority for VA to disclose information under this agreement is section 1631(f) of the Act (42 U.S.C. 1383(f)), which requires Federal agencies to provide such information as our Commissioner needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

*D. Categories of Records and Persons Covered by the Matching Program*

1. Systems of Records

VA will provide us with electronic files containing compensation and pension payment data from its system of records (SOR) entitled the ''Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA'' (58VA21/22/28), first published at 74 FR 14865 (April 1, 2009).

We will match the VA data with SSI/SVB payment information maintained in our SOR entitled ''Supplemental Security Income Record and Special Veterans Benefits (SSA/OASSIS 60–0103).''

2. Number of Records

During the 12-month period from April 2010 through March 2011, we received 14.3 million records from VA, of which 524,470 matched supplemental security records (SSR). We expect the volume of records received from VA to increase in the future. We estimate receiving 84 million records annually from VA in the coming years.

3. Specified Data Elements

We will conduct the match using the Social Security number, name, date of birth, and VA claim number on both the VA file and the SSR.

4. Frequency of Matching

VA will furnish us with an electronic file containing VA compensation and pension payment data monthly. The actual match will take place approximately during the first week of every month.

*E. Inclusive Dates of the Matching Program*

The effective date of this matching program is May 11, 2012; provided that the following notice periods have lapsed: 30 days after publication of this notice in the **Federal Register** and 40 days after notice of the matching program is sent to Congress and OMB. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 2012–18109 Filed 7–24–12; 8:45 am]

**BILLING CODE 4191–02–P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2011–0021]**

## Social Security Ruling, SSR 12–2p; Titles II and XVI: Evaluation of Fibromyalgia

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Ruling (SSR).

**SUMMARY:** In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 12–2p. This ruling provides guidance on how we develop evidence to establish that a person has a medically determinable impairment of fibromyalgia, and how we evaluate fibromyalgia in disability claims and continuing disability reviews under titles II and XVI of the Social Security Act.

**DATES:** *Effective Date:* July 25, 2012.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Williams, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020.

**SUPPLEMENTARY INFORMATION:** Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this SSR in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, special veterans benefits, and black lung benefits programs. We may base SSRs on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all components of the Social Security Administration. 20 CFR 402.35(b)(1).

This SSR will be in effect until we publish a notice in the **Federal Register** that rescinds it, or publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004—Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

**Michael J. Astrue,**

*Commissioner of Social Security.*

## Policy Interpretation Ruling

## Titles II and XVI: Evaluation of Fibromyalgia

*Purpose:* This Social Security Ruling (SSR) provides guidance on how we develop evidence to establish that a person has a medically determinable impairment (MDI) of fibromyalgia (FM), and how we evaluate FM in disability claims and continuing disability reviews under titles II and XVI of the Social Security Act (Act).[1]

*Citations:* Sections 216(i), 223(d), 223(f), 1614(a)(3), and 1614(a)(4) of the Act, as amended; Regulations No. 4, subpart P, sections 404.1505, 404.1508–404.1513, 404.1519a, 404.1520, 404.1520a, 404.1521, 404.1523, 404.1526, 404.1527–404.1529, 404.1545, 404.1560–404.1569a, 404.1593, 404.1594, appendix 1, and appendix 2; and Regulations No. 16, subpart I, sections 416.905, 416.906, 416.908–416.913, 416.919a, 416.920, 416.920a, 416.921, 416.923, 416.924, 416.924a, 416.926, 416.926a, 416.927–416.929, 416.945, 416.960–416.969a, 416.987, 416.993, 416.994, and 416.994a.

## Introduction

FM is a complex medical condition characterized primarily by widespread pain in the joints, muscles, tendons, or nearby soft tissues that has persisted for at least 3 months. FM is a common syndrome.[2] When a person seeks disability benefits due in whole or in part to FM, we must properly consider the person's symptoms when we decide whether the person has an MDI of FM. As with any claim for disability benefits, before we find that a person with an MDI of FM is disabled, we must ensure there is sufficient objective evidence to support a finding that the person's impairment(s) so limits the person's functional abilities that it precludes him or her from performing any substantial gainful activity. In this Ruling, we describe the evidence we need to establish an MDI of FM and explain how we evaluate this impairment when we determine whether the person is disabled.

## Policy Interpretation

FM is an MDI when it is established by appropriate medical evidence. FM can be the basis for a finding of disability.

I. *What general criteria can establish that a person has an MDI of FM?* Generally, a person can establish that he or she has an MDI of FM by providing evidence from an acceptable medical source.[3] A licensed physician (a medical or osteopathic doctor) is the only acceptable medical source who can provide such evidence. We cannot rely upon the physician's diagnosis alone. The evidence must document that the physician reviewed the person's medical history and conducted a physical exam. We will review the physician's treatment notes to see if they are consistent with the diagnosis of FM, determine whether the person's symptoms have improved, worsened, or remained stable over time, and establish the physician's assessment over time of the person's physical strength and functional abilities.

II. *What specific criteria can establish that a person has an MDI of FM?* We will find that a person has an MDI of FM if the physician diagnosed FM and provides the evidence we describe in section II.A. or section II. B., and the physician's diagnosis is not inconsistent with the other evidence in the person's case record. These sections provide two sets of criteria for diagnosing FM, which we generally base on the 1990 American College of Rheumatology (ACR) Criteria for the Classification of Fibromyalgia[4] (the criteria in section II.A.), or the 2010 ACR Preliminary Diagnostic Criteria[5] (the criteria in section II.B.). If we cannot find that the person has an MDI of FM but there is evidence of another MDI, we will not evaluate the impairment under this Ruling. Instead, we will evaluate it under the rules that apply for that impairment.

A. *The 1990 ACR Criteria for the Classification of Fibromyalgia.* Based on these criteria, we may find that a person has an MDI of FM if he or she has all three of the following:

1. A history of widespread pain—that is, pain in all quadrants of the body (the right and left sides of the body, both above and below the waist) and axial skeletal pain (the cervical spine, anterior chest, thoracic spine, or low back)—that has persisted (or that persisted) for at least 3 months. The pain may fluctuate in intensity and may not always be present.

2. At least 11 positive tender points on physical examination (see diagram below). The positive tender points must be found bilaterally (on the left and right sides of the body) and both above and below the waist.

a. The 18 tender point sites are located on each side of the body at the:

- Occiput (base of the skull);
- Low cervical spine (back and side of the neck);
- Trapezius muscle (shoulder);
- Supraspinatus muscle (near the shoulder blade);
- Second rib (top of the rib cage near the sternum or breast bone);
- Lateral epicondyle (outer aspect of the elbow);
- Gluteal (top of the buttock);
- Greater trochanter (below the hip); and
- Inner aspect of the knee.

b. In testing the tender-point sites,[6] the physician should perform digital palpation with an approximate force of 9 pounds (approximately the amount of pressure needed to blanch the thumbnail of the examiner). The physician considers a tender point to be positive if the person experiences any pain when applying this amount of pressure to the site.

3. Evidence that other disorders that could cause the symptoms or signs were excluded. Other physical and mental disorders may have symptoms or signs that are the same or similar to those

[1] For simplicity, we refer in this SSR only to initial claims for benefits made by adults (individuals who are at least age 18). However, the policy interpretations in this SSR also apply to claims for benefits made by children (individuals under age 18) under title XVI of the Act and to claims above the initial level. FM can affect children, and the signs and symptoms are essentially the same in children as adults. The policy interpretations in this SSR also apply to continuing disability reviews of adults and children under sections 223(f) and 1614(a)(4) of the Act, and to redeterminations of eligibility for benefits we make in accordance with section 1614(a)(3)(H) of the Act when a child who is receiving title XVI childhood disability benefits attains age 18.

[2] See National Center for Biotechnology Information, U.S. National Library of Medicine, Fibromyalgia, *http://www.ncbi.nlm.nih.gov/pubmedhealth/PMH0001463.*

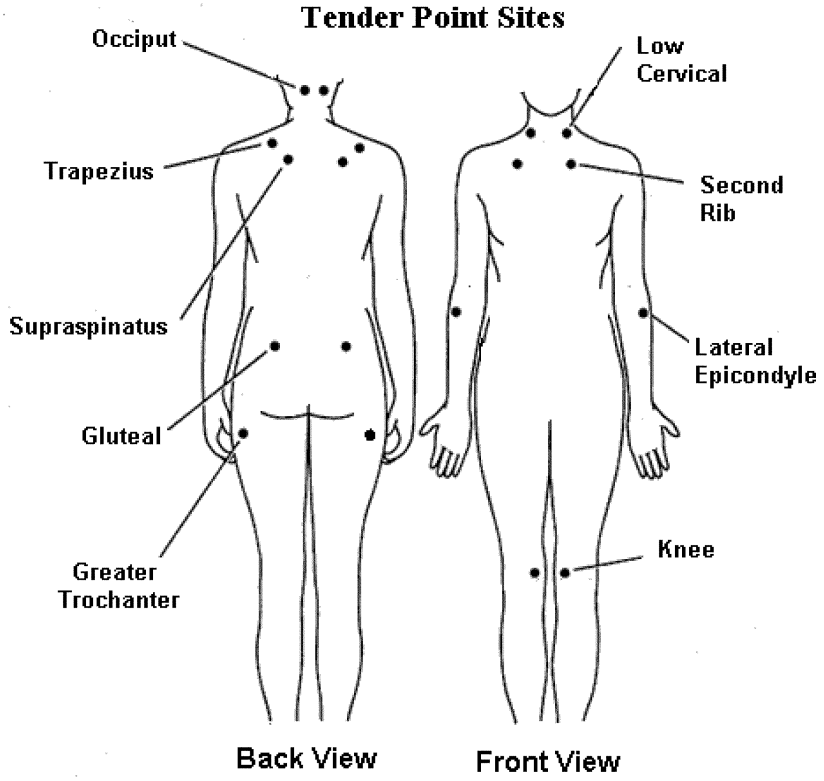
[3] See 20 CFR 404.1513(a) and 416.913(a).

[4] See Frederick Wolfe *et al., The American College of Rheumatology 1990 Criteria for the Classification of Fibromyalgia: Report of the Multicenter Criteria Committee,* 33 Arthritis and Rheumatism 160 (1990), available at *http://www.rheumatology.org/practice/clinical/classification/fibromyalgia/1990_Criteria_for_Classification_Fibro.pdf.*

[5] See Frederick Wolfe *et al., The American College of Rheumatology Preliminary Diagnostic Criteria for Fibromyalgia and Measurement of Symptom Severity,* 62 Arthritis Care & Research 600 (2010), available at *http://www.rheumatology.org/practice/clinical/classification/fibromyalgia/2010_Preliminary_Diagnostic_Criteria.pdf.*

[6] We may use the criteria in section II.B. of this SSR to determine an MDI of FM if the case record does not include a report of the results of tender-point testing, or the report does not describe the number and location on the body of the positive tender points.

resulting from FM.[7] Therefore, it is common in cases involving FM to find evidence of examinations and testing that rule out other disorders that could account for the person's symptoms and signs. Laboratory testing may include imaging and other laboratory tests (for example, complete blood counts, erythrocyte sedimentation rate, anti-nuclear antibody, thyroid function, and rheumatoid factor).




B. *The 2010 ACR Preliminary Diagnostic Criteria.* Based on these criteria, we may find that a person has an MDI of FM if he or she has all three of the following criteria[8]:

1. A history of widespread pain (see section II.A.1.);

2. Repeated manifestations of six or more FM symptoms, signs,[9] or co-occurring conditions,[10] especially manifestations of fatigue, cognitive or memory problems (''fibro fog''), waking unrefreshed,[11] depression, anxiety disorder, or irritable bowel syndrome; and

3. Evidence that other disorders that could cause these repeated manifestations of symptoms, signs, or co-occurring conditions were excluded (see section II.A.3.).

**III. What documentation do we need?**

*A. General*

1. As in all claims for disability benefits, we need objective medical evidence to establish the presence of an MDI. When a person alleges FM, longitudinal records reflecting ongoing medical evaluation and treatment from acceptable medical sources are especially helpful in establishing both the existence and severity of the impairment. In cases involving FM, as in any case, we will make every reasonable effort to obtain all available, relevant evidence to ensure appropriate and thorough evaluation.

2. We will generally request evidence for the 12-month period before the date of application unless we have reason to believe that we need evidence from an

[7] Some examples of other disorders that may have symptoms or signs that are the same or similar to those resulting from FM include rheumatologic disorders, myofacial pain syndrome, polymyalgia rheumatica, chronic Lyme disease, and cervical hyperextension-associated or hyperflexion-associated disorders.

[8] We adapted the criteria from the 2010 ACR Preliminary Diagnostic Criteria because the Act and our regulations require a claimant for disability benefits to establish by objective medical evidence that he or she has a medically determinable impairment. See sections 223(d)(5)(A) and 1614(a)(3)(D) of the Act; 20 CFR 404.1508 and 416.908; SSR 96–4p: Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations, 61 FR 34488 (July 2, 1996) (also available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR96–04-di-01.html*).

[9] Symptoms and signs that may be considered include the ''(s)omatic symptoms'' referred to in Table No. 4, ''Fibromyalgia diagnostic criteria,'' in the 2010 ACR Preliminary Diagnostic Criteria. We consider some of the ''somatic symptoms'' listed in Table No. 4 to be ''signs'' under 20 CFR 404.1528(b) and 416.928(b). These ''somatic symptoms'' include muscle pain, irritable bowel syndrome, fatigue or tiredness, thinking or remembering problems, muscle weakness, headache, pain or cramps in the abdomen, numbness or tingling, dizziness, insomnia, depression, constipation, pain in the upper abdomen, nausea, nervousness, chest pain, blurred vision, fever, diarrhea, dry mouth, itching, wheezing, Raynaud's phenomenon, hives or welts, ringing in the ears, vomiting, heartburn, oral ulcers, loss of taste, change in taste, seizures, dry eyes, shortness of breath, loss of appetite, rash, sun sensitivity, hearing difficulties, easy bruising, hair loss, frequent urination, or bladder spasms.

[10] Some co-occurring conditions that may be considered are referred to in Table No. 4, ''Fibromyalgia diagnostic criteria,'' in the 2010 ACR Preliminary Diagnostic Criteria as ''somatic symptoms,'' such as irritable bowel syndrome or depression. Other co-occurring conditions, which are not listed in Table No. 4, may also be considered, such as anxiety disorder, chronic fatigue syndrome, irritable bladder syndrome, interstitial cystitis, temporomandibular joint disorder, gastroesophageal reflux disorder, migraine, or restless leg syndrome.

[11] ''Waking unrefreshed'' may be indicated in the case record by the person's statements describing a history of non-restorative sleep, such as statements about waking up tired or having difficulty remaining awake during the day, or other statements or evidence in the record reflecting that the person has a history of non-restorative sleep.

earlier period, or unless the alleged onset of disability is less than 12 months before the date of application.[12] In the latter case, we may still request evidence from before the alleged onset date if we have reason to believe that it could be relevant to a finding about the existence, severity, or duration of the disorder, or to establish the onset of disability.

*B. Other Sources of Evidence*

1. In addition to obtaining evidence from a physician, we may request evidence from other acceptable medical sources, such as psychologists, both to determine whether the person has another MDI(s) and to evaluate the severity and functional effects of FM or any of the person's other impairments. We also may consider evidence from medical sources who are not ''acceptable medical sources'' to evaluate the severity and functional effects of the impairment(s).

2. Under our regulations and SSR 06–3p,[13] information from nonmedical sources can also help us evaluate the severity and functional effects of a person's FM. This information may help us to assess the person's ability to function day-to-day and over time. It may also help us when we make findings about the credibility of the person's allegations about symptoms and their effects.[14] Examples of nonmedical sources include:

a. Neighbors, friends, relatives, and clergy; and

b. Past employers, rehabilitation counselors, and teachers; and

c. Statements from SSA personnel who interviewed the person.

*C. When There Is Insufficient Evidence for Us To Determine Whether the Person Has an MDI of FM or Is Disabled*

1. We may take one or more actions to try to resolve the insufficiency:[15]

a. We may recontact the person's treating or other source(s) to see if the information we need is available;

b. We may request additional existing records;

c. We may ask the person or others for more information; or

d. If the evidence is still insufficient to determine whether the person has an MDI of FM or is disabled despite our efforts to obtain additional evidence, we may make a determination or decision based on the evidence we have.

2. We may purchase a consultative examination (CE) at our expense to determine if a person has an MDI of FM or is disabled when we need this information to adjudicate the case.[16]

a. We will not purchase a CE solely to determine if a person has FM in addition to another MDI that could account for his or her symptoms.

b. We may purchase a CE to help us assess the severity and functional effects of medically determined FM or any other impairment(s). If necessary, we may purchase a CE to help us determine whether the impairment(s) meets the duration requirement.

c. Because the symptoms and signs of FM may vary in severity over time and may even be absent on some days, it is important that the medical source who conducts the CE has access to longitudinal information about the person. However, we may rely on the CE report even if the person who conducts the CE did not have access to longitudinal evidence if we determine that the CE is the most probative evidence in the case record.

IV. *How do we evaluate a person's statements about his or her symptoms and functional limitations?* We follow the two-step process set forth in our regulations and in SSR 96–7p.[17]

A. *First step of the symptom evaluation process.* There must be medical signs and findings that show the person has an MDI(s) which could reasonably be expected to produce the pain or other symptoms alleged. FM which we determined to be an MDI satisfies the first step of our two-step process for evaluating symptoms.

B. *Second step of the symptom evaluation process.* Once an MDI is established, we then evaluate the intensity and persistence of the person's pain or any other symptoms and determine the extent to which the symptoms limit the person's capacity for work. If objective medical evidence does not substantiate the person's statements about the intensity, persistence, and functionally limiting effects of symptoms, we consider all of the evidence in the case record, including the person's daily activities, medications or other treatments the person uses, or has used, to alleviate symptoms; the nature and frequency of the person's attempts to obtain medical treatment for symptoms; and statements by other people about the person's symptoms. As we explain in SSR 96–7p, we will make a finding about the credibility of the person's statements regarding the effects of his or her symptoms on functioning. We will make every reasonable effort to obtain available information that could help us assess the credibility of the person's statements.

V. *How do we find a person disabled based on an MDI of FM?* Once we establish that a person has an MDI of FM, we will consider it in the sequential evaluation process to determine whether the person is disabled. As we explain in section VI. below, we consider the severity of the impairment, whether the impairment medically equals the requirements of a listed impairment, and whether the impairment prevents the person from doing his or her past relevant work or other work that exists in significant numbers in the national economy.

VI. *How do we consider FM in the sequential evaluation process?*[18] As with any adult claim for disability benefits, we use a 5-step sequential evaluation process to determine whether an adult with an MDI of FM is disabled.[19]

A. At step 1, we consider the person's work activity. If a person with FM is doing substantial gainful activity, we find that he or she is not disabled.

B. At step 2, we consider whether the person has a ''severe'' MDI(s). If we find that the person has an MDI that could reasonably be expected to produce the pain or other symptoms the person alleges, we will consider those symptom(s) in deciding whether the person's impairment(s) is severe. If the person's pain or other symptoms cause a limitation or restriction that has more than a minimal effect on the ability to perform basic work activities, we will

[12] See 20 CFR 404.1512(d) and 416.912(d).

[13] See 20 CFR 404.1513(d)(4), 416.913(d)(4); SSR 06–3p: Titles II and XVI: Considering Opinions and Other Evidence from Sources Who Are Not ''Acceptable Medical Sources'' in Disability Claims, 71 FR 45593 (August 9, 2006), (also available at: *http://www.ssa.gov/OP_Home/rulings/di/01/SSR2006-03-di-01.html*).

[14] See section IV below.

[15] See 20 CFR 404.1520b(c) and 416.920b(c).

[16] See 20 CFR 404.1520b(c)(3), and 416.920b(c)(3). We may purchase a CE without recontacting a person's treating or other sources if the source cannot provide the necessary information, or the information is not available from the source. See 20 CFR 404.1519a(b), and 416.919a(b).

[17] See 20 CFR 404.1529(b) and (c) and 416.929(b) and (c); SSR 96–7p: Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements, 61 FR 34483 (July 2, 1996) (also available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR96-07-di-01.html*).

[18] As we have already noted, we refer in this SSR only to adult disability claims, but the guidance in the SSR applies to all disability cases under titles II and XVI involving FM. We use different sequential evaluation processes for claims of children under title XVI and in continuing disability reviews of adults and children under titles II and XVI. See 20 CFR 404.1594, 416.924, 416.994, and 416.994a. We also use a modification of the 5-step sequential evaluation process for adults in 20 CFR 416.920 when we do age-18 redeterminations under title XVI. See 20 CFR 416.987.

[19] See 20 CFR 404.1520 and 416.920.

find that the person has a severe impairment(s).[20]

C. At step 3, we consider whether the person's impairment(s) meets or medically equals the criteria of any of the listings in the Listing of Impairments in appendix 1, subpart P of 20 CFR part 404 (appendix 1). FM cannot meet a listing in appendix 1 because FM is not a listed impairment. At step 3, therefore, we determine whether FM medically equals a listing (for example, listing 14.09D in the listing for inflammatory arthritis), or whether it medically equals a listing in combination with at least one other medically determinable impairment.

D. Residual Functional Capacity (RFC) assessment: In our regulations and SSR 96–8p,[21] we explain that we assess a person's RFC when the person's impairment(s) does not meet or equal a listed impairment. We base our RFC assessment on all relevant evidence in the case record. We consider the effects of all of the person's medically determinable impairments, including impairments that are ''not severe.'' For a person with FM, we will consider a longitudinal record whenever possible because the symptoms of FM can wax and wane so that a person may have ''bad days and good days.''

E. At steps 4 and 5, we use our RFC assessment to determine whether the person is capable of doing any past relevant work (step 4) or any other work that exists in significant numbers in the national economy (step 5). If the person is able to do any past relevant work, we find that he or she is not disabled. If the person is not able to do any past relevant work or does not have such work experience, we determine whether he or she can do any other work. The usual vocational considerations apply.[22]

1. Widespread pain and other symptoms associated with FM, such as fatigue, may result in exertional limitations that prevent a person from doing the full range of unskilled work in one or more of the exertional categories in appendix 2 of subpart P of part 404 (appendix 2).[23] People with FM may also have nonexertional physical or mental limitations because of their pain or other symptoms.[24] Some may have environmental restrictions, which are also nonexertional.

2. Adjudicators must be alert to the possibility that there may be exertional or nonexertional (for example, postural or environmental) limitations that erode a person's occupational base sufficiently to preclude the use of a rule in appendix 2 to direct a decision. In such cases, adjudicators must use the rules in appendix 2 as a framework for decision-making and may need to consult a vocational resource.[25]

**DATES:** *Effective Date:* This SSR is effective on July 25, 2012.

Cross-References: SSR 82–63: Titles II and XVI: Medical-Vocational Profiles Showing an Inability To Make an Adjustment to Other Work; SSR 83–12: Title II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Exertional Limitations Within a Range of Work or Between Ranges of Work; SSR 83–14: Titles II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments; SSR 85–15: Titles II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Solely Nonexertional Impairments; SSR 96–3p: Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe; SSR 96–4p: Policy Interpretation Ruling Titles II and XVI: Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations; SSR 96–7p: Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements; SSR 96–8p: Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims; SSR 96–9p, Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work; SSR 99–2p: Titles II and XVI: Evaluating Cases Involving Chronic Fatigue Syndrome (CFS); SSR 02–2p: Titles II and XVI: Evaluation of Interstitial Cystitis; and SSR 06–3p: Titles II and XVI: Considering Opinions and Other Evidence from Sources Who Are Not ''Acceptable Medical Sources'' in Disability Claims; Considering Decisions on Disability by Other Governmental and Nongovernmental Agencies; and Program Operations Manual System (POMS) DI 22505.001, DI 22505.003, DI 24510.057, DI 24515.012, DI 24515.061–DI 24515.063, DI 24515.075, DI 24555.001, DI 25010.001, and DI 25025.001.

[FR Doc. 2012–17936 Filed 7–24–12; 8:45 am]

BILLING CODE 4191–02–P

[20] See SSR 96–3p: Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe, 61 FR 34468 (July 2, 1996) (also available at: *http://www.ssa.gov/OP_Home/rulings/di/01/SSR96-03-di-01.html*).

[21] See 20 CFR 404.1520(e), 416.920(e); SSR 96–8p: Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims, 61 FR 34474 (July 2, 1996) (also available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR96–08-di-01.html*).

[22] See 20 CFR 404.1560–404.1569a and 416.960–416.969a.

[23] See SSR 83–12: Title II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Exertional Limitations Within a Range of Work or Between Ranges of Work (available at *http://www.socialsecurity.gov/OP_Home/rulings/di/02/SSR83-12-di-02.html*).

[24] See SSR 85–15: Titles II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating Solely Nonexertional Impairments (available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/02/SSR85-15-di-02.html*); and SSR 96–4p.

[25] See SSR 83–12; SSR 83–14: Titles II and XVI: Capability To Do Other Work—The Medical-Vocational Rules as a Framework for Evaluating a Combination of Exertional and Nonexertional Impairments (available at *http://www.socialsecurity.gov/OP_Home/rulings/di/02/SSR83-14-di-02.html*); SSR 85–15; and SSR 96–9p, Titles II and XVI: Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work, 61 FR 34478 (July 2, 1996) (also available at: *http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR96-09-di-01.html*).

## DEPARTMENT OF STATE

**[Public Notice 7963]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Byzantine Art in the Mary and Michael Jaharis Galleries of Greek, Roman and Byzantine Art''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Byzantine Art in the Mary and Michael Jaharis Galleries of Greek, Roman and Byzantine Art'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Art Institute of Chicago, Chicago, IL, from on or about November 10, 2012, until on or about November 8, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public

Notice of these Determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 18, 2012.

**J. Adam Ereli,**

*Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2012–18156 Filed 7–24–12; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2012–0039]**

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a letter dated March 17, 2012, CSX Transportation (CSX), has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232. FRA assigned the petition Docket Number FRA–2012–0039.

CSX seeks relief with respect to the application of 49 CFR 232.205, *Class I brake test-initial terminal inspection,* and 232.15 (specifically paragraph (a)), *Movement of defective equipment,* to the cars found to have ineffective brakes during Class I initial terminal brake tests performed at the CONSOL coal pier facility in Baltimore, MD. Specifically, CSX requests that FRA permit cars that cannot be safely repaired at CONSOL's coal pier facility to be moved to CSX's Mount Clare and Curtis Bay facilities for repair.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: 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 September 10, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on July 19, 2012.

**Ron Hynes,**

*Director, Office of Safety Assurance and Compliance.*

[FR Doc. 2012–18081 Filed 7–24–12; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2012–0052]**

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 11, 2012, the Southeastern Pennsylvania Transportation Authority (SEPTA) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain Federal hours of service requirements for train employees engaged in commuter or intercity rail passenger transportation contained at 49 CFR Section 228.405(b)(4). FRA assigned the petition Docket Number FRA–2012–0052.

In its petition, SEPTA seeks a waiver allowing travel time from a train employee's home to all reporting points to be considered as time off duty. FRA's current policy only allows travel time (at a designated home terminal, from an employee's residence to a single fixed regular reporting point) to be defined as commuting and time off duty. Travel time between a train employee's residence and other than regular reporting points is considered deadheading and can count as time on duty. In support of its request, SEPTA submitted fatigue analysis of employee work schedules arguing that safety would not be compromised by approving the waiver request. SEPTA also provided information that the waiver would be in the public interest, because of increased employee availability, which would reduce the financial burden placed on this publicly funded commuter railroad.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by September 10, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on July 19, 2012.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2012–18083 Filed 7–24–12; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–2012–0029]**

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated February 28, 2012, Canadian Pacific Railway (CP) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance extension from certain provisions of the Federal railroad safety regulations contained at 49 CFR Sections 242.403(b), (c)(1)–(3), (d), (e)(1)–(4), (e)(6)–(11), (e)(13) and f(1)–(2). FRA assigned the petition Docket Number FRA–2012–0029.

The Confidential Close Call Reporting System (C3RS) pilot project for the CP Portage, WI, terminal was initially approved by FRA on March 3, 2008. In Docket Number FRA–2007–0008, CP requested and received a waiver of compliance from certain provisions of 49 CFR Part 240 to support its C3RS demonstration pilot project. In this petition, CP, the Brotherhood of Locomotive Engineers and Trainmen, and the United Transportation Union are requesting a waiver in order to shield the reporting employee(s) and the railroad from punitive sanctions that would otherwise arise as provided in selected sections of § 242.403.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays. If you do not have access to the Internet, please contact FRA's Docket Clerk at 202–493–6030 and the clerk will provide necessary information concerning the contents of the petition.

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 September 10, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on July 19, 2012.

**Robert C. Lauby,**

*Deputy Associate Administrator for Regulatory and Legislative Operations.*

[FR Doc. 2012–18082 Filed 7–24–12; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### FY 2012 Discretionary Funding Opportunity; Section 5309 Bus and Bus Facilities and Section 5312 National Research Program Veterans Transportation and Community Living Initiative

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** FTA Veterans Transportation and Community Living Initiative II Grants: Announcement of Project Selections.

**SUMMARY:** The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the selection of projects funded under the Fiscal Year 2012 Veterans Transportation and Community Living Initiative (VTCLI) discretionary grant opportunity, which was announced in the Notice of Funding Availability on February 7, 2012. The 2012 grant program, referred to as ''VTCLI II'' in this notice, makes funds available to local, state and tribal agencies to create or expand One-Call/One-Click Transportation Resource Centers in their communities. These centers will increase the availability of community transportation resources to veterans, service members and military families and improve the accessibility of existing mobility resources and other transportation information to the whole community. Additionally, they will enable closer coordination of existing transportation services to improve customer experiences and overall efficiency. The VTCLI supports the Obama Administration's priority of supporting America's veterans and military families, as well as the objectives of the Federal Interagency Coordinating Council on Access and Mobility. The initiative is a joint effort of the U.S. Departments of Defense, Health and Human Service, Labor, Transportation and Veterans Affairs.

**FOR FURTHER INFORMATION CONTACT:** Successful applicants should contact the appropriate FTA Regional Office (Appendix) for specific information regarding applying for the funds. Unsuccessful applicants may contact

Erik Weber, Office of Program Management at (202) 366–0705, email: *erik.weber@dot.gov,* to arrange a proposal debriefing within 30 days of this announcement. For general program information on the Veterans Transportation and Community Living Initiative, contact Erik Weber of the Office of Program Management. A TDD is available at 1–800–877–8339 (TDD/FIRS).

**SUPPLEMENTARY INFORMATION:** *Veterans Transportation and Community Living Initiative Grant Program:* Approximately $30 million was made available by FTA for the VTCLI II grant opportunity, with $26.6 million in Section 5309 Bus and Bus Facilities funds and $2.9 million in Section 5312 National Research funds allocated to selected projects. In total, 80 eligible applications requested $40 million. Project proposals were evaluated based on the criteria detailed in the February 7, 2012 Notice of Funding Availability. The projects selected and shown in Table 1 will provide mobility choices to veterans, military families and other community members, increasing their awareness of and access to existing community transportation options and enabling them remain active in their communities. Funds must be used for eligible purposes defined under 49 U.S.C. 5309(b)(3), 5302(a)(1), and 5312(a), and be consistent with the competitive announcement of availability of funds as well as the applicant's proposal. In selecting projects for this program, FTA ensured that an equitable share of the available funds is allocated to projects that are not in urbanized areas.

*Project Implementation:* So that funds can be obligated expeditiously, grantees selected for competitive discretionary funding should work with their FTA Regional Office to finalize the grant application in FTA's Transportation Electronic Award Management system (TEAM) for the projects identified in the attached table. In cases where the allocation amount is less than the proposer's requested amount, grantees should work with the Regional Office to appropriately reduce the scope in the event specific activities were excluded upon funding selection, or scale the project such that a complete phase or project is accomplished. A discretionary project identification number has been assigned to each project for tracking purposes and must be used in the TEAM application. Section 5309 and Section 5312 funds must be obligated in separate grants and thus have been assigned discrete discretionary project identification numbers for organizations receiving both types of funds. Section 5309-funded awards are identified by a ''D2012–BUSP'' project identification number, while Section 5312-funded awards have been assigned ''D2011–NATR'' numbers. Selected projects have not been extended blanket pre-award authority, however, grantees may request pre-award authority and, on a case-by-case basis, FTA Regional Offices may grant it through a Letter of No Prejudice.

FTA Section 5309 funds may only be used for eligible purposes defined under 49 U.S.C. 5309(b)(3) and 5302(a)(1), as described in FTA Circular 9030.1C, and further limited by the February 7, 2012 **Federal Register** Notice of Funding Availability. Announcement of selection in this notice does not guarantee award of funds to the selected organization until all applicable grant requirements, including presence of eligible local match, are met. Sources of any in-kind match proposed should be discussed with the FTA Regional Office to ensure eligibility. For any VTCLI II projects that include lease of space, please refer to FTA's guidance on Capital Leases found at *http://www.fta.dot.gov/grants/12865.html* and in Chapter IV, subparagraph 3.j(2) of FTA Circular 5010.1D. For any projects which proposed to use applicant labor to accomplish capital design and engineering tasks, please refer to FTA's guidance on Force Account labor found in Chapter IV, paragraph 4.d of FTA Circular 5010.1D. All capital procurements undertaken with VTCLI II funds must comply with FTA's Third Party Procurement Guidelines found at *http://www.fta.dot.gov/legislation_law/12349_8641.html.* Any further questions on procurement guidelines should be discussed with the FTA Regional Office. Section 5312 Research funds must adhere to the requirements of the Section 5312 National Research Program, and may be used only for eligible purposes defined under 49 U.S.C. 5312(a) and FTA Circular 6100.1D and further limited by the February 7, 2012 Notice of Funding Availability. Post-award reporting requirements include submission of the Financial Federal Report and Milestone reports in TEAM as appropriate (see FTA Circular 5010.1D) and may include additional reporting specific to the VTCLI II. Recipients also may be expected to participate in events or peer networks related to VTCLI II. Grants which include Section 5312 Research funds may be required to develop a final report or provide data for a consolidated report on the program.

Under the Section 5312 funds available, FTA also is awarding a $500,000 cooperative agreement to the VTCLI Technical Assistance Consortium to carry out general and targeted technical assistance to VTCLI grantees, in order to ensure successful, coordinated outcomes. Each awardee will be assigned a technical assistance facilitator who will help identify areas of need for the project and help carry out the coordinated planning, needs assessment and performance measurement requirements set out in the February 7, 2012 Notice of Funding Availability. Several states and regions have received multiple VTCLI awards. As stated in the Notice, VTCLI II applicants were required to commit to update the appropriate state, regional and/or local coordinated human service transportation plan to address mobility needs of the veteran and military communities. As appropriate, this update should consider opportunities to coordinate between any VTCLI grants (both FY 2011 and FY 2012) within a region or state. The Technical Assistance Consortium will provide assistance in these efforts.

FTA will hold an informational webinar for grantees on Thursday, July 26 2012, to discuss the goals and expectations of the VTCLI and address technical aspects of applying for funds. Further details about the webinar will be posted at *http://www.fta.dot.gov/veterans.*

The grantee must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out the project supported by the FTA grant. By statute, the Section 5309 funds allocated in this announcement must be obligated in a grant by September 30, 2014, but since project readiness was a factor in selection, applicants are expected to apply promptly in order to begin implementing the project within twelve months.

Issued in Washington, DC, this 18th day of July 2012.

**Peter Rogoff,**

*Administrator.*

## Appendix

### FTA Regional and Metropolitan Offices

| | |
|---|---|
| Mary E. Mello, Deputy Regional Administrator, Region 1—Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055.<br>States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. | Robert C. Patrick, Regional Administrator, Region 6—Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550.<br>States served: Arkansas, Louisiana, Oklahoma, New Mexico, and Texas. |
| Marilyn G. Shazor, Regional Administrator, Region 2—New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. 212–668–2170.<br>States served: New Jersey, New York.<br>New York Metropolitan Office, Region 2–New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202. | Mokhtee Ahmad, Regional Administrator, Region 7—Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816–329–3920.<br>States served: Iowa, Kansas, Missouri, and Nebraska. |
| Brigid Hynes-Cherin, Regional Administrator, Region 3—Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100.<br>States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.<br>Washington DC Metropolitan Office, 1990 K St. NW., Suite 510, Washington, DC 20006, Tel: (202) 219–3562. | Linda Gehrke, Regional Administrator, Region 8—Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300.<br>States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. |
| Yvette Taylor, Regional Administrator, Region 4—Atlanta, 230 Peachtree Street NW., Suite 800, Atlanta, GA 30303, Tel. 404–865–5600.<br>States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands. | Leslie T. Rogers, Regional Administrator, Region 9—San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415–744–3133.<br>States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.<br>Los Angeles Metropolitan Office, Region 9—Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952. |
| Marisol Simon, Regional Administrator, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.<br>States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.<br>Chicago Metropolitan Office, Region 5—Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789. | Rick Krochalis, Regional Administrator, Region 10—Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954.<br>States served: Alaska, Idaho, Oregon, and Washington. |

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**Table 1**

**FY 2012 Veterans Transportation and Community Living Initiative Grant Program Projects**

**NOTE: Projects designated with a D2012-BUSP number are funded with Section 5309 Bus and Bus Facilities Capital funds,**
**projects designated with a D2011-NATR are funding with Section 5312 National Research Program funds**

| State | Recipient | Project Description | Project ID | Final Amt. |
|---|---|---|---|---|
| CA | San Diego Association of Governments (SANDAG) | Creation of an enhanced transportation information and referral directory, and a free mobile transportation application. Installation of interactive transportation kiosks at military bases, VA facilities & other locations. | D2012-BUSP-001 | $ 2,000,000 |
| | | | D2011-NATR-001 | $ 50,000 |
| CA | Santa Clara Valley Transportation Authority (VTA) | Expand existing one-call/one-click center and searchable online transportation database to include veterans, military resources. Introduce a mobility management social network and online collaborative workspace to veteran and military community. | D2012-BUSP-002 | $ 2,000,000 |
| | | | D2011-NATR-002 | $ 50,000 |
| CO | Colorado Department of Transportation | DRMAC will conduct expanded marketing and outreach to veteran and military communities and fund portion of statewide VTCLI manager to coordinate projects in Colorado. | D2011-NATR-003 | $ 50,000 |
| CO | Colorado Department of Transportation | All Points Transit will conduct outreach and marketing for One-Call/One-Click project and fund portion of statewide VTCLI manager to coordinate projects in Colorado. | D2011-NATR-004 | $ 14,500 |
| CO | Colorado Department of Transportation | ACT of Pikes Peak Region will conduct marketing and outreach to military community, medical facilities, VA medical clinics, local VSOs, and fund portion of statewide VTCLI manager to coordinate projects in Colorado. | D2011-NATR-005 | $ 50,000 |
| CO | Colorado Department of Transportation | NWCCOG will build and maintain relationships with key veteran/military partners, perform data validation and fund portion of statewide VTCLI manager to coordinate projects in Colorado. | D2011-NATR-006 | $ 50,000 |
| FL | City of Tallahassee | Conduct multi-lingual outreach & marketing on TV, Radio, print & other promotional materials and conduct a program analysis of One-Call/One-Click project to assess outcomes. | D2011-NATR-007 | $ 50,000 |
| FL | Jacksonville Transportation Authority | Conduct planning, marketing, outreach and training for One-Call/One-Click project. | D2011-NATR-008 | $ 50,000 |

**NOTE: Projects designated with a D2012-BUSP number are funded with Section 5309 Bus and Bus Facilities Capital funds,**
**projects designated with a D2011-NATR are funding with Section 5312 National Research Program funds**

| State | Recipient | Project Description | Project ID | Final Amt. |
|---|---|---|---|---|
| FL | Lee County Government | Install transportation information kiosks in key locations, install in-vehicle technology to improve real-time information, and conduct a regional study focusing on veterans transportation needs. | D2012-BUSP-003 | $ 1,309,200 |
| | | | D2011-NATR-009 | $ 50,000 |
| FL | Pinellas County Metropolitan Planning Organization | TBARTA will conduct an innovative quality assurance process with customer satisfaction surveys, and one-on-one consultation with One-Call/One-Click users to ensure accurate information. | D2011-NATR-010 | $ 50,000 |
| FL | Santa Rosa Board of County Commission | Purchase scheduling and dispatching software and install AVL/GPS in vehicles for a shuttle service to VA center in adjacent county provided by the Santa Rosa County Veterans Memorial Foundation. | D2012-BUSP-004 | $ 222,387 |
| FL | St. Lucie County Board of County Commissioners | Create customer web portal for services, purchase hardware and software for coordinated delivery, including in-vehicle technology, and call taking, as beginning phase of One-Call/One-Click Center. | D2012-BUSP-005 | $ 404,000 |
| | | | D2011-NATR-011 | $ 50,000 |
| GA | Atlanta Regional Commission | Conduct veteran stakeholder outreach and training to raise awareness of the software developed under One-Call/One-Click project and its purpose. | D2011-NATR-012 | $ 50,000 |
| GA | Georgia Department of Transporation | Create a website for existing One-Call Center adding One-Click capability, providing online information, scheduling & cancelling of trips. Conduct public engagement and outreach to large military population in area. | D2012-BUSP-006 | $ 160,000 |
| | | | D2011-NATR-013 | $ 50,000 |
| IA | Iowa Department of Transportation | Conduct a survey of veterans transportation options, then establish a database of services combined with similar databases to create a single statewide comprehensive database. Purchase rideshare matching software to enable more shared trips to common locations. | D2012-BUSP-007 | $ 1,461,800 |
| | | | D2011-NATR-014 | $ 50,000 |
| ID | Idaho Transportation Department | Conduct face-to-face public education workshops about state's FY11 projects in communities where One-Call/One-Click services will operate. | D2011-NATR-015 | $ 50,000 |

**NOTE: Projects designated with a D2012-BUSP number are funded with Section 5309 Bus and Bus Facilities Capital funds,**
**projects designated with a D2011-NATR are funding with Section 5312 National Research Program funds**

| State | Recipient | Project Description | Project ID | Final Amt. |
|---|---|---|---|---|
| IL | Illinois Department of Transportation | Expand the One-Call/One-Click Center to incorporate additional providers and vehicles with MDTs and other in-vehicle technology. | D2012-BUSP-008 | $ 81,778 |
| IN | Central Indiana Regional Transportation Authority | Conduct outreach and marketing to the veterans community for the consolidated transportation resource website. | D2011-NATR-016 | $ 20,000 |
| KY | Kentucky Transportation Cabinet | Build on previous project with additional in-vehicle technology, software and other online infrastructure for coordinated rural transportation providers in the state. Partner with state Veterans Affairs department for a statewide call center. | D2012-BUSP-009 | $ 808,421 |
| | | | D2011-NATR-017 | $ 50,000 |
| LA | The City of Shreveport | Modify maintenance bay in existing transit facility to house an expanded customer call center as new One-Call/One-Click center. Add in-vehicle technology to allow better provision of trip information for customers who call to schedule or check on them. | D2012-BUSP-010 | $ 440,000 |
| | | | D2011-NATR-018 | $ 50,000 |
| MA | Berkshire Regional Transit Authority | Create a One-Call/One-Click transportation center at the downtown transit center and purchase technology to enable coordination and better customer information for demand response service. | D2012-BUSP-011 | $ 2,000,000 |
| MA | Cape Ann Transportation Authority | Purchase hardware, software and in-vehicle technology to improve coordination between 3 providers and enable veterans to make easy transfers to VA-bound services or find other ridesharing options. | D2012-BUSP-012 | $ 289,080 |
| MA | Metrowest Regional Transit Authority | Expand paratransit call-center to include veterans transportation services and promote existing out-of-service-area transportation to VA Medical Centers in Boston. | D2012-BUSP-013 | $ 1,024,000 |
| MI | Michigan Department of Transportation | Michigan Association of United Ways will expand 2-1-1 system into a One-Call/One-Click Center. Build out a statewide database, single high profile website, statewide call routing system, and reporting system. | D2012-BUSP-014 | $ 1,420,100 |
| | | | D2011-NATR-019 | $ 50,000 |

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**projects designated with a D2011-NATR are funding with Section 5312 National Research Program funds**

| State | Recipient | Project Description | Project ID | Final Amt. |
|---|---|---|---|---|
| MI | City of Livonia | Build out call center to allow online information and booking, IVR phone system, in-vehicle technology and software to improve coordination with SMART and Detroit DOT services and connect with SMART's regional veterans website. | D2012-BUSP-015 | $ 213,594 |
| | | | D2011-NATR-020 | $ 25,000 |
| MI | Suburban Mobility Authority for Regional Transportation | Area Agency on Aging (AAA) 1B will augment SMART's prior project by Purchasing software to enable transportation resources, which meet needs SMART cannot, to link into the One-Call/One-Click Center and coordinate services crossing into Wayne County where the VAMC is. | D2012-BUSP-016 | $ 220,000 |
| MN | Minnesota Department of Transportation | Expand prior project, a state-hosted One-Call/One-Click center, to cover an additional 33 counties, making it statewide. Connect with existing senior, disability, and veteran resources provided by respective state agencies. | D2012-BUSP-017 | $ 536,206 |
| | | | D2011-NATR-021 | $ 50,000 |
| MO | Mid-America Regional Council | Coordinate with additional regional transportation providers to pull service information into database funded in FY11 VTCLI grant, and conduct marketing and outreach once product is ready for public release. | D2011-NATR-022 | $ 49,990 |
| MP | Commonwealth Office of Transit Authority | Construct building and equip a new One-Call/One-Click center which is being established as Northern Marianas is adding new transportation services to meet need. | D2012-BUSP-018 | $ 1,029,600 |
| | | | D2011-NATR-023 | $ 50,000 |
| MT | Great Falls Transit | Create coordinating software for community transit, veterans, human service and others providers to view ride schedules of all partner agencies and create cross-platform scheduling system. | D2012-BUSP-019 | $ 370,000 |
| | | | D2011-NATR-024 | $ 10,500 |
| NC | City of Fayetteville | Establish a multi-agency website and call center with various transit and military affiliations. | D2012-BUSP-020 | $ 31,120 |
| | | | D2011-NATR-025 | $ 15,560 |
| NC | North Carolina Department of Transporation | Macon Co Transit will join with other transit providers in Southwest NC to create a Transportation Coordination Management Center that will improve service on long distance trips to VA hospitals. | D2012-BUSP-021 | $ 459,873 |

**NOTE: Projects designated with a D2012-BUSP number are funded with Section 5309 Bus and Bus Facilities Capital funds,**
**projects designated with a D2011-NATR are funding with Section 5312 National Research Program funds**

| State | Recipient | Project Description | Project ID | Final Amt. |
|---|---|---|---|---|
| NC | North Carolina Department of Transportation | Onslow United Transit System will upgrade software to coordinate fixed-route and demand-response/paratransit amongst multiple providers in the Marine Camp Lejeune/Air Station New River area. | D2012-BUSP-022 | $ 57,136 |
| ND | City of Grand Forks | Expand existing state web site and city call center into a full service One-Call/One-Click Center to meet the needs of vets and expand service to the rest of the state. Purchase software for rural providers to enable incorporation into state call center. | D2012-BUSP-023 | $ 1,726,120 |
| | | | D2011-NATR-026 | $ 50,000 |
| NE | Omaha-Council Bluffs Metropolitan Area Planning Agency | Conduct marketing activities for One-Call/One-Click Center, and add to veteran representatives to permanent transportation coordination and planning advisory groups. | D2011-NATR-027 | $ 50,000 |
| NE | Transit Authority of the City of Omaha | Upgrade technology for paratransit vehicles and operators to improve reservation, payment, identification for customers and integration with Metropolitan Area Planning Agency One-Call/One-Click Center | D2012-BUSP-024 | $ 2,000,000 |
| NJ | County of Morris | Develop a One Click/One Call Transportation Resource Center by enhancing existing scheduling system to link local transit providers and the VA center. | D2012-BUSP-025 | $ 543,000 |
| NM | Mid-Region Council of Governments | Implement the first phase of a comprehensive One-Call/One-Click Center including the development and implementation of web site to provide integrated referrals for transportation partners. | D2012-BUSP-026 | $ 282,500 |
| | | | D2011-NATR-028 | $ 50,000 |
| NM | New Mexico Department of Transportation | Upgrade scheduling software, in-vehicle technology and routing, and regional call center to provide more efficient reservation, scheduling and delivery of rides while incorporating information on veterans/military transportation needs and services. | D2012-BUSP-027 | $ 364,000 |
| | | | D2011-NATR-029 | $ 50,000 |
| NV | Regional Transportation Commission of Southern Nevada | Conduct outreach about Veterans Medical Transportation Network, a community needs survey, update the coordinated plan to include veterans issues, publish a One-Call/One-Click Center user's guide. | D2011-NATR-030 | $ 50,000 |

**NOTE: Projects designated with a D2012-BUSP number are funded with Section 5309 Bus and Bus Facilities Capital funds,**
**projects designated with a D2011-NATR are funding with Section 5312 National Research Program funds**

| State | Recipient | Project Description | Project ID | Final Amt. |
|---|---|---|---|---|
| NY | County of Schuyler | Conduct outreach to and coordination with Veteran Service Organizations in support of One-Call/One-Click project. | D2011-NATR-031 | $ 36,000 |
| OH | Greater Dayton Regional Transit Authority | Upgrade demand-response software to enhance customer interface, including smart phone/mobile app access, and ride reminders. Purchase in-vehicle technology for regional partner providers. | D2012-BUSP-028 | $ 450,000 |
| OH | Portage Area Regional Transportation Authority | Implement One-Call/One-Click design, supported by two County Veterans Commissions, to give veterans and other citizens an all-in-one trip planning tool incorporating multiple service providers. | D2012-BUSP-029 | $ 224,400 |
| | | | D2011-NATR-032 | $ 50,000 |
| OH | Stark Area Regional Transit Authority | Conduct marketing and outreach, including electronic and print materials for One-Call/One-Click project. | D2011-NATR-033 | $ 50,000 |
| OH | Western Reserve Transit Authority | Implement an outreach and education plan for reaching veterans and military families working with VSOs, the VA clinic, the university's vets office, and other partner. | D2011-NATR-034 | $ 50,000 |
| OK | Indian Nations Council of Governments (INCOG) | Supplement prior project by adding in-vehicle technology to additional vehicles, adding customer ride notifications and the completion of a veterans one-call center at the VTS site in Muskogee. | D2012-BUSP-030 | $ 460,896 |
| | | | D2011-NATR-035 | $ 50,000 |
| OR | Rogue Valley Transportation District | Purchase a building to house a one-call/one-click center, brokerage and other regional coordination activities which will incorporate veterans needs and services. | D2012-BUSP-031 | $ 1,076,200 |
| | | | D2011-NATR-036 | $ 6,000 |
| OR | Tri-County Metropolitan Transportation District of Oregon | RideConnection will implement a 3-phase outreach plan for the FY11 VTCLI project, focusing on the TriCounty military community, with planning, training, technical assistance and other services. | D2011-NATR-037 | $ 49,643 |

**NOTE: Projects designated with a D2012-BUSP number are funded with Section 5309 Bus and Bus Facilities Capital funds,**
**projects designated with a D2011-NATR are funding with Section 5312 National Research Program funds**

| State | Recipient | Project Description | Project ID | Final Amt. |
|---|---|---|---|---|
| PA | County of Cambria | Increase outreach and marketing to new local partners and conduct additional planning to coordinate with PennDOT statewide project. | D2011-NATR-038 | $ 50,000 |
| SC | South Carolina Department of Transportation | Lowcountry COG will conduct 3-phase outreach project with needs analysis of veterans, updated coordination plan and marketing strategy to reach a variety of veterans & veterans groups. | D2011-NATR-039 | $ 49,714 |
| SD | South Dakota Department of Transportation | River Cities Public Transit, together with Prairie Hill Transit, will conduct joint education and outreach campaign of One-Call/One-Click Center projects. | D2011-NATR-040 | $ 50,000 |
| SD | South Dakota Department of Transportation | Prairie Hills Transit, together with River Cities Public Transit, will conduct joint education and outreach campaign of One-Call/One-Click Center projects. | D2011-NATR-041 | $ 50,000 |
| TX | Alamo Area Council of Governments | Create One-Call/One-Click Center using Aging and Disability Resource Center-Bexar County Area Agency on Aging and 211 systems with comprehensive website, IVR call system & customer service center. | D2012-BUSP-032 | $ 791,120 |
| | | | D2011-NATR-042 | $ 50,000 |
| TX | City of El Paso Sun Metro | Create a marketing outreach campaign to support One-Call/One-Click project. | D2011-NATR-043 | $ 31,000 |
| TX | Dallas Area Rapid Transit | Create an open-source software system called North Texas Rides with one-click website, mobile and social applications as well as kiosks located throughout the region integrated with 211 & 511. | D2012-BUSP-033 | $ 1,189,800 |
| | | | D2011-NATR-044 | $ 50,000 |
| TX | Texas Department of Transportation | East Texas COG will create a one-call/one-click center with joint dispatching, inter-operable communications, AVL and GPS systems for multiple coordinating transportation providers. | D2012-BUSP-034 | $ 230,992 |

**NOTE: Projects designated with a D2012-BUSP number are funded with Section 5309 Bus and Bus Facilities Capital funds,**
**projects designated with a D2011-NATR are funding with Section 5312 National Research Program funds**

| State | Recipient | Project Description | Project ID | Final Amt. |
|---|---|---|---|---|
| UT | Tooele County | Implement a veterans outreach program, coordinated planning and program evaluation supporting One-Call/One-Click project. | D2011-NATR-045 | $ 50,000 |
| UT | Utah Transit Authority | Build a data exchange framework which will allow trips, customers, and other information to be shared across regional transportation providers, including the DAV volunteer transportation network. | D2012-BUSP-035 | $ 400,000 |
| | | | D2011-NATR-046 | $ 50,000 |
| VA | Culpeper County, Virginia | Renovate a section of building and purchase technolgy to expand and upgrade existing Senior Center to become veteran/transportation one-call/one-click center. | D2012-BUSP-036 | $ 122,303 |
| | | | D2011-NATR-047 | $ 50,000 |
| WA | Washington State Department of Transportation | Hopelink will conduct veterans outreach & marketing to promote the one-click site and use of kiosks being placed prior project. They will also conduct a county-wide needs assessment. | D2011-NATR-048 | $ 50,000 |
| WA | Washington State Department of Transportation | Paratransit Services will hire outreach coordinator to work with VAMCs, Outpatient Clinics and other stakeholders, develop materials about project and train VA staff on transportation info kiosks. | D2011-NATR-049 | $ 50,000 |
| WA | Washington State Department of Transportation | Human Services Council will add in-vehicle technology to more partner providers' vehicles; create a web-based trip request module; and conduct coordination and outreach with veterans, military, and community partners to create an asset map of vet-focused service. | D2012-BUSP-037 | $ 172,688 |
| | | | D2011-NATR-050 | $ 50,000 |
| WA | Washington State Department of Transportation | Pierce County will upgrade web server and website to create true One-Call/One-Click center on the United Way/South Sound 211 system and conduct coordinated plan needs assessment & gap analysis, performance measurement and marketing. | D2012-BUSP-038 | $ 27,400 |
| | | | D2011-NATR-051 | $ 50,000 |
| WI | Center for Independent Living for Western Wisconsin, Inc. | Conduct outreach, marketing, and perform a study measure outcomes of One-Call/One-Click project. | D2011-NATR-052 | $ 50,000 |
| -- | VTCLI Technical Assistance Consortium | Carry out general and targeted technical assistance to VTCLI grantees, in order to ensure successful, coordinated outcomes | -- | $ 500,000 |
| | | **Total Project Funding……** | | **$ 29,457,621** |

[FR Doc. 2012–18073 Filed 7–24–12; 8:45 am]
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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 6 (Sub-No. 483X)]**

### BNSF Railway Company—Abandonment Exemption—in Los Angeles County, CA

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F–*Exempt Abandonments* to abandon its freight rail operating easement over a 5.3-mile line of railroad owned by the Los Angeles County Metropolitan Transportation Authority (LACMTA), between milepost 7.95 (just north of West 67th Street curbline) and milepost 13.25 (just south of the existing Metro Green Line structure), in the City of Los Angeles, Los Angeles County, Cal. (the line). The line traverses United States Postal Service Zip Codes 90043, 90045, 90245, 90301, and 90305 and includes the stations of Hyde Park, Ortiz, Inglewood, and Williams.

BNSF has certified that: (1) No local traffic has moved over the line for the past two years; (2) no overhead traffic has been handled on the line for at least two years; (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 two-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 exemption will be effective on August 24, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 6, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 [3] must be filed by August 14, 2012, 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 BNSF's representative: Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 655 Fifteenth Street NW., Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by July 30, 2012. 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), BNSF 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 BNSF's filing of a notice of consummation by July 25, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

Decided: July 19, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Derrick A. Gardner,**

*Clearance Clerk.*

[FR Doc. 2012–18152 Filed 7–24–12; 8:45 am]

**BILLING CODE 4915–01–P**

[1] 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.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

[3] BNSF states that the abandonment will facilitate LACMTA's desire to construct and operate the Crenshaw/LAX Transit Corridor Project (Project), a light rail line that will begin at the Metro Green Line near the existing Aviation/LAX station and end on Crenshaw Boulevard at the Metro Exposition Light Rail Line. As a result, BNSF states that the line is not available for public purposes other than the Project.

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 1101X]**

### Progressive Rail, Incorporated—Discontinuance of Service Exemption—in Barron County, WI

On July 5, 2012 Progressive Rail, Incorporated (PGR) and Wisconsin Central Ltd. (WCL) (collectively, Petitioners) filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue rail service provided by PGR over approximately 23.97 miles of rail line in Barron County, Wis. (the Lines), consisting of: (1) 16.92 miles of rail line between milepost 80.88 at or near Almena and milepost 97.80 at or near Cameron, and (2) 7.05 miles of rail line between milepost 49.0 at or near Cameron and milepost 56.05 at or near Rice Lake. The Lines are owned by WCL and have been operated by PGR since 2004 under lease from WCL.[1] WCL intends to resume operating the Lines itself. The Lines traverse U.S. Postal Service Zip Codes 54805, 54812, 54822, and 54868. The Lines include the stations of Almena (MP 81.0), Poskin (MP 85.4), Barron (MP 91.10), Cameron (MP 96.1), and Rice Lake (MP 56.05).

WCL states that the Lines do not contain any federally granted rights-of-way. Any documentation in Petitioners' possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad–Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 23, 2012.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) to subsidize continued rail service will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).[2]

All filings in response to this notice must refer to Docket No. AB 1101X and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001, and (2) David A. Hirsh, Harkins Cunningham LLP, 1700 K Street NW., Suite 400, Washington, DC 20006–3804. Replies to the petition are due on or before August 20, 2012.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: July 19, 2012. By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Derrick A. Gardner,**

*Clearance Clerk.*

[FR Doc. 2012–18128 Filed 7–24–12; 8:45 am]

**BILLING CODE 4915–01–P**

[1] *See Progressive Rail, Inc.—Lease & Operation Exemption—Rail Lines of Wis. Cent., Ltd.,* FD 34600 (STB served Nov. 12, 2004).

[2] Because this is a discontinuance proceeding and not an abandonment proceeding, trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8.

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Designation of One (1) Entity Pursuant to Executive Order 13572 of April 29, 2011, ''Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria''

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one (1) entity whose property and interests in property are blocked pursuant to Executive Order 13572 of April 29, 2011, ''Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria.''

**DATES:** The designation by the Director of OFAC of the one (1) entity identified in this notice, pursuant to Executive Order 13572, is effective on July 18, 2012.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW. (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

#### Background

On April 29, 2011, the President issued Executive Order 13572, ''Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria,'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President expanded the scope of the national emergency declared in Executive Order 13338 of May 11, 2004.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State: (1) To be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of human rights abuses in Syria, including those related to repression; (2) to be a senior official of an entity whose property and interests in property are blocked pursuant to this Order; (3) to have materially assisted, sponsored or provided financial, material, or technological support for, or goods or services in support of, the activities in subsection (b)(i) of Section 1 of the Order or any person whose property and interests in property are blocked pursuant to Executive Order 13338, Executive Order 13460, or this Order; or (4) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to Executive Order 13460 or this Order.

On July 18, 2012, the Director of OFAC, in consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in subsection 1(b) of the Order, one (1) entity whose property and interests in property are blocked pursuant to Executive Order 13572.

The listing for the entity on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

#### Entity

1. DREX TECHNOLOGIES S.A. (a.k.a. DREX TECHNOLOGIES), Virgin Islands, British; Company Number 394678 (Virgin Islands, British) [SYRIA].

Dated: July 18, 2012.

**Adam Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2012–18182 Filed 7–24–12; 8:45 am]

BILLING CODE 4810–AL–P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Designation of Twenty-Nine (29) Individuals Pursuant to Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria''

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of twenty-nine (29) individuals whose property and interests in property are blocked pursuant to Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria.''

**DATES:** The designation by the Director of OFAC of the twenty-nine (29) individuals identified in this notice, pursuant to Executive Order 13573, is effective on July 18, 2012.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW., (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

#### Background

On May 18, 2011, the President issued Executive Order 13573, ''Blocking Property of Senior Officials of the Government of Syria,'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 13338 of May 11, 2004, which was expanded in scope in Executive Order 13572 of April 29, 2011.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State: (1) To be a senior official of the Government of Syria; (2) to be an agency or instrumentality of the Government of Syria, or owned or controlled, directly or indirectly, by the Government of Syria or by an official or officials of the Government of Syria; (3) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any person whose property an interests in property are blocked pursuant to this order; or (4) to be owned or controlled by, or to have acted or purported to act for or on behalf of directly or indirectly, any person whose property and interest are blocked pursuant to this order.

On July 18, 2012, the Director of OFAC, in consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in subsection 1(b) of the Order, twenty-nine (29) individuals whose property and interests in property are blocked pursuant to Executive Order 13573.

The listings for those individuals on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

*Individuals*

1. AHMAD AL-ABDULLAH, Subhi; DOB 1951; POB Idleb, Sryia; Minister of Agriculture and Agrarian Reform (individual) [SYRIA].
2. AL-WAZZ, Hazwan; DOB 1962; POB Damascus, Syria; Minister of Education (individual) [SYRIA].
3. IBRAHIM SAID, Mahmoud; DOB 1953; POB Lattakia, Syria; Minister of Transport (individual) [SYRIA].
4. SHUKRI KURDI, Fuad; DOB 1953; POB Aleppo, Syria; Minister of Industry (individual) [SYRIA].
5. YEHYA MOALLA, Mohammad; DOB 1951; POB Lattakia, Syria; Minister of Higher Education (individual) [SYRIA].
6. ZAFER MIHBEK, Mohammad; DOB 1945; POB Aleppo, Syria; Minister of Economy and Foreign Trade (individual) [SYRIA].
7. AL-JLEILATI, MOHAMMAD (a.k.a. AL-JILILATI, MOHAMMAD); DOB 1945; POB Damascus, Syria; Minister of Finance (individual) [SYRIA].
8. AHED AL-ZOUBI, Omran; DOB 1959; POB Damascus, Syria; Minister of Information (individual) [SYRIA].
9. AL-ASSAF, Safwan; DOB 1959; POB Hama, Syria; Minister of Housing and Urban Development (individual) [SYRIA].
10. AL-SIBAEI, Yasser; DOB 1951; POB Homs, Syria; Minister of Public Works (individual) [SYRIA].
11. FARAH SARKIS, Nazira; DOB 1962; POB Aleppo, Syria; Minister of State for Environment Affairs (individual) [SYRIA].
12. HAIDAR, Ali; DOB 1962; POB Hama, Syria; Minister of State for National Reconciliation Affairs (individual) [SYRIA].
13. MOHAMMAD ZAKARYA, Jassim; DOB 1968; POB Hasaka, Syria; Minister of Social Affairs and Labor (individual) [SYRIA].
14. MSHAWEH, Lubanah; DOB 1955; POB Damascus, Syria; Minister of Culture (individual) [SYRIA].
15. MU'ZI HNEIDI, Said; DOB 1954; POB Damascus, Syria; Minister of Oil and Mineral Resources (individual) [SYRIA].
16. AL-NASSER, Hala Mohammad; DOB 1964; POB Raqqa, Syria; Minister of Tourism (individual) [SYRIA].
17. AL-SAYYED, Mohammad Abdul-Sattar; DOB 1958; POB Tartus, Syria; Minister of Religious Endowments (individual) [SYRIA].
18. HABIB, Radwan; DOB 1962; POB Aleppo, Syria; Minister of Justice (individual) [SYRIA].
19. HANNA, Bassam; DOB 1954; POB Aleppo, Syria; Minister of Water Resources (individual) [SYRIA].
20. HIJAB, Riyad (a.k.a. HIJAB, Riyad Farid), Syria; DOB 1966; POB Deir Ezzor, Syria; Prime Minister (individual) [SYRIA].
21. JAMIL, Qadri (a.k.a. JAMIL, Kadri); DOB 1952; POB Damascus, Syria; Deputy Prime Minister for Economic Affairs; Minister of Internal Trade and Consumer Protection (individual) [SYRIA].
22. AL-HALQI, Wael Nader; DOB 1964; POB Daraa, Syria; Minister of Health (individual) [SYRIA].
23. AZZAM, Mansour Fadlallah; DOB 1960; POB Sweida, Syria; Minister of Presidential Affairs (individual) [SYRIA].
24. FARZAT, Hussein Mahmoud; DOB 1957; POB Hama, Syria; Minister of State (individual) [SYRIA].
25. GHALAWANJI, Omar Ibrahim; DOB 1954; POB Tartous, Syria; Deputy Prime Minister for Services Affairs; Minister of Local Administration (individual) [SYRIA].
26. KHAMIS, Imad Mohammad Deeb; DOB 01 Aug 1961; POB near Damascus, Syria; Minister of Electricity (individual) [SYRIA].
27. SABOUNI, Imad Abdul-Ghani (a.k.a. SABOUNI, Emad Abdul-Ghani); DOB 1964; POB Damascus, Syria; Minister of Communications and Technology (individual) [SYRIA].
28. SWEID, Joseph Jurji (a.k.a. SUWAID, Joseph); DOB 1958; POB Damascus, Syria; Minister of State (individual) [SYRIA].
29. MAYALEH, Adib (a.k.a. MAYALA, Adib); DOB 1955; POB Daraa, Syria; Governor of Central Bank of Syria (individual) [SYRIA].

Dated: July 18, 2012.

**Adam Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2012–18185 Filed 7–24–12; 8:45 am]

BILLING CODE 4811–AL–P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Actions Taken Pursuant to Executive Order 13382

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing on OFAC's list of Specially Designated Nationals and Blocked Persons (''SDN List'') the names of five entities, whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.'' The designations by the Director of OFAC, pursuant to Executive Order 13382, were effective on July 18, 2012.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

**Electronic and Facsimile Availability**

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

**Background**

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in

activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On July 18, 2012, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated five entities whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

**Entities**

1. BUSINESS LAB, Maysat Square Al Rasafi Street Bldg. 9, PO Box 7155, Damascus, Syria [NPWMD].
2. HANDASIEH (a.k.a. ORGANIZATION FOR ENGINEERING INDUSTRIES), PO Box 21120 Baramkeh, Damascus, Syria; PO Box 2849, Al Moutanabi Street, Damascus, Syria; PO Box 5966, Abou Bakr Al Seddeq St., Damascus, Syria [NPWMD].
3. INDUSTRIAL SOLUTIONS, Baghdad Street 5, PO Box 6394, Damascus, Syria [NPWMD].
4. MECHANICAL CONSTRUCTION FACTORY, PO Box 35202, Industrial Zone, Al-Qadam Road, Damascus, Syria [NPWMD].
5. SYRONICS (a.k.a. SYRIAN ARAB CO. FOR ELECTRONIC INDUSTRIES), Kaboon Street, PO Box 5966, Damascus, Syria [NPWMD].

Dated: July 18, 2012.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2012–18188 Filed 7–24–12; 8:45 am]

BILLING CODE 4810–AL–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Information Collection; Comment Request

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before September 24, 2012 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Joel. P. Goldberger, (202) 927–9368 or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Joel.P.Goldberger@irs.gov*.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

*We invite comments on:* (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

**Information Collections Open for Comment**

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

*Title:* Request for Discharge From Personal Liability Under Internal Revenue Code Section 2204 or 6905.

*OMB Number:* 1545–0432.

*Form Number:* Form 5495.

*Abstract:* Form 5495 provides guidance under sections 2204 and 6905 for executors of estates and fiduciaries of decedent's trusts. The form, filed after regular filing of an Estate, Gift, or Income tax return for a decedent, is used by the executor or fiduciary to request discharge from personal liability for any deficiency for the tax and periods shown on the form.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 25,000.

*Estimated Time per Respondent:* 12 hours 16 minutes.

*Estimated Total Annual Burden Hours:* 306,500.

*Title:* Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

*OMB Number:* 1545–1251. *Regulation Project Number:* PS–5–91 (T.D. 8437).

*Abstract:* This regulation concerns oil and gas property held by partnerships. Because the depletion allowance with respect to production from domestic oil and gas properties is computed by the partners and not by the partnership, section 1.613A–3(e)(6)(i) of the regulation requires each partner to separately keep records of the partner's share of the adjusted basis in each oil and gas property of the partnership.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,500,000.

*Estimated Time per Respondent:* 2 minutes.

*Estimated Total Annual Burden Hours:* 49,950.

*Title:* Changes in Methods of Accounting.

*OMB Number:* 1545–1541.

*Regulation Project Number:* Revenue Procedure 97–27, as modified by Revenue Procedure 97–30 and Revenue Procedure 2002–19.

*Abstract:* The information requested in Revenue Procedure 97–27 is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of that change.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

*Estimated Number of Respondents:* 3,276.

*Estimated Time per Respondent:* 2 hours, 46 minutes.

*Estimated Total Annual Burden Hours:* 9,083.

*Title:* Deemed IRAs in Qualified Retirement Plans.

*OMB Number:* 1545–1841.

*Form Number:* REG–157302–02; TD 9142.

*Abstract:* Section 408(q), added to the Internal Revenue Code by section 602 of the Economic Growth and Tax Relief Reconciliation Act of 2001, provides that separate accounts and annuities may be added to qualified employer plans and deemed to be individual retirement accounts and individual retirement annuities if certain requirements are met. Section 1.408(q)–1(f)(2) provides that these deemed IRAs must be held in a trust or annuity contract separate from the trust or annuity contract of the qualified employer plan. This collection of information is required to ensure that the separate requirements of qualified employer plans and IRAs are met.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations, Not-for-profit Institutions, and State, local or Tribal government.

*Estimated Number of Respondents:* 800.

*Estimated Time per Respondent:* 50 hours.

*Estimated Total Annual Burden Hours:* 40,000.

*Title:* Elections Created or Effected by the American Jobs Creation Act of 2004.

*OMB Number:* 1545–1986.

*Notice Number:* Notice 2006–47.

*Abstract:* The American Jobs Creation Act of 2004, Public Law 108–357, 118 Stat. 1418 (the Act), created various elections and permits taxpayers to revoke certain elections that are currently in effect in light of changes made by the Act. The collection of information is necessary to inform the Internal Revenue Service that an election is being made or revoked. This notice will enable the Internal Revenue Service to ensure that the eligibility requirements for the various elections or revocations have been satisfied; verify that the requisite computations, allocations, etc. have been made correctly; and appropriately monitor whether any required collateral actions relating to the elections or revocations have been complied with.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 150,000.

*Estimated Average Time per Respondent:* 5 min.

*Estimated Total Annual Burden Hours:* 12,765.

*Title:* Installment Payments of Section 1446 Tax for Partnerships.

*OMB Number:* 1545–1991.

*Form Number:* Form 8804–W.

*Abstract:* Regulations for section 1446 require a worksheet for installment payments of section 1446 tax. Partnerships generally must make installment payments of estimated section 1446 tax if they expect the aggregate tax on the effectively connected taxable income (ECTI) that is allocable to all foreign partners to be $500 or more.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 500.

*Estimated Time per Respondent:* 59 hours 35 minutes.

*Estimated Total Annual Burden Hours:* 29,795.

*Title:* Section 168(k)(4) Election Procedures.

*OMB Number:* 1545–2133. *Revenue Procedure Number:* Revenue Procedure 2009–16.

*Abstract:* This revenue procedure provides the time and manner for (1) corporations to make the election to apply section 168(k)(4) of the Code, (2) corporations to make the allocation of the bonus depreciation amount resulting from the section 168(k)(4) election, (3) corporate partners who make the section 168(k)(4) election to notify partnerships, and (3) U.S. automobile manufacturing partnerships (such as, Chrysler) to make the election to apply section 3081(b) of the Act.

*Current Actions:* Extension of a previously approved collection.

*Affected Public:* Businesses and for-profit institutions.

*Estimated Number of Respondents:* 5,400.

*Estimated Time per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 2,700.

*Title:* Qualified Plug-in Electric Vehicle Credit.

*OMB Number:* 1545–2137.

*Form Number:* Notice 2009–16.

*Abstract:* The Energy Improvement and Extension Act of 2008 added new § 30D of the Internal Revenue Code to authorize credit for new qualified plug-in electric drive motor vehicles. This notice provides procedures for a vehicle manufacturer to certify that a motor vehicle meets certain requirements for the credit, and to certify the amount of the credit available with respect to the motor vehicle. The notice also provides guidance to taxpayers who purchase motor vehicles regarding the conditions under which they may rely on the vehicle manufacturer's certification.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individual, Businesses and other for-profit organizations.

*Estimated Number of Respondents:* 6.

*Estimated Time per Respondent:* 40 hours.

*Estimated Total Annual Burden Hours:* 280.

*Title:* Identity Theft Affidavit; Declaración Jurada sobre el Robo de Identidad.

*OMB Number:* 1545–2139.

*Form Number:* Form 14039 and Form 14039–SP.

*Abstract:* The primary purpose of these forms is to provide a method of reporting identity theft issues to the IRS so that the IRS may document situations where individuals are or may be victims of identity theft. Additional purposes include the use in the determination of proper tax liability and to relieve taxpayer burden. The information may be disclosed only as provided by 26 U.S.C 6103.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 100,000.

*Estimated Time per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 25,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Approved: July 19, 2012.

**Yvette B. Lawrence,**

*IRS Reports Clearance Officer.*

[FR Doc. 2012–18086 Filed 7–24–12; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### United States Mint

### Price for the 2012 American Eagle Silver Proof Coin

**AGENCY:** United States Mint, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The United States Mint is lowering the price of the 2012 American Eagle Silver Proof Coin. The product will now be offered for sale at a price of $54.95.

**FOR FURTHER INFORMATION CONTACT:** B. B. Craig, Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW; Washington, DC 20220; or call 202–354–7500.

**Authority:** 31 U.S.C. 5111, 5112 & 9701.

Dated: July 17, 2012.

**Richard A. Peterson,**

*Deputy Director, United States Mint.*

[FR Doc. 2012–18061 Filed 7–24–12; 8:45 am]

**BILLING CODE 4810–37–P**

## U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

### Notice of Open Meetings To Prepare and Release 2012 Annual Report to Congress

*Advisory Committee:* U.S.-China Economic and Security Review Commission.

**ACTION:** Notice of open meetings.

**SUMMARY:** Notice is hereby given of meetings of the U.S.-China Economic and Security Review Commission.

*Name:* Dennis C. Shea, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission will meet in Washington, DC as follows: (1) Review-Edit 2012 Annual Report to Congress—August 1–2, September 12–13, October 11–12, and October 23–24, and (2) Official Public Release of Commission's Annual Report—November 14, 2012.

The Commission is mandated by Congress to investigate, assess, evaluate and report to Congress annually on the U.S.-China economic and security relationship. The mandate specifically charges the Commission to prepare a report to Congress ''regarding the national security implications and impact of the bilateral trade and economic relationship between the United States and the People's Republic of China [that] shall include a full analysis, along with conclusions and recommendations for legislative and administrative actions * * *''

**Purpose of Meetings**

Pursuant to this mandate, the Commission will meet in Washington, DC on August 1–2, September 12–13, October 11–12, and October 23–24, 2012 to consider drafts of material for its 2012 Annual Report to Congress that have been prepared for its consideration by the Commission staff, and to make modifications to those drafts that Commission members believe are needed; and release the final Annual Report to the public on November 14, 2012.

The report review-editing sessions are for members of the Commission to review and edit staff drafts of sections of the Commission's 2012 Annual Report for submission to Congress. The Commission is subject to the Federal Advisory Committee Act (FACA) with the enactment of the Science, State, Justice, Commerce and Related Agencies Appropriations Act, 2006 that was signed into law on November 22, 2005 (Pub. L. 109–108). In accord with FACA's requirement, meetings of the Commission to make decisions concerning the substance and recommendations of its 2012 Annual Report to Congress are open to the public.

**Topics To Be Discussed**

The Commissioners will be considering draft report sections addressing the following topics:

- The United States-China trade and economic relationship, including its bilateral investment and the role of state-owned enterprises, intellectual property protection and its 5-year plan, technology transfers, and outsourcing.
- China's activities directly affecting U.S. national security interests, including its area control military strategy, space developments, and intelligence activities and capabilities.
- China's foreign and regional activities and relationships, including those pertaining to Taiwan and Hong Kong.
- China's foreign and national security policies.

**Dates and Times (Eastern Daylight Time)**

- Wednesday, August 1, 2012 (10 a.m. to 5 p.m.)
- Thursday, August 2, 2012 (9 a.m. to 5 p.m.)
- Wednesday and Thursday, September 12–13, 2012 (9 a.m. to 5 p.m.)
- Thursday and Friday, October 11–12, 2012 (9 a.m. to 5 p.m.)
- Tuesday and Wednesday, October 23–24, 2012 (9 a.m. to 5 p.m.)
- Wednesday, November 14, 2012—Official Press Conference to Release Final Report to the Public—Date, Time and Location will be announced in October on the Commission's Web site at *www.uscc.gov.*

**ADDRESSES:** All report review-editing sessions will be held in The Hall of the States (North Bldg.) in Conference Room 231 (2nd floor) located at 444 North Capitol Street NW., Washington, DC 20001. The location for the Official Press Conference to release the final Annual Report to the public will be

announced on the Commission's Web site at *www.uscc.gov* in October 2012.

Public seating is limited and will be available on a ''first-come, first-served'' basis. Advanced reservations are not required. All participants must register at the front desk of the lobby.

**Required Accessibility Statement**

The entirety of these Commission editorial and drafting meetings will be open to the public. The Commission may recess the public editorial/drafting sessions to address administrative issues in closed session.

The open meetings will also be adjourned in the noon vicinity for a lunch break. At the beginning of the lunch break, the Chairman will announce the reconvening time for the Annual Report review and editing session so members of the public will know when they may return if they wish to do so.

**FOR FURTHER INFORMATION CONTACT:** Gavin Williams, USCC Staff Assistant, U.S.-China Economic and Security Review Commission, 444 North Capitol Street NW., Suite 602, Washington, DC 20001; Phone: (202) 624–1407; Email: *gwilliams@uscc.gov.*

**Authority**

Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: July 17, 2012.

**Michael Danis,**

*Executive Director, U.S.-China Economic and Security Review Commission.*

[FR Doc. 2012–18138 Filed 7–24–12; 8:45 am]

**BILLING CODE 1137–00–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0564]**

## Proposed Information Collection Activity; Comment Request: Direct Deposit Enrollment

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to enroll claimants receiving benefit payments into an electronic funds transfer program.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before September 24, 2012.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0564'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Nancy J. Kessinger at (202) 632–8924 or FAX (202) 275–5947.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

**Titles**

a. Direct Deposit Enrollment, VA Form 24–0296.

b. International Direct Deposit Enrollment, VA Form 24–0296a.

*OMB Control Number:* 2900–0564.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Claimants who wish to have their benefit payments electronically deposited into their financial institution account must complete the appropriate direct deposit form to enroll the electronic funds transfer program.

*Affected Public:* Individuals or households.

**Estimated Annual Burden**

a. VA Form 24–0296—750 hours.

b. VA Form 24–0296a—500 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

**Estimated Number of Respondents**

a. VA Form 24–0296—3,000.

b. VA Form 24–0296a—2,000.

Dated: July 19, 2012.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2012–18063 Filed 7–24–12; 8:45 am]

**BILLING CODE P**

# FEDERAL REGISTER

Vol. 77 Wednesday,

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Part II

## Nuclear Regulatory Commission

10 CFR Parts 30, 31, 32 et al.

Requirements for Distribution of Byproduct Material; Final Rule

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Parts 30, 31, 32, 40, and 70**

**RIN 3150–AH91**

**[NRC–2008–0338]**

## Requirements for Distribution of Byproduct Material

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations to make requirements for distributors of byproduct material clearer, less prescriptive, and more risk-informed and up to date. The Commission is also redefining categories of devices to be used under exemptions, adding explicit provisions regarding the sealed source and device registration process, and adding flexibility to the licensing of users of sealed sources and devices. This action is primarily intended to make licensing processes more efficient and effective. These changes will affect manufacturers and distributors of sources and devices containing byproduct material and future users of some products currently used under a general or specific license.

**DATES:** *Effective Date:* This final rule is effective on October 23, 2012.

**ADDRESSES:** Please refer to Docket ID NRC–2008–0338 when contacting the NRC about the availability of information for this final rule. You may access information and comment submittals related to this final rulemaking, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0338.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Catherine R. Mattsen, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–6264, email: *Catherine.Mattsen@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

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## I. Background

### *A. Introduction*

The Commission has authority to issue both general and specific licenses for the use of byproduct material and also to exempt byproduct material from regulatory control under Section 81 of the Atomic Energy Act of 1954, as amended (hereafter, ''the Act'' or the AEA). A general license is provided by regulation, grants authority to a person for particular activities involving byproduct material as described within the general license, and is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person. Requirements for general licensees appear in the regulations and are designed to be commensurate with the specific circumstances covered by each general license. A specific license is issued to a named person who has filed an application with the Commission.

In considering its exemptions from licensing, the Commission is directed by the Act to make ''a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.'' (Section 81(a) of the Act, 42 U.S.C. 2111.) As beneficial uses of radioactive material were developed and experience grew, new products intended for use by the general public were invented and the regulations were amended to accommodate the use of new products.

Although presenting very low risks of significant individual doses to members of the general public, exempt products are a source of routine exposure to the public. A substantial portion of the population uses and enjoys benefits from exempt products, such as smoke detectors, but also receives some radiation exposure from those products. In keeping with its consumer product policy, which calls for the Commission to evaluate the total effect of consumer products on the public, the Commission conducted a systematic reevaluation of the exemptions from licensing. A major part of the effort was an assessment of the potential and likely doses to workers and the public under these exemptions. Dose assessments for most of these exemptions can be found in NUREG–1717,[1] ''Systematic Radiological

[1] NUREG–1717 is a historical document developed using the models and methodology available in the 1990s. The NUREG provides the estimate of the radiological impacts of the various exemptions from licensing based on what was known about distribution of material under the exemptions in the early 1990s. NUREG–1717 was used as the initial basis for evaluating the regulations for exemptions from licensing requirements and determining whether those regulations adequately ensured that the health and safety of the public were protected consistent with NRC policies related to radiation protection. The agency will not use the results presented in NUREG–1717 as a sole basis for any regulatory decisions or future rulemaking without additional analysis. Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee at the NRC Public Document Room, One White Flint

Assessment of Exemptions for Source and Byproduct Materials,'' June 2001. Actual exposures of the public likely to occur are in line with Commission policy concerning acceptable doses from products and materials used under exemptions. For some exemptions, there was a significant difference between potential and likely doses because the use of the exemption is limited or nonexistent, or significantly lower quantities are used in products than is potentially allowed under the exemption.

The NRC has reviewed the regulations governing the distribution of byproduct material to persons for use under the exemptions, as well as other regulations governing distribution of products containing byproduct material. The Commission decided to make these regulations more flexible, user-friendly, and performance-based, and to improve its ability to risk-inform its regulatory program. These concepts were considered in developing potential revisions to the regulatory program in the area of distribution of byproduct material.

In a final rule published October 16, 2007 (72 FR 58473), some of these revisions that could be more readily completed were made, including the removal of obsolete exemptions. This action is a follow-on to that effort for revisions that required more detailed development. To make optimal use of rulemaking resources, both for the NRC and the Agreement States who must develop conforming regulations, several issues have been combined into this rule. The proposed rule containing these amendments was published for public comment in the **Federal Register** on June 24, 2010 (75 FR 36212). The public comment period closed September 7, 2010. Ten comment letters were received. The NRC has considered these comments in this final rule.

*B. Regulatory Framework*

The Commission's regulations in part 30 of Title 10 of the Code of Federal Regulations (10 CFR) contain the basic requirements for licensing of byproduct material. Part 30 includes a number of provisions that exempt the end user from licensing requirements, so-called ''exemptions.'' Some exemptions are product-specific, intended only for specific purposes which are narrowly defined by regulation. More broadly defined are the general materials exemptions, which allow the use of many radionuclides in many chemical and physical forms subject to limits on activity, and which are specified in §§ 30.14 and 30.18 for exempt concentrations and exempt quantities, respectively. The Commission's regulations currently also include two ''class exemptions''—for self-luminous products and gas and aerosol detectors, in §§ 30.19 and 30.20, respectively—which cover a broad class of products not limited to certain quantities or radionuclides. In the case of class exemptions, many products can be approved for use through the licensing process if the applicant for a distribution license demonstrates that the specific product is within the class and meets certain radiation dose criteria.

Part 31 of 10 CFR provides general licenses for the use of certain items containing byproduct material and the requirements associated with these general licenses.

Part 32 of 10 CFR sets out requirements for the manufacture or initial transfer (distribution) of items containing byproduct material to persons exempt from licensing requirements and to persons using a general license. It also includes requirements applicable to certain manufacturers and distributors of products and materials to be used by specific licensees. The requirements for manufacturers and initial transferors (distributors) address such measures as prototype testing, labeling, reporting and recordkeeping, quality control, and, in some cases, specific sampling procedures.

## II. Discussion

This final rule is making a number of revisions to the regulations governing the use of byproduct material under exemptions from licensing and under general license, and to the requirements for those who distribute products and materials. The changes are intended to improve the efficiency and effectiveness of certain licensing actions.

*A. Actions Related to Sealed Source and Device Registration*

A.1 Updating Regulations To Add Registration Requirements

Section 32.210 provides for the registration of sealed sources and devices containing sealed sources intended for use under a specific license. Manufacturers or distributors may submit a request to the NRC for an evaluation of radiation safety information for a product and for registration of the product. After satisfactory completion of the evaluation, the NRC issues a certificate of registration to the person making the request. Subsequently, under § 30.32(g), specific licensees or applicants for a specific license who wish to use the registered product need only identify the source or device by manufacturer and model number, as registered with the Commission under § 32.210 or with an Agreement State, in their applications. Because the source or device has already been evaluated and its safety information is a matter of record, the users are not required to submit the detailed radiation safety information for the source or device in their license applications. This greatly simplifies the licensing process for the users of specifically licensed sources and devices. The registration system is referred to as the Sealed Source and Device (SS & D) Registry. Many Agreement States have a similar registration process. Registration certificates for the sources and devices reviewed and approved by the Agreement States are also added to the national SS & D Registry. However, some Agreement States do not include the evaluation and registration of sealed sources and devices in their agreements; in these cases, authority for these reviews remains under NRC regulatory jurisdiction.

A definition of the registry is included in § 35.2 as follows: ''Sealed Source and Device Registry means the national registry that contains all the registration certificates, generated by both NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.'' This definition is being added to part 32 by this action, as the information requirements for the SS & D review and registration are in part 32. The SS & D Registry is maintained in a computer database, which is available to the Agreement States, as well as U.S. government agencies and some foreign regulators. While this process, in which the manufacturer or initial distributor obtains a registration certificate for the source or device, is generally used for most specifically licensed sources and devices, in some cases of custom-made sources or devices, the planned user will sometimes submit the detailed radiation safety information. As a matter of licensing practice, such a custom device, if containing more than certain quantities of radioactive material, is also registered; however, it only allows for the use of the custom-made source or device by the specified user. As § 30.32(g) requires the radiation safety information to be submitted by

North, 11555 Rockville Pike, Public File Area O1–F21, Rockville, MD or see: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1717/*.

applicants to use sealed sources and devices if they are not registered, manufacturers and distributors generally register the sources and devices that are to be used under a specific license. Sealed source or device review and registration are conducted for most sealed sources and devices to be used under a specific license.

This registration process has also been extended to many generally licensed and some exempt products. The regulations in part 32 contain requirements for submittal of radiation safety information concerning these products by the manufacturer or initial distributor. Although registration of these products by the manufacturer or initial distributor was not previously addressed by the regulations, the NRC's licensing practice has been to issue registration certificates for certain of these products based on the radiation safety information submitted. Also, fees are assessed based on whether or not a ''sealed source and/or device review'' is required.

The products in each of these categories for which the registration process has been used as part of the licensing process have been indicated in guidance, e.g., NUREG–1556, Vol. 3, Rev. 1, ''Consolidated Guidance About Materials Licenses: Applications for Sealed Source and Device Evaluation and Registration''; NUREG–1556, Vol. 8, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Exempt Distribution Licenses''; and NUREG–1556, Vol. 16, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Licenses Authorizing Distribution to General Licensees.'' For a number of categories of specifically licensed sources and devices, an explicit requirement for registration is included in the regulations. Existing specific requirements include §§ 35.400, 35.500, 35.600, 36.21, and 39.41(f). These concern certain medical use products, sealed sources installed in irradiators after July 1, 1993, and energy compensation sources (a specific type of reference source used in well logging).

The only products used under exemption from licensing for which the NRC issues registration certificates are those distributed for use under a ''class exemption.'' As noted earlier, a class exemption allows for the use under exemption of a category of products with the safety decision for individual products made through the licensing process. The safety review for these products includes evaluating the product against specific safety criteria contained in the regulations in part 32. The regulations currently contain two class exemptions. These are found in § 30.19, Self-luminous products containing tritium, krypton-85, or promethium-147, and § 30.20, Gas and aerosol detectors containing byproduct material, and equivalent Agreement State regulations. As discussed later in this document, this rule establishes a third class exemption for certain industrial products.

In the case of generally licensed products, sealed source and device registration certificates have been issued for products distributed for use under §§ 31.3, 31.5, 31.7, and 31.10, and equivalent Agreement State regulations. (Note that this registration is distinct and different in scope and purpose from the registration of devices by some general licensees under § 31.5(c)(13).)

Neither general licensees nor persons exempt from licensing requirements need to submit any safety information in order to obtain a product. For these products, however, the registration process also serves the important purpose of providing information to the regulators in all jurisdictions. Products are approved by the NRC and, in some cases, by the various Agreement States for distribution to all jurisdictions. For those products that are registered by the manufacturer or distributor, the registration information is available to the NRC and to the Agreement States through the SS & D Registry. In this way, the various jurisdictions can be assured of the radiation safety of the products being used under their regulations that have been evaluated by another jurisdiction. The registration of products by model number also assists in the tracking of generally licensed devices by the NRC and the Agreement States. In some cases, a secondary distributor of a generally licensed device may refer to the registration certificate obtained by the manufacturer, or more frequently a source to be installed in a generally licensed device may be manufactured by a different entity who has registered the source separately.

For those products used under a product-specific exemption, for which registration certificates are not issued, the safety of the product has been evaluated based primarily on the constraints contained in the regulations, such as a quantity limit for a specific radionuclide, and what can be projected about the life cycle of the product and how it is used. Some of these evaluations are documented in NUREG/CR–1775, ''Environmental Assessment of Consumer Products Containing Radioactive Material,'' October 1980 (ADAMS Accession No. ML082910862), and NUREG–1717. The applicable requirements in § 32.14(b) require information to be submitted to allow an evaluation of the potential radiation exposure and, in accordance with § 32.14(d), the NRC makes a determination that the byproduct material is ''properly contained in the product under the most severe conditions that are likely to be encountered in normal use and handling.'' But the information to support this evaluation of the particular product is not considered necessary to routinely provide to the Agreement States through the SS & D Registry.

No sealed source and device review is conducted for the products used under the general licenses in §§ 31.8 or 31.11. The general license in § 31.8 is specifically for no more than 0.185 MBq (5 μCi) [1] of americium-241 or radium-226 in the form of calibration and reference sources, and applies only to specific licensees. The safety of these sources is also well established, with the individual product being reviewed and approved in the licensing process. The general license in § 31.11 pertains to in-vitro clinical or laboratory testing using prepackaged units containing certain limited quantities of byproduct material, e.g., iodine-125 in units not exceeding 10 μCi (0.37 MBq). These in-vitro kits are not sealed sources or devices. They can be used only by physicians, clinical laboratories, hospitals, and practitioners of veterinary medicine who preregister with the Commission and by part 35 licensees. There is also no SS & D registration for the recently added general license in § 31.12, which covers only items produced prior to the NRC gaining jurisdiction over radium-226. Because there is no allowance for future production of items to be used under this general license, there are no associated distributor requirements and thus, no requirement for a product to be registered in the SS & D Registry. These products are mostly antiquities produced before States had regulations similar to NRC's.

Registration certificates are issued for most specifically licensed sealed sources and devices. The exceptions are for small calibration and reference sources and for sources and devices to be used by (1) broad scope licensees

[1] The NRC's policy on units calls for new and amended regulations to use the International System of Units (SI) with the English unit equivalent following in parentheses. In this document, a number of references are made to existing regulations that are currently in English units; in referencing such values, the actual regulatory value is given first with the SI unit equivalent, sometimes a rounded approximation, following in parentheses. Also, when discussing comments, units used by the commenter are used.

under 10 CFR part 33 and equivalent Agreement State regulations, (2) research and development licensees, and (3) licensees for whom the source or device was built to their unique specifications and contain no more than 740 GBq (20 Ci) of tritium or 7.4 GBq (200 mCi) of any other radionuclide. These three categories of licensees must be qualified by training and experience and have sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in any form as indicated in their license(s). Under these circumstances, licensing these three types of users does not rely on the inherent safety features of the source or device; users will be evaluated under the criteria in § 30.33(a)(2) and (3) and licensed to handle equivalent quantities of the materials in any form. If the source is registered but not the device, the users must be licensed to handle equivalent quantities of the materials in unshielded form.

For specifically licensed calibration and reference sources, the quantity cutoffs being established for small sources excluded from the requirement for registration are 0.37 MBq (10 μCi) for alpha emitters and 37 MBq (1 mCi) for beta and/or gamma emitters. This is a simplification from previous licensing practice, which used a limit of 3.7 MBq (100 μCi) or 10 times the quantity specified in § 30.71, whichever is greater, for beta and/or gamma emitters. The limits using that guidance for beta/gamma emitters range from 3.7 MBq (100 μCi) to 370 MBq (10 mCi). Thus, for any particular radionuclide, the new criterion is no more than 10 times higher to 10 times lower than previous practice. As certificates typically cover a large number of radionuclides for this type of sealed source, this change is not expected to affect the overall number of registration certificates issued.

This final rule explicitly adds registration requirements to the regulations for byproduct material in products used under certain general licenses and under certain exemptions from licensing requirements, as well as for additional specifically licensed sources and devices for which this is not currently addressed by the regulations. This will make it easier for potential applicants for a license to distribute these products to determine the applicable requirements and associated fees. These provisions are in large part consistent with previous licensing practice and appear in §§ 32.22(a)(3)(ii), 32.26(c)(2), 32.30(c)(3), 32.51(a)(6), 32.53(f), 32.61(g), 32.74(a)(4), and 32.210.

A.2 Adding Provisions for Amendment, Modification and Revocation, Review, and Inactivation of Registration Certificates

The Commission is adding a number of other explicit provisions to the regulations concerning sealed source and device registration certificates. Many certificates are revised and updated from time to time as a result of amendment requests made by manufacturers or distributors to accommodate desired changes in a product or associated procedures or to add new products to a registration certificate covering a series of models. Sections 30.38 and 30.39, which previously addressed only amendment of licenses, are being revised to also address amendment of registration certificates. The final rule is also revising § 30.38 to remove the requirement to use Form NRC–313 for requesting amendments to licenses, because as a practical matter, many amendments are requested and obtained without use of the form.

Unlike specific licenses, registration certificates are not issued with expiration dates. If a significant safety issue arises with a product, regulatory means are available to address it, such as an order issued to a distributor to cease distribution until the safety issue is resolved. The Commission has had authority to request additional information or to modify requirements under the general provisions in §§ 2.204, 30.34(e), and 30.61. In addition, since the Commission has authority to revoke a license, and registration is used as part of the licensing process, the Commission has had the authority to revoke a registration certificate, if, for example, it determined that the registration was inconsistent with regulatory standards or the certificate had been obtained by providing falsified information. However, the regulations have not referenced this authority. Therefore, § 30.61 is being revised to explicitly implement the Commission's authority to modify or revoke registration certificates.

As a registration certificate, in conjunction with a license, authorizes distribution of a product, a certificate may be reevaluated at the time of license renewal. Generally, this has not been the practice of the NRC, but may be the case for some Agreement States. In the case of licenses authorizing distribution to exempt persons, a limited review of the certificate(s), when applicable, has typically been conducted to ensure that the information is complete and accurate with respect to any changes that may have occurred since issuance of the certificate. For all types of certificates, it is important that there be consistency between the license and the certificate(s).

The Commission does not believe that it is necessary to conduct a complete reevaluation of sealed sources and devices at the time that distribution licenses are renewed, usually every 10 years, since generally, there are fewer safety significant aspects that are likely to change reflected in the registration certificate than those addressed in the license. The Commission does recognize a need to update registration certificates and relies, for the most part, on certificate holders to request amendments of certificates, as appropriate. One factor is that the NRC is required to consider the application of industry standards, for example, as reflected in § 32.210(d). These industry standards may be revised to provide improved safety. Also, licensees are required by § 20.1101 to implement radiation protection programs and to use, to the extent practical, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and doses to members of the public that are as low as is reasonably achievable (ALARA). Thus, it is appropriate for licensees to consider new developments in technology and standards as they may impact ALARA in the design of products. However, because § 32.210(f) requires the certificate holder to manufacture and distribute products in accordance with the provisions of the registration certificate and any statements made in the request for registration, and no reevaluation of a source or device, once approved, is normally required, the regulatory structure may limit rather than encourage industry improvement.

There may be reasons to reevaluate a sealed source or device in some circumstances with regard to either the actual design of a source or device, or such other aspects as quality assurance or information provided to the user on safe use. While the current regulations provide adequate authority to do so, recalling a registration certificate for review and reissuance in the absence of a significant safety problem with the product is an activity very rarely conducted by the NRC in the past. This final rule also includes an explicit provision to specifically address such a process in § 32.210(h). The Commission will complete such an evaluation in accordance with the criteria specified in § 32.210. As noted under Section II. A.1, ''Updating Regulations to Add

Registration Requirements,'' of this document, this final rule adds specific provisions delineating which sealed sources and devices must be registered in the SS & D Registry, broadening the applicability of § 32.210 to some generally licensed and exempt products. The Commission may use the new provision in § 32.210(h) to update the certificate with respect to applicable current regulatory standards or to ensure the quality of the summary of safety information and the information on conditions of use contained in the registration certificate that is available to the various jurisdictions.

Generally, the Commission has not made standards more restrictive with regard to products to be used under a general license or under an exemption from licensing, so as to restrict further distribution of a previously approved product. However, such a decision in the future may necessitate a reevaluation of a registration certificate.

Registrations in the SS & D Registry are kept active until a distributor who is no longer distributing the particular sources or devices, requests to change the status. At this point, the registration is changed to inactive status, meaning that the covered products are no longer authorized to be distributed. Annual fees are assessed by the NRC only for active registration certificates. The SS & D registrations are kept indefinitely in inactive status after authorization to distribute has ceased, so that the registration information is available for sources and devices previously distributed and possibly still in use.

Because some States do not have annual fees for maintaining active SS & D certificates, distributors do not consistently request inactivation of certificates, leaving active certificates in the database that do not reflect any continued distribution. This somewhat limits the information available to other jurisdictions as to what sources and devices are authorized for continued distribution. This rule includes a provision for inactivation (§ 32.211), which will require distributors to request inactivation of certificates normally within 2 years after distribution of the source(s) or device(s) covered by the certificate has ceased. Two years was chosen to minimize any impact on certificate holders. NRC certificate holders typically request inactivation of certificates within about a year. The inactivation provision has been modified in the final rule from the proposed wording of that section to recognize that a decision to cease distribution may occasionally occur more than 2 years after the last initial transfer of a covered source or device has been made. In this situation, a distributor must provide a brief explanation of the circumstances that led to requesting inactivation of the certificate after more than 2 years of no transfers. This provision is expected to improve the consistency of this approach across jurisdictions through the addition of equivalent provisions to Agreement State regulations, and thus, the quality of the information concerning current distribution available to regulators.

A.3 Adding Flexibility for Licensing Users of Sealed Sources and Devices

As noted, the safety information for every sealed source and device to be used under a specific license is not included in the SS & D Registry. However, the wording of § 30.32(g) has not allowed as much flexibility as was expected when this provision was added to the regulations. In some circumstances, it has been impractical or impossible for users to provide all of the information required by § 30.32(g). This has caused some applicants and licensees renewing their licenses to seek exemptions from § 30.32(g) for the use of products for which the manufacturer or distributor has not obtained an SS & D registration.

In addition to providing criteria in a revision to § 32.210 for situations where an SS & D registration is not required, revisions to § 30.32(g) are also being made to accommodate exceptions made in the SS & D registration process. In order to better accommodate the new provisions clearly, paragraph (g) of § 30.32 has been slightly restructured in the final rule.

A new § 30.32(g)(3) (which appeared as § 30.32(g)(4) in the proposed rule) provides that limited information is required for the smaller calibration and reference sources that are not registered. Also included is a provision to allow for licenses to be issued without the need for every individual sealed source or device to be used to be identified by the applicant. A new § 30.32(g)(4) (which appeared in § 30.32(g)(5) in the proposed rule) allows an applicant to propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used as an alternative to identifying each sealed source and device individually when it is not feasible to do so.

This latter provision is not intended as a broadly applied change in the approach to licensing the use of sealed sources and devices. This change is intended to accommodate certain expected situations in which having to identify each sealed source or device presents an undue burden. For example, military applicants are sometimes unable to identify exactly which product they may be procuring. This provision could also be used by the types of applicants/licensees identified in § 32.210(g)(2), namely those licensed for research and development (R & D), those licensed under part 33, and certain custom users who have adequate training and experience and facilities and equipment to handle comparable quantities of material in other forms. It may also be reasonable to use such an approach to provide some flexibility in the case of calibration and reference sources. The words, ''If it is not feasible to identify each sealed source and device individually,'' have been included in the final rule text to clarify the limited applicability of this provision.

It is anticipated that except for the R & D licensees, part 33 licensees, and certain custom users, one of the constraints would be that the sealed sources and devices are registered, as it is generally not practical for an applicant to supply adequate information to demonstrate that the radiation safety properties of unspecified sources or devices are inherently adequate to protect health and minimize danger to life and property.

The use of the SS & D registration process as a tool for licensing was intended to provide a more efficient and effective licensing process than to have all users provide detailed information about the sources and devices to be used, and for license reviewers to evaluate the safety of the sources and devices in conjunction with the evaluation of the applicant's training and experience and facilities and equipment. The changes to §§ 30.32(g) and 32.210(g) are intended to further improve the efficiency and effectiveness of the licensing process by eliminating the need for unnecessary exemptions for recognized situations that are not unique to a particular applicant.

A.4 Extending Requirements Concerning Legacy Sources and Devices to All Byproduct Material Covered by Part 30

In the final rule published October 1, 2007 (72 FR 55863), which amended the Commission's regulations to incorporate the new categories of byproduct material added by the Energy Policy Act of 2005 (EPAct), a revision was made to § 30.32(g) to facilitate licensing the use of legacy sealed sources and devices. These are older sources and devices for which the manufacturer is no longer in existence and for which it may be

impossible to provide all of the categories of information identified in § 32.210(c), as required by § 30.32(g)(1)(ii), formerly § 30.32(g)(2). Generally, that amendment was intended to cover sources and devices manufactured before the promulgation of § 32.210. This provision, formerly in § 30.32(g)(3), delineates additional information that is required to license the use of a sealed source or device for which all of the information previously required is not available. The information must include a description of the source or device, a description of radiation safety features, intended use and associated operating experience, and results of a recent leak test. The NRC licensing staff will review the submitted information to make a licensing decision regarding possession and use of the source or device. However, that amendment limited the provision to sealed sources and devices containing naturally occurring and accelerator-produced radioactive material (NARM), because the scope of that rule was limited to such materials. There are, however, a number of legacy sealed sources and devices containing pre-EPAct byproduct material, i.e., byproduct material as defined in section 11e.(1) of the AEA, for which it may also be impossible to provide all of the information required under § 32.210(c). This final rule is extending that provision to legacy sources and devices containing any byproduct material, as defined in part 30; it is now designated § 30.32(g)(2).

*B. Establish a New Class Exemption for Certain Industrial Products*

As noted in Section I.B., ''Regulatory Framework,'' class exemptions allow the Commission to exempt categories of products or devices with similar characteristics and purposes, rather than requiring individual exemptions for each product. For example, the class exemption in § 30.20 for gas and aerosol detectors was established in April 1969. Since that time, new products possessing similar attributes were allowed to be licensed for distribution under § 30.20 as they were developed. This regulatory structure allowed the new detectors to be used without product-specific exemptions, which would have required additional rulemaking. The health and safety of the public is ensured by evaluating each specific product against safety criteria contained in the regulations that apply to all products in a class.

There are a number of products used under the general license in § 31.5 that could meet similar safety criteria but do not come under either of the existing classes, i.e., §§ 30.19 and 30.20. Certain industrial devices were identified by the NRC staff for possible use under an exemption from licensing requirements because of their low risk; i.e., static eliminators and ion generators containing polonium-210, beta backscatter and transmission devices, electron capture detectors for gas chromatographs, x-ray fluorescence analyzers, and calibration and reference sources. Dose assessments were conducted for these categories of products assuming use under an exemption from licensing and included in NUREG–1717. For each of the types of licensed products suggested for possible use under an exemption and included in the dose evaluations of NUREG–1717, some of the products clearly result in doses so low that requiring use under a license could be considered an unnecessary regulatory burden and an unnecessary expenditure of user and NRC resources. However, it is not clear that each type of device would necessarily qualify for exemption for all of the radionuclides and quantities used. Therefore, the NRC is adding a new class exemption, rather than attempting to create a number of additional product-specific exemptions with appropriate limitations, such as radionuclide-specific quantity limits.

The new class exemption in § 30.22, covering a broad range of industrial devices, will maintain protection of public health and safety and, at the same time, relieve regulatory burden. Presently, most of these products are licensed under the general license in § 31.5 and equivalent Agreement State regulations. In order for a product to be distributed for use under the new class exemption, the manufacturer or importer will be required to demonstrate that a particular device meets certain safety criteria, with NRC review and approval. This class exemption will also allow for the development of new products within the class or category of industrial devices that could be approved for use under exemption without the need for additional rulemaking to add product-specific exemptions.

This approach allows for a broader number of devices to be exempted and for variations on a product or new products in the class to be approved for use under exemption from licensing without further need for rulemaking. The exemption may lead to more devices being developed with appropriately low risk that meet the criteria for the exemption. Thus, additional benefit to society may accrue if more people make use of the types of products in this class.

Although some calibration and reference sources are currently licensed under § 31.5, a clarification is included in the new exemption that such sources are not covered, since it is more difficult to assess likely scenarios of handling and use for sources not incorporated into a specific device with a specific purpose; in particular, the number of sources that might be used or stored in close proximity is apt to be greater and more uncertain. Also, calibration and reference sources are frequently used by persons using other radioactive materials under a license, minimizing the benefit of an exemption in this case. Many of these are already used under the exemption in § 30.18. Some containing americium-241 and radium-226 are also covered by the general license in § 31.8. Therefore, it is not believed that the type of exemption being added is an appropriate regulatory approach for calibration and reference sources.

The exemption covers industrial devices with the same list of purposes as are covered by the general license in § 31.5 with the exception of that of producing light. The class exemption for self-luminous products is considered adequate and appropriate to provide for exempt use of products of this type.

The new exemption for industrial products has a lower dose criterion for routine use than that associated with the general license and includes consideration of potential doses from disposal. Devices used under § 31.5 must be returned to a specific licensee, such as a vendor (distributor) or waste broker, and ultimately disposed of as low-level radioactive waste. Under the new exemption from licensing requirements, there are no controls on disposal; the devices will be disposed without regard to their radioactivity. Thus, the potential impacts of uncontrolled disposal need to be evaluated in the licensing process for each particular device.

The information to be submitted by an applicant to distribute a device for use under this new class exemption is delineated in § 32.30; these requirements are very similar to those for applications to distribute a product for use under the other class exemptions, for example, under § 32.26 for gas and aerosol detectors.

The safety criteria are similar to the criteria for licensing the manufacture or distribution of gas and aerosol detectors (contained in §§ 32.27 and 32.28). However, those criteria include more organ-specific limits, because they were based on the dose limitation methodology recommended by the International Commission on Radiation

Protection (ICRP) in 1959 in ICRP–2, ''Report of ICRP Committee II on Permissible Dose for Internal Radiation,'' whereas more recently developed approaches to radiation protection rely less on individual organ dose limits or constraints, particularly when doses are low, and include weighting organ dose contributions to overall dose. These newer approaches involve calculating doses in total effective dose equivalent as in 10 CFR part 20, based on ICRP–26, ''Recommendations of the International Commission on Radiological Protection,'' or effective dose, based on the subsequent recommendations of the ICRP. The safety criteria for the new class exemption will not require that the exposures be estimated specifically in terms of total effective dose equivalent (TEDE) or effective dose.

The intent is to provide flexibility so that the most up-to-date dose calculation methodology may be used. However, the staff will normally accept the use of the current approved methodology such as that now reflected in part 20.

The NRC notes that the ICRP issued its latest recommendations in ICRP–103, ''The 2007 Recommendations of the International Commission on Radiological Protection.'' The specific dose conversion factors based on those recommendations have not yet been calculated. However, as the safety criteria for the class exemption are design criteria, it is preferable to have the flexibility to use the latest information for considering risk during design.

For the purposes of these provisions, a definition of a generic term for internal dose, ''committed dose,'' is being added to § 32.2 to encompass this approach, which includes weighting of organ and tissue doses, but not strictly under one system. The definition of ''committed dose'' has been changed in the final rule to remove the reference to specific definitions in part 20 and of ICRP, but maintain the basic approach. The revised definition includes the term ''tissue weighting factors.'' The NRC would normally accept dose estimates based on the weighting factors in part 20 or the tissue weighting factors in ICRP–60, ''1990 Recommendations of the International Commission on Radiological Protection,'' or ICRP–103.

The dose criterion for routine use of these devices is 200 μSv (20 mrem)/year, which is significantly higher than that for gas and aerosol detectors (5 mrem (50 μSv)/year). This exemption covers industrial type devices, used almost exclusively on the job, meaning that routine doses will normally be occupational, i.e., doses received by individuals in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material. In a small proportion of cases, a user might not be a worker, but a student, for example. However, these instances are likely to involve a limited amount of time for exposure over the year, reducing doses to these types of users. Due to the industrial purpose of the devices, these products are not expected to be sold in the large quantities possible for consumer products, such as smoke detectors. Therefore, these products will contribute to the exposures of many fewer people. Doses to members of the public would generally be smaller, usually much less than that to the user.

In order to provide reasonable assurance that members of the public are not routinely exposed to more than a few mrem/year (few 10's of μSv/year), the regulation also includes a criterion that the device is unlikely to be routinely used by members of the general public in a non-occupational environment. The Commission's policy for consumer products is for the general public to receive no more than a small fraction of the public dose limit from exempt products, so that their exposures from all sources are not likely to routinely exceed the public dose limit, which is now 100 mrem (1 mSv)/year.

The fact that industrial products are not as widely used as items commonly used in the home will tend to limit the contribution by these products to disposal doses; e.g., the exposures of landfill workers. Nonetheless, the safety criteria include a separate criterion for disposal, 10 μSv (1 mrem)/year. This criterion is lower than the criterion for routine use, because the same individuals are apt to be exposed to all products disposed in any particular landfill or municipal incinerator.

Accident criteria are similar to those for products to be used under §§ 30.19 and 30.20. The higher of these limits, that for the lowest probability accident, is also used in the safety criteria for the general license in § 31.5, under which many of the devices potentially covered by the new class exemption are currently used (§ 32.51(a)(2)(iii)). However, the safety criteria for the new class exemption include an additional criterion to ensure that the radionuclide quantities allowed for use under the exemption are limited, such that the maximum possible dose is controlled, even if the circumstances leading to such a dose are extremely improbable.

The accident criteria currently in § 32.23(d), § 32.24, Column IV, § 32.27(c), § 32.28, Column III, and § 32.51(a)(2)(iii) were expected to limit the total amount of radioactive material likely to be approved for use under the relevant exemption or general license, irrespective of the design to contain or shield the material. However, designs to contain the material even under severe conditions of use or accident have resulted in relatively large quantities of materials being approved in some cases. Although the radiological risk is well controlled by these designs, possible scenarios of misuse are not required to be evaluated.

For this new exemption, a criterion is included requiring that specific scenarios of misuse be analyzed and shown to meet certain dose limits. The analysis required to meet this misuse criterion will be relatively simple. Evaluating actual risk from possible misuse would be much more difficult, but such risks will be limited by this misuse criterion. The basis for this criterion is to ensure public health and safety. The criterion is 100 mSv (10 rem), plus an additional skin dose criterion. This criterion is slightly lower than the accident criterion of 15 rem (150 mSv) applicable to products covered by the existing class exemptions and the general license in § 31.5. This criterion is considered to be a more appropriate value given the high level of uncertainty in estimates of doses under accident conditions.

Limiting the radionuclide quantities allowed for use under the exemption, even if well contained, has the additional benefits of: (1) Minimizing risks associated with devices becoming subject to scrap metal recycling, such as property damage due to contamination resulting from smelting; (2) further controlling overall impacts to waste disposal workers; (3) minimizing overall impacts to the environment from uncontrolled disposal of products used under exemptions from licensing; and (4) minimizing the potential problems of products exempted by the NRC being detected at and sometimes rejected for disposal in landfills and municipal incinerators by State and local restrictions.

In the proposed rule, an additional fixed limit for radionuclides of concern, in terms of a small fraction of the Category 2 threshold as listed in Appendix E of part 20, was also included (as proposed § 32.30(c)(4)). This additional limit is not included in the final rule. The Commission has determined that there is no safety or security basis for a quantity limit, that the safety criteria will adequately protect public health and safety from products approved for use under the

new class exemption, and that the misuse criterion in particular will adequately control the quantities of material that will be approved for use in such products to obtain the additional benefits described above.

Except for the removal of this specific quantity limit and the change to the definition of ''committed dose,'' the rule is essentially identical to the proposed regulatory text related to this new class exemption with one minor change made in response to public comment. That change involves the specific distances at which applicants will measure the radiation field around devices they seek to distribute for use under the exemption. This is discussed further under Section III, ''Summary and Analysis of Public Comments on the Proposed Rule.''

*C. Remove Unnecessary Limitations From the Class Exemption for Gas and Aerosol Detectors*

The class exemption in § 30.20 is for gas and aerosol detectors ''designed to protect life or property from fires and airborne hazards.'' At the time that this exemption was added to the regulations, the applications of these types of devices under consideration were smoke detectors and devices to detect chemicals that would constitute an airborne hazard if inhaled. The words ''designed to protect life or property from fires and airborne hazards'' were included to ensure that the products provided a clear societal benefit. Products similar to those allowed, but not quite fitting the ''class,'' cannot be approved for use under this exemption. For example, drug detectors were rejected for distribution for use under this exemption because they do not specifically protect life or property from fires or airborne hazards. The NRC believes that there is a clear societal benefit from this application and allowing its use under the exemption is justified, as long as a particular device meets the applicable safety standards. A minor modification, therefore, is being made to allow for a slightly broader class of product without eliminating the expectation of a societal benefit. ''Designed to protect life or property from fires and airborne hazards'' is replaced with, ''designed to protect health, safety, or property.'' This will allow other potential applications under an existing regulatory framework, which has safety criteria designed to adequately protect public health and safety.

*D. Update the Regulations on Certain Static Eliminators and Ion Generating Tubes*

Section 31.3 provided a general license for certain static eliminators and ion generating tubes. The static eliminators distributed for use under this provision include those intended for use by the general public. There were no requirements associated with this general license; however, the provision did not explicitly contain an exemption from 10 CFR parts 19, 20, and 21. Nonetheless, the Commission has generally treated products covered by this provision as if the users were exempt from licensing. Distribution had to be authorized only by the NRC and not by the Agreement States. There were no distribution requirements specified in part 32. Distributors were licensed under part 30, with particular license conditions related to distribution determined on a case-by-case basis. Reporting requirements in licenses were similar to exempt distribution reporting requirements.

This inconsistency resulted from the fact that the use of the static eliminators covered by this general license predated the regulations in parts 19, 20, 21, 31, and 32. The general license for static eliminators was first issued in part 30 in the 1950s shortly before the formalization of radiation protection requirements was completed by issuance of part 20. Therefore, the original general license did not include an exemption from part 20. Training requirements were separated from part 20 and issued in part 19 at a later date. The ion generating tubes covered by paragraph (d) of § 31.3 were also covered by the general license in part 30 prior to the recodification of byproduct material regulations into 10 CFR parts 30, 31, 32, 33, 34, 35, and 36 in 1965. The general licenses for byproduct material were moved from part 30 to part 31 at that time.

In 1971 (36 FR 6015; April 1, 1971), the Commission proposed to change this general license to an exemption, and also to expand it into a class exemption under which additional static elimination devices and ion generating tubes with differing radionuclides and quantities could be approved for use under the exemption through licensing actions. As a result of competing priorities for staff effort at the time, that rule was never finalized.

Although these products have a long history of use, there have been relatively few licensed distributors. Nonetheless, this situation caused some confusion in the licensing process. The Commission is changing this general license into an exemption from licensing in § 30.15(a)(2). The current licensed distributor will not be required to amend its license in order to continue distribution, but any future distributors will come under the distributor provisions associated with § 30.15; i.e., §§ 32.14, 32.15, and 32.16. This change is intended to have no effect on any current distributor or user of these products, only to remove an inconsistency in the regulations and to make any future licensing decisions in this regard more efficient and effective.

With respect to the issue of requirements for sealed source and device review, this change removes the need for a registration certificate if these products are distributed under the authority of a license issued under § 32.14. The licensing practice of using the sealed source and device review and registration process for products to be used under the general license in § 31.3 primarily resulted from the lack of specific requirements for a distribution license in the regulations. Thus, § 32.210 provided the types of information to be provided concerning the product for NRC review.

*E. Remove Prescriptive Requirements for Distributors of Generally Licensed Devices and Exempt Products*

The Commission determined that the requirements for manufacturers or initial distributors of exempt and generally licensed products were in some cases overly prescriptive, particularly in the areas of prototype testing and acceptance sampling/quality control (QC) procedures. Such a prescriptive approach is easy to implement and regulate, but is relatively inflexible. When evaluating a new or redesigned product, the NRC requires prototype testing to validate the design of products and their ability to contain byproduct material. Acceptance sampling (a specific QC process) monitors the effectiveness of the manufacturing process for safety-significant parts to minimize the likelihood of failures and events caused by inadequate manufacturing quality.

This rule is intended to focus the regulations on performance, rather than procedures. The regulations retain general requirements and provide general standards by which performance may be judged, rather than specifying detailed procedures that must be followed, except for products for which oversight of these activities would no longer be required as discussed under Section II.F., ''Make the Requirements for Distributors of Exempt Products More Risk-Informed.'' The NUREG–1556 series of documents provides

guidance to licensees and applicants on acceptable approaches to meeting these requirements.

The procedures being removed from the regulations are generally acceptable to meet the new performance-based requirements. Safety benefits of the changes being made in this area will primarily be gained indirectly by removing overly burdensome and possibly counterproductive procedures and, more importantly, by accommodating the use of new technologies. The intent is for the revised regulatory requirements to be equivalent to previous practices (except as noted), so that existing licensees will not have to change their procedures as a result of this rulemaking. However, the revised provisions are written so that applicants and licensees have flexibility in the methods that they use to determine the design quality (prototype tests) and manufacturing quality (acceptance sampling/QC) of these products. In keeping with national and international best manufacturing standards, manufacturers and the distributors that represent them are expected to maintain a quality management system that stresses continual improvement. Examples of such system requirements can be found in the International Organization for Standardization standard, ISO 9001:2008, ''Quality Management Systems—Requirements.'' While the focus of ISO 9001:2008 is on customer satisfaction, it contains some quality management concepts that are appropriate to the distribution of generally licensed and exempt products containing byproduct material.

Prototype Test Procedures

This final rule simplifies the prescriptive regulations for prototype testing for new products proposed for use under general license. The revised provisions include only those aspects that are results-oriented, rather than specifying detailed procedures that must be followed. An applicant may choose to follow current prototype test procedures, as they would satisfy the outcomes required by this rule in every situation. The specific procedures are being removed from the regulations and included as example acceptable procedures in guidance documents.

In the case of generally licensed products, regulations that had contained prescriptive requirements for prototype testing were:

- Paragraph (d)(4) of § 32.53, ''Luminous safety devices for use in aircraft: Requirements for license to manufacture, assemble, repair or initially transfer,'' standard to pass tests described in § 32.101;
- Paragraph (d)(2) of § 32.57, ''Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer,'' standard to pass tests described in § 32.102;
- Paragraph (e)(4) of § 32.61, ''Ice detection devices containing strontium-90; requirements for license to manufacture or initially transfer,'' standard to pass tests described in § 32.103;
- Section 32.101, ''Schedule B—prototype tests for luminous safety devices for use in aircraft'';
- Section 32.102, ''Schedule C—prototype tests for calibration or reference sources containing americium-241 or radium-226''; and
- Section 32.103, ''Schedule D—prototype tests for ice detection devices containing strontium-90.''

No prescriptive prototype testing requirements pertaining to manufacturers of exempt products remained in the regulations, as they had been previously removed. Most recently, §§ 32.14(d)(2) and 32.40 were removed by a rule published October 16, 2007 (72 FR 58473).

Acceptance Sampling and Quality Control Procedures

In the case of generally licensed products, regulations that contained prescriptive requirements for acceptance sampling/quality control procedures were:

- Paragraphs (a) though (d) of § 32.55, ''Same: Quality assurance; prohibition of transfer'' (''Same'' refers to ''Luminous safety devices for use in aircraft'');
- Section 32.59, ''Same: Leak testing of each source'' (''Same'' refers to ''Calibration or reference sources containing americium-241 or radium-226'');
- Paragraphs (a) through (e) of § 32.62, ''Same: Quality assurance; prohibition of transfer'' (''Same'' refers to ''Ice detection devices containing strontium-90''); and
- Section 32.110, ''Acceptance sampling procedures under certain specific licenses.''

The prescriptive requirements for acceptance sampling/quality control procedures pertaining to manufacturers of exempt products were paragraphs (a)(2), (a)(3), and (c)(2) of § 32.15, ''Same: Quality assurance, prohibition of transfer, and labeling.'' (''Same'' refers to ''Certain items containing byproduct material.'')

These all included specified procedures; §§ 32.15(a) and (c), 32.55(b) and (d), and 32.62(c) and (e) specifically referred to § 32.110.

The NRC intends to allow acceptance sampling to be performance-based, rather than specifying procedural details. Section 32.110 provided that a random sample shall be taken from each inspection lot of specified devices for which testing is required in accordance with the appropriate sampling table in that section. If the number of defectives in the sample does not exceed the acceptance number in the appropriate sampling table, the lot was not to be accepted, while if the number of defectives exceeds the acceptance number, the entire inspection lot was to be rejected. There is no longer a need for the NRC to maintain the acceptance sampling tables that were in § 32.110, which provided the number of acceptable defective units in various lot sizes for a variety of Lot Tolerance Percent Defective values. **Note:** *Lot Tolerance Percent Defective* is defined in § 32.2 as the poorest quality in an individual inspection lot that should be accepted. The table in § 32.110(b)(6), Lot Tolerance Percent Defective 5.0 percent, correlated with the standard in the above cited regulations. However, the other seven tables in § 32.110 apparently had been little used since their publication in 1974, as there were no specific standards in part 32 requiring Lot Tolerance Percent Defectives other than 5 percent. Licensees can now easily use widely available computer software to determine their own acceptance sampling procedures to best monitor their manufacturing processes. This final rule removes § 32.110. Acceptance sampling criteria continue to be specified in §§ 32.15, 32.55, and 32.62, specifying the values required for quality (Lot Tolerance Percent Defective) and confidence. Section 32.59 requires leak testing of each source for calibration or reference sources containing americium-241 or radium-226 generally licensed under § 31.8, rather than sampling of lots. This final rule does not change that provision other than providing minor clarifications.

Previously, the NRC required the affected categories of licensees to perform acceptance sampling in accordance with § 32.110 or propose alternative procedures (under § 32.15(b), § 32.55(c), or § 32.62(d)) which provided a Lot Tolerance Percent Defective of 5.0 percent at a consumer's risk of 0.10. This ''consumer's risk'' criterion is equivalent to 90 percent confidence that the Lot Tolerance Percent Defective will

not be exceeded. The applicant's quality control procedures, including any alternate procedures proposed, are reviewed and approved by the NRC. This final rule does not change the 5 percent criterion for Lot Tolerance Percent Defective (i.e., 95 percent acceptance). The value of consumer risk of 10 percent was more relaxed than others used by the NRC, such as in inspections, which use standards of no more than 5 percent defective at 5 percent risk. The final rule revises the acceptance sampling standard to no more than 5 percent risk, expressed as ''95 percent confidence,'' for those categories of products for which the acceptance criteria are specified in the regulations. The term ''confidence'' is now more commonly used in this context.

Most of NRC's statistical acceptance criteria today—such as in inspections—are, at least, 95 percent acceptance with 95 percent confidence. Raising the required confidence level from 90 percent to 95 percent may be an increase in burden, but is justified, because the 90 percent standard was inconsistent with other agency practices, as well as industry standards. However, it is expected that because of the nature of the products covered by these regulations, the lot sizes apt to be used, and other factors, the revision is unlikely to change the approaches used by the limited number of current licensees under these provisions.

Another change in NRC's acceptance sampling regulations is a clarification of the prohibition on the transfer of any defective lot. The prohibition of transfer of rejected lots, previously appearing in §§ 32.15(c)(2), 32.55(d)(2), and 32.62(e)(2), is being revised. The prohibition of transfer appeared to apply only to individual items found to be defective, rather than addressing all items in a sampled lot that do not meet the acceptance standard. These revisions concerning rejected lots appear in §§ 32.15(b)(2), 32.55(d)(2), and 32.62(e)(2). From a statistical standpoint, unless a lot is sampled and tested in such a way as to demonstrate compliance with the required measures of quality assurance, the entire lot should be rejected. The final rule requires that distribution of any part, or sub-lot, of a rejected lot must be in accordance with procedures spelled out in the license, and that testing after repairs must be performed by an independent reviewer. The provision for an independent reviewer is a new requirement, but it is a recommendation of the International Atomic Energy Agency (IAEA), and may have been used voluntarily as an industry best practice. The IAEA recommends that, based on sound statistical theory, depending on the safety significance of the defective item or lot, the independent reviewer may be a different inspector from the one that performed the original sampling, or an inspector from a third party. In the case of the products for which these changes are being made, the risk is low and it is sufficient for the independent inspector to simply be another qualified employee. Individual worker accountability plays an important role in an effective quality assurance (QA) program, and an independent reviewer, besides adding another layer of assurance that the sub-lot or part is acceptable, will add accountability to the program.

The sampling plan will normally be detailed in the license, which will ensure that the quality assurance program is systematic and planned where justified, such as for lot sizes, sample sizes, criteria, and procedures. The primary source of guidance on quality control and quality assurance is NUREG–1556, Vol. 3, Rev. 1. This guidance indicates that the NRC may accept a certificate of accreditation in lieu of a full set of QA/QC plans or procedures. The vendor providing certification must, however, make the commitment that the generic QA/QC program includes provisions that address the specific requirements in the regulations for the fabrication of the sealed sources or devices. Depending on the specific requirements of the fabrication process, such provisions would include:

- Verifying that the design conforms fully with the statements and commitments submitted in support of the application (including materials, dimensions within stated tolerances, manufacturing methods, assembly methods, labeling), using sampling methods that meet applicable provisions, such as § 32.55.
- Leak testing all units to 185 Bq (0.005 μCi).
- Testing all units for proper operation of all safety features.
- Verifying that, for all units, the radiation levels do not exceed the maximum values stated in the application.

The proper treatment and definition of lots is essential from a statistical perspective, and relevant to acceptance sampling procedures. For the purposes of acceptance sampling, a ''lot'' should consist of homogeneous products manufactured from the same or similar machines, interchangeable in terms of their intended use or function. Similarly, from a statistical perspective, a sampling plan must demonstrate certain characteristics to sufficiently guarantee quality:

- Manufacturer compliance with predetermined lot sizes, sample sizes, sampling methodology, and acceptance criteria.
- Agreement with a one-time decision to accept or reject a lot in its entirety.
- Separate, predetermined treatment of sub-lots.
- The calculation and reporting of separate measures for quality and for confidence.

It should be emphasized, however, that the regulatory requirement for acceptance sampling is not an attempt to control overall product quality, but to minimize the possibility that a distributed product has inadequate or malfunctioning safety features.

In summary, this final rule revises the cited paragraphs concerning prototype testing and quality control, including specific sampling requirements, to make these requirements for distributors more flexible and performance-based rather than prescriptive. Guidance on quality assurance methods is included in NUREG–1556, Vol. 3, Rev. 1, including specifically Appendix G.

Less prescriptive, more flexible, performance-based regulations will continue to specify performance requirements. Generally, the specific procedures being removed from the regulations continue to be considered acceptable. The NRC normally evaluates products using radiation safety criteria in accepted industry standards. If these standards and criteria do not readily apply to a particular case, the NRC formulates reasonable standards and criteria in consultation with the manufacturer or distributor. References to appropriate industry and consensus standards are included in NUREG–1556, Vol. 3, Rev. 1, Appendix F. Updated guidance will be provided when a new or revised industry standard becomes available that the NRC considers more appropriate. The licensee will be free to propose alternative methods to those presented in industry standards and guidance, provided that the methods provide sufficient evidence that all safety related components are capable of performing their intended functions.

Current licensees will need to make any necessary upgrades to their QC programs when this rule becomes effective. However, because license conditions are written broadly, it is not expected that any such changes in the QC programs will be inconsistent with an existing license (or registration certificate). Any changes needed in the license to better ensure consistency with the revised requirements will likely be

made at the time of the next license renewal or related amendment of the license.

*F. Make the Requirements for Distributors of Exempt Products More Risk-Informed*

To a large extent, the NRC has applied similar requirements throughout part 32 on manufacturers and distributors of all categories of products, irrespective of the quantity of byproduct material within or the risk of a product. However, given the low risk of some exempt products, some of the requirements are believed to be unnecessary, and not commensurate with the associated risk. This was particularly true in the areas of prototype testing and quality control requirements for products to be used under exemptions from licensing.

The NRC considered whether some of the products used under an exemption from licensing present such low levels of radiation exposures, both routinely and in the event of accidents, that continued NRC oversight of the specific prototype tests and/or the quality control/quality assurance to be applied by the manufacturer or distributor would not be warranted.

Although many products distributed under the class exemptions would likely meet such a low-risk standard, the Commission does not believe it prudent to eliminate any of these requirements for the class exemptions. The safety criteria for each class exemption are intended to ensure that the risks associated with any product approved for use under the associated exemption are quite low. Nonetheless, because of the nature of a class exemption to allow for new products to be approved, it is not possible to conclude that elimination of oversight of prototype testing or quality control procedures for an entire class of products is prudent. The evaluation of the safety of the individual product may depend on knowledge of such procedures.

The NRC evaluated the inherent potential for radiation exposures from products containing byproduct material used under product-specific exemptions and the likelihood of increases in risks if oversight of the subject procedures were removed. The product-specific exemptions appear in § 30.15. There were four types of products listed in that provision for which future distribution is allowed, specifically timepieces, ionization chamber smoke detectors, electron tubes, and ionizing radiation measuring instruments. (Note that in the discussion under Section II. D., ''Update the Regulations on Certain Static Eliminators and Ion Generating Tubes,'' the Commission is adding another exemption to § 30.15.) The requirements of this type for manufacturers and distributors of products used under § 30.15 were contained in: § 32.14(b)(4), on submittal of information on prototype test procedures used and the results; § 32.14(b)(5), on submittal of quality control procedures to be used; and §§ 32.15(a)(2) and (a)(3) and 32.110, on specific sampling procedures for quality control. Paragraph 32.15(c) also contained a prohibition on transferring any defective lot or item to exempt persons.

Even without the NRC's continuing oversight of these procedures, licensees would be motivated to retain them as good business practices. There are a number of factors that will likely cause manufacturers and distributors to continue to conduct prototype testing and at least some form of quality control/assurance. In some cases, functionality testing closely aligns with testing for containment of radioactive material. The consideration of risk for these products, however, did not rely on this expectation, beyond some reasonable bounding assumptions about the likelihood and consequences of distributing defective products. For example, failures that result in functional failure may happen more frequently, but it is not reasonable to assume that manufacturers would continue to distribute a large percentage of defective devices over long periods.

The NRC used NUREG–1717 as a primary resource concerning estimates of doses that result from the distribution, use, maintenance and repair, disposal, and accidents involving these products. The NRC considered the extent to which these doses might be affected if the lack of oversight over prototype testing resulted in a product design that was less effective in containing or shielding the byproduct material. The NRC also considered the extent that doses or probability of accidents could be affected if the lack of oversight of quality control/quality assurance significantly reduced the effectiveness of licensees' programs in this area. This assessment was semi-qualitative as there is no data available on products used without regulatory control, which could support a quantitative probabilistic risk assessment.

This final rule eliminates NRC oversight for these types of activities for a few of the exempt products as not justified, based on risk. Requirements to submit information on prototype tests in § 32.14(b)(4) are eliminated for products exempt under § 30.15(a)(7) and (8), ionization chamber smoke detectors and electron tubes respectively. This requirement is also removed for timepieces under § 30.15(a)(1) containing promethium-147 or tritium in the form of gaseous tritium light sources. Oversight of quality control/quality assurance is eliminated for these same products as well as for products to be used under the new exemption in § 30.15(a)(2), static eliminators and ion generating tubes formerly covered by the general license in § 31.3. This is in revised § 32.14(b)(5), which now requires that quality control procedures be submitted for approval only for ionizing radiation measuring instruments and timepieces containing tritium in the form of paint. Other requirements in the application for a license to distribute these products remain, such as the submittal (under § 32.14(b)) and evaluation (§ 32.14(d)) of basic design features intended to contain the byproduct material.

Based on the assessment of the inherent safety of these products, it is estimated that even if a lack of appropriate prototype testing resulted in lower quality product designs in the future or poor quality control resulted in degradation of production quality, the potential increases in individual doses would be less than 10 μSv (1 mrem)/year in any situation where significant numbers of products could be affected. Also, in the extreme case of a significant change in future distributor behavior, some individual doses could be increased by somewhat higher amounts in non-routine situations. Overall, considering both potential increases in doses and the probability of circumstances resulting in those increases, the potential incremental risk is estimated to be insignificant.

Unnecessary regulatory burden on distributors of these products is reduced. Because, as noted above, licensees are not likely to eliminate such procedures as a result of discontinued NRC oversight, the benefits assumed are only those associated with eliminating the submittal of testing/sampling procedures for review and approval, eliminating the submittal of prototype testing results, and allowing added flexibility to change procedures in response to other factors, including competitive demands for continuous quality improvement, without NRC permission.

Current licensees authorized to distribute products affected by this change will need to amend their license in order to not be held accountable for continuing to follow the QC/QA program as delineated in their license.

This will be a simple amendment as the regulations will be clear that this license condition is no longer required.

*G. Minor Clarifying or Administrative Revisions*

Other minor revisions are being made to better organize, clarify, or update the regulations in these parts, such as the renaming of subparts C and D and the movement of §§ 32.72 and 32.74 from subpart B to subpart C. These two sections are being moved because they do not cover generally licensed items. Minor conforming amendments are included in parts 40 and 70 because the delineation of the delegation of licensing programs to the Regions is written broadly in these parts. Such revisions are noted in Section IV., ''Summary of Final Amendments by Section.''

## III. Summary and Analysis of Public Comments on the Proposed Rule

The NRC reviewed the public comments received on the June 24, 2010 (75 FR 36212), proposed rule. The comment period ended on September 7, 2010. Ten comment letters were received. The commenters included the Organization of Agreement States (OAS), the State of Wisconsin, the radiation safety officer of a university, and an individual. The remainder were manufacturers and distributors and organizations representing manufacturers and distributors. Two commenters requested an extension to the comment period. Although an extension was not granted, all comments were considered. In addition to inviting comments on any aspects of the proposed rule, the NRC posed specific questions for consideration. A discussion of the comments and the NRC's responses follow.

*A. Actions Related to Sealed Source and Device Registration*

A.1 Updating Regulations To Add Registration Requirements

*Comment:* While only one commenter specifically supported the overall change to add requirements for registration of the various categories of sources and devices and to add the definition of the sealed source and device registry to part 32, most appeared to generally support these changes. One commenter specifically noted the importance of the Compatibility Category B for SS & D related changes in order to ensure consistency throughout all jurisdictions.

*Response:* No changes to this aspect of the rule have been made. The Commission agrees with the importance of national consistency in this regard. Compatibility Category B applies as proposed to the paragraphs in part 32 relevant to requirements to obtain SS & D registration (except for those sections that are NRC only because the NRC retains authority over all distribution to exempt persons). Also as proposed, Compatibility Category D continues to apply to § 32.210 for those States that do not issue registration certificates.

A.2 Adding Provisions for Amendment, Modification and Revocation, Review, and Inactivation of Registration Certificates

A large portion of the comments received on the proposed rule concerned the provisions for inactivation of certificates and for reevaluation of certificates. There were four specific questions raised in the notice of proposed rulemaking concerning the updating of registration certificates. The following comments relate primarily to these two questions:

*Q.1 Updating of registration certificates in the SS & D Registry:*

*(a) Under what circumstances should proposed § 32.210(h) be used to require a reevaluation? How should such a reevaluation be conducted with minimum impact to industry? Q.1 (d) In general, how might the NRC use the proposed provision for review in § 32.210(h) in relation to changes in standards for products or limits in addressing continued distribution and the timing for changes to the authority to distribute tied to the registration certificate?*

*Comment:* Commenters on this subject were manufacturers and distributors and representatives of the industry. These commenters recommended that a re-evaluation of registration certificates be conducted: (1) Upon request by the manufacturer or initial distributor due to changes [that would affect regulatory compliance]; (2) to ensure compliance with regulations; (3) based on indications of radiological safety concerns or when new regulations implement more restrictive dose constraints; or (4) when the regulations that apply to those sealed sources or devices change to an extent that compliance with the regulation could require modification of the conditions of the registration. One commenter supported the recommendation that no reevaluation was needed except to ensure compliance with the regulations or if there are reports of defects that would affect regulatory compliance, by indicating that the fundamentals of radiation protection or technology are not likely to undergo any change significant enough to create a compelling need for reevaluation of a device certificate.

*Response:* Generally, the NRC agrees with the circumstances recommended by the various commenters for reevaluation of a registration certificate. Another possible situation in which a review might be required would be in the case of an older certificate that has not been revised by request of the holder and that has limited information related to the original demonstration of safety. However, at this time, the NRC does not envision the routine auditing of certificates for adequacy of information.

*Comment:* One commenter recommended that if the regulations for sealed sources and devices change to an extent that compliance with the regulation could require modification of the conditions of the registration, then the affected licensees should be notified of those requirements, and the date by which compliance is required. Likewise, licensees could be required to make a notification that no design changes are required.

*Response:* The approach suggested by the commenter is a reasonable one for the NRC to take in such a circumstance; however, such an occurrence is rare and implementation details would be decided on a case-by-case basis.

*Comment:* One commenter agreed that it is not necessary to conduct a complete reevaluation of sealed sources and devices at the time that distribution licenses are reviewed, but also stated that the NRC should change NUREG–1556 guidance to explicitly require a review of certificates at the time of license renewal to ensure that the information is complete, accurate, and that the source or device remains current considering the application of the current industry standards.

*Response:* The NRC agrees that it is not necessary to conduct a complete reevaluation of sealed sources and devices at the time that distribution licenses are reviewed for renewal, although some review of certificates for consistency with the license is appropriate at that time. The NRC staff is currently updating the guidance in NUREG–1556 series concerning such matters.

*Comment:* One commenter suggested that the NRC conduct a comprehensive audit of all certificates in the registry and reconcile them with NRC and Agreement States Distribution License issued. This commenter noted problems, such as licenses being amended without amendment of the accompanying registration certificates and the existence of certificates still

listed for active vendors when the company's distribution license had been previously terminated.

*Response:* This is not something to be addressed in rulemaking. The NRC sometimes identifies such problems as the commenter has noted and corrects them. The NRC could not conduct a complete audit of all certificates, as the Agreement States have responsibility for ensuring the consistency of their distributor licenses with the relevant certificates. The addition of the inactivation provision in § 32.211 is intended to improve the consistency in this aspect of the SS & D registration process.

*Comment:* The NRC should monitor changes to relevant ANSI [American National Standards Institute] and ISO standards for reference during the review process.

*Response:* The NRC generally keeps current with respect to such standards, in some cases participating on the committees making the revisions. This comment did not call for any particular change to the current rulemaking language in this final rule.

*Comment:* Two commenters expressed the opinion that § 32.210(h) was redundant and therefore not necessary, given that the NRC already has authority under § 30.61 to request additional information or to modify requirements, if necessary, to revoke a license and registration certificate. One stated that § 32.210(h) would not ensure consistency between licenses and certificates and that instead of adding this provision, §§ 30.34(e) and 30.61 should be designated Compatibility Category B or A for Agreement States because of the transboundary implications associated with source or device registrations, which could be distributed in all fifty states and worldwide. This commenter also suggested that this would grant Agreement States the ability to review, revoke, inactivate, or modify certificates based on significant safety issues.

*Response:* The NRC disagrees that § 32.210(h) is duplicative of the general authority provided under § 30.61. The intent of this rule concerning sealed source and device registration certificates is to make the regulations more explicit as to how the registration process is used in the licensing process. The details of this process should be specified in part 32. It would not be appropriate to designate §§ 30.34(e) and 30.61 Compatibility Category B for Agreement States, which is the program element assigned when there are significant direct transboundary implications, in order to address the transboundary implications associated with source or device registrations. These provisions cover a broad range of licenses for which there are no transboundary implications. The importance of national consistency for sealed source and device registrations is more appropriately handled in the categorization of the appropriate part 32 provisions, such as §§ 32.210 and 32.211. However, the Commission has decided that the transboundary implications of § 32.210(h) are not significant enough to require identical treatment by each jurisdiction, so this one paragraph within § 32.210 has been assigned Compatibility Category C (for Agreement States who perform SS & D evaluations); thus, those States would adopt the essential objectives of § 32.210(h), rather than essentially the same language.

*Comment:* One commenter suggested that § 32.210(h) include a backfit provision, suggesting an approach where certificate holders would be given a certain amount of time to reevaluate their source or device to determine whether it meets new dose criteria. This suggested approach also included actions that could be taken to control user doses if the source or device does not meet the criteria.

*Response:* Requiring previously approved products to meet new standards established in the regulations is not an action the NRC would anticipate taking very often, particularly given that overall standards for radiation protection are not expected to change dramatically in the foreseeable future. There are no new dose criteria in this rule to be applied to previously approved products. It is not appropriate to incorporate an implementation provision into this rule as suggested by the commenter to cover potential future changes in regulations concerning dose criteria. Specific implementation provisions of this type can only reasonably be provided in the regulations in connection with a specific regulatory change being implemented. The NRC deals with such circumstances within the rulemaking process which makes such a change.

The following comments respond to this question posed:

*Q 1.(b) How might registration certificates best be updated so as not to discourage improvement in the design of sources or devices, more readily allow for the application of updated industry standards, and ensure that information in the certificates is fully consistent with current practices? (For example, in addition to the proposed provision in § 32.210(h), other options could include reviewing certificates at the time of license renewal, in part or in whole; adding separate expiration dates to certificates with typically longer terms than licenses, e.g., 10 to 20 years; and explicitly allowing licensees to make changes without NRC approval, if these changes do not reduce safety margins.)*

*Comment:* Two of the commenters suggested that device certificates should expire and be renewed at intervals of 10 years or longer, and that at the time of renewal, the certificate be updated to meet current industry standards. One of these commenters thought that this could be done in lieu of requiring inactivation of a device certificate after 2 years, stating that the inactivation provision would severely restrict business and put an undue burden on both the State and NRC programs, and companies with small distributions. The other stated that expiration dates should be specific to each device, based on its certificate approval date, and that the renewal should be easily performed requiring only a request to renew and an explanation of any changes needed to comply with current radiation safety standards. In contrast, one commenter stated that requiring reviews of certificates in conjunction with license renewal or placing expiration dates on certificates is unnecessary.

*Response:* The option of adding expiration dates and then conducting a renewal process would not appropriately replace the inactivation process. If a distributor is no longer distributing products covered by a certificate, there would be no reason to renew the certificate. The inactivation provision is discussed further later in this section.

If the NRC were to institute a policy of adding expiration dates to registration certificates, the expiration date would be specific to the certificate and the sources or devices covered by the certificate based on the issuance date as suggested by the commenter. Although the Commission agrees there is value in using an expiration/renewal process for registration certificates, instituting such a system nationally would be a significant change from the process in place for some time and would put additional burdens on the Agreement States that issue certificates at a time when resources are limited. There are other means to deal with changes that should be made to certificates, such as the use of the new provision in § 32.210(h).

*Comment:* One commenter suggested that the NRC should explicitly list which criteria constitute an amendment such as change in product name, company name, or any component directly related to radiation safety. Another commenter suggested that if

certificates are not written in an overly specific manner, most minor product changes or improvements could be handled by submittals regarding the change which show that the device meets the original requirements. Additionally, the NRC could amend the certificate's tie-down condition to reference the registrant's revised submissions by date.

*Response:* Paragraph (f) of § 32.210 requires the certificate holder to manufacture and distribute products in accordance with the provisions of the registration certificate and any statements made in the request for registration. It would be complicated and not feasible for this provision to be revised to indicate exactly which aspects must be followed. Such an approach could increase risks that a distributor may make changes with unintended impacts on safety. The NRC has modified administrative practices concerning the content of registration certificates so as to minimize the inclusion of details not important to safety on the certificate. The NRC does amend certificates to reference new submissions as appropriate.

*Comment:* Another commenter also recommended that the NRC add amendment criteria to § 32.210 providing suggested regulatory text which is similar to the approach in 10 CFR 50.59. This suggested approach would allow distributors to make changes based on their own evaluation as to the potential impact on safety and require them to keep records of the changes and report them to the NRC within 24 months.

*Response:* The NRC staff did consider recommending such a provision in part 30 in particular when conducting the systematic assessment of exemptions. However, because of the difficulties expected developing such a provision for the broad range of products and facilities involved in the use of byproduct material, the staff did not recommend such a provision for parts 30 and/or 32. The approach suggested by the commenter included the need for complex analyses by the distributor concerning safety that would not be reported to the NRC for up to 24 months. The NRC believes that this may lead to compromises in safety. Also, at one time, fees charged for amendment of licenses and registration certificates were a deterrent to licensees proposing changes; however, changes were made to the fee structure, so that this is no longer the case.

The following comments respond to this question posed:

*Q.1(c) How should certificates for previously approved devices be handled if the device does not meet current standards, such as in the case of the separately proposed (August 3, 2009; 74 FR 38372) quantity limit in the general license in § 31.5 (and comparable Agreement State provisions)? How should registration certificates be handled in this situation? (For example, in some cases, the distributor may be able to limit the quantity of affected radionuclides, rather than change its certificate to one for specifically licensed devices.)*

*Comment:* A few commenters recommended that previously approved devices be grandfathered when standards are changed, one recommending this for devices in use, others for future distributions under existing active certificates as well. One of those supporting allowing continued distribution of previously approved devices recommended that the grandfathering of previously approved devices should be a Compatibility Category B for Agreement States. Generally, these commenters did not believe it justified to change the status of previously approved devices unless there was a significant impact on health, safety, security, or the environment. One of these commenters stated that such actions should only be taken if well justified in terms of benefit versus cost and that revised standards should only apply to devices distributed after a certain date. Related to the referenced proposed rule, which would have added an activity limit to the general license in § 31.5, two of the commenters indicated that the registration certificates would have to be revised to address distribution to both general and specific licensees. One commenter stated that it disagrees with the content of the proposed rule on limiting the amount of byproduct material in generally licensed devices.

*Response:* The Commission has decided against adopting a final rule based on the referenced proposed rule. That proposed rule would not have grandfathered devices already in use under the general license. The impact that the rule would have had on current users played a role in the decision not to adopt a final rule on that subject.

Generally, the NRC agrees with the comment that it would not be justified to change the status of previously approved devices unless there was a significant impact on health, safety, security, or the environment. The NRC recognizes that the appropriate regulatory action may be different when considering a change for (1) products to be approved in the future, (2) the continued distribution of products previously approved, and (3) products previously manufactured and already in use.

*Comment:* A few commenters recommended that new and re-distributed devices, devices manufactured after a certain date, or devices with significant changes, should require a new or updated certificate that complies with current or revised standards.

*Response:* Because of existing requirements in § 32.210(f), a certificate would have to be amended before devices with significant changes could be distributed. As to changes made to regulatory requirements that may necessitate a change to an existing certificate, the NRC makes decisions on implementation of a revised regulation on a case-by-case basis considering the risks involved and benefits associated with the particular change.

*Comment:* One commenter proposed that an independent screening review be performed to identify the set of devices likely to result in occupational dose in excess of 500 mrem TEDE and a public dose of 50 mrem in 1 year, and then establish notification or review criteria for the certificate holders accordingly. This commenter suggested that the NRC notify each certificate holder with devices exceeding the dose criteria and request a factual accuracy review, comments regarding the calculations, and the cost to recall and make changes to ensure compliance with the dose values. This recommendation went on to suggest that, if occupational doses could exceed 500 mrem/year, the distributor should be required to notify users that they should comply with part 20 (or the Agreement State regulations), and that if public doses could exceed 50 mrem, but not 100 mrem, the NRC should require an ALARA review similar to that required by 10 CFR 20.1101(d).

*Response:* This proposal did not suggest revising the regulations. However, in looking at a possible screening process, it should be noted that acceptable potential doses that workers and the general public may receive from a device depends on whether it is to be used under an exemption from licensing, a general license, or a specific license. Devices to be used under certain exemptions and the general license in § 31.5 are evaluated against specific safety criteria in part 32. There are no specific criteria for devices used under specific license; the safety of workers and the public being primarily protected by part 20, which applies to all specific licensees. Applying such a process as suggested by the commenter across the board would be inappropriate. In particular, the

recommended criteria would be inappropriate for evaluating products used under exemptions from licensing. Also, in the absence of an indication of a problem or adverse operational experience, the NRC does not believe it necessary to conduct a screening for all previously approved devices.

The Inactivation Provision in § 32.211

The only issue that received a significant number of objections was the proposed inactivation requirement. However, much of this reaction resulted from apparent misinterpretation of the intent of the provision and because of unforeseen impacts that could result if devices are transferred only occasionally with two years passing without a transfer of a device for which some continued distribution is anticipated.

*Comment:* A few commenters indicated that it was not uncommon for 2 years to pass between transfers of particular devices and that the requirement to inactivate in this instance would be burdensome to business. Comments were that compliance with this proposed rule would not be practical, that licensees may not know in advance when their last manufacture or transfer of a sealed source or device will take place, and that the certificate holders should decide when to inactivate certificates based on their business needs and intentions. Commenters specifically suggested that one may anticipate new applications for a product, development of new markets, etc., and that it might force inactivation of a certificate for a device which may be required again in another few months. Two commenters noted that the costs of maintaining the certificate, including the fees, provide incentive to inactivate a certificate when there are no prospects of future sales; one of these commenters recognized the rationale for desiring registrations to be inactivated if there is no intent to manufacture and/or distribute within a reasonable period. One commenter stated that the existing certificates already must be renewed periodically. This commenter suggested a 5-year time limit to apply for inactivation.

*Response:* The primary intent of the amendments concerning the sealed source and device registry, including the inactivation provision, is to make the regulations more explicit and transparent with respect to the use of registration certificates as part of the licensing process and also to improve national consistency in the processes used, thus improving the quality of the information in the registration database. This provision was not intended to interfere with business decisions or processes, but rather was proposed to alleviate any confusion as to which sources and devices are authorized for continued distribution, as well as providing a mechanism for regulators to help ensure the continued availability of qualified device service providers. The NRC would not want distributors to unnecessarily inactivate a certificate as a result of this provision and then need to apply for an active certificate again in the case of product with a limited market.

The intent of the language of the proposed rule text was that the request would be made when two conditions are met: (1) There is no ongoing intent to distribute and (2) 2 years have passed since distribution has ceased. However, the Statement of Considerations for the proposed rule did not address the condition in the regulation that the distributor must have no intention to make further transfers. As the commenters have noted, an unintended consequence of the rule as proposed might have been that if a distributor does not make the decision to make no further transfers more than 2 years after the last transfer, it could be in noncompliance with the regulations.

The text in this final rule has therefore been revised to clarify that no action need be taken after 2 years without a transfer until it is determined that there will be no future transfers. However, within 90 days of such a determination, inactivation must be requested and some brief explanation must be provided if more than 2 years has elapsed since distribution of any source or device covered by the certificate has ceased.

If a licensee is concerned that an inspection could identify a certificate that it is being kept active in anticipation of future sales, even though no sale has been made in 2 years, it may document its intent to continue sales; however, this would not be required. There may be existing evidence available of an expectation to continue to distribute. In some cases, there are capabilities that must be maintained in order to continue to be able to and/or be authorized to distribute, particularly for a manufacturer. There may be such documents as marketing materials, including catalogues of available products, or internal memos, which indicate either an ongoing intent to sell or a decision to cease distribution.

In addition, the situation of not transferring any source or device for more than 2 years with the intent to continue sales is expected to be relatively rare, particularly because individual certificates frequently include numerous models that have been approved for distribution. While distributors should update certificates to indicate which models are no longer being sold, the NRC did not make doing so a requirement or set a deadline for this type of amendment of certificates. The text of § 32.211 has also been revised to clarify that inactivation is necessary when all sources or devices covered by a certificate are no longer being distributed and to clarify that certificates must be inactivated before the associated distribution license is terminated. The specific address for submitting inactivation requests is also added.

*Comment:* Some commenters expressed concern that the proposed language of § 32.211 did not appear to allow redistributions or other transfers of sources or devices after inactivation of a certificate. Two commenters specifically suggested that the proposed wording of the fourth sentence in proposed § 32.211 should be changed to include the word ''initially'' so that it reads: ''A specific license to manufacture or initially transfer a source or device covered only by an inactivated certificate no longer authorizes the licensee to initially transfer such sources or devices for use.'' Another commenter was also concerned about redistribution, stating that it should be authorized even if the certificate is inactive. This commenter believed that an inactive certificate does not allow for the transfer or redistribution of registered sources or devices by specific licensees and noted that a source or device no longer being initially distributed is nonetheless safe for use by persons authorized to use the source in accordance with the conditions of the registration certificate.

*Response:* The intent of proposed § 32.211 in this regard is that only the unique authority provided to the distributor by the registration certificate (along with the associated license) to initially transfer a source or device ceases, without any effect on any other transfers of the covered source(s) or device(s). The suggested addition of the word, ''initially,'' has been made for clarification. The inactivation of a certificate does not limit the use or transfer of previously manufactured sources and devices. The Commission agrees that a source or device that is no longer being distributed is nonetheless safe for use by persons authorized to use it in accordance with the conditions of the certificate. The only concern after the inactivation of a certificate is that proper servicing continues to be available. The inactivation provision clarifies that a device shall be serviced

as provided in the certificate and the inactivation process alerts the regulator that servicing may not be available from the original distributor.

A.3 Adding Flexibility for Licensing Users of Sealed Sources and Devices

Two specific questions were posed in the proposed rule concerning this issue:

*Q.5 Proposal in § 30.32(g)(5) to allow some licenses to specify only constraints on the number and type of sealed sources and devices to be used and the conditions under which they are to be used:*

*(a) In view of the expectation that this authorization would only be granted in limited situations and due to special circumstances, how can NRC make it clear that approval of this approach would be at the NRC's discretion, rather than this being an open-ended option for anyone, or should the regulation specify when this approach is acceptable?*

*Comment:* In response to this question, two commenters requested that the NRC be as clear and detailed or practical as possible when imposing new requirements. Additionally, one commenter suggested that the NRC add an example of an exemption in NUREG–1556.

*Response:* The text of the final rule has been revised to clarify that this approach may be used if it is not feasible to identify each sealed source and device individually. Examples of situations where use of this approach is acceptable were discussed in the proposed rule as well as in the discussion of this issue in Section II. A.3., ''Adding Flexibility for Licensing Users of Sealed Sources and Devices.'' Such examples and additional guidance are being provided in the interim guidance [Docket ID NRC–2012–0074] developed for this rulemaking, and will ultimately be included in the revisions to applicable volumes of NUREG–1556. A notice concerning the availability of the interim guidance for comment was published in the Proposed Rules section of this issue of the **Federal Register**. However, one situation that is not considered appropriate for this approach is in applying for the renewal of a license that had been previously issued without identification of individual sources and devices where it is simply inconvenient to provide an inventory of currently held sources and devices.

*Q.5(b) Are there other situations besides those discussed, when identifying all of the sealed sources and devices to be licensed is particularly impractical?*

*Comment:* Two commenters responded to this question. One comment concerned not applying any limits on the quantities distributed to generally licensed or exempt devices. The other commenter suggested that the definition of ''sealed source'' in § 30.4 (and part 70) lacks specificity and should be revised to focus on only those sources manufactured and distributed pursuant to an SS & D registration. This commenter indicated that this would address confusion as to the applicability of certain requirements, in particular, leak testing requirements, to sources that are contained in ways that could be construed to constitute a sealed source, under the current definition. The suggested revision would have limited sealed sources to those that are registered in the SS & D Registry.

*Response:* The provision proposed in § 30.32(g)(5) and in the final rule as § 30.32(g)(4) is not applicable to generally licensed or exempt devices, which do not have to be listed on a specific license. Addressing concerns related to the applicability of leak testing requirements for specifically licensed sources is outside of the scope of this rule. Limiting the definition of ''sealed source'' to registered sources would be inconsistent with aspects of this rule (in particular § 32.210(g)) and other provisions in NRC regulations.

*B. Establish a New Class Exemption for Certain Industrial Products*

Only about half of the commenters made any statements about the proposed new class exemption. The comments received were mostly supportive, although some concerns were noted. Support for the proposed exemption came primarily from a major manufacturer and from the OAS. The manufacturer indicated that research and development of new devices is expensive and time-consuming, that the uncertainty in the regulatory outcome and the lengthy rulemaking process to obtain a product-specific exemption made exempt product development risky, and that creating a class exemption for industrial devices with risk-informed, performance-based criteria would reduce uncertainty, speed approvals, and lower barriers to innovation, and would provide a nationwide standard. This manufacturer also pointed out the difficulties of general licensing for low-risk devices with inconsistencies in Agreement State licensing of portable devices even though the SS & D Registry authorizes distribution to general licensees. This commenter noted the complications of marketing and distribution of such products on a nationwide basis as well as those for users who may be authorized to use a device under a general license in State A, but if they transport the device to State B, a specific license is required. Both this manufacturer and the OAS suggested that manufacturers would be more inclined to develop products using lower quantities of radioactive materials in order to meet the criteria for exemption, with one commenter suggesting that this would result in a reduction in some hazards to workers, members of the public, and the environment.

*Comment:* One manufacturer/distributor expressed concern that the health and safety of the public or the environment might not be adequately protected, noting the possibility that the increased number of devices allowed to be disposed of in landfills and scrap metal reprocessing streams would potentially increase the number of alarms at landfills, scrap metal facilities, and metal recycling facilities and ultimately create a burden on State regulatory authorities as a result. However, this commenter also said that the number of devices exempted by this provision would be very small and that this could be handled on an individual source or device basis and that the exception could be included in the NUREG–1556 guidance.

*Response:* Granting an exemption from licensing and all of the associated requirements is not appropriately handled through guidance. Although an individual can request specific exemptions under § 30.11, it is not practical for a manufacturer to distribute a product to be used by persons who individually have to request an exemption from licensing. The NRC normally does not issue exemptions from all of the licensing requirements of part 30 except through rulemaking to establish a broadly applicable exemption from licensing.

Although the NRC cannot ensure that exempt products do not occasionally cause alarms at such places as landfills, scrap metal facilities, and metal recycling facilities, the NRC does not believe that this possibility alone would justify not exempting products for which the safety of the public is adequately protected. This would unnecessarily limit the benefits society may derive from the uses of radioactive material.

This new exemption has been designed to ensure that quantities of byproduct materials approved for use in products are well controlled. This includes the misuse scenario in § 32.31(b), which ensures that relatively high quantities are not approved based

on the material being well contained and well shielded. One of the benefits of such criteria is limiting the possibility that quantities of material in any products approved for use under the new class exemption are sufficient to cause such problems during disposal as raised by the commenter.

In addition, labeling requirements help to minimize the efforts that are ultimately spent toward resolving what to do in these cases. When a product is identified in the waste that caused the alarm, the label should be intact in most cases and this provides the information necessary to determine if the product can be accepted or what the disposal options are for it. Most products covered by an exemption do not contain quantities of byproduct material large enough to set off alarms, particularly when shielded within a quantity of waste. How much byproduct material can result in an alarm depends on the practices at the site for handling and sorting waste and when the waste passes any alarm system.

*Comment:* A few commenters discussed the values in the safety criteria in § 32.31, particularly the 20 mrem/year routine use criterion, although not all specifically in response to the following question related to this issue:

*Q.2 New class exemption for industrial products in § 30.20:*

(a) *Is the 20 mrem/year routine dose criterion appropriate, given that users are workers, but there is no control of conditions of use once a product is distributed for use under an exemption from license?*

A manufacturer and an organization representing manufacturers and distributors suggested that the 20 mrem/year criterion was unnecessarily low. These commenters suggested that the criterion should be 50 mrem/year or 100 mrem/year. The commenter suggesting 50 mrem/year argued that 20 mrem/year would be overly burdensome, that the median dose would be lower than the criterion, because of the requirement to estimate the likely number of devices likely to be in one place, and that the most likely scenario of exposure to the public was disposal and that has a separate limit of 1 mrem/year. The commenter supporting 100 mrem/year did not see any reason for the criterion to be lower than the public dose criterion, but also asked how the NRC would monitor compliance with the new criterion given that members of the public are not typically issued dosimetry.

Another commenter suggested that the 20 mrem/year criterion should be lower, also stating that the discussion of a 10 rem misuse scenario is inconsistent with the 25 mrem/year value in 10 CFR 20.1402 and the 10 mrem/year constraint imposed by 10 CFR 20.1101(d), since misuse could result in an airborne intake of radioactive material. This commenter suggested that a more consistent argument might be made for a criterion of 10 mrem/year TEDE for all scenarios.

*Response:* The safety criteria for a class exemption such as the new industrial product exemption are design criteria. Demonstrating that a product meets these criteria depends on projections of future events. There is no monitoring of actual user exposures. As products used under exemption are used without any further regulatory control, the agency cannot ensure that users will not be exposed to a number of different products. They may also be exposed to other sources of radiation. Given the uncertainty in the ultimate exposures and the fact that individuals may be exposed to multiple sources, using the public dose limit of 1 mSv (100 mrem)/year is not adequate or appropriate.

Using the same dose criterion for all scenarios would be inconsistent on a risk basis as the various scenarios have different probabilities of occurrence, particularly in the case of accident scenarios. In addition, the lower criterion for disposal is used because individuals who are impacted by the uncontrolled disposal of exempt products are exposed to all radioactive material going to the same disposal facility, such as a landfill.

With regard to the commenter's comparisons to other existing regulations, ''practice-specific'' limits such as the criteria for unrestricted release in § 20.1402, constraints on air emissions in § 20.1101(d), and the safety criterion for routine use of ''exempt'' industrial products do not need to be numerically consistent. The two cited provisions in part 20 are essentially the fraction of the overall public dose limit considered appropriate for that particular source of exposure to the public. Such practice-specific limits are chosen based on cost/benefit considerations and other factors related to each specific practice.

Given the cost/benefit considerations and the likelihood of the same workers being exposed to a number of different types of devices falling under this and other exemptions, the Commission believes that 200 μSv (20 mrem)/year is an appropriate criterion for worker exposures from a device used under exemption, particularly given that the applicant must estimate the number of the same device likely to be present in the location of use and show that the total exposure from that number of devices is unlikely to exceed this criterion.

The argument for raising the routine use criterion to 50 mrem (500 μSv)/year is also not compelling. Although some individuals using a single or small number of devices would incur a lower than 20 mrem (200 μSv)/year dose, the NRC does not agree that the median dose would be significantly below the criterion. Also, estimating the median dose and regulating on that basis is not the appropriate way to control exposures, as it would not control well the maximum likely dose.

*Comment:* One commenter noted that the requirement in § 32.30(b)(6) to submit information including the maximum radiation levels at 5 and 25 centimeters (cm) was inconsistent with other sections of the regulations, regulatory guidance documents, and consensus standards and recommended that the latter distance be changed to 30 centimeters. Regulations and guidance documents referenced included: (1) The definition of radiation areas and high radiation areas in 10 CFR 20.1003; (2) the exception to posting requirements in 10 CFR 20.1903(c); (3) the ANSI/Health Physics Society standard, ANSI/HPS N43.8–2008, ''Classification of Industrial Ionizing Radiation Gauging Devices'' (which uses the distances 5 cm, 30 cm, and 100 cm for developing the classification of devices); and 4) NUREG–1556, Vol. 3, Rev. 1 (which provides for making radiation measurements at 5 cm, 30 cm, and 100 cm from the product). This commenter also recommended that similar changes be made to §§ 32.22 and 32.26.

*Response:* The NRC agrees that consistency with ANSI/HPS N43.8–2008 and NUREG–1556, Vol. 3, Rev. 1 is appropriate for this situation, although the other references are not particularly relevant, as they deal with different types of requirements. The final rule has been changed to require that measurements be taken at 5 and 30 cm. Note this change in distances for measurements does not affect the safety criteria for devices. The measurements are designed to characterize the radiation profile around the device for use in evaluating the safety of the device. However, the measurements are not used directly in determining acceptability. For a particular device, the applicant must describe how it would be used and the scenarios in which people are exposed during the entire life cycle of the device. This includes estimating distances at which one would typically be exposed. The radiation profile can be used to estimate

the radiation field at various distances for use in the analysis.

Changes to §§ 32.22 and 32.26 are outside the scope of this rulemaking.

While not applicable to the new class exemption itself, the proposed rule also posed this question in connection with the new class exemption:

*Q.2(b) Would it be appropriate to apply certain aspects of the proposed standards for this class exemption to the safety criteria (§§ 32.23 and 32.27) for the existing class exemptions (§§ 30.19 and 30.20), namely, the use of more up-to-date methodology for dose assessment as reflected in the proposed definition of the term, ''committed dose,'' the inclusion of a misuse scenario and/or a specific quantity limit to control quantities that may meet the safety criteria when a source is well contained and shielded, and the consideration of the number of products likely to accumulate in one place in the dose assessments for all scenarios?*

*Comment:* One commenter specifically supported making such changes to the safety criteria for the two class exemptions established in 1969 provided they are also changed to reflect the Federal Radiation Council (FRC)/ Environmental Protection Agency (EPA) guidance on use of ICRP–26 in the setting of radiation safety regulations. Another commenter indicated that manufacturers in any industry cannot typically be held responsible for the intentional misuse of any product, but gave examples of safety features that can be incorporated in the products to help prevent improper use.

*Response:* The Commission posed this question in order to obtain input for any future rulemaking in this area. The NRC plans to consider such changes in the future to the other two class exemptions; however, the approach may not be specifically tied to ICRP–26 methodology. The NRC is currently evaluating what changes to its regulatory program should be considered in connection with achieving better alignment with ICRP–103 recommendations. The basic recommended limit for exposures of the public is consistent in the various versions of the basic safety standards in ICRP–26, ICRP–60, and ICRP–103. The details of calculating doses have been evolving. In the case of design standards such as the subject regulations, it is appropriate to allow for the use of the latest methodology.

The misuse scenario as used in the safety criteria for the new class exemption has been developed to limit the quantity of byproduct material in products used under the exemption so as to limit the potential harm that can be created with the product in any situation, not to attribute responsibility (for example, to a manufacturer) in actual cases of intentional misuse.

*C. Remove Unnecessary Limitations From the Class Exemption for Gas and Aerosol Detectors*

The only comments on this issue were in response to the three specific questions posed:

*Q.3 Expanding the class exemption for gas and aerosol detectors in § 30.20 by revising the requirement of ''designed to protect life or property from fires and airborne hazards'' to instead be ''designed to protect health, safety, or property'':*

(a) *Are there additional products that may be exempted under this expanded definition of the class not specifically considered by the NRC?*

*Comment:* One commenter suggested that the revision could inspire new products alleged to protect property from all sorts of airborne hazards, such as, detectors to detect chemical contaminates in air at ultra clean nano fabrication facilities as well as to sniff airline passengers for drugs.

*Response:* Detectors for maintaining ultra clean nano fabrication facilities would appear to be a type of product with a reasonable benefit to society. The NRC considers it reasonable to allow such a product to be used under exemption, if it is adequately shown to meet the safety criteria in part 32 for evaluation of such products. As the change in scope of the class of products covered by this exemption is relatively limited, the NRC does not expect to see the development of a large number of new products as a result of this change and most are likely to be products used in moderate numbers.

*Q.3(b) Are these words adequate to ensure that products present a clear societal benefit?*

*Comment:* One commenter simply agreed. Another disagreed, indicating that using detectors to sniff for drugs might not be considered ''a clear societal benefit'' by many and that use in nano technology to manufacture ''cool but frivolous products,'' might not be considered a clear societal benefit.

*Response:* If detectors were developed that could be approved for use under this exemption for use in nano technology, they would not be exclusively used for the production of frivolous products, but might also be used for more important applications. Overall some reasonable societal benefit would be expected to balance the limited impact from exempting the detectors. Similarly, the detection of drugs is generally accepted as presenting an overall benefit to society, but NRC recognizes that there could be situations in which the determination of societal benefit is a matter of judgment. Under the final regulations, the NRC will look to see whether the product provides a benefit in protecting health, safety, or property, and if it does, the NRC will find there is a societal benefit.

*Q.3(c) Are there any potential problems with approving additional products for use under this exemption and later reevaluating the safety criteria associated with this exemption for potential alignment with newer recommendations of the ICRP?*

*Comment:* One commenter expressed general agreement with expanding the scope of exempt device approvals, and also stated that it endorsed the position taken by the Canadian Nuclear Safety Commission, certain European countries, and Japanese regulators to allow the complete exemption without device registration or distribution license of products with activities below IAEA exemption ''clearance'' levels. The commenter who questioned whether the revised words for the purpose of the devices ensured products with a clear societal benefit in response to Question 3(b) also stated that creating exemptions consistent with world markets is good for U.S. consumers and manufacturers.

*Response:* With regard to the suggestion to allow complete exemption of products with activities below IAEA exemption ''clearance'' levels, this comment is not specifically responsive to the question posed. However, the NRC does not agree that there should be a ''complete exemption'' such as the commenter suggested. The NRC notes that, related to this issue, the NRC's regulations in §§ 30.14 and 30.70 exempt materials based on the concentration of the byproduct material contained within it. Although this is not considered a ''clearance'' provision, distribution licenses are only required by § 32.11 for products and materials into which byproduct material is introduced by an intentional action. The regulations in §§ 30.18 and 30.71 exempt materials based on the quantity of the byproduct material. In this case, distribution licenses are required in the case of commercial distribution. These are the circumstances for which the NRC considers it appropriate to exercise oversight of the processes to ensure that the materials transferred for use under these general material exemptions in fact meet the constraints of the exemption.

*D. Remove Prescriptive Requirements for Distributors of Generally Licensed Devices and Exempt Products*

Comments received responded to the questions posed related to this issue:

*Q.4 Changes to certain quality control requirements in §§ 32.15, 32.55, and 32.62 to (i) raise the statistical acceptance criteria; i.e., increasing the required confidence that the Lot Tolerance Percent Defective will not be exceeded from the current 90 percent (consumer risk of 0.10) to 95 percent; and (ii) require that distribution of any part, or sub-lot, of a rejected lot must be in accordance with procedures spelled out in the license and that testing after repairs must be performed by an independent reviewer. These proposed revisions are in § 32.15(a) and (b) for certain exempt items, § 32.55(b) and (d) for luminous safety devices used in aircraft, and § 32.62(c) and (e) for ice detection devices.:*

(a) *Would any actual changes in practice need to be made by affected licensees? The NRC would welcome information that would aid in evaluating any impact.*

*Comment:* One commenter stated that licensees would be required to change their procedures, retrain their work force and incur additional cost.

*Response:* The commenter provided no support for this statement. The commenter was contacted and did not provide any additional supporting information on this comment. Most licensees authorized under the distribution provisions for which the sampling/quality control standards are being revised in fact test all products rather than using a sampling procedure. The NRC does not believe that these changes will result in such a significant burden as the commenter is suggesting.

*Q.4(b) Would there be any impact on manufacturers or distributors of products for which oversight of quality control practices are proposed to be removed, if the new provisions were applied to these products instead, i.e., if all of the exceptions in § 32.14(b)(5) were not made effective as proposed? (As discussed under Section III. F. ''Make the Requirements for Distributors of Exempt Products More Risk-Informed,'' products for which quality control oversight may be removed are: ionization chamber smoke detectors, electron tubes, and timepieces containing promethium-147 or tritium in the form of gaseous tritium light sources, covered by exemptions in § 30.15, and for products to be used under the proposed new exemption in § 30.15(a)(2), static eliminators and ion generating tubes formerly covered by the general license in § 31.3.)*

*Comment:* One commenter stated that many manufacturers are ISO 9001 certified and their current procedures are adequate to address any quality control issues.

*Response:* Although this statement is not responsive to the particular question posed, the NRC agrees with the comment.

*E. Other Issues*

There were no specific comments received on the issues of updating the regulations on certain static eliminators and ion generating tubes or making the requirements for distributors of exempt products more risk-informed, or on the proposed minor clarifying and administrative revisions. Some additional minor clarifying changes have been made to the final amendments.

*F. Comments on Issues Outside of the Scope of the Rule*

In addition to those comments noted above, there were a few other comments made that are outside of the scope of the rule.

*Comment:* One commenter stated that the NRC should require manufacturers to take back exempt products after their useful life has expired, without charge to the user of the device, to reduce the amount of material disposed in landfills and released to the environment.

*Response:* The impacts from disposal of products used under the exemptions from licensing have been fully evaluated and determined to be acceptable. Requiring manufacturers to take back exempt products would unnecessarily increase costs to consumers and create problems when distributors have gone out of business and terminated their license. Also, the collection of large numbers of products in one place results in larger exposures to those handling the products than when they are disposed in numerous municipal disposal facilities across the country.

*Comment:* One commenter requested that the NRC make clear the requirements for inventory, leak testing, and reporting in parts 30, 40, and 70.

*Response:* Besides being outside the scope of this rule, the resolution of this issue would be complicated and the commenter did not provide an adequate approach for doing so.

*Comment:* The OAS restated its concerns about the quantities of material used in generally licensed devices being too high and the current general license program not providing adequate accountability for registered material.

*Response:* These concerns were presented in a petition for rulemaking (PRM–31–5), which has been handled separately from this action. The Commission considered the issues raised in a separate rulemaking, but decided against issuing a final rule. Final action on that petition was published January 25, 2012 (77 FR 3640).

## IV. Summary of Final Amendments by Section

10 CFR 30.6(b)(1)(iv)—Adds a reference to new 10 CFR 32.30 as a licensing category not delegated to the NRC Regions.

10 CFR 30.8(c)(1)—Removes reference to 10 CFR 30.38 as a section that contains NRC Form 313.

10 CFR 30.15(a)(2)—Adds an exemption for certain static eliminators and ion generators in place of the general license formerly in 10 CFR 31.3.

10 CFR 30.19(b)—Clarifies that applicants under 10 CFR 32.22 should also apply for a registration certificate.

10 CFR 30.20—Slightly expands the class of products covered under this exemption from licensing; clarifies that applicants under 10 CFR 32.26 should also apply for a registration certificate; updates the parts of the regulations from which persons are exempt to include 10 CFR part 19.

10 CFR 30.22—Establishes a new class exemption for industrial devices initially transferred from 10 CFR 32.30 licensees.

10 CFR 30.32(g)—Restructured for clarity.

10 CFR 30.32(g)(2)—Extends and redesignates the provision for providing alternative information on NARM legacy sealed sources and devices to all legacy sealed sources and devices.

10 CFR 30.32(g)(3)—Adds a provision for providing limited information for certain calibration and reference sources.

10 CFR 30.32(g)(4)—Adds a provision to allow for constraints on the number and type of sealed sources and devices to be used and the conditions under which they are to be used rather than requiring complete identification of all sealed sources and devices to be licensed in certain cases.

10 CFR 30.38—Revises the heading and adds an explicit provision for amendment of registration certificates and removes reference to NRC Form 313.

10 CFR 30.39—Adds registration certificates to clarify that the same requirements are applicable to amendment of a registration certificate as for issuance of a new certificate.

10 CFR 30.61—Revises the heading and adds registration certificates to provisions for modification and revocation of licenses and updates reference to parts under which licenses are issued.

10 CFR 31.3—General license is removed, section reserved, and replaced by a new exemption in 10 CFR 30.15(a)(2).

10 CFR 31.23(b)—Removes reference to 10 CFR 31.3 and makes other minor corrections.

10 CFR 32.1(a)—Expands the description of the scope of 10 CFR part 32 to cover additional requirements and makes clarifications.

10 CFR 32.2—Adds definitions of ''committed dose'' and ''sealed source and device registry.'' The definition of ''committed dose'' was modified from the proposed rule to remove an improper incorporation by reference.

10 CFR 32.8(b)—Adds to the list of information collection requirements: 10 CFR 32.30 on application requirements for distributors of exempt industrial devices, 10 CFR 32.31 on safety criteria to be addressed in the application for license under 10 CFR 32.30, 10 CFR 32.32 on reporting and recordkeeping requirements for distributors of exempt industrial devices, and 10 CFR 32.211 on requesting inactivation of registration certificates.

10 CFR 32.14(b)(4)—Makes exceptions to prototype testing requirements.

10 CFR 32.14(b)(5)—Makes exceptions to quality control requirements.

10 CFR 32.15(a), (b), and (c)—Removes the specific procedural requirements for quality assurance, revises the acceptance criterion, and limits these requirements to products for which such procedures will be required under 10 CFR 32.14.

10 CFR 32.22(a)(3)—Adds an explicit requirement for sealed source and device registration.

10 CFR 32.26—Revises the introductory text to expand the limitation of ''from fires or airborne hazards,'' for the purpose of the detectors, thus, expanding the class of products covered; and adds an explicit requirement for sealed source and device registration.

10 CFR 32.30—Establishes requirements for an application to manufacture, process, produce, or initially transfer for sale or distribution exempt industrial devices.

10 CFR 32.31—Establishes safety criteria for approving industrial devices to be distributed for use under 10 CFR 30.22 and equivalent Agreement State regulations.

10 CFR 32.32—Establishes specific conditions of license for distribution of exempt industrial devices, including quality control, labeling, and reporting and recordkeeping requirements.

10 CFR 32.51(a)(6)—Adds an explicit requirement for sealed source and device registration for devices to be transferred for use under 10 CFR 31.5 and equivalent Agreement State regulations.

10 CFR 32.53—Removes the reference to 10 CFR 32.101 and adds requirements for prototype testing without details of procedures to be followed; revises the requirement for information to be submitted on quality control/quality assurance to be consistent with less prescriptive approach in 10 CFR 32.55; and adds an explicit requirement for sealed source and device registration.

10 CFR 32.55—Revises the requirement to conduct quality assurance to be clearer and less prescriptive and revises the acceptance criterion.

10 CFR 32.56—Adds ATTN: GLTS to address for reporting, explicitly requires reports to Agreement States, and clarifies the need for reporting even if no transfers were made during the reporting period.

10 CFR 32.57(d)(2) and (e)—Removes reference to 10 CFR 32.102 and adds less prescriptive requirement for prototype testing in paragraph (e).

10 CFR 32.59—Makes minor clarifying amendments to testing requirements for calibration and reference sources to be used under 10 CFR 31.8 and equivalent Agreement State regulations.

10 CFR 32.61(e)(4) and (f)—Revises the prototype test requirement by removing reference to 10 CFR 32.103 and adding less prescriptive requirement for prototype testing in paragraph (f).

10 CFR 32.61(g)—Adds an explicit requirement for sealed source and device registration.

10 CFR 32.62(c), (d), and (e)—Revises and clarifies quality assurance requirements, acceptance criterion, and associated prohibition of transfer.

Heading of subpart C is changed to ''Specifically Licensed Items.''

10 CFR 32.72 and 10 CFR 32.74 are moved from subpart B to renamed subpart C.

10 CFR 32.74(a)(4)—Adds an explicit requirement for sealed source and device registration for sealed sources and devices for medical use.

10 CFR 32.101—Specific prototype test procedures for luminous safety devices for use in aircraft are removed.

10 CFR 32.102—Specific prototype test procedures for calibration and reference sources containing americium-241 or radium-226 are removed.

10 CFR 32.103—Specific prototype test procedures for ice detection devices containing strontium-90 are removed.

10 CFR 32.110—Specific acceptance sampling procedures are removed.

Heading of subpart D is changed to ''Sealed Source and Device Registration.''

10 CFR 32.201 is moved from subpart D to renamed subpart C.

10 CFR 32.210(a) and (e)—Remove restriction of applicability to specifically licensed items.

10 CFR 32.210(b)—Adds ATTN: SSDR to address for requests.

10 CFR 32.210(d)—Adds reference to other criteria that apply to various categories of sealed sources and devices.

10 CFR 32.210(g)—Adds criteria for sources and devices not requiring SS & D registration.

10 CFR 32.210(h)—Adds an explicit provision for additional review of registration certificates.

10 CFR 32.211—Adds an explicit provision for inactivation of sealed source and device registration certificates.

10 CFR 32.303(b)—Adds reference to new requirements not issued under section 223 of the AEA, as well as correcting previous omissions.

10 CFR 40.5(b)(1)(iv)—Adds reference to new 10 CFR 32.30 as a licensing category not delegated to the NRC Regions.

10 CFR 70.5(b)(1)(iv)—Adds reference to new 10 CFR 32.30 as a licensing category not delegated to the NRC Regions.

## V. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is amending 10 CFR parts 30 and 32 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

## VI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this final rule would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC staff analyzed the final rule in accordance with the procedure established within Part III, ''Categorization Process for NRC Program Elements,'' of Handbook 5.9 to Management Directive 5.9, ''Adequacy

and Compatibility of Agreement State Programs'' (a copy of which may be viewed at *http://www.nrc.gov/reading-rm/doc-collections/management-directives/*).

NRC program elements (including regulations) are placed into four compatibility categories (See the Compatibility Table in this section). In addition, the NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, and, thus, do not need to be adopted by Agreement States for purposes of compatibility.

Health and Safety (H&S) are program elements that are not required for compatibility but are identified as having a particular health and safety role (i.e., adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this H&S category based on those of the NRC that embody the essential objectives of the NRC program elements because of particular health and safety considerations. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States under the Atomic Energy Act, as amended, or provisions of 10 CFR. These program elements are not adopted by Agreement States. The following table lists the parts and sections that would be revised and their corresponding categorization under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs.''

The final rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. The compatibility categories are designated in the following table:

COMPATIBILITY TABLE FOR FINAL RULE

| Section/paragraph | Change | Subject | Compatibility | |
|---|---|---|---|---|
| | | | Existing | New |
| 30.6(b)(1)(iv) | Amend | Communications | D | D |
| 30.8(c)(1) | Amend | Information collection requirements: OMB approval | D | D |
| 30.15(a)(2) | Add | Certain items containing byproduct material | | B |
| 30.19(b) | Amend | Self-luminous products containing tritium, krypton-85, or promethium-147. | B | B |
| 30.20 | Amend | Gas and aerosol detectors containing byproduct material. | B | B |
| 30.22 | New | Certain industrial devices | | B |
| 30.32(g) | Amend | Application for specific licenses | C | C |
| 30.38 | Amend | Application for amendment of licenses and registration certificates. | D | D |
| 30.39 | Amend | Commission action on applications to renew or amend. | D | D |
| 30.61 | Amend | Modification and revocation of licenses and registration certificates. | D | D |
| 31.3 | Remove | [Existing title—Certain devices and equipment] | B | ★ |
| 31.23(b) | Amend | Criminal penalties | D | D |
| 32.1(a) | Amend | Purpose and scope | D | D |
| 32.2 | Add | Definition: Committed dose | | D |
| 32.2 | Add | Definition: Sealed source and device registry | | D |
| 32.8(b) | Amend | Information collection requirements: OMB approval | D | D |
| 32.14(b)(4) & (b)(5) | Amend | Certain items containing byproduct material; requirements for license to apply or initially transfer. | NRC | NRC |
| 32.15(a), (b), & (c) | Amend | Same: Quality assurance, prohibition of transfer, and labeling. | NRC | NRC |
| 32.22(a)(3) | Add | Self-luminous products containing tritium, krypton-85 or promethium-147: Requirements for license to manufacture, process, produce, or initially transfer. | NRC | NRC |
| 32.26 | Amend | Gas and aerosol detectors containing byproduct material: Requirements for license to manufacture, process, produce, or initially transfer. | NRC | NRC |
| 32.30 | New | Certain industrial devices containing byproduct material: Requirements for license to manufacture, process, produce, or initially transfer. | | NRC |
| 32.31 | New | Certain industrial devices containing byproduct material: Safety criteria. | | NRC |
| 32.32 | New | Conditions of licenses issued under § 32.30: Quality control, labeling, and reports of transfer. | | NRC |

COMPATIBILITY TABLE FOR FINAL RULE—Continued

| Section/paragraph | Change | Subject | Compatibility | |
|---|---|---|---|---|
| | | | Existing | New |
| 32.51(a)(6) | Add | Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer. | | B |
| 32.53(b)(5) & (d)(4) | Amend | Luminous safety devices for use in aircraft: Requirements for license to manufacture, assemble, repair or initially transfer. | B | B |
| 32.53(e) & (f) | Add | Luminous safety devices for use in aircraft: Requirements for license to manufacture, assemble, repair or initially transfer. | B | B |
| 32.55 | Amend | Same: Quality assurance, prohibition of transfer | B | B |
| 32.56 | Amend | Same: Material transfer reports | B | B |
| 32.57(d)(2) | Amend | Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer. | B | B |
| 32.57(e) | Add | Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer. | B | B |
| 32.59 | Amend | Same: Leak testing of each source | B | B |
| 32.61(e)(4) | Amend | Ice detection devices containing strontium-90; requirements for license to manufacture or initially transfer. | B | B |
| 32.61(f) & (g) | Add | Ice detection devices containing strontium-90; requirements for license to manufacture or initially transfer. | | B |
| 32.62(c), (d), & (e) | Amend | Same: Quality assurance; prohibition of transfer | B | B |
| 32.74(a)(4) | Add | Manufacture and distribution of sources or devices containing byproduct material for medical use. | | B |
| 32.101 | Remove | [Existing title—Schedule B—prototype tests for luminous safety devices for use in aircraft]. | B | ★ |
| 32.102 | Remove | [Existing title—Schedule C—prototype tests for calibration or reference sources containing americium-241 or radium-226]. | B | ★ |
| 32.103 | Remove | [Existing title—Schedule D—prototype tests for ice detection devices containing strontium-90]. | B | ★ |
| 32.110 | Remove | [Existing title—Acceptance sampling procedures under certain specific licenses]. | B | ★ |
| 32.210(a), (b), (d), & (e) | Amend | Registration of product information | B<br>★★ | B<br>★★ |
| 32.210(g) | Add | Registration of product information | | B<br>★★ |
| 32.210(h) | Add | Registration of product information | | C<br>★★ |
| 32.211 | New | Inactivation of certificates of registration of sealed sources and devices. | | B<br>★★ |
| 32.303(b) | Amend | Criminal penalties | D | D |
| 40.5(b)(1)(iv) | Amend | Communications | D | D |
| 70.5(b)(1)(iv) | Amend | Communications | D | D |

★ Denotes regulations that are designated Compatibility Category B but which will be removed from the regulations as a result of these proposed amendments. Agreement States should remove these provisions from their regulations when the regulations become final.
★★ D—for States that do not perform SS & D evaluations.

## VII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is making the requirements for distributors of byproduct material clearer, less prescriptive, and more risk-informed and up to date. The Commission is also redefining categories of devices to be used under exemptions, adding explicit provisions regarding the sealed source and device registration process, and adding flexibility to the licensing of users of sealed sources and devices. This action does not constitute the establishment of a standard that establishes generally applicable requirements. However, the regulations being amended concerning sealed source and device reviews, in particular § 32.210(d), will continue to indicate that the NRC uses accepted industry standards, if applicable, in its evaluations.

## VIII. Environmental Assessment and Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act (NEPA) of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this final rule because the Commission has concluded on the basis of an environmental assessment that this final rule, if adopted, would not be a major Federal action significantly affecting the quality of the human

environment. The following is a summary of the Environmental Assessment: Many of the individual actions being taken are the type of actions described in the categorical exclusions of §§ 51.22(c)(2) and 51.22(c)(3)(i) and (iii). In addition, the rule will remove prescriptive procedural provisions, add a new class exemption and a new product-specific exemption, broaden an existing class exemption, add flexibility to the basis for licensing the use of sealed sources and devices, and remove some requirements for the distributors of low risk exempt products. The Commission has concluded that none of these actions would have significant impacts to the environment or otherwise include any condition requiring consultation under section 102(2)(C) of NEPA.

The determination of the environmental assessment is that there will be no significant impact to the public from this action.

This conclusion was published in the environmental assessment that was posted to the Federal rulemaking Web site, *http://www.regulations.gov,* for 75 days after publication of the proposed rule. There were no comments received on the content of the environmental assessment.

## IX. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

## X. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, control numbers 3150–0017; 3150–0001; and 3150–0120.

The burden to the public for these information collections is estimated to average 16.39 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Information Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.Resource@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0017; –0001; –0120), Office of Management and Budget, Washington, DC 20503, or by Internet electronic mail to *Chad_S_Whiteman@omb.eop.gov.*

*Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

## XI. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection on *http://www.regulations.gov* by searching on Docket ID NRC–2008–0338 and in the NRC's PDR, 11555 Rockville Pike, Rockville, MD 20852.

## XII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. A significant number of the licensees affected by this action would meet the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. However, none of the revisions to the regulatory program will result in a significant economic impact on the affected entities.

## XIII. Backfit Analysis

The NRC's backfit provisions are found in the regulations at §§ 50.109, 52.39, 52.63, 52.83, 52.98, 52.145, 52.171, 70.76, 72.62, and 76.76. The requirements contained in this final rule do not involve any provisions that will impose backfits on nuclear power plant licensees as defined in 10 CFR parts 50 or 52, or on licensees for gaseous diffusion plants, independent spent fuel storage installations or special nuclear material as defined in 10 CFR parts 70, 72 and 76, respectively, and as such a backfit analysis is not required. Therefore, a backfit analysis need not be prepared for this final rule to address these classes of entities. With respect to licenses issued under parts 30, 31, and 32, the NRC has determined that there are no applicable provisions for backfit. Therefore, a backfit analysis need not be prepared for this rule to address parts 30, 31, or 32 licensees.

## XIV. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

## List of Subjects

*10 CFR Part 30*

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 31*

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment.

*10 CFR Part 32*

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 40*

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

*10 CFR Part 70*

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR parts 30, 31, 32, 40, and 70.

## PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

■ 1. The authority citation for part 30 continues to read as follows:

**Authority:** Atomic Energy Act secs. 81, 82, 161, 181, 182, 183, 186, 223, 234 (42 U.S.C. 2111, 2112, 2201, 2231, 2232, 2233, 2236, 2273, 2282); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005).

Section 30.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 30.34(b) also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 30.61 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 2. In § 30.6, paragraph (b)(1)(iv) is revised to read as follows:

**§ 30.6 Communications.**

* * * * *

(b) * * *

(1) * * *

(iv) Distribution of products containing radioactive material under §§ 32.11 through 32.30 of this chapter to persons exempt from licensing requirements.

* * * * *

■ 3. In § 30.8, paragraph (c)(1) is revised to read as follows:

**§ 30.8 Information collection requirements: OMB approval.**

* * * * *

(c) * * *

(1) In §§ 30.32 and 30.37, NRC Form 313 is approved under control number 3150–0120.

* * * * *

■ 4. In § 30.15, paragraph (a)(2) is added to read as follows:

**§ 30.15 Certain items containing byproduct material.**

(a) * * *

(2)(i) Static elimination devices which contain, as a sealed source or sources, byproduct material consisting of a total of not more than 18.5 MBq (500 μCi) of polonium-210 per device.

(ii) Ion generating tubes designed for ionization of air that contain, as a sealed source or sources, byproduct material consisting of a total of not more than 18.5 MBq (500 μCi) of polonium-210 per device or of a total of not more than 1.85 GBq (50 mCi) of hydrogen-3 (tritium) per device.

(iii) Such devices authorized before October 23, 2012 for use under the general license then provided in § 31.3 and equivalent regulations of Agreement States and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the Commission.

* * * * *

■ 5. In § 30.19, paragraph (b) is revised to read as follows:

**§ 30.19 Self-luminous products containing tritium, krypton-85, or promethium-147.**

* * * * *

(b) Any person who desires to manufacture, process, or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147 for use under paragraph (a) of this section, should apply for a license under § 32.22 of this chapter and for a certificate of registration in accordance with § 32.210 of this chapter.

* * * * *

■ 6. Section 30.20 is revised to read as follows:

**§ 30.20 Gas and aerosol detectors containing byproduct material.**

(a) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing byproduct material, any person is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in parts 19, 20, 21, and 30 through 36 and 39 of this chapter to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material in gas and aerosol detectors designed to protect health, safety, or property, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under § 32.26 of this chapter, which license authorizes the initial transfer of the product for use under this section. This exemption also covers gas and aerosol detectors manufactured or distributed before November 30, 2007, in accordance with a specific license issued by a State under comparable provisions to § 32.26 of this chapter authorizing distribution to persons exempt from regulatory requirements.

(b) Any person who desires to manufacture, process, or produce gas and aerosol detectors containing byproduct material, or to initially transfer such products for use under paragraph (a) of this section, should apply for a license under § 32.26 of this chapter and for a certificate of registration in accordance with § 32.210 of this chapter.

■ 7. Section 30.22 is added under the undesignated heading ''Exemptions'' to read as follows:

**§ 30.22 Certain industrial devices.**

(a) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the requirements for a license set forth in section 81 of the Act and from the regulations in parts 19, 20, 21, 30 through 36, and 39 of this chapter to the extent that such person receives, possesses, uses, transfers, owns, or acquires byproduct material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced, or initially transferred in accordance with a specific license issued under § 32.30 of this chapter, which license authorizes the initial transfer of the device for use under this section. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

(b) Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing byproduct material for use under paragraph (a) of this section, should apply for a license under § 32.30 of this chapter and for a certificate of registration in accordance with § 32.210 of this chapter.

■ 8. In § 30.32, paragraph (g) is revised to read as follows:

**§ 30.32 Application for specific licenses.**

* * * * *

(g)(1) Except as provided in paragraphs (g)(2), (3), and (4) of this section, an application for a specific license to use byproduct material in the form of a sealed source or in a device that contains the sealed source must either—

(i) Identify the source or device by manufacturer and model number as registered with the Commission under § 32.210 of this chapter, with an Agreement State, or for a source or a device containing radium-226 or accelerator-produced radioactive material with a State under provisions comparable to § 32.210 of this chapter; or

(ii) Contain the information identified in § 32.210(c) of this chapter.

(2) For sources or devices manufactured before October 23, 2012 that are not registered with the Commission under § 32.210 of this chapter or with an Agreement State, and for which the applicant is unable to provide all categories of information

specified in § 32.210(c) of this chapter, the application must include:

(i) All available information identified in § 32.210(c) of this chapter concerning the source, and, if applicable, the device; and

(ii) Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

(3) For sealed sources and devices allowed to be distributed without registration of safety information in accordance with § 32.210(g)(1) of this chapter, the applicant may supply only the manufacturer, model number, and radionuclide and quantity.

(4) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

* * * * *

■ 9. Section 30.38 is revised to read as follows:

**§ 30.38 Application for amendment of licenses and registration certificates.**

Applications for amendment of a license must be filed in accordance with § 30.32 and must specify the respects in which the licensee desires its license to be amended and the grounds for the amendment. Applications for amendment of sealed source and device registration certificates must be filed in accordance with § 32.210 of this chapter and any other applicable provisions and must specify the respects in which the certificate holder desires its certificate to be amended and the grounds for the amendment.

■ 10. Section 30.39 is revised to read as follows:

**§ 30.39 Commission action on applications to renew or amend.**

In considering an application to renew or amend a license or to amend a sealed source or device registration certificate, the Commission will apply the applicable criteria set forth in § 30.33 and parts 32 through 36 and 39 of this chapter.

■ 11. Section 30.61 is revised to read as follows:

**§ 30.61 Modification and revocation of licenses and registration certificates.**

(a) The terms and conditions of each license and registration certificate issued under the regulations in this part and parts 31 through 36 and 39 of this chapter shall be subject to amendment, revision, or modification by reason of amendments to the Act, or by reason of rules, regulations, and orders issued in accordance with the terms of the Act.

(b) Any license or registration certificate may be revoked, suspended, or modified, in whole or in part, for any material false statement in the application or in any statement of fact required under section 182 of the Act, or because of conditions revealed by such application or statement of fact or any report, record, or inspection or other means that would warrant the Commission to refuse to grant a license or registration certificate on an original application, or for violation of, or failure to observe any of the terms and provisions of the Act or of any rule, regulation, or order of the Commission.

(c) Except in cases of willfulness or those in which the public health, interest, or safety requires otherwise, no license or registration certificate shall be modified, suspended, or revoked unless, before the institution of proceedings therefor, facts or conduct that may warrant such action shall have been called to the attention of the licensee or certificate holder in writing and the licensee or certificate holder shall have been given an opportunity to demonstrate or achieve compliance with all lawful requirements.

## PART 31—GENERAL DOMESTIC LICENSES FOR BYPRODUCT MATERIAL

■ 12. The authority citation for part 31 continues to read as follows:

**Authority:** Atomic Energy Act secs. 81, 161, 183, 223, 234 (42 U.S.C. 2111, 2201, 2233, 2273, 2282); Energy Reorganization Act secs. 201, 202 (42 U.S.C. 5841, 5842); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

**§ 31.3 [Removed and Reserved]**

■ 13. Section 31.3 is removed and reserved.

■ 14. In § 31.23, paragraph (b) is revised to read as follows:

**§ 31.23 Criminal penalties.**

* * * * *

(b) The regulations in part 31 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 31.1, 31.2, 31.4, 31.9, 31.22, and 31.23.

## PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

■ 15. The authority citation for part 32 continues to read as follows:

**Authority:** Atomic Energy Act secs. 81, 161, 181, 182, 183, 223, 234 (42 U.S.C. 2111, 2201, 2231, 2232, 2233, 2273, 2282); Energy Reorganization Act sec. 201 (42 U.S.C. 5841); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, sec. 651(e), Pub. L. No. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 16. In § 32.1, paragraph (a) is revised to read as follows:

**§ 32.1 Purpose and scope.**

(a)(1) This part prescribes requirements for the issuance of specific licenses to persons who manufacture or initially transfer items containing byproduct material for sale or distribution to:

(i) Persons exempted from the licensing requirements of part 30 of this chapter, or equivalent regulations of an Agreement State, or

(ii) Persons generally licensed under part 31 of this chapter or equivalent regulations of an Agreement State.

(iii) Persons licensed under part 35 of this chapter.

(2) This part prescribes requirements for the issuance of specific licenses to persons who introduce byproduct material into a product or material owned by or in the possession of a licensee or another, and regulations governing holders of such licenses.

(3) This part prescribes certain requirements governing holders of licenses to manufacture or distribute items containing byproduct material.

(4) This part describes procedures and prescribes requirements for the issuance of certificates of registration (covering radiation safety information about a product) to manufacturers or initial transferors of sealed sources or devices containing sealed sources.

* * * * *

■ 17. In § 32.2, the definitions of *Committed dose* and *Sealed Source and Device Registry* are added in alphabetical order to read as follows:

**§ 32.2 Definitions.**

* * * * *

*Committed dose* for the purposes of this part means the radiation dose that will accumulate over time as a result of retention in the body of radioactive material. Committed dose is a generic term for internal dose and must be calculated by summing the projected dose over the 50 years after intake for

all irradiated organs or tissues multiplying the doses to individual organs and tissues by applicable tissue weighting factors.

* * * * *

*Sealed Source and Device Registry* means the national registry that contains all the registration certificates, generated by both the NRC and the Agreement States, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.

■ 18. In § 32.8, paragraph (b) is revised to read as follows:

**§ 32.8 Information collection requirements: OMB approval.**

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 32.11, 32.12, 32.14, 32.15, 32.16, 32.18, 32.19, 32.20, 32.21, 32.21a, 32.22, 32.23, 32.25, 32.26, 32.27, 32.29, 32.30, 32.31, 32.32, 32.51, 32.51a, 32.52, 32.53, 32.54, 32.55, 32.56, 32.57, 32.58, 32.61, 32.62, 32.71, 32.72, 32.74, 32.201, 32.210, and 32.211.

* * * * *

■ 19. In § 32.14, paragraphs (b)(4) and (5) are revised to read as follows:

**§ 32.14 Certain items containing byproduct material; requirements for license to apply or initially transfer.**

* * * * *

(b) * * *

(4) Except for electron tubes and ionization chamber smoke detectors and timepieces containing promethium-147 or tritium in the form of gaseous tritium light sources, procedures for and results of prototype testing to demonstrate that the byproduct material will not become detached from the product and that the byproduct material will not be released to the environment under the most severe conditions likely to be encountered in normal use of the product;

(5) In the case of ionizing radiation measuring instruments and timepieces containing tritium in the form of paint, quality control procedures to be followed in the fabrication of production lots of the product and the quality control standards the product will be required to meet;

* * * * *

■ 20. In § 32.15, paragraph (c) is removed and reserved and paragraphs (a) and (b) are revised to read as follows:

**§ 32.15 Same: Quality assurance, prohibition of transfer, and labeling.**

(a) Each person licensed under § 32.14 for products for which quality control procedures are required shall:

(1) Maintain quality assurance systems in the manufacture of the part or product, or the installation of the part into the product, in a manner sufficient to provide reasonable assurance that the safety-related components of the distributed products are capable of performing their intended functions;

(2) Subject inspection lots to acceptance sampling procedures, by procedures specified in the license issued under § 32.14, to provide at least 95 percent confidence that the Lot Tolerance Percent Defective of 5.0 percent will not be exceeded; and

(3) Visually inspect each unit in inspection lots. Any unit which has an observable physical defect that could adversely affect containment of the byproduct material must be considered a defective unit.

(b) No person licensed under § 32.14 shall transfer to other persons for use under § 30.15 of this chapter or equivalent regulations of an Agreement State:

(1) Any part or product tested and found defective under the criteria and procedures specified in the license issued under § 32.14, unless the defective part or product has been repaired or reworked, retested, and found by an independent inspector to meet the applicable acceptance criteria; or

(2) Any part or product contained within any lot that has been sampled and rejected as a result of the procedures in paragraph (a)(2) of this section, unless:

(i) A procedure for defining sub-lot size, independence, and additional testing procedures is contained in the license issued under § 32.14; and

(ii) Each individual sub-lot is sampled, tested, and accepted in accordance with the procedures specified in paragraphs (a)(2) and (b)(2)(i) of this section and any other criteria that may be required as a condition of the license issued under § 32.14.

(c) [Reserved]

* * * * *

■ 21. In § 32.22, paragraph (a)(3) is added to read as follows:

**§ 32.22 Self-luminous products containing tritium, krypton-85 or promethium-147: Requirements for license to manufacture, process, produce, or initially transfer.**

(a) * * *

(3)(i) The Commission determines that the product meets the safety criteria in § 32.23; and

(ii) The product has been evaluated by the NRC and registered in the Sealed Source and Device Registry.

* * * * *

■ 22. In § 32.26, the introductory text is revised and paragraph (c) is added to read as follows:

**§ 32.26 Gas and aerosol detectors containing byproduct material: Requirements for license to manufacture, process, produce, or initially transfer.**

An application for a specific license to manufacture, process, or produce gas and aerosol detectors containing byproduct material and designed to protect health, safety, or property, or to initially transfer such products for use under § 30.20 of this chapter or equivalent regulations of an Agreement State, will be approved if:

* * * * *

(c)(1) The Commission determines that the product meets the safety criteria in § 32.27; and

(2) The product has been evaluated by the NRC and registered in the Sealed Source and Device Registry.

■ 23. Section 32.30 is added under subpart A to read as follows:

**§ 32.30 Certain industrial devices containing byproduct material: Requirements for license to manufacture, process, produce, or initially transfer.**

An application for a specific license to manufacture, process, produce, or initially transfer for sale or distribution devices containing byproduct material for use under § 30.22 of this chapter or equivalent regulations of an Agreement State will be approved if:

(a) The applicant satisfies the general requirements of § 30.33 of this chapter: However, the requirements of § 30.33(a)(2) and (3) do not apply to an application for a license to transfer byproduct material in such industrial devices manufactured, processed, or produced under a license issued by an Agreement State;

(b) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, and conditions of handling, storage, use, and disposal of the industrial devices to demonstrate that the device will meet the safety criteria set forth in § 32.31. The information should include:

(1) A description of the device and its intended use or uses;

(2) The type and quantity of byproduct material in each unit;

(3) Chemical and physical form of the byproduct material in the device and changes in chemical and physical form that may occur during the useful life of the device;

(4) Solubility in water and body fluids of the forms of the byproduct material identified in paragraphs (b)(3) and (b)(12) of this section;

(5) Details of construction and design of the device as related to containment and shielding of the byproduct material and other safety features under normal and severe conditions of handling, storage, use, and disposal of the device;

(6) Maximum external radiation levels at 5 and 30 centimeters from any external surface of the device, averaged over an area not to exceed 10 square centimeters, and the method of measurement;

(7) Degree of access of human beings to the device during normal handling and use;

(8) Total quantity of byproduct material expected to be distributed in the devices annually;

(9) The expected useful life of the device;

(10) The proposed methods of labeling or marking the device and its point-of-sale package to satisfy the requirements of § 32.32(b);

(11) Procedures for prototype testing of the device to demonstrate the effectiveness of the containment, shielding, and other safety features under both normal and severe conditions of handling, storage, use, and disposal of the device;

(12) Results of the prototype testing of the device, including any change in the form of the byproduct material contained in the device, the extent to which the byproduct material may be released to the environment, any increase in external radiation levels, and any other changes in safety features;

(13) The estimated external radiation doses and committed doses resulting from the intake of byproduct material in any one year relevant to the safety criteria in § 32.31 and the basis for these estimates;

(14) A determination that the probabilities with respect to the doses referred to in § 32.31(a)(4) meet the criteria of that paragraph;

(15) Quality control procedures to be followed in the fabrication of production lots of the devices and the quality control standards the devices will be required to meet; and

(16) Any additional information, including experimental studies and tests, required by the Commission.

(c)(1) The Commission determines that the device meets the safety criteria in § 32.31.

(2) The device is unlikely to be routinely used by members of the general public in a non-occupational environment.

(3) The device has been registered in the Sealed Source and Device Registry.

■ 24. Section 32.31 is added under subpart A to read as follows:

**§ 32.31 Certain industrial devices containing byproduct material: Safety criteria.**

(a) An applicant for a license under § 32.30 shall demonstrate that the device is designed and will be manufactured so that:

(1) In normal use, handling, and storage of the quantities of exempt units likely to accumulate in one location, including during marketing, distribution, installation, and servicing of the device, it is unlikely that the external radiation dose in any one year, or the committed dose resulting from the intake of radioactive material in any one year, to a suitable sample of the group of individuals expected to be most highly exposed to radiation or radioactive material from the device will exceed 200 μSv (20 mrem).

(2) It is unlikely that the external radiation dose in any one year, or the committed dose resulting from the intake of radioactive material in any one year, to a suitable sample of the group of individuals expected to be most highly exposed to radiation or radioactive material from disposal of the quantities of units likely to accumulate in the same disposal site will exceed 10 μSv (1 mrem).

(3) It is unlikely that there will be a significant reduction in the effectiveness of the containment, shielding, or other safety features of the device from wear and abuse likely to occur in normal handling and use of the device during its useful life.

(4) In use, handling, storage, and disposal of the quantities of exempt units likely to accumulate in one location, including during marketing, distribution, installation, and servicing of the device, the probability is low that the containment, shielding, or other safety features of the device would fail under such circumstances that a person would receive an external radiation dose or committed dose in excess of 5 mSv (500 mrem), and the probability is negligible that a person would receive an external radiation dose or committed dose of 100 mSv (10 rem) or greater.[1]

(b) An applicant for a license under § 32.30 shall demonstrate that, even in unlikely scenarios of misuse, including those resulting in direct exposure to the unshielded source removed from the device for 1,000 hours at an average distance of 1 meter and those resulting in dispersal and subsequent intake of $10^{-4}$ of the quantity of byproduct material (or in the case of tritium, an intake of 10 percent), a person will not receive an external radiation dose or committed dose in excess of 100 mSv (10 rem), and, if the unshielded source is small enough to fit in a pocket, that the dose to localized areas of skin averaged over areas no larger than 1 square centimeter from carrying the unshielded source in a pocket for 80 hours will not exceed 2 Sv (200 rem).

■ 25. Section 32.32 is added under subpart A to read as follows:

**§ 32.32 Conditions of licenses issued under § 32.30: Quality control, labeling, and reports of transfer.**

Each person licensed under § 32.30 shall:

(a) Carry out adequate control procedures in the manufacture of the device to ensure that each production lot meets the quality control standards approved by the Commission;

(b) Label or mark each device and its point-of-sale package so that:

(1) Each item has a durable, legible, readily visible label or marking on the external surface of the device containing:

(i) The following statement: ''CONTAINS RADIOACTIVE MATERIAL'';

(ii) The name of the radionuclide(s) and quantity(ies) of activity;

(iii) An identification of the person licensed under § 32.30 to transfer the device for use under § 30.22 of this chapter or equivalent regulations of an Agreement State; and

(iv) Instructions and precautions necessary to assure safe installation, operation, and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information).

(2) The external surface of the point-of-sale package has a legible, readily visible label or marking containing:

(i) The name of the radionuclide and quantity of activity;

(ii) An identification of the person licensed under § 32.30 to transfer the device for use under § 30.22 of this chapter or equivalent regulations of an Agreement State; and

(iii) The following or a substantially similar statement: ''THIS DEVICE CONTAINS RADIOACTIVE MATERIAL AND HAS BEEN MANUFACTURED IN COMPLIANCE WITH U.S. NUCLEAR REGULATORY COMMISSION SAFETY

[1] It is the intent of this paragraph that as the magnitude of the potential dose increases above that permitted under normal conditions, the probability that any individual will receive such a dose must decrease. The probabilities have been expressed in general terms to emphasize the approximate nature of the estimates that are to be made. The following values may be used as guides in estimating compliance with the criteria: Low—not more than one such failure/incident per year for each 10,000 exempt units distributed. Negligible—not more than one such failure/incident per year for each one million exempt units distributed.

CRITERIA IN 10 CFR 32.31. THE PURCHASER IS EXEMPT FROM ANY REGULATORY REQUIREMENTS.''

(3) Each device and point-of-sale package contains such other information as may be required by the Commission; and

(c) Maintain records of all transfers and file a report with the Director of the Office of Federal and State Materials and Environmental Management Programs by an appropriate method listed in § 30.6(a) of this chapter, including in the address: ATTN: Document Control Desk/Exempt Distribution.

(1) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(2) The report must indicate that the devices are transferred for use under § 30.22 of this chapter or equivalent regulations of an Agreement State.

(3) The report must include the following information on devices transferred to other persons for use under § 30.22 or equivalent regulations of an Agreement State:

(i) A description or identification of the type of each device and the model number(s);

(ii) For each radionuclide in each type of device and each model number, the total quantity of the radionuclide; and

(iii) The number of units of each type of device transferred during the reporting period by model number.

(4)(i) The licensee shall file the report, covering the preceding calendar year, on or before January 31 of each year.

(ii) Licensees who permanently discontinue activities authorized by the license issued under § 32.30 shall file a report for the current calendar year within 30 days after ceasing distribution.

(5) If no transfers of byproduct material have been made under § 32.30 during the reporting period, the report must so indicate.

(6) The licensee shall maintain the record of a transfer for a period of one year after the transfer is included in a report to the Commission.

■ 26. In § 32.51, paragraph (a)(6) is added to read as follows:

**§ 32.51 Byproduct material contained in devices for use under § 31.5; requirements for license to manufacture, or initially transfer.**

(a) * * *

(6) The device has been registered in the Sealed Source and Device Registry.

* * * * *

■ 27. In § 32.53, paragraphs (b)(5) and (d)(4) are revised and paragraphs (e) and (f) are added to read as follows:

**§ 32.53 Luminous safety devices for use in aircraft: Requirements for license to manufacture, assemble, repair or initially transfer.**

* * * * *

(b) * * *

(5) Quality assurance procedures to be followed that are sufficient to ensure compliance with § 32.55;

* * * * *

(d) * * *

(4) Prototypes of the device have been subjected to and have satisfactorily passed the tests required by paragraph (e) of this section.

(e) The applicant shall subject at least five prototypes of the device to tests as follows:

(1) The devices are subjected to tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment of tritium or promethium-147, such as temperature, moisture, absolute pressure, water immersion, vibration, shock, and weathering.

(2) The devices are inspected for evidence of physical damage and for loss of tritium or promethium-147, after each stage of testing, using methods of inspection adequate for determining compliance with the criteria in paragraph (e)(3) of this section.

(3) Device designs are rejected for which the following has been detected for any unit:

(i) A leak resulting in a loss of 0.1 percent or more of the original amount of tritium or promethium-147 from the device; or

(ii) Surface contamination of tritium or promethium-147 on the device of more than 2,200 disintegrations per minute per 100 square centimeters of surface area; or

(iii) Any other evidence of physical damage.

(f) The device has been registered in the Sealed Source and Device Registry.

■ 28. Section 32.55 is revised to read as follows:

**§ 32.55 Same: Quality assurance, prohibition of transfer.**

(a) Each person licensed under § 32.53 shall visually inspect each device and shall reject any that has an observable physical defect that could adversely affect containment of the tritium or promethium-147.

(b) Each person licensed under § 32.53 shall:

(1) Maintain quality assurance systems in the manufacture of the luminous safety device in a manner sufficient to provide reasonable assurance that the safety-related components of the distributed devices are capable of performing their intended functions; and

(2) Subject inspection lots to acceptance sampling procedures, by procedures specified in paragraph (c) of this section and in the license issued under § 32.53, to provide at least 95 percent confidence that the Lot Tolerance Percent Defective of 5.0 percent will not be exceeded.

(c) The licensee shall subject each inspection lot to:

(1) Tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment of tritium or promethium-147, such as absolute pressure and water immersion.

(2) Inspection for evidence of physical damage, containment failure, or for loss of tritium or promethium-147 after each stage of testing, using methods of inspection adequate for applying the following criteria for defective:

(i) A leak resulting in a loss of 0.1 percent or more of the original amount of tritium or promethium-147 from the device;

(ii) Levels of radiation in excess of 5 microgray (0.5 millirad) per hour at 10 centimeters from any surface when measured through 50 milligrams per square centimeter of absorber, if the device contains promethium-147; and

(iii) Any other criteria specified in the license issued under § 32.53.

(d) No person licensed under § 32.53 shall transfer to persons generally licensed under § 31.7 of this chapter, or under an equivalent general license of an Agreement State:

(1) Any luminous safety device tested and found defective under any condition of a license issued under § 32.53, or paragraph (b) of this section, unless the defective luminous safety device has been repaired or reworked, retested, and determined by an independent inspector to meet the applicable acceptance criteria; or

(2) Any luminous safety device contained within any lot that has been sampled and rejected as a result of the procedures in paragraph (b)(2) of this section, unless:

(i) A procedure for defining sub-lot size, independence, and additional testing procedures is contained in the license issued under § 32.53; and

(ii) Each individual sub-lot is sampled, tested, and accepted in accordance with paragraphs (b)(2) and (d)(2)(i) of this section and any other criteria that may be required as a condition of the license issued under § 32.53.

■ 29. Section 32.56 is revised to read as follows:

**§ 32.56 Same: Material transfer reports.**

(a) Each person licensed under § 32.53 shall file an annual report with the Director, Office of Federal and State Materials and Environmental Management Programs, ATTN: Document Control Desk/GLTS, by an appropriate method listed in § 30.6(a) of this chapter, which must state the total quantity of tritium or promethium-147 transferred to persons generally licensed under § 31.7 of this chapter. The report must identify each general licensee by name, state the kinds and numbers of luminous devices transferred, and specify the quantity of tritium or promethium-147 in each kind of device. Each report must cover the year ending June 30 and must be filed within thirty (30) days thereafter. If no transfers have been made to persons generally licensed under § 31.7 of this chapter during the reporting period, the report must so indicate.

(b) Each person licensed under § 32.53 shall report annually all transfers of devices to persons for use under a general license in an Agreement State's regulations that are equivalent to § 31.7 of this chapter to the responsible Agreement State agency. The report must state the total quantity of tritium or promethium-147 transferred, identify each general licensee by name, state the kinds and numbers of luminous devices transferred, and specify the quantity of tritium or promethium-147 in each kind of device. If no transfers have been made to a particular Agreement State during the reporting period, this information must be reported to the responsible Agreement State agency upon request of the agency.

■ 30. In § 32.57, paragraph (d)(2) is revised and paragraph (e) is added to read as follows:

**§ 32.57 Calibration or reference sources containing americium-241 or radium-226: Requirements for license to manufacture or initially transfer.**

* * * * *

(d) * * *

(2) The source has been subjected to and has satisfactorily passed appropriate tests required by paragraph (e) of this section.

(e) The applicant shall subject at least five prototypes of each source that is designed to contain more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226 to tests as follows:

(1) The initial quantity of radioactive material deposited on each source is measured by direct counting of the source.

(2) The sources are subjected to tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment or binding of americium-241 or radium-226, such as physical handling, moisture, and water immersion.

(3) The sources are inspected for evidence of physical damage and for loss of americium-241 or radium-226, after each stage of testing, using methods of inspection adequate for determining compliance with the criteria in paragraph (e)(4) of this section.

(4) Source designs are rejected for which the following has been detected for any unit: Removal of more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226 from the source or any other evidence of physical damage.

■ 31. Section 32.59 is revised to read as follows:

**§ 32.59 Same: Leak testing of each source.**

Each person licensed under § 32.57 shall perform a dry wipe test upon each source containing more than 3.7 kilobecquerels (0.1 microcurie) of americium-241 or radium-226 before transferring the source to a general licensee under § 31.8 of this chapter or under equivalent regulations of an Agreement State. This test must be performed by wiping the entire radioactive surface of the source with a filter paper with the application of moderate finger pressure. The radioactivity on the filter paper must be measured using methods capable of detecting 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226. If a source has been shown to be leaking or losing more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226 by the methods described in this section, the source must be rejected and must not be transferred to a general licensee under § 31.8 of this chapter, or equivalent regulations of an Agreement State.

■ 32. In § 32.61, paragraph (e)(4) is revised and paragraphs (f) and (g) are added to read as follows:

**§ 32.61 Ice detection devices containing strontium-90; requirements for license to manufacture or initially transfer.**

* * * * *

(e) * * *

(4) Prototypes of the device have been subjected to and have satisfactorily passed the tests required by paragraph (f) of this section.

* * * * *

(f) The applicant shall subject at least five prototypes of the device to tests as follows:

(1) The devices are subjected to tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment of strontium-90, such as temperature, moisture, absolute pressure, water immersion, vibration, shock, and weathering.

(2) The devices are inspected for evidence of physical damage and for loss of strontium-90 after each stage of testing, using methods of inspection adequate for determining compliance with the criteria in paragraph (f)(3) of this section.

(3) Device designs are rejected for which the following has been detected for any unit:

(i) A leak resulting in a loss of 0.1 percent or more of the original amount of strontium-90 from the device; or

(ii) Surface contamination of strontium-90 on the device of more than 2,200 disintegrations per minute per 100 square centimeters of surface area; or

(iii) Any other evidence of physical damage.

(g) The device has been registered in the Sealed Source and Device Registry.

■ 33. In § 32.62, paragraphs (c), (d), and (e) are revised to read as follows:

**§ 32.62 Same: Quality assurance; prohibition of transfer.**

* * * * *

(c) Each person licensed under § 32.61 shall:

(1) Maintain quality assurance systems in the manufacture of the ice detection device containing strontium-90 in a manner sufficient to provide reasonable assurance that the safety-related components of the distributed devices are capable of performing their intended functions; and

(2) Subject inspection lots to acceptance sampling procedures, by procedures specified in paragraph (d) of this section and in the license issued under § 32.61, to provide at least 95 percent confidence that the Lot Tolerance Percent Defective of 5.0 percent will not be exceeded.

(d) Each person licensed under § 32.61 shall subject each inspection lot to:

(1) Tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could possibly affect the effective

containment of strontium-90, such as absolute pressure and water immersion.

(2) Inspection for evidence of physical damage, containment failure, or for loss of strontium-90 after each stage of testing, using methods of inspection adequate to determine compliance with the following criteria for defective: A leak resulting in a loss of 0.1 percent or more of the original amount of strontium-90 from the device and any other criteria specified in the license issued under § 32.61.

(e) No person licensed under § 32.61 shall transfer to persons generally licensed under § 31.10 of this chapter, or under an equivalent general license of an Agreement State:

(1) Any ice detection device containing strontium-90 tested and found defective under the criteria specified in a license issued under § 32.61, unless the defective ice detection device has been repaired or reworked, retested, and determined by an independent inspector to meet the applicable acceptance criteria; or

(2) Any ice detection device containing strontium-90 contained within any lot that has been sampled and rejected as a result of the procedures in paragraph (c)(2) of this section, unless:

(i) A procedure for defining sub-lot size, independence, and additional testing procedures is contained in the license issued under § 32.61; and

(ii) Each individual sub-lot is sampled, tested, and accepted in accordance with paragraphs (c)(2) and (e)(2)(i) of this section and any other criteria as may be required as a condition of the license issued under § 32.61.

## Subpart C—Specifically Licensed Items

■ 34. The heading of subpart C is revised to read as set forth above.

### §§ 32.72 and 32.74 [Transferred to Subpart C]

■ 35. Sections 32.72 and 32.74 are transferred from subpart B to subpart C; § 32.74 is amended by adding paragraph (a)(4) to read as follows:

### § 32.74 Manufacture and distribution of sources or devices containing byproduct material for medical use.

(a) * * *

(4) The source or device has been registered in the Sealed Source and Device Registry.

* * * * *

### § 32.101 [Removed]

■ 36. Section 32.101 is removed.

### § 32.102 [Removed]

■ 37. Section 32.102 is removed.

### § 32.103 [Removed]

■ 38. Section 32.103 is removed.

### § 32.110 [Removed]

■ 39. Section 32.110 is removed.

## Subpart D—Sealed Source and Device Registration

■ 40. The heading of subpart D is revised to read as set forth above.

### § 32.201 [Transferred to Subpart C]

■ 41. Section 32.201 is transferred from subpart D to subpart C.

■ 42. In § 32.210, paragraphs (a), (b), (d), and (e) are revised and paragraphs (g) and (h) are added to read as follows:

### § 32.210 Registration of product information.

(a) Any manufacturer or initial distributor of a sealed source or device containing a sealed source may submit a request to the NRC for evaluation of radiation safety information about its product and for its registration.

(b) The request for review must be sent to the NRC's Office of Federal and State Materials and Environmental Management Programs, ATTN: SSDR by an appropriate method listed in § 30.6(a) of this chapter.

* * * * *

(d) The NRC normally evaluates a sealed source or a device using radiation safety criteria in accepted industry standards. If these standards and criteria do not readily apply to a particular case, the NRC formulates reasonable standards and criteria with the help of the manufacturer or distributor. The NRC shall use criteria and standards sufficient to ensure that the radiation safety properties of the device or sealed source are adequate to protect health and minimize danger to life and property. Subpart A of this part includes specific criteria that apply to certain exempt products and subpart B includes specific criteria applicable to certain generally licensed devices. Subpart C includes specific provisions that apply to certain specifically licensed items.

(e) After completion of the evaluation, the Commission issues a certificate of registration to the person making the request. The certificate of registration acknowledges the availability of the submitted information for inclusion in an application for a specific license proposing use of the product, or concerning use under an exemption from licensing or general license as applicable for the category of certificate.

* * * * *

(g) Authority to manufacture or initially distribute a sealed source or device to specific licensees may be provided in the license without the issuance of a certificate of registration in the following cases:

(1) Calibration and reference sources containing no more than:

(i) 37 MBq (1 mCi), for beta and/or gamma emitting radionuclides; or

(ii) 0.37 MBq (10 μCi), for alpha emitting radionuclides; or

(2) The intended recipients are qualified by training and experience and have sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in any form in the case of unregistered sources or, for registered sealed sources contained in unregistered devices, are qualified by training and experience and have sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in unshielded form, as specified in their licenses; and

(i) The intended recipients are licensed under part 33 of this chapter or comparable provisions of an Agreement State; or

(ii) The recipients are authorized for research and development; or

(iii) The sources and devices are to be built to the unique specifications of the particular recipient and contain no more than 740 GBq (20 Ci) of tritium or 7.4 GBq (200 mCi) of any other radionuclide.

(h) After the certificate is issued, the Commission may conduct an additional review as it determines is necessary to ensure compliance with current regulatory standards. In conducting its review, the Commission will complete its evaluation in accordance with criteria specified in this section. The Commission may request such additional information as it considers necessary to conduct its review and the certificate holder shall provide the information as requested.

■ 43. Section 32.211 is added to subpart D to read as follows:

### § 32.211 Inactivation of certificates of registration of sealed sources and devices.

(a) A certificate holder who no longer manufactures or initially transfers any of the sealed source(s) or device(s) covered by a particular certificate issued by the Commission shall request inactivation of the registration certificate. Such a request must be made to the NRC's Office of Federal and State Materials and Environmental Management Programs, ATTN: SSDR by an appropriate method listed in § 30.6(a) of this chapter and must normally be made no later than two years after initial

distribution of all of the source(s) or device(s) covered by the certificate has ceased. However, if the certificate holder determines that an initial transfer was in fact the last initial transfer more than two years after that transfer, the certificate holder shall request inactivation of the certificate within 90 days of this determination and briefly describe the circumstances of the delay.

(b) If a distribution license is to be terminated in accordance with § 30.36 of this chapter, the licensee shall request inactivation of its registration certificates associated with that distribution license before the Commission will terminate the license. Such a request for inactivation of certificate(s) must indicate that the license is being terminated and include the associated specific license number.

(c) A specific license to manufacture or initially transfer a source or device covered only by an inactivated certificate no longer authorizes the licensee to initially transfer such sources or devices for use. Servicing of devices must be in accordance with any conditions in the certificate, including in the case of an inactive certificate.

■ 44. In § 32.303, paragraph (b) is revised to read as follows:

**§ 32.303 Criminal penalties.**

* * * * *

(b) The regulations in part 32 that are not issued under subsections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 32.1, 32.2, 32.8, 32.11, 32.14, 32.18, 32.21, 32.22, 32.23, 32.24, 32.26, 32.27, 32.28, 32.30, 32.31, 32.51, 32.53, 32.57, 32.61, 32.71, 32.72, 32.74, 32.301, and 32.303.

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 45. The authority citation for part 40 continues to read as follows:

**Authority:** Atomic Energy Act secs. 11(e)(2), 62, 63, 64, 65, 81, 161, 181, 182, 183, 186, 193, 223, 234, 274, 275 (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2231, 2232, 2233, 2236, 2243, 2273, 2282, 2021, 2022); Energy Reorganization Act secs. 201, 202, 206 (42 U.S.C. 5841, 5842, 5846); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–59, 119 Stat. 594 (2005).

Section 40.7 also issued under Energy Reorganization Act sec. 211, Pub. L. 95–601, sec. 10, as amended by Pub. L. 102–486, sec. 2902 (42 U.S.C. 5851). Section 40.31(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 40.46 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 40.71 also issued under Atomic Energy Act sec. 187 (42 U.S.C. 2237).

■ 46. In § 40.5, paragraph (b)(1)(iv) is revised to read as follows:

**§ 40.5 Communications.**

* * * * *

(b) * * *

(1) * * *

(iv) Distribution of products containing radioactive material under §§ 32.11 through 32.30 of this chapter to persons exempt from licensing requirements.

* * * * *

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 47. The authority citation for part 70 continues to read as follows:

**Authority:** Atomic Energy Act secs. 51, 53, 161, 182, 183, 193, 223, 234 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2243, 2273, 2282, 2297f); secs. 201, 202, 204, 206, 211 (42 U.S.C. 5841, 5842, 5845, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 194 (2005).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.21(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152). Section 70.31 also issued under Atomic Energy Act sec. 57(d) (42 U.S.C. 2077(d)). Sections 70.36 and 70.44 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 70.81 also issued under Atomic Energy Act secs. 186, 187 (42 U.S.C. 2236, 2237). Section 70.82 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

■ 48. In § 70.5, paragraph (b)(1)(iv) is revised to read as follows:

**§ 70.5 Communications.**

* * * * *

(b) * * *

(1) * * *

(iv) Distribution of products containing radioactive material under §§ 32.11 through 32.30 of this chapter to persons exempt from licensing requirements.

* * * * *

Dated at Rockville, Maryland, this 13th day of July, 2012.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 2012–17711 Filed 7–24–12; 8:45 am]

BILLING CODE 7590–01–P

# FEDERAL REGISTER

Vol. 77 Wednesday,

No. 143 July 25, 2012


Part III

## The President

Memorandum of July 19, 2012—Ensuring the Uniformed Services Employment and Reemployment Rights Act (USERRA) Protections

Proclamation 8842—Honoring the Victims of the Tragedy in Aurora, Colorado

Federal Register
Vol. 77, No. 143
Wednesday, July 25, 2012

# Presidential Documents

**Title 3—**

## The President

**Memorandum of July 19, 2012**

## Ensuring the Uniformed Services Employment and Reemployment Rights Act (USERRA) Protections

**Memorandum for the Heads of Executive Departments and Agencies**

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects individuals performing, or who performed, uniformed service in accordance with 38 U.S.C. 4301–4335 from adverse employment discrimination on the basis of their uniformed service, and provides for their prompt restoration to civilian employment when they return to civilian life.

USERRA is intended to ensure that these service members are not disadvantaged in their civilian careers because of their service; are promptly reemployed in their civilian jobs upon their return from duty; and are not discriminated against in employment because of their military status or obligations. This memorandum will help ensure that Federal agencies improve compliance with USERRA through outreach, education, and oversight.

The Administration strongly believes that every man or woman who has served in our country's uniformed services deserves the full protection of our employment laws, including USERRA. No discrimination or unfair treatment based on one's service will be tolerated. We must do our utmost to ensure that all service members' employment and reemployment rights are respected.

The Federal Government, as our Nation's largest employer, has a responsibility to adopt best practices with respect to employing returning service members. Attracting and retaining the best talent means ensuring fair treatment for individuals who have served our country. Close attention must be paid to our returning service members to ensure that we protect their reemployment rights, and effectively manage their reintegration when they return from service.

As a critical part of that effort, I am directing executive departments and agencies (agencies) to take steps to ensure robust compliance with USERRA's employment and reemployment protections across the Federal Government through outreach, education, and oversight. Ensuring agencies' compliance with USERRA across the Federal Government will maintain our commitment to those who serve.

This effort will build upon, and be in furtherance of, Executive Order 13518 of November 9, 2009 (Employment of Veterans in the Federal Government), which directed agencies to take steps to enhance recruitment of and promote employment opportunities for veterans within the executive branch. Over the last few years, the Federal Government has made a concerted and successful effort to increase the hiring of military veterans and members of the National Guard and Reserves, and veterans now constitute a higher percentage of the Federal workforce than they have in years.

The Federal Government must continue to improve outreach to the uniformed services, veteran, Guard, and Reserve communities; improve agencies' USERRA training and guidance; and ensure that service members and veterans in Federal employment receive the full extent of their employment

protections, including USERRA protections. Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby direct the following:

**Section 1**. *USERRA Employment Protection Working Group.* There is established the USERRA Employment Protection Working Group (Working Group), to be co-chaired by the Assistant to the President for Domestic Policy and the Assistant to the President and National Security Advisor, or their designated representatives, which shall coordinate and review agency efforts to implement USERRA.

(a) In addition to the Co-Chairs, the Working Group shall include representatives from:

(i) the Department of Defense;

(ii) the Department of Justice;

(iii) the Department of Labor;

(iv) the Department of Veterans Affairs;

(v) the Office of Personnel Management;

(vi) the Office of the Special Counsel; and

(vii) such other agencies or offices as the Co-Chairs may designate.

(b) In addition to coordinating and reviewing agency efforts to implement USERRA pursuant to this memorandum, the Working Group shall:

(i) collect data to better track the Federal Government's performance in implementing USERRA protections;

(ii) coordinate agency efforts to implement best practices, training, and procedures for any agency officials who are authorized to recommend, take, or approve any personnel action with respect to employees of the agency in order to improve compliance with USERRA employment and reemployment protections; and

(iii) conduct outreach to veterans and members of the National Guard and Reserve and other members of the uniformed services to assist them in fully exercising their employment rights.

(c) Within 30 days of the date of this memorandum, the head of each agency shall designate a senior agency official to act as a liaison between the agency and the Working Group. The agency liaison shall be responsible for providing the Working Group with information on agency efforts to implement this memorandum, as well as any other relevant information on service member employment that the Working Group may require.

(d) Within 90 days of the date of this memorandum, the Working Group shall report to the President on Government-wide progress in implementing this memorandum.

**Sec. 2**. *Federal USERRA Guidance.* (a) Within 180 days of the date of this memorandum, the Director of the Office of Personnel Management, in consultation with the Council on Veterans Employment established by Executive Order 13518 and offices and agencies participating in the Working Group, as appropriate, shall issue guidance to agencies on Federal USERRA employment protection, which shall describe specific steps agencies can take to improve USERRA employment and reemployment protection policies and practices, including:

(i) improving data collection procedures to help better track overall service member employment data in the Federal Government, including Guard and Reserve members;

(ii) using appropriate metrics, as established by the Office of Personnel Management, to measure implementation of this memorandum;

(iii) using guidance and tools, as developed by the Office of Personnel Management through collaboration with the Working Group and Council on Veterans Employment, which draw upon best agency practices as well as practices and guidance from the private sector; and

(iv) strengthening relationships between service members, stakeholder groups, and the agency, and providing better information to service members so as to allow them to be reintegrated as quickly and efficiently as possible when they return to civilian life.

(b) In the course of developing guidance pursuant to subsection (a), the Director of the Office of Personnel Management, in consultation with the Council on Veterans Employment and offices and agencies participating in the Working Group as appropriate, shall review relevant statutes, regulations, policies, and agency training and guidance to identify reforms that would facilitate improved implementation of and compliance with USERRA. The Director of the Office of Personnel Management, in consultation with the Director of the Office of Management and Budget (OMB), shall report to the President on this review, no later than 1 year from the date of this memorandum, and provide recommendations for changes to laws, regulations, and policies that would strengthen USERRA protections.

(c) In developing guidance pursuant to subsection (a), the Director of the Office of Personnel Management shall consult with affected agencies, interagency groups, and public stakeholders.

(d) The Department of Defense and the Office of Personnel Management shall work together to improve data collection procedures to help better track the overall veteran and service member employment data in the Federal Government, particularly Guard and Reserve Members.

**Sec. 3**. *Ensuring USERRA Employment Protection.* The head of each agency shall, as expeditiously as possible:

(a) implement the guidance issued pursuant to section 2 of this memorandum;

(b) ensure that the agency has prioritized policies and actions to implement USERRA employment protections, including providing appropriate training and information, as well as undertaking appropriate reemployment measures; and

(c) allocate sufficient resources to effectively implement the requirements of this memorandum, subject to the availability of appropriations.

**Sec. 4**. *General Provisions.* (a) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This memorandum shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) Independent agencies are strongly encouraged to comply with the requirements of this memorandum.

The Director of the Office of Personnel Management is hereby authorized and directed to publish this memorandum in the **Federal Register.**

THE WHITE HOUSE,
*Washington, July 19, 2012.*

[FR Doc. 2012–18325
Filed 7–24–12; 11:15 am]
Billing code 6325–01–P

# Presidential Documents

**Proclamation 8842 of July 20, 2012**

## Honoring the Victims of the Tragedy in Aurora, Colorado

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

**A Proclamation**

As a mark of respect for the victims of the senseless acts of violence perpetrated on July 20, 2012, in Aurora, Colorado, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, I hereby order that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, July 25, 2012. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

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

[FR Doc. 2012–18326
Filed 7–24–12; 11:15 am]
Billing code 3295–F2–P

# FEDERAL REGISTER

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Part IV

## The President

Notice of July 24, 2012—Continuation of the National Emergency With Respect to the Actions of Certain Persons To Undermine the Sovereignty of Lebanon or Its Democratic Processes or Institutions

Federal Register
Vol. 77, No. 143
Wednesday, July 25, 2012

# Presidential Documents

**Title 3—**

## The President

**Notice of July 24, 2012**

## Continuation of the National Emergency With Respect to the Actions of Certain Persons To Undermine the Sovereignty of Lebanon or Its Democratic Processes or Institutions

On August 1, 2007, by Executive Order 13441, the President declared a national emergency and ordered related measures blocking the property of certain persons undermining the sovereignty of Lebanon or its democratic processes or institutions and certain other persons, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President determined that the actions of certain persons to undermine Lebanon's legitimate and democratically elected government or democratic institutions; to contribute to the deliberate breakdown in the rule of law in Lebanon, including through politically motivated violence and intimidation; to reassert Syrian control or contribute to Syrian interference in Lebanon; or to infringe upon or undermine Lebanese sovereignty contribute to political and economic instability in that country and the region and constitute an unusual and extraordinary threat to the national security and foreign policy of the United States.

Certain ongoing activities, such as continuing arms transfers to Hizballah that include increasingly sophisticated weapons systems, serve to undermine Lebanese sovereignty, contribute to political and economic instability in Lebanon, and continue to constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. Therefore, the national emergency declared on August 1, 2007, and the measures adopted on that date to deal with that emergency, must continue in effect beyond August 1, 2012. In accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13441.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
*July 24, 2012.*

[FR Doc. 2012–18356
Filed 7–24–12; 2:15 pm]
Billing code 3295–F2–P

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