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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 40

**[NRC–2011–0072]**

**RIN 3150–AI95**

### Regulatory Changes To Implement the United States/Australian Agreement for Peaceful Nuclear Cooperation; Corrections

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule; correcting amendments.

**SUMMARY:** On November 8, 2011, the U.S. Nuclear Regulatory Commission (NRC or the Commission) published in the **Federal Register** a final rule (76 FR 69120) that amended the NRC's regulations to implement the 2010 ''Agreement between the Government of Australia and the Government of the United States of America Concerning Peaceful Uses of Nuclear Energy.'' The present NRC action is necessary to relocate a new section added by the final rule, and to make a related conforming change to the final rule.

**DATES:** This correction is effective December 20, 2011, and is applicable to November 8, 2011, the date the original rule became effective.

**FOR FURTHER INFORMATION CONTACT:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 492–3667; email: *Cindy.Bladey@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** This action corrects the final rule published on November 8, 2011 (76 FR 69120). Specifically, the new section in Title 10 of the Code of Federal Regulations (10 CFR) Part 40 is added as § 40.56 rather than § 40.52. This change is necessary because 10 CFR 40.52 through 40.55 were proposed to be added by a previous NRC rulemaking (75 FR 43425; July 26, 2010) that the NRC now intends to publish as a final rule. A conforming change is being made to the revised 10 CFR 40.13(c)(5)(v) provision, so that it will contain the proper cross-reference to § 40.56. These amendments are administrative in that they make no substantive changes to requirements, and the NRC accordingly finds that notice and opportunity for public comment on this corrective action is unnecessary.

**List of Subjects in 10 CFR Part 40**

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

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; 5 U.S.C. 552 and 553; and the Energy Policy Act of 2005; Public Law 109–58, 119 Stat. 594 (2005); the NRC is adopting the following amendments to 10 CFR part 40.

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 1. The authority citation for part 40 continues to read as follows:

**Authority:** Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs.11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243), sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note) Energy Policy Act of 2005 Pub. L. No. 109–59, 119 Stat 594 (2205).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486 sec 2902, 106 Stat. 3122 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955.

(42 U.S.C. 2237).

**§ 40.13 [Amended]**

■ 2. In § 40.13, paragraph (c)(5)(v) is amended by removing the reference ''§ 40.52'' and adding in its place the reference ''§ 40.56''.

**§ 40.52 [Redesignated as § 40.56]**

■ 3. Redesignate § 40.52 as § 40.56.

**§§ 40.52 through 40.55 [Added and Reserved]**

■ 4. Add and reserve §§ 40.52 through 40.55.

Dated at Rockville, Maryland, this 14th day of December 2011.

For the Nuclear Regulatory Commission.

**Leslie Terry,**

*Acting Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 2011–32471 Filed 12–19–11; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2011–0836; Directorate Identifier 2010–NE–38–AD; Amendment 39–16898; AD 2011–26–08]**

**RIN 2120–AA64**

### Airworthiness Directives; Rolls-Royce plc (RR) RB211–Trent 800 Series Turbofan Engines

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Rolls-Royce plc (RR) RB211-Trent 800 Series Turbofan Engines. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as fuel leaks from the engine due to damage to sections of the fan case low-pressure (LP) fuel tubes. We are issuing this AD to prevent engine fuel leaks, which could result in risk to the airplane.

**DATES:** This AD becomes effective January 24, 2012. The Director of the Federal Register approved the

incorporation by reference of certain publications listed in this AD as of January 24, 2012.

**ADDRESSES:** The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

**FOR FURTHER INFORMATION CONTACT:** Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *alan.strom@faa.gov;* phone: (781) 238–7143; fax: (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 22, 2011 (76 FR 52288). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Fuel leaks from the engine have occurred in-service due to damage to sections of the fan case Low Pressure (LP) fuel tubes which run between the Low Pressure and the High Pressure (HP) fuel pumps. This damage has been caused by frettage between the securing clips and the tube outer surface, which has caused localised thinning of the tube wall thickness. The thinning of the tube wall causes the tube to fracture and fuel loss to occur.

The corrective action includes inspection of the tubes and replacement of the associated clips. The fretting and thinning of the fuel tubes is caused by relative movement between the tubes and the clips. You may obtain further information by examining the MCAI in the AD docket.

## Comments

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

### Request To Correct Title in Rolls-Royce Service Bulletin

A commenter, Air New Zealand, requested that we change the service bulletin reference from ''RB.211–73–D685'' to ''RB.211–73–AD685.''

We agree. The changed the AD to correct the service bulletin reference.

### Request To Change Service Bulletin Revision Number

Three commenters, American Airlines (American), Delta Airlines (Delta), and the Boeing Company (Boeing), suggested that we change compliance from Revision 5 to Revision 6 of the Rolls-Royce Service Bulletin.

We agree. We changed the AD to use RR SB RB.211–73–AD685, Revision 6, dated February 21, 2011, which is the latest version of the service bulletin.

### Request To Allow Compliance to Earlier Revisions of the Service Bulletin

One commenter, Delta, asked that engines previously inspected per Revision 3 of SB RB.211–73–AD685, dated August 18, 2009; or Revision 4 of SB RB.211–73–AD685, dated January 20, 2010 or Revision 5 of SB RB.211–73–AD685, dated August 18, 2010; to have met the initial inspection requirements of the AD.

We agree. We added a new paragraph to the AD called ''Previous Inspection Credit'' which provides credit for performing the initial inspection according to the requirements of Revisions 3, 4, or 5 of the SB.

### Request To Revise Cost of Compliance

A commenter, American Airlines, requested that the cost estimate per engine be increased to $905. American noted that the AD creates repetitive not one-time expenses due to the need for repetitive inspections. American also asserted that the estimate in the NPRM (76 FR 52288, August 22, 2011) of labor hours to comply with the AD was not accurate. American suggested 8 labor hours per inspection is a realistic figure.

We agree in part. While the AD does require repetitive inspections, we do not agree with including repetitive expenses for inspections in our cost estimate. We only include the cost of one inspection cycle, even if the AD requires repetitive inspections, in our cost estimates. We agree our labor estimate should be increased. We accept that 8 labor hours is a realistic estimate of labor hours and allows us to make a more accurate assessment of labor cost. We changed the estimate of work hours in the AD from 3 to 8. We also corrected the cost of the parts required from $225 in the NPRM to $884. We revised the total cost to comply with the AD from $52,800 to $172,040.

### Request To Revise Initial Inspection Paragraph

A commenter, Boeing, requested that the Initial Inspection paragraph be revised by including the following: ''Inspect the Fuel Oil Heat Exchanged (FOHE) mounting hardware for signs of damage. Use paragraph 3.A.(4) of the Service Bulletin RB.211–73–AD685, Revision 6, dated February 21, 2011.'' Boeing noted that damage or wear to FOHE mounts may contribute to low pressure (LP) fuel tube cracking. Delta Airlines commented further that EASA AD 2010–0188 requires this FOHE mount inspection because it requires accomplishment of the entire service bulletin when doing the inspection. For clarity, Delta requested that the final rule include a comment that the inspection requirements do not mandate the FOHE mount inspections.

We do not agree. The requirement of this AD to inspect the fuel tubes is sufficient to ensure safe operation. The repetitive inspection intervals for fuel tubes required by this AD consider observed FOHE mount wear. This AD does not require inspection of the FOHE mounts. We did not change the AD based on this comment.

### Request To Add Requirement To Remove Damaged Fuel Tubes

Two commenters, Boeing and Delta, requested clarification regarding when to replace fuel tubes. Boeing requested that under ''Actions and Compliance'' the following requirement be included: ''Removal and replacement of damaged fuel tubes (P/N FK23986) in accordance with paragraph 3.A.(5) of the Service Bulletin RB.211–73–AD685, Revision 6, dated February 21, 2011.'' Boeing indicated that rejected fuel tubes need to be replaced to avoid fuel leaks. Delta indicated that the On-wing Inspection and In-shop Inspection paragraphs do not include information about replacing tubes when needed as the result of inspections. Delta also noted that the Repetitive Inspection paragraph does discuss replacement of these parts when needed.

We agree in part. Although parts that fail inspection may not be returned to service, we agree that clarifying when fuel tubes are replaced would help. We revised the On-wing Inspection and In-shop Inspection paragraphs to indicate that the tubes should be replaced if they fail inspection.

### Request To Clarify Initial Inspection Requirement

One commenter, Delta, noted that under the Initial Inspection paragraph, one of the options for complying with the AD is to do the initial inspection before 3,000 hours since last inspection. Delta requested that we clarify the meaning of ''last inspection.''

We agree. We added a definition paragraph to indicate that our reference to 3,000 hours since last inspection refers to the inspection of the fan case LP fuel tubes for frettage between the securing clips and the tube outer surface part numbers FK22617, FK19213, and FK23986.

**Request To Clarify Handling of Clips for Fuel Tubes**

One commenter, Delta, asked that the final rule clarify how to handle the clips that hold the fuel tubes in place. Delta noted that paragraphs 3.A.(2) and 3.A.(3) (on-wing) and 3.B.(2) and 3.B.(3) of RR SB RB.211–73–AD685, which are referenced in the NPRM (76 FR 52288), do not include inspection criteria for the clips. Delta requested that we either require inspection or replacement of the clips with a new or serviceable part per the note in Paragraph 3.A. of the RR SB RB.211–73–AD685, which says that ''clips should be removed and replaced one at a time to prevent pre-loading of the clip position.''

We agree. The fretting and thinning of the fuel tubes is caused by relative movement between the tubes and the clips. Worn or fretted clips cause increased relative movement between the tubes and the clips and thus more tube wear and fretting. Clip wear is not repairable and so the clips cannot be reused. We, therefore, revised the AD by changing the On-wing Inspection and In-shop Inspection paragraphs to indicate that the clips must be replaced during the initial inspection and during every repeat inspection.

**Request To Clarify Repeat Inspections Paragraph**

One commenter, Delta, requested clarification of the Repeat Inspections paragraph. Delta noted that this paragraph might be misinterpreted to mean inspection and tube replacement should be accomplished per paragraphs 3.A.(2), 3.A.(3), 3.B.(2), and 3.B.(3) of RR SB RB.211–73–AD685. Since these paragraphs only apply to replacement of the tubes, Delta believes the language should be clarified.

We agree. We revised the Repeat Inspections paragraph to clarify that paragraphs 3.A.(1) through 3.A.(3) (On-wing) or 3.B.(1) through 3.B.(3) (In-shop) of RR SB RB.211–78–AD685 apply to the inspection.

**Conclusion**

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator nor increase the scope of the AD.

**Costs of Compliance**

We estimate that this AD affects about 110 products of U.S. registry. We also estimate that it will take about 8 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts cost about $884 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $172,040.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

*For the reasons discussed above, I certify this AD:*

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

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

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

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

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (phone: (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2011–26–08 Rolls-Royce plc:** Amendment 39–16898; Docket No. FAA–2011–0836; Directorate Identifier 2010–NE–38–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective January 24, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all Rolls-Royce plc (RR) RB211–Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines. These engines are installed on, but not limited to, Boeing 777 series airplanes.

**(d) Reason**

This AD was prompted by fuel leaks from the engine that occurred in-service due to damage to sections of the fan case low-pressure (LP) fuel tubes, which run between the LP and the high-pressure (HP) fuel pumps. This damage was caused by frettage between the securing clips and the tube outer surface, which caused localized thinning of the tube wall thickness. The thinning of the tube wall causes the tube to fracture and leak fuel. We are issuing this AD to prevent engine fuel leaks, which could result in risk to the airplane.

**(e) Actions and Compliance**

Unless already done, do the following actions.

**(f) Initial Inspection and Clip replacement**

Within 2,000 hours in service after the effective date of this AD, or before accumulating 3,000 hours-since-new or 3,000 hours-since-last-inspection, whichever is latest, do one of the following:

**(1) On-Wing Inspection and Clip Replacement**

Inspect the fan case LP fuel tubes, part numbers (P/Ns) FK22617, FK19213, and

FK23986. Replace the clips that hold the fuel tubes in place. Use paragraphs 3.A.(1) through 3.A.(3) (on-wing) of RR Non-modification Alert Service Bulletin (ASB) RB.211–73–AD685, Revision 6, dated February 21, 2011 to do the inspection. Replace any fan case LP fuel tubes that fail inspection.

**(2) In-Shop Inspection and Clip Replacement**

Inspect the fan case LP fuel tubes, P/N FK22617, FK19213, and FK23986. Replace the clips that hold the fuel tubes in place with new or serviceable clips. Use paragraphs 3.B.(1) through 3.B.(3) (in-shop) of RR Non-modification ASB RB.211–73–AD685, Revision 6, dated February 21, 2011 to do the inspection. Replace any fan case LP fuel tubes that fail inspection.

**(g) Repetitive Inspection and Clip Replacement**

Repeat the inspection required by paragraphs (f)(1) and (f)(2) of this AD and replace the clips at intervals not exceeding every 3,000 hours time-since-last-inspection.

**(h) Re-Installation Prohibition**

Do not re-install any clips replaced in accordance with paragraphs (f)(1) and (f)(2) of this AD.

**(i) Previous Inspection Credit**

If you previously performed the inspection required by Revision 3 of SB RB.211–73–D685, dated August 18, 2009, or Revision 4 of SB RB.211–73–D685, dated January 20, 2010, or Revision 5 of ASB RB.211–73–AD685, dated August 18, 2010, you met the initial inspection requirements of this AD.

**(j) Definition**

''Last inspection'' means the last inspection of the fan case LP fuel tubes, P/Ns FK22617, FK19213, and FK23986, for frettage between the securing clips and the tube outer surface.

**(k) FAA AD Differences**

None.

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

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

**(m) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0188, dated September 20, 2010, and Rolls-Royce plc Alert Service Bulletin RB.211–73–AD685, Revision 6, dated February 21, 2011, for related information. Contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418; or email: *http://www.rolls-royce.com/contact/civil_team.jsp,* for a copy of this service information.

(2) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; email: *alan.strom@faa.gov;* phone: (781) 238–7143; fax: (781) 238–7199, for more information about this AD.

**(n) Material Incorporated by Reference**

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified.

(2) Rolls-Royce plc Alert Service Bulletin RB.211–73–AD685, Revision 6, dated February 21, 2011, approved for IBR January 24, 2012.

(3) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ; phone: 011–44–1332–242424; fax: 011–44–1332–245418 or email: *http://www.rolls-royce.com/contact/civil_team.jsp.*

(4) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Burlington, Massachusetts, on December 12, 2011.

**Thomas A. Boudreau,**

*Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2011–32490 Filed 12–19–11; 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–2011–0085; Directorate Identifier 2000–NE–19–AD; Amendment 39–16897; AD 2011–26–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Teledyne Continental Motors (TCM) and Rolls-Royce Motors Ltd. (R–RM) Series Reciprocating Engines

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for certain TCM and R–RM series reciprocating engines. That AD currently requires replacement of certain magnetos if they fall within the specified serial number (S/N) range, inspection of the removed magneto to verify that the stop pin is still in place, and, if the stop pin is not in place, inspection of the engine gear train, crankcase, and accessory case. This new AD corrects the range of S/Ns affected, requires the same replacement and inspections, and adds R–RM C–125, C–145, O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines to the applicability. This AD was prompted by our awareness of an error in the previous AD applicability in the range of magneto S/Ns affected and of the need to include certain engines made by R–RM, under license of TCM. We are issuing this AD to prevent engine failure and loss of control of the airplane due to migration of the magneto impulse coupling stop pin out of the magneto frame and into the gear train of the engine.

**DATES:** This AD is effective January 24, 2012.

**ADDRESSES:** For service information identified in this AD, contact Teledyne Continental Motors, Inc., PO Box 90, Mobile, AL 36601; phone: 251–438–3411, or go to *http://tcmlink.com/servicebulletins.cfm.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. 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 AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: (800) 647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Juanita Craft, Aerospace Engineer, Atlanta Certification Office, FAA, Small Airplane Directorate, 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5584; fax: (404) 474–5606; email: *juanita.craft@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 to supersede AD 2002–13–04, amendment 39–12792 (67 FR 43230, June 27, 2002). That AD applies to the specified products. The NPRM published in the **Federal Register** on June 28, 2011 (76 FR 37682). That NPRM proposed to continue to require replacement of certain magnetos if they fall within the specified S/N range, inspection of the removed magneto to verify that the stop pin is still in place, and, if the stop pin is not in place, inspection of the engine gear train, crankcase, and accessory case. That NPRM also proposed to correct the range of S/Ns affected and add R–RM C–125, C–145, O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines to the applicability. We are issuing this AD to prevent engine failure and loss of control of the airplane due to migration of the magneto impulse coupling stop pin out of the magneto frame and into the gear train of the engine.

## Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal and the FAA's response to this comment.

## Question on Who the AD Is Written Against

A commenter, not further identified, asked why the AD was issued against TCM and not ''Slick.''

We do not agree. We write ADs against either a product or an appliance. In the case of this AD, magnetos are part of the engine type certificate and, therefore, considered part of the product (the engine). We did not change the AD as a result of this comment.

## Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

## Costs of Compliance

We estimate that this AD affects 100 R–RM C–125, C–145, O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines installed on airplanes of U.S. registry. We also estimate that it will take about 2 work-hours per engine to perform the inspections, and that the average labor rate is $85 per work-hour. Based on these figures, we estimate the total cost of this AD to U.S. operators to be $17,000. 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

*For the reasons discussed above, I certify that this AD:*

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

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

(3) Will not affect intrastate aviation in Alaska, 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.

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2002–13–04, Amendment 39–12792 (67 FR 43230, June 27, 2002), and adding the following new AD:

**2011–26–07 Teledyne Continental Motors (TCM) and Rolls-Royce Motors Ltd. (R–RM) Series Reciprocating Engines:** Amendment 39–16897; Docket No. FAA–2011–0085; Directorate Identifier 2000–NE–19–AD.

**(a) Effective Date**

This airworthiness directive (AD) is effective January 24, 2012.

**(b) Affected ADs**

This AD supersedes AD 2002–13–04, Amendment 39–12792 (67 FR 43230, June 27, 2002).

**(c) Applicability**

This AD applies to TCM and R–RM C–125, C–145, O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines with Champion Aerospace (formerly Unison Industries) Slick Magnetos, models 6314, 6324, and 6364, with magneto serial numbers (S/Ns) of 99110001 through 99129999, inclusive.

**(d) Unsafe Condition**

This AD was prompted by an error in the previous AD applicability in the range of magneto S/Ns affected, and by the need to include certain engines made by R–RM, under license of TCM. We are issuing this AD to prevent engine failure and loss of control of the airplane due to migration of the magneto impulse coupling stop pin out of the magneto frame and into the gear train of the engine.

**(e) Compliance**

Comply with this AD within 10 flight hours after the effective date of this AD, unless already done.

**(f) Replacement of Magneto**

Replace any magneto that has an S/N of 99110001 through 99129999, inclusive, with a magneto that does not have a serial number in that range. If a magneto is not in this S/N range, no further action is required by this AD.

**(g) Inspections**

Inspect each removed magneto to verify that the impulse coupling stop pin is present. If the pin is missing, do the following:

(1) For C–125, C–145, O–300, IO–360, and TSIO–360 series engines, do the following:

(i) Remove magnetos, alternator or generator, and starter adapter from the accessory case.

(ii) Remove the accessory case from the crankcase and oil sump.

(iii) Visually inspect the entire engine gear train for damaged or broken gears and gear teeth.

(iv) Inspect visible portions of the engine crankcase and accessory case for damage due to the stop pin becoming lodged between the engine gear train and the crankcase or accessory case.

(v) If the accessory case is damaged, repair or replace the accessory case.

(vi) If the engine crankcase is damaged, disassemble the engine, and repair or replace the crankcase.

(vii) Inspect the oil pump drive gear teeth and inner cam gear teeth for damage. Replace any engine drive train component that has been damaged.

(viii) Replace any damaged gear, and magnaflux the mating gears using the applicable engine overhaul manual.

(2) For LTSIO–520–AE series engines, do the following:

(i) Remove the starter adapter, fuel pump, vacuum pumps, accessory drive pads, and both magnetos.

(ii) Visually inspect the entire engine gear train for damaged or broken gears and gear teeth.

(iii) If any damage has occurred, remove the engine from the airplane, disassemble the engine, and inspect it for damage. If any damage is found, repair as necessary.

(iv) Replace any damaged gear, and magnaflux the mating gears using the applicable engine overhaul manual.

(v) Inspect the interior portions of the engine crankcase for damage due to the stop pin becoming lodged between the gear train and the crankcase. If the crankcase is damaged, repair or replace the crankcase.

**(h) Installation Prohibition**

After the effective date of this AD, do not install any Champion Aerospace (formerly Unison Industries) Slick magnetos, model 6314, 6324, or 6364 that have an S/N of 99110001 through 99129999, inclusive, on any engine.

**(i) Alternative Methods of Compliance**

The Manager, Atlanta Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

**(j) Related Information**

(1) A cross-reference for part numbers (P/Ns) for Champion Aerospace (formerly Unison Industries) Slick magneto model 6314 (TCM P/N 653271), model 6324 (TCM P/N 653292), and model 6364 (TCM P/N 649696) can be found in TCM Mandatory Service Bulletin MSB00–6D, dated November 19, 2010.

(2) For more information about this AD, contact Juanita Craft, Aerospace Engineer, Propulsion, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate; 1701 Columbia Avenue, College Park, Georgia 30337; phone: (404) 474–5584; fax: (404) 474–5606; email: *juanita.craft@faa.gov*.

**(k) Material Incorporated by Reference**

None.

Issued in Burlington, Massachusetts, on December 8, 2011.

**Peter A. White,**

*Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2011–32252 Filed 12–19–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30818; Amdt. No. 3457]**

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

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective December 20, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 2011.

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

*For examination*—

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

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

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

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

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

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

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

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

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

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

### The Rule

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

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for

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

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

## Conclusion

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

## List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on December 9, 2011.

**John M. Allen,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

** * * Effective Upon Publication*

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 12–Jan–12 | CQ | Rota Island | Rota Intl | 1/2192 | 11/9/11 | This NOTAM, published in TL 12–01, is hereby rescinded in its entirety. |
| 12–Jan–12 | CQ | Rota Island | Rota Intl | 1/2193 | 11/9/11 | This NOTAM, published in TL 12–01, is hereby rescinded in its entirety. |
| 12–Jan–12 | CQ | Rota Island | Rota Intl | 1/2194 | 11/9/11 | This NOTAM, published in TL 12–01, is hereby rescinded in its entirety. |
| 12–Jan–12 | WI | Racine | John H. Batten | 1/1475 | 11/9/11 | RNAV (GPS) RWY 4, Orig. |
| 12–Jan–12 | WI | Racine | John H. Batten | 1/1478 | 11/9/11 | VOR RWY 4, Amdt 1. |
| 12–Jan–12 | WI | Racine | John H. Batten | 1/1479 | 11/9/11 | RNAV (GPS) RWY 32, Orig. |
| 12–Jan–12 | NJ | Berlin | Camden County | 1/2601 | 12/1/11 | RNAV (GPS) RWY 5, Orig. |
| 12–Jan–12 | NJ | Berlin | Camden County | 1/2603 | 12/1/11 | RNAV (GPS) RWY 23, Orig. |
| 12–Jan–12 | NC | Beaufort | Michael J. Smith Field | 1/2605 | 12/1/11 | RNAV (GPS) RWY 21, Amdt 1. |
| 12–Jan–12 | CT | Windsor Locks | Bradley Intl | 1/3411 | 12/1/11 | ILS OR LOC RWY 24, ILS RWY 24 (SA CAT I), ILS RWY 24 (SA CAT II), Amdt 12. |
| 12–Jan–12 | TN | Memphis | Memphis Intl | 1/4441 | 12/1/11 | ILS OR LOC RWY 36L, ILS RWY 36L (CAT II), ILS RWY 36L (CAT III), Amdt 14A. |
| 12–Jan–12 | GA | Brunswick | Brunswick Golden Isles | 1/4953 | 12/1/11 | RNAV (GPS) RWY 7, Amdt 1. |
| 12–Jan–12 | PA | Selinsgrove | Penn Valley | 1/4954 | 12/1/11 | VOR A, Amdt 7. |
| 12–Jan–12 | PA | Selinsgrove | Penn Valley | 1/4955 | 12/1/11 | RNAV (GPS) RWY 17, Orig. |
| 12–Jan–12 | FL | Orlando | Orlando Sanford Intl | 1/5827 | 12/1/11 | RNAV (GPS) RWY 9R, Orig-B. |
| 12–Jan–12 | FL | Orlando | Orlando Sanford Intl | 1/5828 | 12/1/11 | RNAV (GPS) RWY 9L, Amdt 2B. |
| 12–Jan–12 | FL | Orlando | Orlando Sanford Intl | 1/5829 | 12/1/11 | ILS OR LOC RWY 9L, Amdt 3A. |
| 12–Jan–12 | FL | Orlando | Orlando Sanford Intl | 1/5830 | 12/1/11 | ILS OR LOC RWY 27R, Amdt 1A. |
| 12–Jan–12 | FL | Orlando | Orlando Sanford Intl | 1/5831 | 12/1/11 | RNAV (GPS) RWY 27R, Amdt 1B. |
| 12–Jan–12 | FL | Orlando | Orlando Sanford Intl | 1/5832 | 12/1/11 | NDB B, Orig-A. |
| 12–Jan–12 | FL | Orlando | Orlando Sanford Intl | 1/5833 | 12/1/11 | ILS OR LOC RWY 9R, Orig-A. |
| 12–Jan–12 | FL | Orlando | Orlando Sanford Intl | 1/5835 | 12/1/11 | RNAV (GPS) RWY 18, Orig-A. |
| 12–Jan–12 | FL | Orlando | Orlando Sanford Intl | 1/5836 | 12/1/11 | NDB C, Orig-A. |
| 12–Jan–12 | MA | Beverly | Beverly Muni | 1/6016 | 12/1/11 | RNAV (GPS) RWY 16, Amdt 1. |
| 12–Jan–12 | VA | South Boston | Willam M Tuck | 1/6226 | 12/1/11 | Takeoff Minimums and Obstacle DP, Amdt 3. |
| 12–Jan–12 | NC | Mount Airy | Mount Airy/Surry County. | 1/6390 | 12/1/11 | NDB RWY 36, Orig-A. |
| 12–Jan–12 | MO | Kansas City | Charles B. Wheeler Downtown. | 1/6613 | 12/1/11 | ILS OR LOC RWY 19, Amdt 22A. |
| 12–Jan–12 | NV | Las Vegas | Mc Carran Intl | 1/6652 | 12/1/11 | ILS OR LOC RWY 25R, Amdt 17. |

| AIRAC Date | State | City | Airport | FDC No. | FDC Date | Subject |
|---|---|---|---|---|---|---|
| 12–Jan–12 ... | NV | Las Vegas ..... | Mc Carran Intl ..... | 1/6653 | 12/1/11 | ILS OR LOC/DME RWY 1L, Orig-A. |
| 12–Jan–12 ... | NV | Las Vegas ..... | Mc Carran Intl ..... | 1/6654 | 12/1/11 | RNAV (GPS) RWY 1R, Amdt 1. |
| 12–Jan–12 ... | NV | Las Vegas ..... | Mc Carran Intl ..... | 1/6655 | 12/1/11 | RNAV (GPS) RWY 19R, Amdt 1. |
| 12–Jan–12 ... | NV | Las Vegas ..... | Mc Carran Intl ..... | 1/6656 | 12/1/11 | VOR RWY 25L/R, Amdt 3. |
| 12–Jan–12 ... | NV | Las Vegas ..... | Mc Carran Intl ..... | 1/6657 | 12/1/11 | RNAV (GPS) RWY 19L, Amdt 1. |
| 12–Jan–12 ... | NV | Las Vegas ..... | Mc Carran Intl ..... | 1/6658 | 12/1/11 | VOR/DME A, Orig-C. |

[FR Doc. 2011–32498 Filed 12–19–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30817; Amdt. No. 3456]**

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

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

**ACTION:** Final rule.

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

**DATES:** This rule is effective December 20, 2011. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 2011.

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

*For examination*—

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

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

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

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

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

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

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

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

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

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

### The Rule

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

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

for making some SIAPs effective in less than 30 days.

## Conclusion

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

## List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on December 9, 2011.

**John M. Allen,**

*Director, Flight Standards Service.*

## Adoption of the Amendment

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

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

**Effective 12 JAN 2012**

San Francisco, CA, San Francisco Intl, Takeoff Minimums and Obstacle DP, Amdt 7
New Haven, CT, Tweed-New Haven, Takeoff Minimums and Obstacle DP, Amdt 6
Fort Myers, FL Southwest Florida Intl, VOR/DME OR TACAN RWY 24, Amdt 2A
Nahunta, GA, Brantley County, Takeoff Minimums and Obstacle DP, Orig
Independence, KS, Independence Muni, ILS OR LOC RWY 35, Amdt 1A
Olathe, KS, Johnson County Executive, LOC RWY 36, Amdt 1B
Olathe, KS, Johnson County Executive, LOC/DME RWY 18, Amdt 7D
Boston, MA, General Edward Lawrence Logan Intl, RNAV (GPS) RWY 15R, Amdt 1A
Mooresville, NC, Lake Norman Airpark, RNAV (GPS) RWY 14, Orig-B
Hastings, NE., Hastings Muni, RNAV (GPS) RWY 4, Orig
Hastings, NE., Hastings Muni, RNAV (GPS) RWY 32, Orig
Hastings, NE., Hastings Muni, VOR RWY 32, Amdt 14
Portland, OR, Portland Intl, ILS OR LOC RWY 10R, ILS RWY 10R (SA CAT I), ILS RWY 10R (CAT II), ILS RWY 10R (CAT III), Amdt 34
Greenville, SC, Greenville Downtown, Takeoff Minimums and Obstacle DP, Amdt 6
Fort Hood/Killeen, TX, Robert Gray AAF, RADAR–2, Orig

**Effective 9 FEB 2012**

Anchorage, AK, Merrill Field, RNAV (GPS)–A, Amdt 1
Anchorage, AK, Merrill Field, Takeoff Minimums and Obstacle DP, Amdt 1
Anchorage, AK, Ted Stevens Anchorage Intl, ILS OR LOC/DME RWY 7L, ILS RWY 7L (SA CAT I), ILS RWY 7L (CAT II), Amdt 2
Anchorage, AK, Ted Stevens Anchorage Intl, ILS OR LOC/DME RWY 7R, ILS RWY 7R (SA CAT I), ILS RWY 7R (CAT II), ILS RWY 7R (CAT III), Amdt 2
Anchorage, AK, Ted Stevens Anchorage Intl, ILS RWY 15, Amdt 5
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 7L, Amdt 2
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 7R, Amdt 4
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 15, Amdt 2
Anchorage, AK, Ted Stevens Anchorage Intl, Takeoff Minimum and Obstacle DP, Amdt 7
Anchorage, AK, Ted Stevens Anchorage Intl, VOR RWY 7R, Amdt 13A, CANCELLED
Big Lake, AK, Big Lake, RNAV (GPS) RWY 7, Amdt 1
Big Lake, AK, Big Lake, RNAV (GPS) RWY 25, Amdt 1
Big Lake, AK, Big Lake, Takeoff Minimums and Obstacle DP, Amdt 2
Big Lake, AK, Big Lake, VOR RWY 7, Amdt 7
Galena, AK, Edward G. Pitka Sr., VOR/DME RWY 7, Amdt 7B
Galena, AK, Edward G. Pitka Sr., VOR/DME RWY 25, Amdt 10B
Kenai, AK, Kenai Muni, ILS OR LOC RWY 19R, Amdt 4
Kenai, AK, Kenai Muni, RNAV (GPS) RWY 1L, Amdt 2
Kenai, AK, Kenai Muni, RNAV (GPS) RWY 19R, Amdt 2
Kenai, AK, Kenai Muni, VOR RWY 19R, Amdt 19
Kenai, AK, Kenai Muni, VOR/DME RWY 1L, Amdt 8
Kodiak, AK, Kodiak, ILS OR LOC/DME Y RWY 25, Amdt 2
Kodiak, AK, Kodiak, VOR RWY 25, Amdt 2
McGrath, AK, McGrath, VOR/DME–C, Amdt 2
Middleton Island, AK, Middleton Island, RNAV (GPS) RWY 1, Amdt 1
Middleton Island, AK, Middleton Island, RNAV (GPS) RWY 19, Amdt 1
Petersburg, AK, Petersburg James A. Johnson, GPS–B, Orig, CANCELLED
Petersburg, AK, Petersburg James A. Johnson, LDA/DME–D, Amdt 6
Petersburg, AK, Petersburg James A. Johnson, RNAV (GPS)–B, Orig
Petersburg, AK, Petersburg James A. Johnson, Takeoff Minimums and Obstacle DP, Amdt 5
Petersburg, AK, Petersburg James A. Johnson, ZARUT ONE Graphic DP
Soldotna, AK, Soldotna, NDB RWY 7, Amdt 2
Soldotna, AK, Soldotna, NDB RWY 25, Amdt 3
Soldotna, AK, Soldotna, VOR–A, Amdt 7
Valdez, AK, Valdez Pioneer Field, JMAAL ONE Graphic DP
Valdez, AK, Valdez Pioneer Field, LDA/DME–H, Amdt 1
Valdez, AK, Valdez Pioneer Field, Takeoff Minimums and Obstacle DP, Amdt 6
Wasilla, AK, Wasilla Takeoff Minimums and Obstacle DP, Amdt 1
Anniston, AL Anniston Rgnl, ILS OR LOC RWY 5, Amdt 3B
Anniston, AL Anniston Rgnl, NDB RWY 5, Amdt 4B
Anniston, AL Anniston Rgnl, RNAV (GPS) RWY 5, Amdt 1A
Anniston, AL Anniston Rgnl, RNAV (GPS) Y RWY 23, Amdt 1A
Anniston, AL Anniston Rgnl, RNAV (GPS) Z RWY 23, Orig-A
Anniston, AL Anniston Rgnl, Takeoff Minimums and Obstacle DP, Amdt 6A
Nashville, AR, Howard County, RNAV (GPS) RWY 1, Orig
Nashville, AR, Howard County, RNAV (GPS) RWY 19, Orig
Nashville, AR, Howard County, Takeoff Minimums and Obstacle DP, Orig
Chinle, AZ, Chinle Muni, Takeoff Minimums and Obstacle DP, Orig
Douglas Bisbee, AZ, Bisbee Douglas Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Los Angeles, CA, Los Angeles Intl, ILS OR LOC RWY 25R, Amdt 17A
Fort Collins/Loveland, CO, Fort Collins-Loveland Muni, ILS OR LOC RWY 33, Amdt 6A
Leesburg, FL, Leesburg Intl, RNAV (GPS) RWY 13, Amdt 2A
Clinton, IA, Clinton Muni, ILS OR LOC RWY 3, Amdt 5
Independence, IA, Independence Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Driggs, ID, Driggs-Reed Memorial, GPS–A, Orig-C, CANCELLED
Driggs, ID, Driggs-Reed Memorial, RNAV (GPS)–A, Orig
Paris, IL, Edgar County, NDB RWY 27, Amdt 10, CANCELLED
Olathe, KS, New Century Aircenter, VOR–A, Amdt 6B, CANCELLED
Scott City, KS, Scott City Muni, Takeoff Minimums and Obstacle DP, Orig
Grand Haven MI, Grand Haven Memorial Airpark, Takeoff Minimums and Obstacle DP, Amdt 5

Cook, MN, Cook Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Ely, MN, Ely Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Aurora, MO, Jerry Sumners Sr Aurora Muni, GPS RWY 36, Orig, CANCELLED
Aurora, MO, Jerry Sumners Sr Aurora Muni, RNAV (GPS) RWY 18, Orig
Aurora, MO, Jerry Sumners Sr Aurora Muni, RNAV (GPS) RWY 36, Orig
Branson West, MO, Branson West Muni-Emerson Field, RNAV (GPS) RWY 3, Orig
Branson West, MO, Branson West Muni-Emerson Field, RNAV (GPS) RWY 21, Orig
Farmington, MO, Farmington Rgnl, VOR/DME–A, Orig-B
Jackson, MS, Hawkins Field, ILS OR LOC RWY 16, Amdt 5A
West Yellowstone, MT, Yellowstone, Takeoff Minimums and Obstacle DP, Amdt 2
West Yellowstone, MT, Yellowstone, TARGY ONE Graphic DP
Hickory, NC, Hickory Rgnl, HICKORY THREE Graphic DP
Northwood, ND, Northwood Muni-Vince Field, Takeoff Minimums and Obstacle DP, Orig
Zelienople, PA, Zelienople Muni, RNAV (GPS) RWY 17, Orig-A
Hohenwald, TN, John A. Baker Fld, NDB RWY 2, Orig-B
Hohenwald, TN, John A. Baker Fld, RNAV (GPS) RWY 2, Amdt 1
Seymour, TX, Seymour Muni, Takeoff Minimums and Obstacle DP, Orig
Norfolk, VA, Chesapeake Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
La Crosse, WI, La Crosse Muni, ILS OR LOC RWY 18, Amdt 20

*Rescinded:* On December 12, 2011 (76 FR 77112), the FAA published an Amendment in Docket No. 30815, Amdt No. 3454 to Part 97 of the Federal Aviation Regulations under section 97.33. The following four entries, effective December 15, 2011, are hereby rescinded in their entirety:

Rota Island-North Mariana Island, CQ, Rota Intl, GPS RWY 9, Orig-C, CANCELLED
Rota Island-North Mariana Island, CQ, Rota Intl, GPS RWY 27, Orig-C, CANCELLED
Rota Island-North Mariana Island, CQ, Rota Intl, RNAV (GPS) RWY 9, Orig
Rota Island-North Mariana Island, CQ, Rota Intl, RNAV (GPS) RWY 27, Orig

[FR Doc. 2011–32506 Filed 12–19–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

## National Institute of Standards and Technology

## 15 CFR Part 285

**[Docket No 110125063–1687–02]**

**RIN 0693–AB61**

## National Voluntary Laboratory Accreditation Program; Operating Procedures

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, is issuing a final rule amending the regulations pertaining to the National Voluntary Laboratory Accreditation Program (NVLAP). Regulations concerning the establishment of laboratory accreditation programs (LAPs) within NVLAP are being amended to clarify the original intent of this section and to improve the readability and understanding of the agency's regulations.

**DATES:** This rule is effective on December 20, 2011.

**ADDRESSES:** David F. Alderman, Acting Chief, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140.

**FOR FURTHER INFORMATION CONTACT:** David F. Alderman, Acting Chief, National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 2140, Gaithersburg, MD 20899–2140; telephone number: (301) 975–4019; email address: *david.alderman@nist.gov*; NVLAP Web site: *www.nist.gov/nvlap.*

**SUPPLEMENTARY INFORMATION:**

### Background

Title 15 Part 285 of the Code of Federal Regulations sets out procedures and general requirements under which the National Voluntary Laboratory Accreditation Program (NVLAP) operates as an unbiased third party to accredit both testing and calibration laboratories. NVLAP establishes laboratory accreditation programs (LAPs) in response to legislation or requests from government agencies and private sector entities.

The NVLAP procedures were first published in the **Federal Register** on February 25, 1976, and have been revised several times. In 2001, major revisions to the procedures were published to ensure their consistency with certain international standards and guidance documents, and to reorganize and simplify Part 285 for ease of use and understanding. While the existing regulations were accurate, the language was complex and difficult to understand; therefore, the procedures were rewritten in plain English and their subparts consolidated in order to make the regulations more user friendly.

### Description and Explanation of Change

The purpose of this rule is to amend section 285.4, *Establishment of laboratory accreditation programs (LAPs) within NVLAP,* so that it conforms to the intent of the 2001 revisions to Part 285 of Title 15 of the CFR and makes the regulations easier to understand. NIST is amending the last sentence in section 285.4 as follows: change the third instance of the word ''and'' to ''or,'' and add the words ''to ensure open participation'' after the phrase ''other means.''

As a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA), NVLAP complies with the requirements of ISO/IEC 17011, *Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies.* The change will allow NVLAP more flexibility in determining how to best fulfill the requirements for impartiality found in ISO/IEC 17011, 4.3.2, by assuring a balanced representation of interested parties when evaluating the need for a requested LAP.

The original intent of the last sentence of section 285.4 was to allow NVLAP the flexibility to employ the most appropriate means to ensure open participation of stakeholders; however, the use of the word ''and'' may be misinterpreted to mean that a public workshop is required for each and every LAP request. There are numerous means by which consultation with interested parties may be accomplished exclusive of a workshop, which include, but are not limited to meeting with government and individual industry stakeholders on a frequent basis, attending consortia and conferences at which regulators, specifiers, and requesters are in attendance, and soliciting public comments via public notices, electronic communications, and news articles. Further, the use of the word ''or'' does not preclude the use of both workshops and other means to collect the necessary information.

### Summary of Comments

On March 29, 2011, the National Institute of Standards and Technology published a notice of proposed rulemaking and request for comments in the **Federal Register** (76 FR 17367) pertaining to the proposed amendment to section 285.4 of Part 285 of Title 15 of the CFR. The comment period closed on April 28, 2011. No comments were received and there is no other reason to believe that any alteration to the proposed rule is necessary; therefore,

NIST will implement the rulemaking as proposed.

**Classification**

*Executive Order 12866*

This rule is not a significant rule for the purposes of Executive Order 12866.

*Executive Order 12612*

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

*Regulatory Flexibility Act*

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, at the proposed rule stage, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The regulation is procedural and has no impact on any entity unless that entity chooses to participate, in which case, the cost to the participant is the same cost for any size participant; (2) access to NVLAP's accreditation system is not conditional upon the size of a laboratory or membership of any association or group, nor are there undue financial conditions to restrict participation; and (3) the technical criteria, against which individual laboratories are assessed, are not changed by this rule. No comments were received on this certification; therefore no regulatory flexibility analysis is required and none was prepared.

*Paperwork Reduction Act*

This rule does not involve a new collection of information subject to the Paperwork Reduction Act (PRA). The collection of information for NVLAP has been approved by the Office of Management and Budget (OMB) under control number 0693–0003. Notwithstanding any other provision of the law, no person is required to comply, nor shall any person be subject to penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

*National Environmental Policy Act*

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

**List of Subjects in 15 CFR Part 285**

Accreditation, Business and industry, Calibration, Commerce, Conformity assessment, Laboratories, Measurement standards, Testing.

For the reasons set forth in the preamble, title 15 of the Code of Federal Regulations is amended as follows:

## PART 285—NATIONAL VOLUNTARY LABORATORY ACCREDITATION PROGRAM

■ 1. The authority citation for 15 CFR Part 285 continues to read as follows:

**Authority:** 15 U.S.C. 272 *et seq.*

■ 2. Section 285.4 is amended by revising the last sentence to read as follows:

**§ 285.4 Establishment of laboratory accreditation programs (LAPs) within NVLAP.**

* * * For requests from private sector entities and government agencies, the Chief of NVLAP shall analyze each request, and, after consultation with interested parties through public workshops or other means to ensure open participation, shall establish the requested LAP, if the Chief of NVLAP determines there is need for the requested LAP.

Dated: December 8, 2011.

**Willie E. May,**

*Associate Director for Laboratory Programs.*

[FR Doc. 2011–32256 Filed 12–19–11; 8:45 am]

BILLING CODE 3510–13–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0003]**

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Cyclosporine

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The NADA provides for the veterinary prescription use of cyclosporine oral solution, USP (MODIFIED) for the control of feline allergic dermatitis.

**DATES:** This rule is effective December 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Angela K.S. Clarke, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, (240) 276–8318, email: *angela.clarke@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408, filed NADA 141–329 that provides for the use of ATOPICA for Cats (cyclosporine oral solution, USP (MODIFIED)) by veterinary prescription for the control of feline allergic dermatitis in cats at least 6 months of age and weighing at least 3 pounds. The NADA is approved as of August 8, 2011, and 21 CFR 520.522 is amended to reflect the approval.

A summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 520**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 2. In § 520.522, revise paragraphs (a) and (d) to read as follows:

**§ 520.522 Cyclosporine.**

(a) *Specifications*—(1) Each cyclosporine capsule, USP (MODIFIED) contains 10, 25, 50, or 100 milligrams (mg) cyclosporine.

(2) Each milliliter of cyclosporine oral solution, USP (MODIFIED) contains 100 mg cyclosporine.

* * * * *

(d) *Conditions of use*—(1) *Dogs.* Use capsules described in paragraph (a)(1) of this section as follow:

(i) *Amount.* Administer 5 mg per kilogram (mg/kg) of body weight given orally as a single daily dose for 30 days. Following this initial daily treatment period, the dosage may be tapered by decreasing the frequency of administration to every other day or two times a week, until a minimum frequency is reached which will maintain the desired therapeutic effect.

(ii) *Indications for use.* For the control of atopic dermatitis in dogs weighing at least 4 pounds.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats.* Use the solution described in paragraph (a)(2) of this section as follow:

(i) *Amount.* Administer 7 mg/kg of body weight orally as a single daily dose for a minimum of 4 to 6 weeks or until resolution of clinical signs. Following this initial daily treatment period, the dosage may be tapered by decreasing the frequency of administration to every other day or twice weekly to maintain the desired therapeutic effect.

(ii) *Indications for use.* For the control of feline allergic dermatitis in cats at least 6 months of age and weighing at least 3 pounds.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: December 15, 2011.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 2011–32526 Filed 12–19–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 9570]**

**RIN 1545–BK16**

## Tax Return Preparer Penalties Under Section 6695

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations that modify existing regulations related to the tax return preparer penalties under section 6695 of the Internal Revenue Code (Code). The final regulations are necessary to monitor and to improve compliance with the tax return preparer due diligence requirements of section 6695(g). The final regulations affect paid tax return preparers.

**DATES:** *Effective date:* The final regulations are effective on December 20, 2011.

*Applicability date:* For date of applicability, see § 1.6695–2(e).

**FOR FURTHER INFORMATION CONTACT:** Spence Hanemann, (202) 622–4940 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collection of information contained in the final regulations was previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1570. The collection of information is in § 1.6695–2(b)(1) and (b)(4) of the final regulations, and is an increase in the total annual burden from the burden in the prior regulations. The collection of this information will improve the IRS' ability to enforce compliance with the due diligence requirements under section 6695(g) with respect to determining eligibility for, or the amount of, the earned income credit (EIC) under section 32.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6695 of the Code.

The Treasury Department and the IRS published a notice of proposed rulemaking (REG–140280–09) in the **Federal Register**, 76 FR 62689, on October 11, 2011 (the NPRM). A public hearing was scheduled for November 7, 2011. The IRS did not receive any requests to testify at the public hearing, and the public hearing was cancelled. Written comments responding to the NPRM were received and are available for public inspection at *http://www.regulations.gov* or upon request. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions to the regulations are discussed in this preamble.

### Summary of Comments and Explanation of Revisions

The IRS received nine written comments in response to the NPRM, and this section addresses those public comments. This section also describes the significant differences between the rules proposed in the NPRM and those adopted in the final regulations.

*1. 2011 Amendment to Section 6695(g)*

On October 21, 2011, section 501 of the United States-Korea Free Trade Agreement Implementation Act, Public Law 112–41, 125 Stat 428, amended section 6695(g) of the Code by increasing the amount of the penalty from $100 to $500. To account for this change in the law, § 1.6695–2(a) of the final regulations has been conformed to the statutory language of section 6695(g), as amended.

*2. Necessity of These Regulations*

Two commenters stated that the proposed amendments to the due diligence standards in the NPRM were unnecessary in light of recent regulatory changes requiring tax return preparers to register with the IRS and comply with the ethical standards governing practice before the IRS (Circular 230), as well as the tax return preparer penalties under section 6694. They suggested that the IRS can apply these existing provisions to address misconduct by tax return preparers, including improper determination of eligibility for, and amount of, EIC by both individual tax return preparers and firms.

As reflected in section 6695(g), Congress has determined that noncompliance with the EIC rules poses a sufficiently significant problem to merit imposing unique due diligence requirements on tax return preparers involved in determining eligibility for, or amount of, the EIC. By recently quintupling the amount of the penalty for failure to comply with these requirements, Congress reaffirmed the need for specific rules to reduce EIC noncompliance. In order to address noncompliance with the EIC rules, the final regulations modify the due diligence requirements under section 6695(g) that have been in place for over a decade. Treasury and the IRS concluded that these regulations are consistent with section 6695(g), and no modification is made in the final regulations in response to these comments.

*3. Submission of Form 8867*

Section 1.6695–2(b)(1)(i) of the proposed regulations required that the Form 8867, ''Paid Preparer's Earned Income Credit Checklist,'' be submitted to the IRS in the manner required by forms, instructions, or other appropriate guidance. One commenter noted, in part, that tax return preparers sometimes provide a paper copy of the completed tax return or claim for refund to the taxpayer for submission by the taxpayer. A tax return preparer's ability to provide a paper copy, as opposed to filing the tax return electronically, is subject to the rules and limitations in § 301.6011–7 and related guidance. Another commenter stated that the proposed regulations were unclear in how they apply to nonsigning tax return preparers. The due diligence requirements and the penalty for failure to comply with them apply to any tax return preparer, including a nonsigning tax return preparer, who determines eligibility for, or amount of, the EIC.

After consideration of these comments, Treasury and the IRS have concluded that the rules in the regulations should be clarified to provide how tax return preparers who prepare a tax return or claim for refund but do not submit it directly to the IRS can satisfy the requirement under proposed § 1.6695–2(b)(1)(i) to submit the completed Form 8867 to the IRS. In response to these comments, § 1.6695–2(b)(1)(i) of the final regulations provides that tax return preparers who prepare a tax return or claim for refund but do not submit it directly to the IRS may satisfy this aspect of their due diligence obligation by providing the form to the taxpayer or the signing tax return preparer, as appropriate, for submission with the tax return or claim for refund.

One commenter suggested that the Form 8867 be a stand-alone form that the taxpayer signs and submits as an affidavit of EIC eligibility. After consideration of this comment, Treasury and the IRS have concluded that imposing such an obligation on taxpayers, rather than on tax return preparers, would be contrary to the purpose of section 6695(g), which is to discourage tax return preparers from preparing EIC tax returns or claims for refund without performing basic due diligence. No modification is made in the final regulations in response to this comment.

*4. Requirement To Verify Taxpayer Information*

Section 1.6695–2(b)(1)(i) of the proposed regulations required submission of Form 8867 to the IRS, and § 1.6695–2(b)(4)(i)(C) of the proposed regulations required retention of a copy of any document that was provided by the taxpayer and on which the tax return preparer relied to complete Form 8867 or the Earned Income Credit Worksheet. Two commenters suggested that these additional requirements increased a tax return preparer's burden under the knowledge requirement of existing § 1.6695–2(b)(3) because a tax return preparer would now be obligated to verify taxpayers' responses to the eligibility questions and also to verify nonsigning tax return preparers' (if any) completion of the Form 8867. The proposed regulations, however, do not expand tax return preparers' obligation to verify information provided by taxpayers and other tax return preparers under existing § 1.6695–2(b)(3).

Under § 1.6695–2(b)(3) of the current regulations, tax return preparers are already required to complete Form 8867, prohibited from ignoring the implications of information provided, obligated to make reasonable inquiries if the information provided appears incorrect, inconsistent, or incomplete, and required to contemporaneously document their reasonable inquiries and the taxpayer's responses. For purposes of § 1.6695–2(b)(3), tax return preparers would not be held to a higher standard under the proposed regulations than they are under the existing regulations. A tax return preparer can generally rely on the information furnished by a taxpayer (or other tax return preparer who determines eligibility for, or amount of, the EIC) as long as the tax return preparer does not know, or have reason to know, that the information is incorrect, inconsistent, or incomplete. A signing tax return preparer who satisfies the knowledge requirement in § 1.6695–2(b)(3), therefore, will ordinarily be able to rely on the information furnished to the signing tax return preparer by a taxpayer or nonsigning tax return preparer regarding the EIC. The additional requirements in proposed § 1.6695–2(b)(1)(i) and (b)(4)(i)(C) are not unduly burdensome and will improve the IRS' ability to determine whether a tax return preparer has complied with the EIC due diligence requirements that already exist. No modification is made in the final regulations in response to these comments.

*5. Nonsigning Tax Return Preparers*

Two commenters expressed concern that expanding the due diligence requirements and penalty to nonsigning tax return preparers would subject individuals to the section 6695(g) penalty who are beyond the intended scope of these rules. The commenters provided the example of individuals hired by tax preparation software companies to answer discrete questions for taxpayers who are using tax preparation software to prepare their own tax return or claim for refund. These individuals provide general resource information for the taxpayers who are preparing their own tax return or claim for refund, and they do not know all of the specific facts relating to the taxpayer's tax return or claim for refund. The commenters reasoned that these individuals might be nonsigning tax return preparers and would arguably be subject to these due diligence requirements and related penalty.

The term ''nonsigning tax return preparer'' is specifically defined in § 301.7701–15(b)(2) and is limited to those who prepare all or a substantial portion of a tax return or claim for refund within the meaning of § 301.7701–15(b)(3). Under § 301.7701–15(b)(3), a person who renders tax advice on a position that is directly relevant to the existence or amount of an entry on a tax return or claim for refund is regarded as having prepared that entry. Section 301.7701–15(b)(3) further provides that whether a schedule, entry, or other portion of a tax return or claim for refund is a substantial portion is determined based upon whether the person knows or reasonably should know that the tax attributable to the schedule, entry, or other portion of a tax return or claim for refund is a substantial portion of the tax required to be shown on the tax return or claim for refund. Also, § 301.7701–15(f)(1)(viii) provides an exception from the definition of tax return preparer for any individual providing only typing, reproduction, or other mechanical assistance in the preparation of a tax return or claim for refund.

Treasury and the IRS have concluded that, in the routine situation described by these commenters, the individuals employed at the tax preparation software companies as described in the comments are not nonsigning tax return preparers as long as they either (i) fall within the mechanical exception because they are not exercising independent judgment on the taxpayer's underlying tax positions, or (ii) do not know (and reasonably should not know) that any generic advice provided relating to the EIC is a substantial portion of the tax required to be shown. On the other hand, in rare instances when any such individual is both exercising independent judgment and knows or reasonably should know that specific advice provided to a taxpayer

relating to EIC is a substantial portion of the tax return or claim for refund within the meaning of § 301.7701–15(b)(3), the individual is a nonsigning tax return preparer subject to the due diligence rules. No modification is made to the final regulations in response to this comment.

*6. Penalizing Firms*

By replacing ''signing tax return preparer'' with ''tax return preparer,'' § 1.6695–2(a) of the proposed regulations effectively provided that a firm that employs a person to prepare for compensation a tax return or claim for refund may be subject to the penalty for its employee's failure to comply with the due diligence requirements. Two commenters questioned the proposed application of the due diligence requirements and penalty to firms. Section 6695(g) imposes a penalty on ''[a]ny person who is a tax return preparer'' that fails to comply with the due diligence requirements ''with respect to determining eligibility for, or the amount of, the credit allowable by section 32.'' Under section 7701(a)(36), a ''tax return preparer'' is ''any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by title or any claim for refund of tax imposed by this title.'' After consideration of these comments, Treasury and the IRS have concluded that it is appropriate to apply the due diligence requirements to firms as provided in the proposed regulations. This position is consistent with the long-standing application of the section 6694 tax return preparer penalties to firms under the rules provided in §§ 1.6694–2(a)(2) and 1.6694–3(a)(2). No modification is made to the final regulations in response to these comments.

*7. Conditions Required for Imposing a Penalty on a Firm*

Proposed § 1.6695–2(c) provided generally that a firm cannot be subject to a penalty under section 6695(g) unless one of the following three conditions is satisfied: (1) A member of the principal management of the firm knew of the failure to comply with the due diligence requirements; (2) the firm failed to establish reasonable and appropriate procedures to ensure compliance with the due diligence requirements; or (3) the firm failed to comply with its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference. Two commenters expressed concern with the conditions required for application of the penalty to a firm, as set forth in proposed § 1.6695–2(c).

One of these commenters noted that, if management became aware through the firm's reasonable and appropriate compliance procedures that an employee failed to comply with the due diligence requirements, then the firm would be subject to a penalty under proposed § 1.6695–2(c)(1) because management knew of the failure. The commenter suggested that the final regulations provide that the penalty not apply to the firm if management knew and took reasonable action to resolve the problem before the penalty is assessed. After consideration of this comment, Treasury and the IRS have concluded that, if management knows of the failure to comply prior to the date the tax return or claim for refund is filed, the only acceptable remedial action would be to satisfy the due diligence requirements prior to filing, in which case there would be no penalty. If, on the other hand, management does not know of the failure to comply until after the tax return or claim for refund is filed, the appropriate analysis is whether the firm had reasonable and appropriate compliance procedures and disregarded those procedures through willfulness, recklessness, or gross indifference, as described in § 1.6695–2(c)(3), and management's knowledge is relevant only insofar as it is a factor in that analysis. In response to this comment, the final regulations provide that a firm is only subject to a penalty under § 1.6695–2(c)(1) if the manager knew of an employee's failure to comply with the due diligence requirements prior to the date the tax return or claim for refund was filed.

The other commenter suggested that the IRS might determine under proposed § 1.6695–2(c)(3) that a single failure to submit Form 8867 with a tax return by an otherwise compliant firm qualifies as disregard of reasonable and appropriate compliance procedures through gross indifference. Section 1.6695–2(c)(3) of the proposed regulations established a heightened standard, in part, by imposing liability for the penalty against a firm that disregarded its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference. A single, accidental failure to submit Form 8867 with a tax return by an otherwise compliant firm would not constitute disregard of compliance procedures through willfulness, recklessness, or gross indifference, and the firm would not be subject to the penalty in that situation. After consideration of this comment, Treasury and the IRS have concluded that the heightened standards in proposed § 1.6695–2(c)(3) would adequately protect firms against isolated and inadvertent instances of disregard of their compliance procedures. No modification is made to the final regulations in response to this comment.

*8. Retention of Records*

Proposed § 1.6695–2(b)(4)(ii) required that a tax return preparer must retain the records described in § 1.6695–2(b)(4)(i) for the period ending three years after the later of the date the tax return or claim for refund was due or the date it was filed. One commenter stated that the record retention date should not be tied to the date the tax return or claim for refund was filed because, if the tax return preparer who prepares the tax return or claim for refund is not the individual who files it, that tax return preparer might not know when it is filed and when the retention period expires. In response to the comment, the final regulations require a tax return preparer to retain the records described in § 1.6695–2(b)(4)(i) for the period ending three years after the later of the date the tax return or claim for refund was due or the date it was transferred in final form by the tax return preparer to the next person in the course of the filing process. In the case of a signing tax return preparer who electronically files the tax return or claim for refund, the next step in the filing process will be to electronically file the tax return or claim for refund, so the relevant date is the date the tax return or claim for refund is filed. In the case of a signing tax return preparer who does not electronically file the tax return or claim for refund, the next person in the course of the filing process will be the taxpayer, so the relevant date is the date the tax return or claim for refund is presented to the taxpayer for signature. In the case of a nonsigning tax return preparer, the next person in the course of the filing process will be the signing tax return preparer, so the relevant date is the date the nonsigning tax return preparer submitted to the signing tax return preparer that portion of the tax return or claim for refund for which the nonsigning tax return preparer was responsible.

The record retention date under the final regulations will be the same for nonsigning tax return preparers supervised by a signing tax return preparer in the same firm and nonsigning tax return preparers who are employed by a different firm than the signing tax return preparer. In both cases, the records must be retained until three years from the later of the due date of the tax return or the date the tax

return or claim for refund is submitted in final form to the signing tax return preparer. As a practical matter, however, a supervised nonsigning tax return preparer and the supervising signing tax return preparer can satisfy both of their record retention obligations under the final regulations by retaining a single paper or electronic copy of the records described in § 1.6695–2(b)(4)(i). The supervised nonsigning tax return preparer's record retention period may, nevertheless, expire before the signing tax return preparer's record retention period. In such cases, the supervising signing tax return preparer is required to retain the records until the expiration of his or her record retention period under § 1.6695–2(b)(4)(ii), regardless of when the supervised nonsigning tax return preparer's record retention period expires.

*9. Comment Period and Effective Date*

One commenter stated that the 30-day comment period provided under the proposed regulations was inadequate. Numerous substantive comments were, in fact, received addressing the proposed regulations. Treasury and the IRS have concluded that the duration of the comment period provided in the proposed regulations was in compliance with all of the applicable procedural rules and requirements governing regulations.

Three commenters stated that the proposed effective date of the regulations would not provide tax return preparers and computer software providers sufficient time to adjust their procedures and products to reflect the proposed amendments. The proposed regulations provided that they will apply to tax returns and claims for refund for tax years ending on or after December 31, 2011. The IRS publicly announced in Spring 2011 that the IRS was exploring the implementation of a new requirement for tax return preparers to submit the Form 8867 with a taxpayer's tax return or claim for refund. Treasury and the IRS have concluded that implementation of these rules for the upcoming filing season is consistent with the best interests of tax administration.

**Special Analyses**

It has been determined that this final rule is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to the final regulations.

When an agency issues a rulemaking, the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities.

The final rules affect tax return preparers who determine the eligibility for, or the amount of, EIC. The NAICS code that relates to tax preparation services (NAICS code 541213) is the appropriate code for tax return preparers subject to the final regulations. Entities identified as tax preparation services are considered small under the Small Business Administration size standards (13 CFR 121.201) if their annual revenue is less than $7 million. The IRS estimates that approximately 75 to 85 percent of the 550,000 persons who work at firms or are self-employed tax return preparers are operating as or employed by small entities. The IRS has determined that the final rules will have an impact on a substantial number of small entities.

The IRS has determined, however, that the economic impact on entities affected by the final rules will not be significant. The prior regulations under section 6695(g) required tax return preparers to complete the Form 8867 or otherwise record in their files the information necessary to complete the form. Tax return preparers were also required to maintain records of the checklists and EIC computations, as well as a record of how and when the information used to compute the EIC was obtained by the tax return preparer. The amount of time necessary to submit, record, and retain the additional information required in the final regulations, therefore, should be minimal for these tax return preparers.

Based on these facts, the IRS hereby certifies that the collection of information contained in the final regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business and no comments were received.

**Drafting Information**

The principal author of the final regulations is Spence Hanemann, Office of the Associate Chief Counsel (Procedure and Administration).

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

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

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

Section 1.6695–2 also issued under 26 U.S.C. 6695(g). * * *

■ **Par. 2.** In § 1.6695–2, paragraphs (a), (b)(1), (b)(2), (b)(4), (c), and (d) are revised and new paragraph (e) is added to read as follows:

**§ 1.6695–2 Tax return preparer due diligence requirements for determining earned income credit eligibility.**

(a) *Penalty for failure to meet due diligence requirements.* A person who is a tax return preparer of a tax return or claim for refund under the Internal Revenue Code with respect to determining the eligibility for, or the amount of, the earned income credit (EIC) under section 32 and who fails to satisfy the due diligence requirements of paragraph (b) of this section will be subject to a penalty of $500 for each such failure.

(b) * * *

(1) *Completion and submission of Form 8867*—(i) The tax return preparer must complete Form 8867, ''Paid Preparer's Earned Income Credit Checklist,'' or such other form and such other information as may be prescribed by the Internal Revenue Service (IRS), and—

(A) In the case of a signing tax return preparer electronically filing the tax return or claim for refund, must electronically file the completed Form 8867 (or successor form) with the tax return or claim for refund;

(B) In the case of a signing tax return preparer not electronically filing the tax return or claim for refund, must provide the taxpayer with the completed Form 8867 (or successor form) for inclusion with the filed tax return or claim for refund; or

(C) In the case of a nonsigning tax return preparer, must provide the signing tax return preparer with the completed Form 8867 (or successor form), in either electronic or non-

electronic format, for inclusion with the filed tax return or claim for refund.

(ii) The tax return preparer's completion of Form 8867 (or successor form) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained by the tax return preparer.

(2) *Computation of credit*—(i) The tax return preparer must either—

(A) Complete the Earned Income Credit Worksheet in the Form 1040 instructions or such other form and such other information as may be prescribed by the IRS; or

(B) Otherwise record in one or more documents in the tax return preparer's paper or electronic files the tax return preparer's EIC computation, including the method and information used to make the computation.

(ii) The tax return preparer's completion of the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section) must be based on information provided by the taxpayer to the tax return preparer or otherwise reasonably obtained by the tax return preparer.

* * * * *

(4) *Retention of records*—(i) The tax return preparer must retain—

(A) A copy of the completed Form 8867 (or successor form);

(B) A copy of the completed Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section); and

(C) A record of how and when the information used to complete Form 8867 (or successor form) and the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section) was obtained by the tax return preparer, including the identity of any person furnishing the information, as well as a copy of any document that was provided by the taxpayer and on which the tax return preparer relied to complete Form 8867 (or successor form) or the Earned Income Credit Worksheet (or other record of the tax return preparer's EIC computation permitted under paragraph (b)(2)(i)(B) of this section).

(ii) The items in paragraph (b)(4)(i) of this section must be retained for three years from the latest of the following dates, as applicable:

(A) The due date of the tax return (determined without regard to any extension of time for filing);

(B) In the case of a signing tax return preparer electronically filing the tax return or claim for refund, the date the tax return or claim for refund was filed;

(C) In the case of a signing tax return preparer not electronically filing the tax return or claim for refund, the date the tax return or claim for refund was presented to the taxpayer for signature; or

(D) In the case of a nonsigning tax return preparer, the date the nonsigning tax return preparer submitted to the signing tax return preparer that portion of the tax return or claim for refund for which the nonsigning tax return preparer was responsible.

(iii) The items in paragraph (b)(4)(i) of this section may be retained on paper or electronically in the manner prescribed in applicable regulations, revenue rulings, revenue procedures, or other appropriate guidance (see § 601.601(d)(2) of this chapter).

(c) *Special rule for firms.* A firm that employs a tax return preparer subject to a penalty under section 6695(g) is also subject to penalty if, and only if—

(1) One or more members of the principal management (or principal officers) of the firm or a branch office participated in or, prior to the time the return was filed, knew of the failure to comply with the due diligence requirements of this section;

(2) The firm failed to establish reasonable and appropriate procedures to ensure compliance with the due diligence requirements of this section; or

(3) The firm disregarded its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference (including ignoring facts that would lead a person of reasonable prudence and competence to investigate or ascertain) in the preparation of the tax return or claim for refund with respect to which the penalty is imposed.

(d) *Exception to penalty.* The section 6695(g) penalty will not be applied with respect to a particular tax return or claim for refund if the tax return preparer can demonstrate to the satisfaction of the IRS that, considering all the facts and circumstances, the tax return preparer's normal office procedures are reasonably designed and routinely followed to ensure compliance with the due diligence requirements of paragraph (b) of this section, and the failure to meet the due diligence requirements of paragraph (b) of this section with respect to the particular tax return or claim for refund was isolated and inadvertent. The preceding sentence does not apply to a firm that is subject to the penalty as a result of paragraph (c) of this section.

(e) *Effective/applicability date.* This section applies to tax returns and claims for refund for tax years ending on or after December 31, 2011.

**Steven T. Miller,**

*Deputy Commissioner for Services and Enforcement.*

Approved: December 14, 2011.

**Emily S. McMahon,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 2011–32487 Filed 12–19–11; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2011–1112]**

**RIN 1625–AA00**

## Safety Zone; City of Beaufort's Tricentennial New Year's Eve Fireworks Display, Beaufort River, Beaufort, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Beaufort River, in Beaufort, South Carolina, during the City of Beaufort's Tricentennial New Year's Eve Fireworks Display. The safety zone is necessary to protect the public from the hazards associated with launching fireworks over navigable waters of the United States. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

**DATES:** This rule is effective from 5:30 p.m. until 6:50 p.m. on December 31, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1112 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1112 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary final rule, call or email Ensign John

Santorum, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.R.Santorum@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive notice of the fireworks display until December 1, 2011. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the fireworks display. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the fireworks display.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

## Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with launching fireworks over navigable waters of the United States.

## Discussion of Rule

On New Year's Eve, a fireworks display will be held in Beaufort, South Carolina. The fireworks will be launched from a barge, which will be located on the Beaufort River. The fireworks will explode over the Beaufort River. The fireworks display is scheduled to commence at 6 p.m. and conclude at 6:20 p.m.

The temporary safety zone encompasses certain waters of the Beaufort River in Beaufort, South Carolina. The safety zone will be enforced from 5:30 p.m. on December 31, 2011, 30 minutes prior to the scheduled commencement of the fireworks display at approximately 6 p.m., to ensure the safety zone is clear of persons and vessels. Enforcement of the safety zone will cease at 6:50 p.m. on December 31, 2011, 30 minutes after the scheduled conclusion of the fireworks display, to account for possible delays. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

## Regulatory Analyses

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

## Regulatory Planning and Review

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

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will be enforced for only one hour and twenty minutes; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

## Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Beaufort River encompassed within the safety zone from 5:30 p.m. until 6:50 p.m. on December 31, 2011. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

## Assistance for Small Entities

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

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that 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 this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone that will be enforced for a total of one hour and twenty minutes. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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

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

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

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

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

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

■ 2. Add a temporary § 165.T07–1112 to read as follows:

**§ 165.T07–1112 Safety Zone; City of Beaufort's Tricentennial New Year's Eve Fireworks Display, Beaufort River, Beaufort, SC.**

(a) *Regulated Area.* The following regulated area is a safety zone: all waters of the Beaufort River within a 500 yard radius of position 32°25′40″ N, 80°40′23″ W. 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 Charleston in the enforcement of the regulated area.

(c) *Regulations.*

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port

Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

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

(d) *Effective Date.* This rule is effective from 5:30 p.m. until 6:50 p.m. on December 31, 2011.

Dated: December 9, 2011.

**M.F. White,**

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

[FR Doc. 2011–32485 Filed 12–19–11; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 4

**RIN 2900–AN60**

### Schedule for Rating Disabilities; Evaluation of Amyotrophic Lateral Sclerosis

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending its Schedule for Rating Disabilities by revising the disability evaluation criterion provided for amyotrophic lateral sclerosis (ALS) to provide an evaluation of 100 percent for any veteran with service-connected ALS. This change is necessary to adequately compensate veterans who suffer from this progressive, untreatable, and fatal disease. This change is intended to provide a total disability rating for any veteran with service-connected ALS.

**DATES:** *Effective Date:* This final rule is effective January 19, 2012.

*Applicability Date:* This final rule applies to an application for benefits that:

- Is received by VA on or after January 19, 2012;
- Was received by VA before January 19, 2012 but has not been decided by a VA regional office as of that date;
- Is appealed to the Board of Veterans' Appeals on or after January 19, 2012;
- Was appealed to the Board before January 19, 2012 but has not been decided by the Board as of that date; or
- Is pending before VA on or after January 19, 2012 because the Court of Appeals for Veterans Claims vacated a Board decision on the application and remanded it for readjudication.

**FOR FURTHER INFORMATION CONTACT:** Nancy A. Copeland, Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9428. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On June 23, 2010, VA published in the **Federal Register** (75 FR 35711) a proposed rule that would revise the evaluation criterion for amyotrophic lateral sclerosis (ALS) in the VA Schedule for Rating Disabilities (diagnostic code 8017 in 38 CFR 4.124a, the schedule of ratings for neurological conditions and convulsive disorders). The schedule previously provided a minimum evaluation of 30 percent for ALS; however, we determined that providing a 100-percent evaluation in all cases would obviate the need to reassess and reevaluate veterans with ALS repeatedly over a short period of time, as the condition worsens and inevitably and relentlessly progresses to total disability, and we proposed to increase the minimum evaluation for ALS to 100 percent.

### Comments in Response to Proposed Rule

A 30-day comment period ended July 23, 2010, and we received comments from 17 individual members of the general public and 1 from the Amyotrophic Lateral Sclerosis Association. The comments from the general public included 5 from veterans who have ALS, 3 from family members of veterans who have ALS or who died from ALS, and 1 from an individual raising claim-specific issues. Fifteen of the individual commenters expressed support for the rule. Two of the 15 said they support the rule ''wholeheartedly,'' and others used expressions such as ''it is imperative'' and ''it is absolutely vital.'' We are not making any changes to the final rule based on these supportive comments.

In addition, the Amyotrophic Lateral Sclerosis (ALS) Association strongly endorsed the proposed rule. It stated that the establishment of an evaluation of 100 percent for ALS in all cases, plus the note under the evaluation criterion that recommends consideration of special monthly compensation (SMC) (an additional monthly amount of compensation that may be paid to veterans with certain serious disabilities) will help ensure that veterans with ALS are compensated appropriately. The ALS Association recommended that VA adopt special processing procedures to expedite ALS claims; however, VA has already established procedures for handling hardship cases involving seriously disabled veterans. Therefore, we are not making any changes to the final rule based on this comment.

One commenter said that he would like to see the 100-percent rating for this disease given to all veterans, whether or not they are service-connected. However, under current law, 38 U.S.C. 1110 and 1131, VA's authority is limited to providing compensation to veterans with service-connected disabilities. Therefore, as VA is prohibited from taking the action the commenter requests, we are not making any changes to the final rule based on this comment.

One commenter expressed the belief that revision of the VA rating schedule in the proposed rulemaking would be ''arbitrary,'' arguing that ALS was being evaluated differently from other neurological disorders. The comment expressed the belief that the proposed rule would ''rate multiple disabilities as a single disability'' when a possibility of entitlement to SMC exists, and that the proposed rule would ''produce decisions which result in payment at a rate lower than the veteran is entitled to now.''

VA appreciates this comment; however, this rule does not change the procedure for evaluating service-connected disabilities. It only prescribes a higher minimum disability rating for ALS. VA remains required to provide an evaluation for all service-connected disabilities, regardless of whether a veteran already has received a 100-percent disability rating for one. Therefore, all veterans will continue to receive thorough evaluations for all service-connected disabilities and disorders. All veterans who would be eligible for SMC or ancillary benefits before the promulgation of this regulation will remain so.

As the proposed rule explained, ALS is a rapidly progressing disease, and establishment of a 100-percent evaluation for ALS will not adversely affect how ALS is evaluated for rating purposes. Although a veteran may receive compensation at the 100-percent rate based either on a 100-percent evaluation specifically for ALS or on a combined evaluation for ALS and other service-connected conditions, on either basis VA may consider the veteran for

varying levels of SMC, which is an amount of compensation in addition to amounts payable for service-connected disability, including disabilities rated 100-percent disabling, where applicable. Indeed, as amended, 38 CFR 4.124a includes a note to the rater: ''Consider the need for special monthly compensation.'' Furthermore, because this rule does not alter VA's procedures regarding evaluation of all disabilities and disorders, any ancillary benefits to which a veteran may be entitled will be preserved. We thus make no changes to the regulation based on this comment.

One general public commenter raised claim-specific issues that are unrelated to this rulemaking. We thus are making no changes to the proposed rule based on this comment.

Therefore, based on the rationale set forth in the proposed rule and this document, we are adopting the provisions of the proposed rule as a final rule with no changes.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of'1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule could affect only VA beneficiaries and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are as follows: 64.109, Veterans Compensation for Service-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on October 7, 2011, for publication.

**List of Subjects in 38 CFR Part 4**

Disability benefits, Pensions, Veterans.

Dated: December 15, 2011.

**Robert C. McFetridge,**

*Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

## PART 4—SCHEDULE FOR RATING DISABILITIES

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

**Authority:** 38 U.S.C. 1155, unless otherwise noted.

### Subpart B—Disability Ratings

■ 2. In § 4.124a, revise diagnostic code 8017 to read as follows:

**§ 4.124a Schedule of ratings—neurological conditions and convulsive disorders.**

* * * * *

| | | Rating |
|---|---|---|
| * | * | * |
| 8017 | Amyotrophic lateral sclerosis | 100 |

**Note:** Consider the need for special monthly compensation.

* * * * *

[FR Doc. 2011–32531 Filed 12–19–11; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

**RIN 2900–AO28**

### Copayments for Medications in 2012

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) amends its medical regulations concerning the copayment required for certain medications. Under current regulations, beginning on January 1, 2012, the copayment amount must be increased based on the prescription drug component of the Medical Consumer Price Index, and the maximum annual copayment amount must be increased when the copayment is increased. A prior action ''froze'' the copayment amount for veterans in VA's health care system enrollment priority categories 2 through 6 and allowed for increased copayments, as required by the current regulation, only for veterans in priority categories 7 and 8. This document freezes copayments at the

current rate for veterans in priority categories 2 through 6 for the next 12 months, and thereafter resumes increasing copayments in accordance with any change in the prescription drug component of the Medical Consumer Price Index (CPI–P).

**DATES:** *Effective Date:* This rule is effective on December 20, 2011.

Comments must be received on or before February 21, 2012.

**ADDRESSES:** Written comments may be submitted by email through *http://www.regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO28, Copayments for Medications in 2012.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kristin Cunningham, Director, Business Policy, Chief Business Office, 810 Vermont Avenue, Washington, DC 20420, (202) 461–1599 (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Under 38 U.S.C. 1722A(a), VA must require veterans to pay a $2 copayment for each 30-day supply of medication furnished on an outpatient basis for the treatment of a nonservice-connected disability or condition. Under 38 U.S.C. 1722A(b), VA ''may,'' by regulation, increase that copayment and establish a maximum annual copayment (a ''cap''). We interpret section 1722A(b) to mean that VA has discretion to determine the appropriate copayment amount and annual cap amount for medication furnished on an outpatient basis for covered treatment, provided that any decision by VA to increase the copayment amount or annual cap amount is the subject of a rulemaking proceeding. The copayment amount cannot exceed the cost to the Secretary of this medication (including administrative costs). In 66 Fed Reg 63499 we determined a method for calculating this cost. We have implemented this statute in 38 CFR 17.110.

Under current 38 CFR 17.110(b)(1), veterans are ''obligated to pay VA a copayment for each 30-day or less supply of medication provided by VA on an outpatient basis (other than medication administered during treatment).'' Under the current regulation, for the period from July 1, 2010, through December 31, 2011, ''the copayment amount for veterans in priority categories 2 through 6 of VA's health care system * * * is $8.'' 38 CFR 17.110(b)(1)(ii). ''For veterans in priority categories 7 and 8 of VA's health care system (see § 17.36), the copayment amount from July 1, 2010, through December 31, 2011, is $9.'' 38 CFR 17.110(b)(1)(iii). Thereafter, the copayment amount for all affected veterans is to be established using a formula based on the prescription drug component of the Medical Consumer Price Index, set forth in 38 CFR 17.110(b)(1)(iv).

Current § 17.110(b)(2) also includes a ''cap'' on the total amount of copayments in a calendar year for a veteran enrolled in one of VA's health care enrollment system priority categories 2 through 6. Through December 31, 2011, that cap is set at $960. Thereafter, the cap is to ''increase[ ] by $120 for each $1 increase in the copayment amount'' applicable to veterans enrolled in one of VA's health care enrollment system priority categories 2 through 6.

On February 22, 2011, we published a final rulemaking that established the copayment amounts discussed above, effective through December 31, 2011. 76 FR 9646. In the interim final rule which announced our intent to freeze copayments through December 31, 2011, we made clear that we would return to the CPI–P methodology ''unless additional rulemaking is initiated.'' 75 FR 32670. We are now undertaking ''additional rulemaking'' to extend the freeze in copayment rates.

In our prior rulemaking, we indicated that we were reviewing whether to revise the current regulatory formula. 76 FR 9647. We are still considering such revision, and will continue to review the matter in 2012. Therefore, as before, we continue to believe that a freeze is appropriate in light of this anticipated review and given the current economic climate, and propose to continue to delay implementation of the increase in the copayment amount (and the corresponding $120 increase in the cap) until the completion of our review for veterans in priority categories 2 through 6 of VA's health care system. 76 FR 9647. We continue to believe that it is appropriate to maintain the current copayment amount for these groups while we review our overall copayment methodology because these groups would be impacted more by the increase in the copayment due to their likely greater need for medical care due to their disabilities or conditions of service. Therefore, we will continue the copayment amount at the current $8 rate for veterans in priority categories 2 through 6 through December 31, 2012, in order to complete the review of indicators to base our copayment amounts. The cap will also remain at the current level ($960) for these veterans. Depending on the results of the review described above, the Secretary may initiate a new rulemaking on this subject rather than continue to rely on the CPI–P escalator provision to determine the copayment amount.

At the end of calendar year 2012, unless additional rulemaking is initiated, VA will once again utilize the CPI–P methodology in § 17.110(b)(1)(iv) to determine whether to increase copayments and calculate any mandated increase in the copayment amount for veterans in priority categories 2 through 6. At that time, the CPI–P as of September 30, 2012, will be divided by the index as of September 30, 2001, which was 304.8. The ratio will then be multiplied by the original copayment amount of $7. The copayment amount of the new calendar year will be rounded down to the whole dollar amount. As mandated by current § 17.110(b)(2), the annual cap will be calculated by increasing the cap by $120 for each $1 increase in the copayment amount. Any change in the copayment amount and cap, along with the associated calculations explaining the basis for the increase, will be published in a **Federal Register** notice. Thus, the intended effect of this rule is to temporarily prevent increases in copayment amounts and the copayment cap for veterans in priority categories 2 through 6, following which copayments and the copayment cap will increase as prescribed in current § 17.110(b).

At the same time, in light of the statutory requirement to share costs under 38 U.S.C. 1722A and the distinctions noted above regarding veterans in priority categories 2 through 6, we will not implement a freeze on any copayment increase pursuant to the regulatory formula for veterans in priority categories 7 and 8. A copayment increase for these veterans will depend upon the Medical Consumer Price Index.

We note that we have not yet proposed a new methodology to establish copayments and, for that reason, request public comment only on the effect of this rulemaking, which is

to freeze the copayment amount for veterans in priority categories 2 through 6 while we study alternative methodologies to calculate appropriate copayment amounts for all veterans.

**Administrative Procedure Act**

In accordance with 5 U.S.C. 553(b)(3)(B) and (d)(3), the Secretary of Veterans Affairs finds that there is good cause to dispense with the opportunity for advance notice and opportunity for public comment and good cause to publish this rule with an immediate effective date. As stated above, this rule freezes at current rates the prescription drug copayment that VA charges certain veterans. The Secretary finds that it is impracticable and contrary to the public interest to delay this rule for the purpose of soliciting advance public comment or to have a delayed effective date. Increasing the copayment amount on January 1, 2012, might cause a significant financial hardship for some veterans.

For the above reason, the Secretary issues this rule as an interim final rule. VA will consider and address comments that are received within 60 days of the date this interim final rule is published in the **Federal Register**.

**Effect of Rulemaking**

The Code of Federal Regulations, as revised by this rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures are authorized. All VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

**Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined to be a significant regulatory action. Accordingly, the Office of Management and Budget has reviewed this interim final rule.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments, or on the private sector.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this interim final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This interim final rule will temporarily freeze the copayments that certain veterans are required to pay for prescription drugs furnished by VA. The interim final rule affects individuals and has no impact on any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program number and title for this rule are as follows: 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on December 2, 2011, for publication.

**List of Subjects in 38 CFR Part 17**

Administrative practice and procedure; Alcohol abuse; Alcoholism; Claims; Day care; Dental health; Drug abuse; Foreign relations; Government contracts; Grant programs—health; Grant programs—veterans; Health care; Health facilities; Health professions; Health records; Homeless; Medical and dental schools; Medical devices; Medical research; Mental health programs; Nursing homes; Philippines, Reporting and recordkeeping requirements; Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: December 15, 2011.

**Robert C. McFetridge,**

*Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons set forth in the preamble, VA amends 38 CFR part 17 as follows:

## PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501(a), and as noted in specific sections.

■ 2. In § 17.110, paragraphs (b)(1)(ii), and (b)(2), remove ''December 31, 2011'' each place it appears and add, in each place, ''December 31, 2012''.

[FR Doc. 2011–32532 Filed 12–19–11; 8:45 am]

BILLING CODE 8320–01–P

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 36**

**RIN 2900–AN78**

## Loan Guaranty Revised Loan Modification Procedures

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends a Department of Veterans Affairs (VA) Loan Guaranty regulation related to modification of guaranteed housing loans in default. Specifically, changes are made to requirements related to maximum interest rates on modified loans and to items that may be capitalized in a modified loan amount. In addition, we are revising the regulation to clarify that the holder of a loan may seek VA approval for a loan modification that does not otherwise meet prescribed conditions. The amendments are intended to liberalize the requirements for modification of VA-guaranteed loans and provide holders more options for working with veterans to avoid foreclosure.

**DATES:** This final rule is effective January 19, 2012.

**FOR FURTHER INFORMATION CONTACT:** Mike Frueh, Assistant Director for Loan Management (261), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (571) 272–0017. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:**

### Statutory Background

Under 38 U.S.C. chapter 37, VA guarantees loans made by private lenders to veterans for the purchase, construction, and refinancing of homes owned and occupied by veterans.

### Regulatory Background

On February 1, 2008, VA published in the **Federal Register** (73 FR 6294) a final rule that extensively revised 38 CFR part 36 to modernize procedures for servicing VA-guaranteed home loans. A new subpart F was added to include § 36.4815, which provided detailed parameters for private loan servicers to modify delinquent loans without seeking prior approval from VA, thereby enabling servicers to quickly assist veteran borrowers in avoiding foreclosure. On June 15, 2010, VA published in the **Federal Register** (75 FR 33704) a final rule that redesignated subpart F (the 36.4800 series) to replace obsolete subpart B (the 36.4300 series) in its entirety. On February 7, 2011, VA published in the **Federal Register** (76 FR 6555) an interim final rule that (1) restructured § 36.4315 to clarify that holders may seek VA approval for a loan modification if the proposed modification does not otherwise meet the conditions prescribed in § 36.4315(a), (2) revised the methodology for determining the maximum interest rate on a modified loan, and (3) allowed foreclosure costs actually incurred to be capitalized into the modified loan balance.

### Discussion of Public Comments

The public comment period on the interim final rule closed on April 8, 2011. VA received comments from six entities about the rule. One comment was from a mortgage industry trade association, three were from mortgage servicers, and two were from nonprofit law firms writing on behalf of veteran borrowers. The final rule has been revised to incorporate changes that VA agrees are necessary in light of, or as the logical outgrowth of the comments provided. The following paragraphs discuss the comments VA received on the interim final rule. The comments are presented in order by the paragraph to which the comments apply, and similar comments are grouped together.

### Section 36.4315(a)(8) Interest Rate Restrictions

*Comment:* VA should change the establishment of the maximum interest rate from the date the modification is executed to the date the modification is approved.

*VA Response:* VA concurs. As indicated in the interim final rule, VA based its revision to the establishment of the maximum interest rate allowable on a loan modification to a large extent on a Department of Housing and Urban Development (HUD) Mortgagee Letter (2009–35), which stated that the maximum rate would be computed as of the date of execution of the Modification Agreement. However, several comments mentioned that a subsequent Loan Modification Frequently Asked Questions (FAQ) document posted by HUD on its Web site (at *http://www.hud.gov/offices/hsg/sfh/nsc/faqlm.cfm*) stated that the maximum interest rate on a loan modification should actually be calculated as of the date the Mortgagee approves the modification. This is a more beneficial position for a veteran borrower, as it allows the maximum rate to be calculated when the servicer is underwriting the modification, without the possibility of an interest rate increase occurring before execution of the modification that might result in an increase in the interest rate. In addition, it is more feasible from a processing standpoint for the servicer, because it allows the rate to be fixed without concern that documents may be sent to the borrower to be signed, but the Modification Agreement may be in violation of the regulation if rates decrease before the modification is executed. Therefore, § 36.4315(a)(8)(i) is changed by replacing the word ''executed'' with the word ''approved''.

*Comment:* VA should require that the interest rate on a modified loan be lower than the existing rate, or that any interest rate increase on a modified loan be submitted to VA for approval.

*VA Response:* VA does not concur. As discussed in the preamble to the interim final rule, a modification typically allows capitalization of past due amounts over a very long repayment term, sometimes as long as 10 years past the original maturity date of the loan (or even longer if the original term was less than 30 years), which is easier to maintain than a short term repayment arrangement, but will likely increase the monthly payments by a small amount. This benefits the veteran by eliminating the delinquency and granting a ''fresh start'' on payment of the loan. The servicer is required to determine that the borrower is a reasonable credit risk based on income, expenses and other obligations, so even though the interest rate may be increasing on a modification, future payments will still be affordable. Requiring VA to review every case with a small interest rate increase would place an undue burden on limited staff, while providing no tangible benefit to veterans. Allowing modification at a market interest rate, which may be lower or higher than the existing interest rate, serves as an incentive for the servicer to complete the modification at a rate that will allow it to re-pool the modified loan without taking a loss to do so. However, if the proposed interest rate for the modification is more than one percent above the existing rate, then VA believes it is appropriate to review the case to determine if the increased rate, in addition to the capitalization of the delinquency, could raise serious questions about the veteran's ability to repay the modified loan. That would give VA the opportunity to consider refunding the loan at a lower rate in order to make the modification even more affordable for the veteran borrower. If the servicer decides that a veteran is not a reasonable credit risk for a loan modification, then VA has the opportunity through its oversight to consider refunding the loan at a rate that

will make the loan affordable, if that is possible. This is the position that VA believes best balances the goals of the VA home loan program to provide a benefit to our nation's veterans, while also exercising appropriate judgment in the use of taxpayer funds to acquire loans that will yield much lower than market rates.

*Comment:* VA should mandate lower payments on a modified loan. For circumstances in which: (1) The interest rate will be the same or higher, (2) even a reduced interest rate will not result in a lower payment, or (3) the interest rate cannot be reduced (such as on a loan held by a state housing-finance authority), VA should require reduction in the principal balance so that the payment will be reduced.

*VA Response:* VA does not concur. As stated above, the purpose of a loan modification is to give a borrower a fresh start by resetting the terms of the loan to make payments affordable. Reducing a loan payment does not necessarily guarantee that future payments will be affordable for a borrower, as that requires an analysis of income and other expenses. If a borrower can afford future payments that are slightly higher than existing payments, but cannot afford to pay the accrued delinquency, then there is no need to require that payments on a modified loan be lower than the existing payments, only that the delinquency be eliminated via the modification. As far as requiring that a servicer waive a portion of the principal balance in order to reduce payments, VA does not have any specific authority to do so. VA does have the option to assist a veteran borrower in need of lower payments by refunding a loan and reducing the interest rate well below the market rate to make payments affordable. However, that authority to refund must be balanced against the fact that taxpayer funds will be used to acquire a loan that will be modified to yield much less than market interest rates.

**Section 36.4315(a)(10) Fees Allowed in Modified Amount**

*Comment:* VA should ensure that veterans are not overcharged for foreclosure expenses, perhaps by setting a limit of $1,000 on legal fees that may be capitalized when a loan is modified.

*VA Response:* VA partially agrees. This subparagraph presently limits the amount that may be included in the modified indebtedness to ''actual legal fees and foreclosure costs related to the cancelled foreclosure.'' Existing § 36.4314 limits the amount of legal fees for foreclosure that may be included in the computation of a guaranty claim, based on the reasonable and customary amounts the Secretary has determined appropriate in each state. In order to ensure that veterans are not charged in excess of the maximum amount allowable for a completed foreclosure, § 36.4315(a)(10) is amended to limit the amount of legal fees and costs that may be included in the modified indebtedness to the maximum amounts prescribed in § 36.4314 by inserting after ''canceled foreclosure'' the phrase ''(subject to the maximum amounts prescribed in § 36.4314).''

VA does not believe it is appropriate to set a maximum $1,000 for the limit on cancelled foreclosure costs and fees that may be included in the modified loan balance, as costs vary from state to state, and the amount of work completed on a foreclosure will also very from case to case. The language limiting costs to ''actual'' fees and costs clearly indicates that the maximum allowable charge should not be made unless those fees and costs have actually been incurred.

**Loss Mitigation Requirements**

*Comment:* VA should promulgate new regulations requiring that loan holders engage in mandatory loss mitigation efforts prior to initiation of foreclosure.

*VA Response:* VA does not concur. VA believes its existing regulations both require and encourage loss mitigation efforts by loan holders and their mortgage servicers prior to the initiation of foreclosure. In § 36.4350, VA requires establishment of a system for servicing delinquent loans and prescribes collection actions designed to determine reasons for loan defaults and to explore loss mitigation options. In § 36.4319, VA provides an incentive structure to encourage successful loss mitigation efforts by loan servicers. This final rule (§ 36.4315) allows servicers wide latitude in modifying delinquent loans without the prior approval of VA in order to resolve defaults. VA also authorizes servicers to pursue short sale and deeds in lieu of foreclosure (§ 36.4322) when home retention is not possible and the servicing requirements in VA's regulations are satisfied. Furthermore, in order to ensure that a servicer has sufficient time to explore all possible loss mitigation options, in calculating the guaranty claim payable on a terminated loan, VA allows inclusion of interest for 210 days from the due date of the last paid installment, plus the reasonable period that VA has established for completion of termination in the jurisdiction where the loan is located. We believe all these existing requirements, plus the oversight efforts of dedicated VA Loan Technicians, has resulted in ensuring that veterans receive excellent opportunities to retain their homes when feasible, or to avoid foreclosure when retention is not possible. As a demonstration of this point, for the past 2 years the Mortgage Bankers Association quarterly National Delinquency Survey has reported that VA-guaranteed loans have the lowest foreclosure starts and foreclosure inventory of any loan type.

**Paperwork Reduction Act of 1995**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Executive Orders 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients

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

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The vast majority of VA loans are serviced by very large financial companies. Only a handful of small entities service VA loans and they service only a very small number of loans. This final rule, which only impacts veterans, other individual obligors with guaranteed loans, and companies that service VA loans, will have very minor economic impact on a very small number of small entities servicing such loans. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing—Guaranteed and Insured Loans.

**Signing Authority**

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on October 24, 2011, for publication.

**List of Subjects in 38 CFR Part 36**

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Dated: December 15, 2011.

**Robert C. McFetridge,**

*Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, VA amends 38 CFR part 36 as follows:

## PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

**Authority:** 38 U.S.C. 501 and as otherwise noted.

■ 2. Amend § 36.4315 by:

■ a. In paragraph (a)(8)(i) removing ''executed'' and adding, in its place, ''approved''.

■ b. In paragraph (a)(10) removing ''canceled foreclosure;'' and adding, in its place, ''canceled foreclosure; (subject to the maximum amounts prescribed in § 36.4314)''.

[FR Doc. 2011–32528 Filed 12–19–11; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2011–0897; FRL–9499–9]**

## Revisions to the California State Implementation Plan, South Coast Air Quality Management District

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen ($NO_X$) and oxides of sulfur ($SO_x$) emissions from facilities emitting 4 tons or more per year of $NO_X$ or $SO_x$ in the year 1990 or any subsequent year under the SCAQMD's Regional Clean Air Incentives Market (RECLAIM) program. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** This rule is effective on February 21, 2012 without further notice, unless EPA receives adverse comments by January 19, 2012. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2011–0897, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Lily Wong, EPA Region IX, (415) 947–4114, *wong.lily@epa.gov.*

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

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## I. The State's Submittal

### *A. What rule did the State submit?*

Table 1 lists the rule we are approving with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SCAQMD | 2005 | New Source Review for RECLAIM | 06/03/11 | 09/27/11 |

On October 24, 2011, EPA determined that the submittal for SCAQMD Rule 2005 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

### *B. Are there other versions of this rule?*

Table 2 lists the previous version of this rule approved into the SIP.

TABLE 2—CURRENT SIP APPROVED VERSION OF RULE

| Rule No. | Rule title | Adopted | Submitted | Approved FR citation |
|---|---|---|---|---|
| 2005 | New Source Review for RECLAIM | 05/06/2005 | 10/20/2005 | 08/29/2006, 71 FR 51120 |

### *C. What is the purpose of the submitted rule revision?*

$NO_X$ helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control $NO_X$ emissions.

The RECLAIM program was initially adopted by SCAQMD in October 1993. The program established for many of the largest $NO_X$ and $SO_x$ facilities in the South Coast Air Basin a regional $NO_X$ and regional $SO_x$ emissions cap and trade program, with the regional emissions caps declining over time until 2003. SCAQMD amended RECLAIM to lower the $NO_X$ and $SO_x$ emissions caps in 2005 and 2010 respectively. The program was designed to provide incentives for facilities to reduce emissions and advance pollution control technologies by giving facilities added flexibility in meeting emission reduction requirements. A $NO_X$ or $SO_x$ RECLAIM Trading Credit (RTC) is a limited authorization to emit one pound of $NO_X$ or $SO_x$ during a specified one year period. A RECLAIM facility's emissions may not exceed its RTC holding in any compliance year. A RECLAIM facility may comply with this requirement by installing control equipment, modifying their activities, or purchasing RTCs from other facilities.

The purpose of Rule 2005 was to address how the New Source Review (NSR) program requirements would be implemented in the context of a cap and trade program. Rule 2005 sets forth the pre-construction review requirements for new or modified equipment or processes at RECLAIM facilities.

The rule revision affects existing RECLAIM facilities subject to Rule 2005 whose annual allocations [1] do not exceed its 1994 starting allocation plus non-tradable credits. While such facilities are required to hold sufficient RTCs to offset emissions increases by the beginning of the first year, this rule revision eliminates the requirement to hold sufficient RTCs to offset emissions increases at the beginning of the second and subsequent years. SCAQMD states that the primary purpose of the revision to Rule 2005 was to alleviate the disincentives to existing facilities to modernize and replace older, more polluting equipment with newer and cleaner equipment.

## II. EPA's Evaluation and Action

### *A. How is EPA evaluating the rule?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each $NO_X$ or VOC major source in nonattainment areas (see sections 182(a)(2) and 182(f) of the Act), and must not relax existing requirements (see sections 110(l) and 193 of the Act). The SCAQMD regulates an ozone nonattainment area classified as extreme for the 8-hour ozone NAAQS (40 CFR 81.305), so the RECLAIM Program must fulfill RACT.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule" (the $NO_X$ Supplement), 57 FR 55620, November 25, 1992.
3. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
4. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
5. "Economic Incentive Programs—EPA published the guidance, "Improving Air Quality with Economic Incentive Programs" on January 2001 (EPA–452/R–01–001). The guidance available at *http://www.epa.gov/ttncaaa1/t1/meta/m1201.html.* This guidance applies to discretionary economic incentive programs (EIPs) and represents the agency's interpretation of what EIPs should contain in order to meet the requirements of the Clean Air Act. Because this guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether potential approvability issues arise.

### *B. Does the rule meet the evaluation criteria?*

We believe this rule is consistent with the relevant policy and guidance regarding enforceability and SIP

[1] The RECLAIM program at Rule 2000(c)(3) defines "allocation" as "the number of RECLAIM Trading Credits (RTCs) [as defined in paragraph (c)(63)] a RECLAIM facility holds for a specific compliance year, as referenced in the Facility Permit." Consequently, "annual allocation" means the amount of RTCs the facility holds for a compliance year, as authorized by its permit.

relaxations. While the CAA RACT requirements apply to the RECLAIM program as a whole, the requirements do not specifically apply to Rule 2005 because Rule 2005 addresses the NSR permit program requirements. In EPA's original approval of the RECLAIM program, EPA determined that the RECLAIM program met the CAA RACT requirements. This amendment does not change EPA's previous determination. This revision has no effect on allowable emissions and would not result in emissions increases. Furthermore, this revision is consistent with EPA's original understanding of how the NSR offset requirement would be implemented in the RECLAIM program. EPA's November 8, 1996 limited approval and limited disapproval of RECLAIM (61 FR 57775) stated, ''The NSR offset requirements would only be triggered if a particular facility exceeded its initial RECLAIM allocation plus nontradeable emission allocation.'' (see 61 FR 57777) The Technical Support Document (TSD) has more information on our evaluation.

*C. EPA recommendations to further improve the rule*

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the RECLAIM rules.

*D. Public comment and final action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**,we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by January 19, 2012, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on February 21, 2012. This will incorporate the rule into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

**III. Statutory and Executive Order Reviews**

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

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

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

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

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

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: November 18, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart F—California

■ 2. Section 52.220, is amended by adding and reserving paragraph (c)(403) and by adding paragraph (c)(404) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(404) New and amended regulations for the following APCDs were submitted on September 27, 2011, by the Governor's Designee.

(i) Incorporation by Reference

(A) South Coast Air Quality Management District

(*1*) Rule 2005, ''New Source Review for RECLAIM,'' amended on June 3, 2011.

[FR Doc. 2011–32475 Filed 12–19–11; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 82**

**[EPA–HQ–OAR–2009–0286; FRL–9507–7]**

**RIN 2060–AP54**

# Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—Hydrocarbon Refrigerants

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the U.S. Environmental Protection Agency (EPA)'s Significant New Alternatives Policy (SNAP) program, this action lists isobutane (R–600a) and R–441A as acceptable, subject to use conditions, as substitutes for chlorofluorocarbon (CFC)–12 and hydrochlorofluorocarbon (HCFC)–22 in household refrigerators, freezers, and combination refrigerators and freezers. This action also lists propane (R–290) as acceptable, subject to use conditions, as a substitute for CFC–12, HCFC–22, and R–502 in retail food refrigerators and freezers (stand-alone units only).

**DATES:** This final rule is effective on February 21, 2012. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 21, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0286. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not posted on the Web site and will be made publicly available only in hard copy form.

Publicly available docket materials can be found either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sheppard, Stratospheric Protection Division, Office of Atmospheric Programs, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number (202) 343–9163; fax number (202) 343–2338; email address: *sheppard.margaret@epa.gov.* Notices and rulemakings under EPA's Significant New Alternatives Policy (SNAP) program are available at *www.epa.gov/ozone/snap/regs.*

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## I. General Information

### *A. Background*

This rule pertains to three hydrocarbon refrigerants: Isobutane, propane, and R–441A. Hydrocarbon refrigerants have been in use for over 15 years in countries such as Germany, the United Kingdom, Australia, and Japan in the end-uses addressed by this final rule. In Europe and Asia, equipment manufacturers have designed and tested household and commercial refrigerators and freezers to account for flammability and safety concerns associated with hydrocarbon refrigerants.

The 2010 Report of the United Nations Environment Programme (UNEP)'s Refrigeration, Air Conditioning and Heat Pumps Technical Options Committee (RTOC) estimates that approximately 100 million household refrigerators and freezers are manufactured annually worldwide. One-third of these now use either isobutane or an isobutane/propane blend, and this proportion is expected to increase to 75 percent by 2020. In the retail sector, the RTOC observes that hydrocarbon refrigerants continue to gain market share in Europe and Japan.[1]

Because hydrocarbon refrigerants have zero ozone depletion potential (ODP) and very low global warming potential (GWP) compared to other refrigerants, many companies are interested in using them in the United States (U.S.) as well. In this action, EPA addresses SNAP submissions for use of three hydrocarbon refrigerants in two end-uses: (1) Household refrigerators, freezers, and combination refrigerators and freezers; and (2) retail food refrigerators and freezers (stand-alone units only).

The submitter of R–441A—A.S. Trust and Holdings—has provided documentation to EPA, available in the docket for this rulemaking, that it has withdrawn its submission for the blend originally submitted as ''HCR–188C.'' Because the submission is no longer pending before EPA, we are not

[1] RTOC, 2010, pp. 50, 51, 64.

finalizing a SNAP listing for that blend. Any person wishing to introduce that blend into interstate commerce would be required to submit a new SNAP application under EPA regulations.[2]

1. What are isobutane, propane, and R–441A?

Isobutane and propane are hydrocarbons, and R–441A is a blend of hydrocarbons. Hydrocarbons are flammable organic compounds made up of hydrogen and carbon.

Isobutane, also called 2-methylpropane, has four carbon atoms, the chemical formula $C_4H_{10}$, and a branched structure. It is often written as $CH(CH_3)_2$-$CH_3$ to distinguish it from butane, a straight-chain hydrocarbon with the same chemical formula. Isobutane's Chemical Abstracts Service (CAS) Registry Number is 75–28–5. As a refrigerant, isobutane is designated as R–600a by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 34–2010 ''Designation and Safety Classification of Refrigerants'' (ASHRAE, 2010). It is also referred to as HC–600a and iso-$C_4H_{10}$.

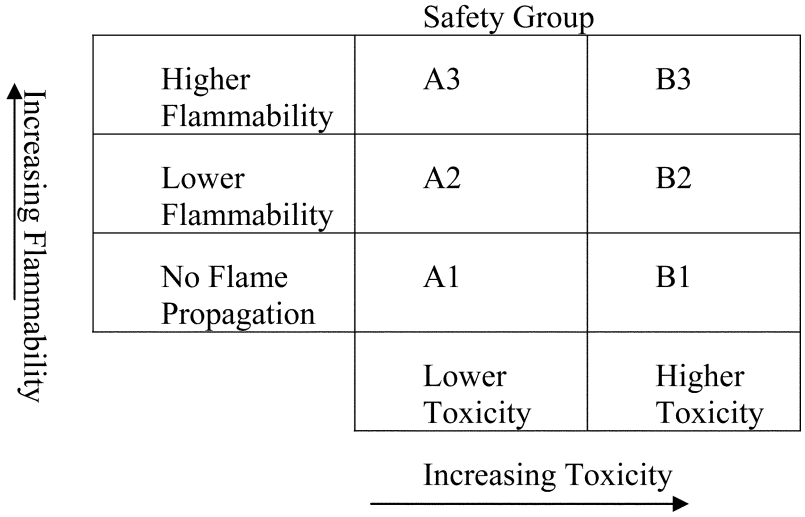
Propane has three carbon atoms, the chemical formula $C_3H_8$, and the CAS Number 74–98–6. As a refrigerant, propane has ASHRAE designation R–290. It is also referred to as HC–290 and $CH_3CH_2CH_3$.

R–441A is a blend of four hydrocarbons: Ethane (3.1 percent by mass), propane (54.8 percent by mass), isobutane (6.0 percent by mass), and butane (36.1 percent by mass). This blend was originally submitted to EPA under the trade name ''HCR–188C1,'' and EPA used that nomenclature in the proposed rule (75 FR 25799). In February 2011, this blend received the designation R–441A under ASHRAE Standard 34–2010.[3] Throughout this final rule, we refer to that blend as R–441A.

ASHRAE Standard 34–2010 categorizes isobutane, propane, and R–441A in the A3 safety group. ASHRAE's safety group classification consists of two alphanumeric characters (*e.g.,* A2 or B1). The capital letter indicates the toxicity, and the numeral denotes the flammability.

Figure 1 illustrates these safety group classifications.

Figure 1. Refrigerant Safety Group Classification




ASHRAE classifies Class A refrigerants as refrigerants for which toxicity has not been identified at concentrations less than 400 ppm by volume, based on data used to determine a workplace exposure limit for long-term exposure, such as a threshold limit value-time-weighted average (TLV–TWA) or consistent indices. Class B refrigerants show evidence of toxicity below 400 ppm on an 8-hour time-weighted average (TWA).

Refrigerants also receive one of three possible flammability classifications: 1 (no flame propagation), 2 (lower flammability), or 3 (higher flammability). Class 3 refrigerants exhibit flame propagation at 60 °C and 101.3 kPa, and have either a lower flammability limit (LFL) of less than or equal to 0.10 kg/m$^3$ or a heat of combustion greater than or equal to 19,000 kJ/kg.

2. Which end-uses are covered in our final decision?

a. Household Refrigerators, Freezers, and Combination Refrigerators and Freezers

This end-use, which we refer to as ''household refrigeration'' in this preamble, consists of appliances that are intended primarily for residential use, although they may be used outside the home. Household freezers offer storage space only at freezing temperatures. Products with both a refrigerator and freezer in a single unit are most common. This final rule includes a use condition that limits the refrigerant charge in this end-use to 57 grams (2.0 ounces) or less for each sealed refrigeration system (*i.e.,* compressor, condenser, evaporator, and refrigerant piping). EPA is also requiring other use conditions as described in Section III (''What did EPA propose, and what are we finalizing?'') below.

b. Retail Food Refrigerators and Freezers (Stand-Alone Units Only)

This end-use, which we refer to as ''retail food refrigeration'' in this preamble, includes the refrigeration systems, including cold storage cases, designed to chill food or keep it at a cold temperature for commercial sale. This final rule addresses the use of hydrocarbons in stand-alone units only.

[2] The submitter has informed EPA that that it is now marketing R–441A (the blend originally submitted as ''HCR–188C1'') under the trade name ''HCR–188C.''

[3] See Addendum g to Standard 34–2010.

A stand-alone appliance is one using a hermetically-sealed compressor and for which all refrigerant-containing components, including but not limited to at least one compressor, condenser, and evaporator, are assembled into a single piece of equipment before delivery to the ultimate consumer or user. Such equipment does not require addition or removal of refrigerant when placed into initial operation. Stand-alone equipment is used to store chilled beverages or frozen products. Examples include reach-in beverage coolers and stand-alone ice cream cabinets. Our acceptability determination does not apply to large refrigeration systems such as walk-in coolers or the direct expansion refrigeration systems typically found in retail food stores. It also does not apply to vending machines.

This final rule includes a use condition that limits the refrigerant charge in this end-use to 150 grams (5.3 ounces) or less. EPA is also requiring other use conditions as described in Section III (''What Did EPA Propose, and What are we finalizing?'') below.

*B. Does this action apply to me?*

This final rule lists the use of three alternative refrigerants in two end-uses: Household refrigerators, freezers, and combination refrigerators and freezers; and retail food refrigerators and freezers (stand-alone units only). Potentially regulated entities that may use isobutane (R–600a) or R–441A in household refrigeration or propane (R–290) in retail food refrigeration include:

TABLE 1—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR

| Category | NAICS code or subsector | Description of regulated entities |
|---|---|---|
| Industry | 333415 | Manufacturers of refrigerators, freezers, and other refrigerating or freezing equipment, electric or other; heat pumps not elsewhere specified or included (NESOI); and parts thereof. |
| Industry | 443111 | Appliance Stores: Household-type. |
| Industry | 445120 | Convenience Stores. |
| Industry | 445110 | Supermarkets and Other Grocery (except Convenience) Stores. |
| Industry | 722211 | Limited-Service Restaurants. |
| Industry | 238220 | Plumbing, Heating, and Air Conditioning Contractors. |
| Industry | 811412 | Appliance Repair and Maintenance. |
| Industry | 423620 | Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers. |
| Industry | 423740 | Refrigeration Equipment and Supplies Merchant Wholesalers. |

This table is not intended to be exhaustive, but rather functions as a guide regarding entities that are likely to use the substitute whose use is regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION CONTACT**.

*C. Which acronyms and abbreviations are used in the preamble?*

Below is a list of acronyms and abbreviations used in the preamble of this rule.

AEGL—Acute Exposure Guideline Level
ASHRAE—American Society of Heating, Refrigerating and Air-Conditioning Engineers
ANSI—American National Standards Institute
CAA—Clean Air Act
CAS—Chemical Abstracts Service
CBI—confidential business information
CFC—chlorofluorocarbon
CFR—Code of Federal Regulations
$CO_2$—carbon dioxide
EPA—United States Environmental Protection Agency
FR—Federal Register
FTA—Fault-Tree Analysis
GHG—greenhouse gas
GWP—global warming potential
HC—hydrocarbon
HCFC—hydrochlorofluorocarbon
HFC—hydrofluorocarbon
ICF—ICF International, Inc.
ICR—information collection request
IEC—International Electrotechnical Commission
kg—kilogram
LFL—lower flammability limit
NAICS—North American Industrial Classification System
NARA—National Archives and Records Administration
NOAEL—no observable adverse effect level
NPRM—notice of proposed rulemaking
NTTAA—National Technology Transfer and Advancement Act
OEM—original equipment manufacturer
ODP—ozone depletion potential
ODS—ozone-depleting substance
OMB—United States Office of Management and Budget
OSHA—United States Occupational Safety and Health Administration
PMS—Pantone® Matching System
ppm—parts per million
RFA—Regulatory Flexibility Act
RfC—reference concentration
RTOC—Refrigeration, Air Conditioning and Heat Pumps Technical Options Committee
SNAP—Significant New Alternatives Policy
TEAP—Technology and Economic Assessment Panel
TLV—Threshold Limit Value
TSCA—Toxic Substances Control Act
TUV—Technischer Überwachungs-Verein (German Technical Inspection Agency)
TWA—time-weighted average
UL—Underwriters Laboratories Inc.
UMRA—Unfunded Mandates Reform Act
UNEP—United Nations Environment Programme
VOC—volatile organic compound
WGL—workplace guidance level
WMO—World Meteorological Organization

## II. How does the SNAP program work?

*A. What are the statutory requirements and authority for the SNAP program?*

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone-depleting substances (ODS). EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

1. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I substance (*i.e.,* chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II substance (*i.e.,* hydrochlorofluorocarbon) with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

2. Listing of unacceptable/acceptable substitutes

Section 612(c) requires EPA to publish a list of the substitutes unacceptable for specific uses and to

publish a corresponding list of acceptable alternatives for specific uses. The list of acceptable substitutes is found at *http://www.epa.gov/ozone/snap/lists/index.html,* and the lists of substitutes that are ''unacceptable,'' ''acceptable subject to use conditions,'' and ''acceptable subject to narrowed use limits'' are in subpart G of 40 CFR part 82.

3. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

4. 90-Day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

5. Outreach

Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

6. Clearinghouse

Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

*B. What are EPA's regulations implementing section 612?*

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) which established the process for administering the SNAP program and issued EPA's first lists identifying acceptable and unacceptable substitutes in the major industrial use sectors (subpart G of 40 CFR part 82). These sectors—refrigeration and air conditioning; foam blowing; cleaning solvents; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion—are the principal industrial sectors that historically consumed the largest volumes of ODS.

Section 612 of the CAA requires EPA to ensure that substitutes found acceptable do not present a significantly greater risk to human health and the environment than other substitutes that are currently or potentially available.

*C. How do the regulations for the SNAP program work?*

Under the SNAP regulations, anyone who plans to market or produce a substitute to replace a class I substance or class II substance in one of the eight major industrial use sectors must provide notice to the Agency, including health and safety information on the substitute, at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to the persons planning to introduce the substitute into interstate commerce,[4] which typically are chemical manufacturers but may include importers, formulators, equipment manufacturers, and end-users.[5] The regulations identify certain narrow exemptions from the notification requirement, such as research and development and test marketing (40 CFR 82.176(b)(4) and (5), respectively).

The Agency has identified four possible decision categories for substitutes that are submitted for evaluation: Acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable (40 CFR 82.180(b)). Use conditions and narrowed use limits are both considered ''use restrictions'' and are explained in the paragraphs below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant end-uses in the sector.

After reviewing a substitute, the Agency may determine that a substitute is acceptable only if certain conditions in the way that the substitute is used are met to minimize risks to human health and the environment. EPA describes such substitutes as ''acceptable subject to use conditions.'' Entities that use these substitutes without meeting the associated use conditions are in violation of EPA's SNAP regulations.

For some substitutes, the Agency may permit a narrowed range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. EPA describes these substitutes as ''acceptable subject to narrowed use limits.'' The Agency requires the user of a narrowed-use substitute to demonstrate that no other acceptable substitutes are available for the specific application by conducting comprehensive studies. A person using a substitute that is acceptable subject to narrowed use limits in applications and end-uses that are not consistent with the narrowed use limit is using the substitute in an unacceptable manner and is in violation of section 612 of the CAA and EPA's SNAP regulations.

The Agency publishes its SNAP program decisions in the **Federal Register** (FR). EPA publishes decisions concerning substitutes that are deemed acceptable subject to use restrictions (use conditions and/or narrowed use limits), or substitutes deemed unacceptable, as proposed rulemakings to provide the public with an opportunity to comment, before publishing final decisions.

In contrast, EPA publishes decisions concerning substitutes that are deemed acceptable with no restrictions in ''notices of acceptability,'' rather than as proposed and final rules. As described in the March 18, 1994, rule initially implementing the SNAP program, EPA does not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include ''Comments'' or ''Further Information'' to provide additional information on substitutes. Since this additional information is not part of the regulatory decision, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs (*e.g.,* worker protection regulations promulgated by the U.S. Occupational Safety and Health Administration (OSHA)). The ''Further Information'' classification does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not

[4] As defined at 40 CFR 82.104, ''interstate commerce'' means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

[5] As defined at 40 CFR 82.172, ''end-use'' means processes or classes of specific applications within major industrial sectors where a substitute is used to replace an ODS.

legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building codes or standards. Thus many of the statements, if adopted, would not require the affected user to make significant changes in existing operating practices.

*D. Where can I get additional information about the SNAP program?*

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, refer to EPA's Ozone Layer Protection Web site at: *www.epa.gov/ozone/snap/index.html.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the March 18, 1994, SNAP final rulemaking (59 FR 13044), codified at 40 CFR part 82, subpart G. A complete chronology of SNAP decisions and the appropriate citations is found at: *http://www.epa.gov/ozone/snap/chron.html.*

## III. What did EPA propose, and what are we finalizing?

*A. Proposed Rule*

On May 10, 2010, EPA published a notice of proposed rulemaking (75 FR 25799) to list isobutane (R–600a) and the hydrocarbon blends HCR–188C and HCR–188C1 as ''acceptable, subject to use conditions,'' as substitutes for chlorofluorocarbon (CFC)–12 and hydrochlorofluorocarbon (HCFC)–22 [6] in household refrigerators, freezers, and combination refrigerators and freezers.[7] (This preamble refers to HCR–188C1 as R–441A.)

EPA also proposed to list propane (R–290) as ''acceptable, subject to use conditions,'' as a substitute for CFC–12, HCFC–22, and R–502 [8] in retail food refrigerators and freezers (stand-alone units only).

For each substitute, EPA proposed the following use conditions:

(1) These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment).

(2) These refrigerants may be used only in refrigerators or freezers that meet all requirements listed in the 10th edition of Underwriters Laboratories (UL) Standard UL 250 (household refrigeration end-use) or the 9th edition (*sic*) of Standard UL 471 (retail food refrigeration end-use).

(3) The quantity of the substitute refrigerant (*i.e.,* ''charge size'') in a refrigerator or freezer shall not exceed 57 grams (2.0 ounces) in the household refrigeration end-use or 150 grams (5.3 ounces) in the retail food refrigeration end-use.

(4) Similar to clauses SA6.1.1 to SA6.1.2 of UL 250 and SB6.1.2 to SB6.1.5 of UL 471, the following markings, or the equivalent, shall be provided and shall be permanent:

(a) ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing.''

(b) ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Use Mechanical Devices. Do Not Puncture Refrigerant Tubing.''

(c) ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed.''

(d) ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.''

(e) ''CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used.''

The marking described in clause (a) above shall be permanently attached on or near any evaporators that can be contacted by the consumer. The markings described in clauses (b) and (c) above shall be located near the machine compartment. The marking described in clause (d) above shall be permanently attached on the exterior of the refrigerator. The marking described in clause (e) above shall be permanently attached near any and all exposed refrigerant tubing. All of these markings shall be in letters no less than 6.4 mm (1/4 inch) high.

(5) The refrigerator or freezer must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, or other devices through which the refrigerant passes, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be applied at all service ports and parts of the unit where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected, and must extend a minimum of 1 inch in both directions from such locations.

(6) The refrigerator or freezer must have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. ''Differ'' means that either the diameter must differ by at least 1/16 inch or the thread direction must be reversed. The unique fittings must be permanently affixed to the unit and may not be accessed with an adaptor until the end-of-life of the unit.

(7) These refrigerants may not be sold for use as a refrigerant in containers designed to contain less than 5 pounds (2.3 kg) [9] of refrigerant.

The proposed rule also included several recommendations classified as ''Further Information.'' These addressed personal protective equipment, proximity to a Class B dry powder-type fire extinguisher, proper ventilation, use of spark-proof tools, recovery equipment, training, refrigerant storage, and evacuation.

Finally, in the proposed rule, EPA sought information and comment on several other issues:

- The availability of industry-wide training on flammable refrigerants for refrigerant technicians;
- Whether EPA should limit the use of hydrocarbon refrigerants only for use in the original equipment manufacturers' (OEMs') specific appliances, as described in the application;
- Whether the use conditions should require ''spark-proof'' circuits in the design of equipment using hydrocarbon refrigerants;
- The availability in the U.S. of recovery units that are designed specifically for hydrocarbons;
- Whether EPA should, in a future rulemaking, consider an exemption for hydrocarbon refrigerants from the venting prohibition under section 608 of the Clean Air Act;
- Whether EPA should require only one condition for each refrigerant: to meet the UL 250 or 471 standards; and

[6] CFC–12 is also referred to as R–12, $CCl_2F_2$ and dichlorodifluoromethane. HCFC–22 is also referred to as R–22, $CHClF_2$, chlorodifluoromethane, and difluorochloromethane.

[7] HCR–188C and HCR–188C1 submissions included window air conditioners as an end-use. EPA is acting on this end-use in a separate rulemaking. As discussed previously, ''HCR–188C'' is the name of a blend that has been withdrawn from review for the household food refrigeration end-use.

[8] R–502 is a blend of CFC–115 (51.2% by weight) and HCFC–22 (48.8%). CFC–115 is also referred to as R–115, $C_2ClF_5$, chloropentafluoroethane, and pentafluorochloroethane.

[9] The proposed rule inadvertently represented 5 pounds as 2.8 kilograms instead of 2.3 kg, which is accurate.

• Whether EPA should find hydrocarbon refrigerants unacceptable until an industry-wide standard exists for servicing refrigerators and freezers using hydrocarbon refrigerants.

*B. Final Rule*

After considering the comments received on the proposed rule, EPA is finalizing a listing for hydrocarbon refrigerants in the household refrigeration and retail food refrigeration end-uses.

EPA is taking action on the specific refrigerant/end-use combinations described in the proposed rule. We are: (1) Finding isobutane acceptable, subject to use conditions, in the household refrigeration end-use; (2) finding propane acceptable, subject to use conditions, in the retail food refrigeration end-use; and (3) finding R–441A (submitted as ''HCR–188C1,'' as discussed in Section I.A.1 above) acceptable, subject to use conditions, in the household refrigeration end-use. As discussed above, the submitter has withdrawn its application for the blend submitted as ''HCR–188C,'' and because that submission is no longer pending before the Agency, EPA is not finalizing a SNAP listing for that blend. The submitter has informed EPA that it is now marketing R–441A (the blend originally submitted as ''HCR–188C1'') under the trade name ''HCR–188C.''

For each of the listing decisions finalized in this action, we are establishing the following use conditions after considering comments on the proposed rule:

(1) EPA is finalizing the proposed requirement that these refrigerants be used only in new equipment designed specifically and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment that is designed for other refrigerants). See Section V.B of this preamble (''New Equipment Only; Not Intended for Use as a Retrofit Alternative'').

(2) EPA is finalizing the proposed requirement that these refrigerants be used only in refrigerators or freezers that meet all requirements listed in Supplement SA to UL 250 (household refrigeration end-use) or Supplement SB to UL 471 (retail food refrigeration end-use). We clarify that the intent of this use condition is to require compliance with the provisions specifically for use with flammable refrigerants found in those supplements, rather than requiring compliance with other material in UL 250 and UL 471 that is not specific to use with flammable refrigerants. See Section V.C (''Compliance with UL Standards'').

(3) EPA is finalizing the proposed requirement for 57-gram and 150-gram charge size limitations for the household refrigeration and retail food refrigeration end-uses, respectively. We are also clarifying that the charge size limitations apply to each refrigerant circuit in a refrigerator or freezer, not necessarily the entire appliance. See Sections V.D (''Charge Size Limitation (Household Refrigeration)'') and V.E (''Charge Size Limitation (Retail Food Refrigeration)'').

(4) EPA is finalizing the marking (labeling) requirements as proposed, as discussed in Section V.F (''Labeling''), with two minor exceptions discussed in Section VI (''What Other Changes Is EPA Making in the Final Rule?''). First, we are correcting the wording of the label located at the machine compartment; second, we are clarifying the language of the requirement to more clearly link each label with its wording and location.

(5) EPA is finalizing the proposed requirement that the refrigerator or freezer have red PMS #185-marked pipes, hoses, or other devices through which the refrigerant passes. We are narrowing the applicability of this requirement by clarifying that the color must be present at all locations through which the refrigerant is serviced, and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (*e.g.,* process tubes), instead of all locations where the refrigerant passes. In addition, we are clarifying that the red coloring must be in place at all times and must be replaced if removed. See Section V.G (''Color-Coded Hoses and Piping'').

(6) Based on the comments received, EPA is not finalizing the proposed requirement for unique fittings at service apertures. Instead we are providing this as a recommendation in the ''Further Information'' column of Appendix R. See Section V.H (''Unique Fittings'').

(7) Based on the comments received, EPA is not finalizing the proposed requirement prohibiting the sale of hydrocarbon refrigerants in containers designed to contain less than 5 pounds (2.3 kg) of refrigerant. See Section V.I (''Small Containers'').

EPA is also making two other changes to the wording of the use conditions and ''Further Information'' provisions in Appendix R. First, we are clarifying that R–502 is one of the refrigerants for which propane is listed as a substitute in the retail food refrigeration end-use. Second, we are including in the ''Further Information'' column a cross-reference to relevant OSHA regulations.

## IV. What is the basis for EPA's final action?

To determine whether these three substitutes present risks that are lower than or comparable to risks from other substitutes that are currently or potentially available in the end-uses under consideration, we examined the criteria in 40 CFR 82.180(a)(7), focusing in particular on the following areas of concern: Impacts on stratospheric ozone and climate; volatile organic compound (VOC) emissions; flammability; asphyxiation risks for consumers and end-users; and toxicity risks to workers, consumers, and the general population.

In support of the proposed rule, in 2009, EPA performed a risk screen analysis for each of the substitutes for the end-use proposed for listing: Isobutane in household refrigeration (ICF, 2009a), propane in retail food refrigeration (ICF, 2009b), HCR–188C in household refrigeration (ICF, 2009c), and HCR–188C1 (R–441A) in household refrigeration (ICF, 2009d). In developing this final rule, EPA reviewed these risk screens and made minor changes for greater consistency and clarity, but made no substantive changes to the assumptions or to the quantitative risk calculations. (EPA did not revise the risk screen for HCR–188C, since the manufacturer withdrew the application for that refrigerant, and EPA is not finalizing an acceptability determination for the refrigerant.) The 2009 risk screens and the 2011 revisions (ICF, 2011a; ICF, 2011b; ICF, 2011c) are included in the docket for this rulemaking.

Based on the information provided in the risk screens, EPA has concluded that the overall environmental risk posed by each of the three substitutes is lower than or comparable to the environmental risks posed by other substitutes in the reviewed end-uses. With respect to public health risks, EPA has concluded that without mitigation, the risks posed by these refrigerants would be higher than other non-flammable refrigerants because individuals may not be aware that their actions could potentially cause a fire, and existing equipment has not been designed specifically to minimize flammability risks. Therefore, EPA is finalizing use conditions to ensure that the overall risks to human health and the environment posed by these substitutes are lower than or comparable to the overall risk posed by other substitutes in the same end-use.

*A. Environmental Impacts*

EPA has concluded that, overall, the environmental risk posed by each of the three reviewed substitutes is lower than or comparable to the environmental risk posed by other substitutes in the reviewed end-uses. All three substitutes have zero ozone depletion potential (ODP) and very low global warming potential (GWP) compared to other refrigerants. Although the substitutes are VOCs, the emissions from the specific uses being found acceptable subject to use conditions would not significantly affect local air quality. Thus the environmental risks associated with ODP, GWP, and VOC effects for each reviewed substitute are lower than or comparable to other acceptable substitutes. These risks are discussed below.

A chemical's ODP is the ratio of its impact on stratospheric ozone compared to the impact of an identical mass of CFC–11.[10] The ODP of CFC–11 is defined as 1.0. Other CFCs and HCFCs have ODPs ranging from 0.01 to 1.0 (WMO, 2011). The ODP of HCFC–22 is 0.055, and the ODP of R–502 is 0.334. The three substitutes discussed in this rule have an ODP of zero, as do other common substitutes in the same end-uses, such as HFC–134a, R–404A, and R–410A.

The GWP of a greenhouse gas (GHG) quantifies its potential integrated climate forcing relative to carbon dioxide ($CO_2$) over a specified time horizon. The 100-year integrated GWPs of isobutane, propane, and R–441A are estimated to be 8 (GE, 2008), 3 (Ben and Jerry's, 2008), and less than 5 (A.S. Trust & Holdings, 2009),[11] respectively, relative to a value of 1.0 for $CO_2$. These are significantly lower than the 100-year integrated GWPs of the substances that they would be replacing: CFC–12 (GWP = 10,890); HCFC–22 (GWP = 1,810); and R–502 (GWP = 4,660) (WMO, 2011) and are significantly lower than those of other acceptable refrigerants in these end-uses (*e.g.,* GWPs of HFC–134a, R–404A, and R–410A are approximately 1,430, 3,920, and 2,090, respectively).

The overall climate impacts from the use of these refrigerants are also dependent upon the energy use by the appliances in which they are used, because the indirect climate impacts associated with electricity consumption typically exceed those from the refrigerants themselves over the full life cycle of refrigerant-containing products (ORNL, 1997). A hydrocarbon appliance that is more energy-efficient than the appliance it replaces would result in GHG emission reductions beyond those attributable to the substitute refrigerant alone. Conversely, the GHG benefits of a substitute refrigerant in a replacement hydrocarbon appliance would be offset if that appliance had lower energy efficiency than the appliance it replaces. EPA was unable to find any detailed life-cycle analysis addressing GHG emissions associated with substituting traditional ODS refrigerants with hydrocarbons. Information in the submissions indicates that energy efficiency of these refrigerants is likely to be comparable to or higher than that of ODS refrigerants and of HFC refrigerants sometimes used (*e.g.,* HFC–134a) (Ben & Jerry's, 2008; A.S. Trust & Holdings, 2007, 2009; GE, 2008). In the *2010 Assessment Report of the Technology and Economic Assessment Panel,* UNEP's Technology and Economic Assessment Panel (TEAP) discusses the energy efficiency of hydrocarbons compared to that of HFC–134a:

> When GWP of HFC–134a is considered prohibitive in relation to HFC emissions (country regulation or company policy), hydrocarbon refrigerants (isobutane and propane, *i.e.* HC–600a and HC–290) or $CO_2$ (R–744) are the current alternative solutions, presenting in most of the cases the same technical reliability and energy performance as HFC–134a. [p. 60]

Hydrocarbons are regulated as VOCs under sections of the CAA that address development of State Implementation Plans to attain and maintain National Ambient Air Quality Standards for ground-level ozone, which is a respiratory irritant (see 40 CFR 51.100(s)). EPA's 1994 risk screen document (EPA, 1994) describes the potential emissions of VOCs from all substitutes for all end-uses in the refrigeration and air-conditioning sector as likely to be insignificant relative to VOCs from all other sources (*i.e.,* other industries, mobile sources, and biogenic sources). Analysis performed for this rulemaking indicates that in the extremely unlikely event that all appliances manufactured by each submitter in these two end-uses were to leak their entire charge over the course of a year, the resulting increase in annual VOC emissions from each substitute as a percent of all annual VOC emissions in the U.S. would be negligible.[12]

Therefore, the use of these hydrocarbons in the household refrigeration and retail food refrigeration end-uses is sufficiently small that a switch from an ODS or from an HFC refrigerant would not have a noticeable impact on local air quality. International experts came to a similar conclusion in *Safeguarding the Ozone Layer and the Global Climate System: Special Report of the Intergovernmental Panel on Climate Change* (IPCC/TEAP, 2005).

Similarly, EPA expects that additional releases of hydrocarbons into the environment from use as refrigerant will have an insignificant impact on ecosystem risks. Because hydrocarbons are volatile and break down quickly in the atmosphere into naturally-occurring compounds such as carbon dioxide, EPA would not expect there to be any significant amount of deposition that might adversely affect aquatic or terrestrial ecosystems.

*B. Flammability*

Because they are flammable, isobutane, propane, and R–441A could pose a significant safety hazard for workers and consumers if handled incorrectly. Isobutane, propane, and R–441A have lower flammability limits (LFLs)[13] of 18,000 ppm, 21,000 ppm, and 16,000 ppm, respectively. The ODS for which these refrigerants are substitutes—CFC–12, HCFC–22, and R–502—and other substitutes available in this end-use are not flammable. When the concentration of a flammable refrigerant reaches or exceeds its LFL in the presence of an ignition source (*e.g.,* a static electricity spark resulting from closing a door, use of a torch during servicing, or a short circuit in wiring that controls the motor of a compressor), an explosion or fire could occur.

Flammability risks are of particular concern because household refrigeration appliances and retail food refrigeration appliances in the United States traditionally have used refrigerants that are not flammable. Without mitigation, the risks posed by flammable refrigerants would be higher than those posed by non-flammable refrigerants because individuals may not be aware that their actions could cause a fire, and

[10] CFC–11, CAS registry No. 75–69–4, is also referred to as R–11, $CCl_3F$ and trichlorofluoromethane.

[11] The submission for HCR–188C1, now known as R–441A, reported that the GWP of the substitute is ''negligible or essentially zero.'' Because the main components of R–441A are the same as the main components of the HCR–188C formulation originally submitted, the GWP of R–441A is expected to be similar to that reported for the original formulation by A.S. Trust & Holdings, Inc. (2007).

[12] As a percent of annual VOC emissions in the U.S., this represents approximately $5 \times 10^{-6}$ percent (for isobutane in the household food refrigeration end-use) (ICF, 2009a and ICF, 2011a), $5 \times 10^{-6}$ percent (for propane in the retail food refrigeration end-use) (ICF, 2009b and ICF, 2011b), and $3 \times 10^{-7}$ percent (for R–441A in the household food refrigeration end-use) (ICF, 2009d and ICF, 2011c).

[13] LFL is the minimum concentration in air at which flame propagation occurs.

existing appliances have not been designed specifically to minimize flammability risks.

Therefore, in order for these substitutes to be used safely, it is important to minimize the presence of potential ignition sources and to reduce the likelihood that the levels of these refrigerants will reach their LFLs. Production facilities, and other facilities where large quantities of the refrigerant are stored, should have proper safety precautions in place to minimize the risk of explosion. EPA recommends that these facilities be equipped with proper ventilation systems to minimize the risks of explosion and be designed to reduce risks from possible ignition sources.

To determine whether the three hydrocarbon refrigerants would present flammability concerns for service and manufacture personnel or for consumers, EPA reviewed the submitters' detailed assessments of the probability of events that might create a fire, as well as engineering approaches to avoid sparking from the refrigeration equipment. EPA also conducted risk screens, available in the docket for this rulemaking, evaluating reasonable worst-case scenarios to model the effects of the sudden release of the refrigerants. The worst-case scenario analysis for each of the three hydrocarbons revealed that even if the unit's full charge were emitted within one minute, the concentration would not reach the LFL for that hydrocarbon.

However, since hydrocarbon refrigerants are flammable, and manufacture personnel, service personnel, and consumers in the U.S. may not be widely familiar with refrigeration appliances containing flammable refrigerants, use conditions are necessary to create awareness of the presence of a flammable refrigerant and ensure safe handling. For this reason, this final rule includes use conditions in order to ensure that these substitutes present aggregate risks that are lower than or comparable to those of other substitutes that are currently or potentially available. This final rule also lists recommendations such as proper ventilation and storage practices, and use of appropriate tools and recovery equipment, to mitigate safety risks for manufacture and servicing personnel.

*C. Asphyxiation*

In evaluating potential human health impacts of isobutane, propane, and R–441A, EPA considered the risk of asphyxiation to workers (store employees and technicians) and consumers. The Agency evaluated a worst-case scenario that did not consider likely mitigating exposure conditions such as open doors or windows, fans, conditioned airflow, or infiltration between a door and its door frame. EPA calculated the maximum charge of each refrigerant that would result in a reduction of oxygen levels to 12 percent in air, which is the no observable adverse effect level (NOAEL) for hypoxia (ICF, 1997). Specifically, under the worst-case conditions evaluated, the charge sizes necessary to reduce the oxygen level in air to the 12-percent NOAEL in the household refrigeration end-use would be 625 grams and 535 grams (for isobutane and R–441A, respectively), which is much larger than the 57-gram charge size limitation required in the use conditions in this rule (ICF, 2011a and 2011c). Likewise, the charge size necessary to achieve the NOAEL in the retail food refrigeration end-use would be 904 grams for propane, which is six times greater than the 150-gram charge size limitations in this rule (ICF, 2011b). This risk is lower than or comparable to that of other available substitutes in these end-uses.

*D. Toxicity*

EPA evaluated the toxicity impacts of the three refrigerants to workers and consumers for the household refrigeration and retail food refrigeration end-uses. The Agency estimated the maximum time-weighted average (TWA) [14] exposures for the hydrocarbons under different exposure scenarios and compared them to relevant industry and government exposure limits for each of the three hydrocarbons (including potential impurities in the substitutes). The risk screens, provided in the docket, describe the toxicity impact assessments in more detail (ICF, 2009a; ICF, 2009b; ICF, 2009d; ICF, 2011a, ICF, 2011b, ICF, 2011c).

To assess occupational exposure for the household refrigeration and retail food refrigeration end-uses, EPA estimated the number of refrigerant releases during appliance manufacture and disposal and the refrigerant amounts released per event. For each refrigerant, EPA used those estimates to calculate the maximum 8-hour TWA exposure, which we then compared to the corresponding workplace guidance level (WGL). EPA found that occupational exposures to these hydrocarbons should not pose a toxicity threat in either end-use because the TWAs were well below the industry and government exposure limits.

To assess consumer and end-user exposure for the household refrigeration end-use, EPA modeled 15- and 30-minute TWAs for catastrophic refrigerant release in a consumer kitchen under a reasonable worst-case scenario. Even under the very conservative modeling assumptions used, EPA found that exposures to any of the three hydrocarbons would not pose a toxicity threat to end-users in the household refrigeration end-use because the TWAs were significantly lower than the NOAEL and/or acute exposure guideline level (AEGL).

To assess consumer and end-user exposure for the retail food refrigeration end-use, EPA estimated 15- and 30-minute TWAs as acute/short-term consumer exposures resulting from catastrophic leakage of refrigerant from retail food refrigerators and compared the TWAs to standard toxicity limits. EPA concluded that none of the three hydrocarbons posed a toxicity threat to consumers in the retail end-use because the TWAs were significantly lower than the NOAEL and/or AEGL.

Finally, EPA assessed the exposure risk to the general population for the three hydrocarbons in their respective end-uses. To do so, EPA estimated factory and on-site releases of each hydrocarbon and compared them to each hydrocarbon's reference concentration (RfC).[15] In all cases, the modeled exposure concentrations were significantly lower than the RfC, leading EPA to conclude that isobutane, propane, and R–441A are unlikely to pose a toxicity risk to the general population. These toxicity risks are lower than or comparable to those posed by the other acceptable substitutes in these end-uses.

## V. What is EPA's response to comments on the May 2010 notice of proposed rulemaking?

In this section, EPA responds to comments on the May 10, 2010, notice of proposed rulemaking (NPRM).

*A. EPA's Acceptability Determination*

*Comment:* Ninety-nine commenters expressed unconditional support for EPA's proposal to find isobutane and R–441A acceptable (subject to use conditions) in the household refrigeration end-use and to find propane acceptable (subject to use conditions) in the retail food refrigeration end-use.

[14] Time-weighted average (TWA) = The average concentration of a specific substance in air over a specified time period—*e.g.,* during the course of an 8-hour work day.

[15] The RfC is a concentration designed to protect the general population against adverse systemic (*i.e.,* non-cancer) health effects.

*Response:* We appreciate the support for our proposed action, and we are taking final action consistent with that proposal.

*Comment:* One commenter observed that although hydrocarbon refrigerants provide some environmental benefit by reducing GHG emissions, they pose flammability risks that more than offset that benefit. The commenter stated that the global warming impacts of HFC refrigerants are currently small due to their low emissions (except in the case of catastrophic leaks), and practices are in place to recover refrigerant and destroy foam at an appliance's end-of-life. The commenter also observed that hydrocarbon refrigerants could enter the refrigerant recovery/recycle chain during servicing or at the end-of-life, necessitating costly upgrades to recycle/recovery equipment in order to mitigate potential flammability risks.

*Response:* EPA reviews substitutes according to regulatory criteria provided at 40 CFR 82.180(a)(7) and described above. EPA has evaluated the hydrocarbon refrigerants against these criteria and has concluded that they present overall environmental and human health risks that are lower than or comparable to other acceptable substitutes in the household refrigeration and retail food refrigeration end-uses. EPA agrees that flammability risks could be a concern for these refrigerants in these end-uses. But, for the two end-uses at issue in this rule, where charges are limited and there is a long history of safe use globally, EPA believes risks can be mitigated to ensure the substitutes can be used as safely as other available substitutes. We are establishing use conditions to ensure that these substitutes pose an overall risk to human health and the environment that is lower than or comparable to the overall risk posed by other substitutes in the same end-uses.

With respect to the comment regarding risks during servicing and at end-of-life, EPA agrees that flammability could pose a concern for the servicing and disposal of appliances containing hydrocarbon refrigerants. However, the use conditions in this final rule address this potential risk. For example, the labeling requirements and the requirement for coloring of tubing will serve as notification to servicing or disposal personnel that an appliance contains a flammable refrigerant.

Section V.L (below) also discusses recovery equipment. Based on comments received, EPA believes that recovery equipment designed specifically for flammable refrigerants is not yet widely manufactured or available in the U.S., although certain commenters observed that they have created their own equipment to meet this need in their own business practices.

*Comment:* Another commenter provided detailed comments on EPA's risk screen for the use of isobutane in the household refrigeration end-use and limited comments on EPA's risk screen for the use of propane in the retail food refrigeration end-use. The commenter stated that EPA has underestimated the safety risks associated with the use of hydrocarbon refrigerants. The comments covered the following:

1. A fault-tree analysis calculating the probability of failures that would lead to ignition of the refrigerant;
2. The results of an external leak test in a mockup kitchen to illustrate the consequences of an external leak;
3. The results of an internal leak test and a deflagration/explosion test to illustrate the consequences of an internal leak;
4. An observation about a manufacturer's major recall of certain models of isobutane refrigerators in 2009 as a result of safety incidents in Asia and Europe; and
5. A statement of similar concerns about the use of propane in small commercial refrigeration systems.

This section of the preamble summarizes these comments and EPA's response.

*Comment 1:* Fault tree analysis.

*Comment:* The commenter included a fault-tree analysis (FTA) that assessed the probability of household refrigerator ignition events due to the random coincidence of ignition sources and internal refrigerant leaks. An FTA considers how likely different events are and how resistant a system is to various faults. The commenter's FTA analyzed several potential scenarios in which ignition events could take place in household refrigerators. The commenter's FTA calculated that isobutane household refrigerators in the U.S. would experience: (a) 2.9 ignition events per year at full market penetration as a result of independent, random events, and (b) an additional 2.5 ignition events for every 10 million refrigerators that enter the market due to a specific coupled failure in which the malfunction of the defrost heater is both the cause of the leak and the ignition source. The commenter concluded that EPA potentially underestimated the risk of ignition-related failures in residential refrigerators for internal leak events. Details of the two calculations are presented below.

(a) Failure scenarios based on independent, random events. The commenter's FTA identified two events that, occurring simultaneously, could potentially lead to an ignition event: (1) An internal isobutane refrigerant leak and (2) the occurrence of an energy source with sufficient energy to cause ignition. The commenter's FTA identified and calculated probabilities for the different ways in which each of these events could happen.

To calculate the probability of an internal leak event, the commenter made assumptions regarding: The number of refrigerator repairs due to joint leakage and evaporator corrosion that might be related to a leak; the number of refrigerator repairs annually (based on the estimated amount of HFC–134a currently sold for use in servicing); and a multiplier accounting for the number of leaking refrigerators that would be thrown away instead of repaired. Based on these assumptions, the commenter estimated that isobutane refrigerators would experience approximately 260,000 internal leak failures per year in the U.S. at full market penetration (which the commenter estimated at approximately 150 million refrigerators).

To calculate the probability of an energy source with sufficient energy to cause ignition, the commenter's FTA estimated the probability of sparks from internal switches and controls, the defrost heater, and static electricity, asserting that any of these sparks would have sufficient energy to ignite a leak. The commenter's FTA calculated the likelihood of an ignition source as 11.2 in 1,000,000.

The commenter's FTA integrated the above assumptions and estimates to calculate an expected 2.9 ignition events per year at U.S. full market penetration.

(b) ''Coupled leak failure'' scenario. The commenter asserted that in addition to the random, independent events assessed above, the defrost heater presents a risk of a coupled failure because an electric short to the evaporator coil can be the cause of both the refrigerant leak and the ignition event. The commenter took three factors into account to determine the total number of ignition events from this coupled failure: (1) The probability that the defrost heater will short-circuit, (2) the probability that an arc from the defrost heater will cause a refrigerant leak, and (3) the probability that the refrigerant will be present in sufficient quantities to ignite (*i.e.,* whether the concentration will be at the LFL or higher). The commenter estimated that for every 10 million household refrigerators using isobutane that are produced, there would be an estimated 2.5 failure events in which an electrical short to the evaporator coil causes both

a refrigerant leak and an ignition over the lifetime of those units. The commenter clarified that this value is in addition to the ignition events calculated in the previous FTA, which would result from the coincidence of independent, random events.

*Response:* While EPA believes that the commenter has overestimated failure probabilities, we agree with the commenter that the risks associated with the use of isobutane in household refrigerators are greater than zero. EPA believes, however, that these risks are sufficiently small and should not preclude a determination that isobutane is acceptable for use subject to use conditions that are for the purpose of mitigating the potential risks.

EPA's interpretation of the risk of ignition-related failures in residential refrigerators for internal leak events is based on information presented in ''Risk Assessment of Flammable Refrigerants for Use in Home Appliances'' (A.D. Little, 1991). The A.D. Little report, available in the docket for this rulemaking, included an FTA in which leak rate calculations were based on historical leak rate data provided by three refrigerator manufacturers. As explained in more detail below, EPA believes that many elements of the commenter's FTA are undocumented, are at odds with the industry data used in the A.D. Little report, and present internal analytical inconsistencies.

(a) Failure scenarios based on independent, random events. Regarding the failure scenarios based on independent, random events, we note that the commenter's discussion of methodology, the equation used for the calculation, and the calculations in the commenter's FTA were inconsistent with each other, making it difficult to evaluate what had been done. Based on the commenter's discussion of methodology, EPA believes that the commenter's FTA applied assumptions that are either undocumented or unsupported by industry data. One such assumption is particularly problematic: The commenter's analysis appears to have considered all leaks as potential risks for ignition. However, in order for a leak to pose a potential risk for ignition, the refrigerant must be present in amounts that meet or exceed the LFL. The ability of a refrigerant to accumulate and reach its LFL is a function of both the rate at which the leak occurs and the presence of enclosed spaces that can trap the refrigerant and allow it to build up. Neither of these conditions was accounted for in the commenter's probability calculations.

As previously mentioned, the A.D. Little report calculated leak rates from historical leak rate data provided by three refrigerator manufacturers. A.D. Little distinguished ''catastrophic'' leaks (the loss of a significant portion of refrigerant charge over a few minutes) from ''slow'' leaks, observing that only catastrophic or ''fast'' leaks would allow refrigerant to accumulate to a level of concern. The report goes on to calculate the ''average'' risk that a leak is a fast leak as 0.1 percent and the ''worst-case'' risk that a leak is a fast leak as 1 percent. EPA believes that the commenter's failure to distinguish ''slow'' from ''fast'' leaks causes the commenter's analysis to overestimate the risk of an ignitable leak by at least two orders of magnitude.

Furthermore, today's rule finalizes use conditions that guard against the potential that refrigerant from a ''fast'' leak will be able to accumulate in amounts that reach the LFL, or that an ignition source would cause an ignition event in the case of a significant leak. The use conditions require any household refrigerator using isobutane to be designed specifically for use with flammable refrigerant in a manner that complies with the UL 250 Standard. UL 250, Supplement SA, ''Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System,'' is intended to protect against an ignition incident in the event of a refrigerant leak. Units that are in compliance with UL 250 (particularly Supplement SA) have passed appropriate ignition or leakage tests as stipulated in the standard. Passing the leakage test (at SA 5.1.2.7 and SA 5.1.3.6) ensures that refrigerant concentrations in the event of a leak do not reach or exceed 75 percent of the LFL inside any internal or external electrical component compartments.

(b) ''Coupled leak failure'' scenario. EPA's concerns about the independent variables underlying the coupled leak failure scenario are the same as those articulated above for randomized events. The commenter did not provide clear documentation or a rationale for how estimates were derived.

EPA believes that the commenter overestimated the probability that a defrost heater would cause a leak and cause ignition because the calculation neglected to account for an important factor: the probability of a defrost cycle coinciding with the time period during which concentrations in the compartment reach the LFL. Even if a refrigerant is present in sufficient quantity (*i.e.,* at LFL), it will not ignite if there is no ignition source. For example, if the door to a compartment that contains refrigerant at LFL is opened before a new defrost cycle begins and the refrigerant dissipates to concentrations below the LFL, then no ignition event will take place, when the next defrost heater cycle begins and an arc occurs. The commenter claimed that the defrost cycle is only active 2 percent of the time (for three 10-minute periods per day). Had the commenter incorporated this factor into the calculations, the number of coupled leak failures would be approximately 50 times lower, dropping from 2.5 per 10 million units to about 0.05 per 10 million units. Since this is the probability of a coupled leak failure over the lifetime of a unit, and the average lifetime of a unit is estimated to be a minimum of 10 years, this would correspond to at most 0.08 ignition events per year at full market penetration (approximately 150 million refrigerators, according to the commenter) due to a coupled leak failure. We consider this a reasonable risk level. Moreover, use conditions in this final rule should further decrease the likelihood of such an event occurring, and that these risks are sufficiently small and should not preclude a determination that isobutane is acceptable for use, subject to use conditions that are for the purpose of mitigating potential risks.

*Comment 2:* External leak test.

The commenter presented results from an experiment that mimicked a leak from an isobutane refrigerator using a bottom-freezer refrigerator located inside a controlled ambient chamber and performed test measurements of isobutane levels in a mockup kitchen. The commenter stated that the experiment followed the leak procedure in the UL 250 standard, including the following setup:

- A kitchen intended to closely resemble a typical U.S. kitchen;
- A bottom-freezer refrigerator located inside a control ambient chamber;
- A 57-gram charge of isobutane; and
- Eight calibrated Henze-Hauck concentration sensors near potential ignition sources.

After running the test, the commenter stated that five sensors showed isobutane concentrations exceeding the LFL for several minutes. The commenter used these results as the basis of an assertion that EPA underestimated the risks from external leaks.

*Response:* To assess the commenter's experiment fully, EPA would require values for the commenter's test parameters and supporting documentation. Based on the information provided, however, we have the following responses.

We note that the commenter's experiment was meant to simulate a worst-case scenario leak. Based on industry data in the A.D. Little report, the annual probability of a catastrophic leak outside a given refrigerator is typically $3.6 \times 10^{-7}$, with a worst-case probability of $9.0 \times 10^{-6}$.

The commenter did not provide the make and model of the refrigerator used, and did not describe whether it was designed specifically to use isobutane as a refrigerant. Since EPA is requiring any isobutane refrigerator to be designed specifically for use with flammable refrigerant and to comply with Supplement SA of UL 250 for use with flammable refrigerants, results from a test for a refrigerator not designed to meet the requirements of Supplement SA would not reflect the risks associated with an isobutane refrigerator that is compliant with the use conditions in this final rule. Even if the refrigerator were specifically designed for use with an isobutane refrigerant and fully compliant with all portions of the UL 250 Standard, EPA believes that the leaked refrigerant at the locations of the five sensors showing isobutane concentrations at or exceeding the LFL is not likely to ignite for the reasons discussed below.

The commenter's experiment leaked an unrealistically large amount of refrigerant, causing slightly higher measurements for isobutane concentrations than could be expected in the actual event of a leak. As described in Section V.D of this preamble (Charge Size Limitation—Household Refrigeration), the proposed and final rules limit the charge size for each sealed refrigerant system to 57 grams, with a use condition for compliance with the UL 250 Standard Supplement SA, which calls for a charge size that will not leak more than 50 grams of hydrocarbon refrigerant with properties similar to isobutane. Thus, a leak of 57 grams, such as the one described in the commenter's experiment, is not consistent with a possible leak from an isobutane refrigerator that is compliant with the use conditions in this final rule.

The first of the five sensors that showed isobutane concentrations above the LFL registered a maximum level of 1.9% for approximately 0.6 minutes (36 seconds). This was just barely above the LFL of 1.8% and had a duration of less than a minute. The sensor would have measured a concentration at or above the LFL for less than 0.6 minutes, if at all, if the test had leaked a realistic amount of refrigerant based on the use conditions in the proposed and final rules.

The concentrations measured at the four other sensors likely still would have been higher than the LFL, even if a realistic amount of refrigerant had been leaked. However, EPA does not believe that there are likely ignition sources present at those locations, which are near the compressor relay, on the floor behind the refrigerator, on the floor just in front of the refrigerator, and on the floor 2.5 meters in front of the refrigerator. If the refrigerator were designed in accordance with the UL 250 Standard as required by this rule, then there would be no ignition sources in either of the first two locations, or the refrigerator would be designed in such a way that the LFL would not be reached near an ignition source in those locations.[16] As for the last two sensors, EPA disagrees with the commenter's assertion that these locations are a likely source of sparks. While not impossible, we believe it is highly unlikely that a major external leak would occur and at the same time, someone would light a match or cigarette in their kitchen and then drop it on the floor. We note that the LFL was not reached at the sensor located near a more likely spark source—30 inches above the floor at an electrical outlet.

In response to the commenter's general observation that EPA's risk screen may underestimate risks, EPA revisited the assumptions made in the end-use modeling for both isobutane and R–441A in the household refrigeration end-use to identify opportunities for a more conservative analysis. The results of this analysis are provided in a memo, ''Additional end-use modeling for household refrigerators and freezers'' (ICF, 2011d), which is provided in the docket for this rulemaking. This exercise identified two parameters for which assumptions could be more conservative:

- Leak amounts were increased to 57 grams (representing the entire allowable charge size) rather than 50 grams (for isobutane) and 40 grams (for R–441A), which were the intended charge sizes submitted by the applicants. While a leak amount of 57 grams is greater than that allowed by the UL 250 Standard, this additional analysis conservatively accounts for the possibility of incorrect manufacturer testing of the product. (We note that a refrigerator that leaks more than 50 grams of isobutane or R–441A refrigerant would not be in compliance with UL 250, and therefore would be in violation of the use conditions of this rule.)
- Stratification was more conservatively modeled through the assumption that 95 percent of the leaked refrigerant mixes evenly into the bottom 0.2 meters (9 inches) of the room, rather than the bottom 0.4 meters as assumed in the risk screen.

Using these more conservative assumptions, EPA performed additional flammability and threshold analysis. EPA found that even with a higher leak amount and a greater degree of stratification, the LFL was not reached in the model for either refrigerant. Furthermore, it would take a 75-gram leak in an 18 $m^3$ kitchen or a 57-gram leak in a 13.8 $m^3$ kitchen to meet or exceed the LFL in the lower portion of the room for isobutane. Likewise, it would take a 59-gram leak in an 18 $m^3$ kitchen or a 57-gram leak in a 17.3 $m^3$ kitchen to meet or exceed the LFL in the lower compartment of the room for R–441A. It should be noted that a survey of kitchen sizes found the smallest kitchen volume to be 31 $m^3$, with 99 percent of kitchens having a volume of at least 53 $m^3$ (Murray, 1997 as cited in ICF, 2009a; ICF, 2009d; ICF, 2011a; and ICF, 2011c). Thus the results of this more conservative and protective modeling do not indicate a significant cause for concern that would cause us to change our determination that isobutane and R–441A are acceptable subject to use conditions for use in the household refrigeration end-use.

Depending on the mixing conditions, it is still possible that in certain locations at floor level, or in restricted areas such as the space between a refrigerator and a wall, the concentrations of isobutane or R–441A could reach their LFLs for a few minutes, posing a threat in the presence of a spark. However, in the worst case, the annual probability of a ''fast'' external leak occurring and an ignition source being present simultaneously is approximately $5.0 \times 10^{-7}$, or 0.5 in a million) (A.D. Little, 1991).

*Comment 3:* Internal leak test and explosion/deflagration experiment.

The commenter provided a cursory description of an internal leak test that measured isobutane concentrations inside the freezer compartment. The commenter concluded that refrigerant concentrations inside the freezer compartment reached 3.2 percent, which exceeds the LFL of 1.8 percent.

[16] Under SA5.1 of the Standard, a leakage test is required to ensure that refrigerant concentrations measured near any internal or external electrical component cannot exceed 75% of the LFL at any point in time and, furthermore, cannot exceed 50% of the LFL for more than 5 minutes at a time. (SA5.1.2.7, SA5.1.3.6). For any locations in which the LFL exceeds these amounts, the product would need to pass an ignition test (SA5.2) and a temperature test (SA 5.3) to ensure that electrical and heating components will not ignite the specific flammable refrigerant under consideration in order to comply with UL 250.

The commenter also described the results of a test to reproduce the deflagration/explosion when an internal leak is ignited. The commenter stated that it performed a leakage test according to UL 250 on a U.S. market refrigerator with original components, including the defrost heater, in outdoor ambient conditions. The test leaked 57 grams of refrigerant and used an unidentified sparking source to simulate a faulty defrost heater connection in the freezer compartment. The result was a violent explosion that sent heavy objects, such as the freezer door, flying up to 48 feet high. The commenter argued that this demonstrates that 57 grams of isobutane would produce enough energy to result in structural damage.

*Response:* As was the case for the external leak test, the commenter provided neither the make and model of the refrigerator used, nor a statement regarding whether the refrigerator was designed specifically to use isobutane. Since EPA is requiring all isobutane refrigerators to be designed specifically for use with flammable refrigerant and to comply with Supplement SA of UL 250 for use of flammable refrigerants, results from a test for a non-compliant refrigerator would not reflect the risks associated with an isobutane refrigerator that is in compliance with the use conditions in this rule. As previously noted, Supplement SA is intended to protect against an ignition incident in the event of a refrigerant leak. Units that are in compliance with Supplement SA of UL 250 have passed appropriate ignition or leakage tests as stipulated in the standard. Passing the leakage test (at SA 5.1.2.7 and SA 5.1.3.6) ensures that refrigerant concentrations in the event of a leak do not reach 75 percent of the LFL inside food compartments.

EPA also notes that the commenter's experiment was meant to simulate a worst-case scenario leak. Based on industry data in the A.D. Little report, the annual probability of a fire or explosion inside a given refrigerator is $2.7 - 10^{-13}$ on average, with a worst-case probability of $7.0 - 10^{-12}$. This latter value corresponds to roughly 0.001 ignition events per year (or 1 ignition event every 1,000 years) at full market penetration (approximately 150 million refrigerators, according to the commenter) under a worst-case scenario. We consider this a reasonable risk level. Again, we note that the use conditions in this final rule should further decrease the likelihood of such an event occurring, and that these risks are small enough not to preclude a determination that isobutane is acceptable for use subject to the use conditions required by this final rule.

*Comment 4:* Recall of isobutane refrigerators.

The commenter described a major recall of certain models of isobutane refrigerators. In 2009 a major consumer refrigerator manufacturer announced a recall of isobutane refrigerators as a result of safety incidents that occurred in Asia and Europe. These incidents occurred despite the fact that these units were specifically designed to operate with isobutane, and were designed to eliminate potential ignition sources. The electrical insulation in the defrost mechanism in these units carbonized, leading to partial short-circuiting and sparking. The sparking corroded the adjacent tubing, which resulted in a leak of hydrocarbon refrigerant. Isobutane concentrations accumulated enough to exceed the LFL in the closed refrigerator unit. During the next defrost cycle, the faulty electrical circuit resulted in ignition of the refrigerant and an explosion.

*Response:* The recall discussed in this comment occurred in October 2009 and involved approximately 400,000 refrigerators in South Korea and Europe that were manufactured between March 2005 and June 2006. According to the manufacturer, the recall was triggered by an October 29, 2009, explosion of an isobutane refrigerator in Gyeonggi, South Korea. Press accounts also discuss a small number of related incidents in the United Kingdom and Germany between 2006 and 2009. Addressing the problem under the recall involved home visits to install a safety device to prevent the defrost heater from overheating.

EPA notes that this final rule requires all isobutane refrigerators to comply with the provisions of Supplement SA to UL 250. These provisions include leakage, ignition, and temperature tests, as well as an accelerated aging test of heater terminal seals and an insulation resistance test of all defrost heaters. These tests are not included in the standards established by the International Electrotechnical Commission (IEC) that would have been applicable to the appliances under recall.

EPA also notes that more than 400 million hydrocarbon refrigerator units are in use worldwide; in China alone, 75 percent of new domestic refrigerators/freezers use isobutane. Refrigerator ignition incidents resulting from leaked isobutane appear to be rare considering the widespread use of hydrocarbon refrigerators worldwide.

*Comment 5:* Use of propane in small commercial refrigeration systems.

The commenter includes a brief observation that the use of propane in small commercial refrigeration systems poses risks similar to use of isobutane in residential refrigerators. The commenter also argues that larger hydrocarbon charges pose a higher risk of ignition events, and that small commercial refrigeration systems are known to have much higher leakage frequencies and failure rates than residential systems.

*Response:* As discussed above, EPA performed a risk screen on the use of propane in small commercial refrigeration systems (ICF, 2009b, revised as ICF, 2011b), which is available in the docket for this rulemaking. The risk screen indicates that propane's LFL is not reached in the retail food refrigeration end-use where the charge size does not exceed that established by the use conditions. As described in the risk screen, under a worst-case (catastrophic) release scenario the maximum instantaneous concentration of propane in the lowest stratum of the room would be approximately 66 percent of the LFL and the concentration in the upper part of the room would be lower. Further, the SNAP application for this end-use pointed out that no catastrophic (''fast'') leaks had been reported from among the 270,000 hydrocarbon refrigerators in operation belonging to the submitter.

The commenter did not provide information to refute EPA's risk screen for retail food refrigeration. EPA's flammability assessment indicates that the risk of explosion is extremely small in this end-use.

*B. New Equipment Only; Not Intended for Use as a Retrofit Alternative*

EPA received ten comments on its proposed requirement that hydrocarbon refrigerants ''be used only in new equipment designed specifically and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment).'' Nine of the commenters supported restricting the use of hydrocarbon refrigerants to new equipment only.

*Comment:* One commenter requested that retrofitting old household refrigerators and freezers and retail food refrigerators (stand-alone equipment only) be allowed. The commenter suggested that safety concerns could be alleviated by allowing retrofitting only by personnel who are trained to handle flammable refrigerants.

*Response:* Under the SNAP program, an application for SNAP approval specifies whether the proposed refrigerant use is for new equipment,

retrofitted equipment, or both. None of the submissions applied for use in retrofitted equipment. The Agency did not conduct a risk analysis for use of the substitutes in retrofitted equipment, nor did any of the comments provide such an analysis. Therefore, EPA is not addressing such use at this time.

EPA would consider whether to find hydrocarbon refrigerants acceptable for use in retrofitted equipment in the future if sufficient evidence, including a risk assessment, is provided and shows that such use will present risks to human health and the environment that are lower than or comparable to risks from other available substitutes.

*C. Compliance With UL Standards*

EPA received ten sets of comments on its proposed requirement that the hydrocarbon refrigerants be used only in refrigerators or freezers that meet all requirements listed in the Underwriters Laboratories (UL) Standard for Household Refrigerators and Freezers, UL 250 (for the household refrigeration end-use) [17] and the UL Standard for Commercial Refrigerators and Freezers, UL 471 (for the retail food refrigeration end-use).[18] Most commenters supported adherence to applicable UL standards, although some offered the following additional comments.

*Comment:* One commenter recommended that a final rule be contingent upon the existence and acceptance of a comprehensive industry-wide safety standard. The commenter also suggested that EPA could add other standards to the list of references addressing the safety of hydrocarbon refrigerants. The commenter referred to ANSI Standard Z21.24,[19] ASHRAE Standard 15,[20] UL Standard 21,[21] EN 378,[22] ISO–5149,[23] the IOR Safety Code of Practice for Refrigerating Systems Utilising A2 & A3 Refrigerants,[24] and AS/NZS 1677.[25]

*Response:* It is unclear what was intended by either comment. Regarding the first comment, EPA notes that the UL standards are in fact industry-wide safety standards. UL has tested equipment for flammability risk in both household and retail food refrigeration. UL also has developed acceptable safety standards including requirements for construction, for marking, and for leakage, ignition, and temperature tests, as well as an accelerated aging test of heater terminal seals and an insulation resistance test of all defrost heaters.

With respect to the second comment, it is unclear whether the commenter is suggesting that the other standards be imposed as use conditions, whether they should be included in the ''Further Information'' column of the regulations, or whether they should simply be described in this preamble. The commenter provided no reasoning as to why the listed standards should be included either as use conditions or in the ''Further Information'' column of the regulation, and we are not aware that these standards provide any additional protections that are not provided by this rule. EPA believes that the use conditions established in this final rule will ensure that these substitutes will present risks that are lower than or comparable to the risks from other available alternatives.

*D. Charge Size Limitation (Household Refrigeration)*

EPA received ten comments on its proposed charge size limitation of 57 grams (2.0 ounces) for the household refrigeration end-use.

*Comment:* Five commenters recommended a limit of 150 grams (5.3 ounces) to correspond to standards established by the International Electrotechnical Commission (IEC 60335–2–24), including two non-governmental organizations, a manufacturer of refrigerator compressors, and two manufacturers of household refrigerators and freezers. One of these commenters, an environmental organization, observed that over 400 million refrigerators using propane and isobutane refrigerants are in use worldwide and that they generally are certified to the 150-gram international safety standard. The commenter stated that EPA has not provided a justification for a 57-gram charge size limit.

One commenter, a manufacturer of household refrigerators and freezers, stated that the 57-gram charge size limit in some cases would reduce the efficiency of the appliance and raise the indirect GHG emissions associated with the product's energy use. Two commenters, a manufacturer of household refrigerators and freezers and an environmental organization, observed that the UL 250 standard could change in the future and recommended that EPA should modify its charge size limitation to harmonize with UL 250 as it changes over time.

Three of the commenters supported the 57-gram limitation, including a manufacturer of household refrigerators and freezers that submitted to the SNAP program for hydrocarbon refrigerant in this end use; a manufacturer of commercial refrigerators and freezers that submitted to the SNAP program for hydrocarbon refrigerant in both household and commercial refrigerators and freezers; and a manufacturer of commercial refrigerators and freezers.

*Response:* EPA agrees with the comments supporting the proposed requirement that the charge size not exceed 57 grams for household refrigeration. UL 250 allows a maximum leak amount of 50 grams (1.8 ounces), and the submitter used procedures outlined in the UL 250 leakage test to conclude that up to 7 grams of additional refrigerant charge could be solubilized in the oil (and assumed not to leak or immediately vaporize with the refrigerant in the event of a leak). This information was reflected in EPA's risk screen for isobutane, which modeled a maximum refrigerant release of 50 grams (ICF, 2009a and ICF, 2011a).

It is true that hundreds of millions of refrigerators and freezers using propane and isobutane refrigerants in other countries are certified to the IEC 60335–2–24 standard, which allows for a charge of hydrocarbon refrigerant up to 150 g. However, available evidence suggests that most of these appliances actually have charges that are closer to 57 g than to 150 g. For comparison, a typical U.S. household refrigerator using HFC–134a has a charge of roughly 140 g,[26] and a charge of isobutane providing comparable cooling would be 40 to 50% of the charge of HFC–134a,[27] or 56 to 70 g. It is EPA's understanding that most European household refrigerators are smaller than the typical U.S. household refrigerator and that they use less charge; thus, we would expect that

[17] EPA is referencing Supplement SA (''Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System'') from UL Standard 250, ''Household Refrigerators and Freezers,'' 10th edition.

[18] EPA is referencing the UL Standard 471, 9th edition Supplement SB; ''Requirements for Refrigerators and Freezers.

[19] American National Standards Institute (ANSI) Z21.24: *Connectors for Gas Appliances.*

[20] ASHRAE Standard 15–2010: Safety Standard for Refrigeration Systems.

[21] UL 21: Standard for LP-Gas Hose.

[22] EN 378: *Refrigerating systems and heat pumps—Safety and environmental requirements.* Prepared by European Committee for Standardization/Technical Committee CEN/TC 182 (Refrigerating systems, safety and environmental requirements).

[23] International Organization for Standardization. ISO 5149: Mechanical refrigerating systems used for cooling and heating—Safety requirements.

[24] IOR (Institute of Refrigeration): Safety code of practice for refrigerating systems utilising A2 and A3 refrigerants.

[25] The Joint Australian Standard/New Zealand Standard (AS/NZS) 1677: Addresses safety, design, construction, installation, testing, inspection, operation and maintenance of refrigeration systems.

[26] A. D. Little, 2002.

[27] ACRIB, 2001.

European household refrigerators have charge sizes less than 70 g. The commenter's own Web site states, ''[T]oday's hydrocarbon refrigerators, with hermetically sealed compressor systems, use between 30 to 70 grams of refrigerant, depending on the size of the refrigerator.'' [28] Thus, the safety record of hydrocarbon refrigerators and freezers in Europe appears to reflect experience primarily with charge sizes much smaller than 150 g.

While EPA could assess various charge sizes on a theoretical basis, we do not have the resources to perform product testing and we rely primarily on industry, national safety standard organizations, and non-governmental organizations to conduct tests on appliances. UL has tested household refrigerators, freezers, and combination refrigerators and freezers for safety, especially with respect to flammability concerns, and the U.S. insurance industry and commercial sector rely on the results of those tests. Testing by manufacturers and UL addresses flammability in the manufacturing process as well as how the product functions with different charge sizes. UL developed the 50-gram allowable leak limit as the result of testing during development of the UL 250 standard for household refrigerators and freezers. The 50-gram allowable leak limit for household refrigerators in UL 250 differs from the 150-gram allowable leak limit for commercial refrigerators and freezers in UL 471 due to factors such as the difference in the room sizes modeled for household versus retail appliances. Therefore, building on the UL allowance of a 50-gram allowable leak limit and the tests performed by the submitter, we concluded that the maximum charge size should be 57 grams for the household refrigeration end-use.

EPA did not receive specific information concerning the potential energy efficiency effects of limiting the charge size to 57 g or less. Thus, we are not able to judge the technical merits of the commenter's statement.

EPA does not have sufficient information supported by safety testing data at this time from other commenters, industry, U.S. national safety organizations, or non-governmental organizations to support a charge size limit different from one based on UL 250, such as the 150-gram limit in IEC 60335–2–24. EPA understands that the limit in UL 250 may change in the future. If that occurs, and if the appropriate safety testing data is submitted to EPA supporting safe use of a larger charge, we would consider modifying the use conditions at a future date.

We acknowledge that a larger charge size may improve the energy efficiency of an appliance and simplify its construction. However, based on the analyses available at this time, we do not have sufficient information to demonstrate that a larger charge size would not create an unacceptable level of risk as compared to other available substitutes in the household refrigeration end-use. As noted above, EPA could modify the use conditions in the future if sufficient data were submitted to support safe use of a larger charge size.

*Comment:* One commenter requested a more precise definition of ''charge,'' recognizing that the exact value of the charge depends on the accuracy of the charging equipment.

*Response:* EPA regulations do not provide an accuracy specification or interpretation for ''charge'' or ''charge size.'' EPA believes that such a regulatory definition is not necessary for purposes of this use condition. EPA believes that the wording in the use condition (''the quantity of the substitute refrigerant'') provides sufficient guidance and that manufacturers and service technicians have the proper instrumentation and training to judge the quantity of refrigerant being charged to an appliance.

*Comment:* One commenter encouraged EPA to clarify or provide a test procedure for how manufacturers should measure the potential solubility of isobutane in the oil.

*Response:* Providing such a test procedure is beyond the scope of this final rule. The use conditions reflect the assumption that 7 grams of a 57-gram charge could be solubilized in the refrigerant oil while still allowing compliance with UL 250. The SNAP submittal for isobutane in the household refrigeration end-use contains information on the solubility of isobutane with refrigerant oils (GE, 2008). We typically defer to the technical standard-setting agency on this type of issue unless there is convincing evidence disputing such a calculation. Moreover, we note that manufacturers that choose to use isobutane are not obligated to measure its potential solubility in oil for purposes of complying with the use conditions, since any charge below 50 grams would be in compliance with UL 250 and the charge size limitations of this rule. Thus we see no reason to establish a test procedure for performing such an analysis.

*Comment:* Two commenters observed that an appliance in the household refrigeration end-use might incorporate more than one sealed system and requested that the charge size limitation apply to each sealed system in an appliance, not to the entire appliance.

*Response:* EPA agrees and is clarifying that the 57-gram charge size limit applies to each sealed system.[29] A household refrigeration appliance may incorporate multiple sealed systems. Having multiple sealed systems is less of a concern than having a single system with the same combined charge since the probability of two sealed systems leaking simultaneously is very low. In addition, hermetically sealed systems are less likely to leak, presenting a lower probability of fire or explosion. Hermetically sealed systems provide an increased level of safety in normal use.

### *E. Charge Size Limitation (Retail Food Refrigeration)*

EPA received seven sets of comments on its proposed charge size limitation of 150 grams (5.3 ounces) for the retail food refrigeration end-use. Six commenters supported the 150-gram limitation, although some offered additional comments.

*Comment:* One commenter recommended increasing the limit to 170 grams for three reasons: first, that EPA's 150-gram limit was calculated based on a small European-sized kitchen and reflected a 20-percent reduction from the LFL; second, that the proposed limit was based on domestic refrigerator standards and misapplied to commercial applications; and third, that the UL standard reflects 150 grams of leakage and 20 grams that remains in the oil and does not leak.

*Response:* EPA is finalizing the 150-gram charge size limit as proposed for this end-use. This limit is more conservative than the UL 471 standard, which reflects a leak amount of 150 grams (*i.e.,* not counting refrigerant

[28] Greenpeace, 1997.

[29] A ''sealed system'' is an independently operated refrigeration system, including a compressor, evaporator, condenser, metering device, and refrigerant not shared for other purposes. For example, a refrigerator-freezer might employ one sealed system to chill food in the refrigerator section and a second sealed system to keep food frozen in the freezer compartment. ''Appliance'' is defined at 40 CFR 82.152 as ''any device which contains and uses a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.'' Thus a refrigerator, freezer, or combination refrigerator and freezer, for example, may consist of two appliances provided that the refrigerant in the first appliance (*i.e.,* the first compressor, condenser, evaporator, and metering device) does not mix with the refrigerant in the second appliance (*e.g.,* the second compressor, condenser, evaporator, and metering device).

solubilized in oil). Unlike the charge limit for the household refrigeration end-use, the charge limit for the retail food refrigeration end-use does not reflect an additional amount of refrigerant assumed to be solubilized in the oil because SNAP submitters did not include test data to support this information for propane. UL 471 limits the amount of refrigerant leaked to 150 grams, based on testing performed during the development of the UL 471 standard. The commenter provided no test data showing that 20 grams (or some alternative amount) would be captured in the oil if the UL 471 standard were applied. Nor was there evidence that the leak assumptions for the household refrigeration end-use (7 of 57 grams solubilized) might apply proportionately to other equipment or other refrigerants. Therefore, because EPA does not have a sufficient analytic basis to derive a 170-gram charge size limit, EPA has no basis to support a change to the 150-gram charge size limit we proposed for this end-use.

*Comment:* Two commenters also observed that the IEC standards may be revised upward in the future, and that EPA's limit should reflect such changes.

*Response:* The IEC charge size limit has not yet increased and EPA cannot anticipate the timing or extent of such an increase. Further, EPA has not received any information showing that a larger charge size would ensure that propane would present risks in this end-use that are lower than or comparable to risks from other potentially available substitutes. If the IEC or UL standards are revised in the future or if other information becomes available that would support a change in charge size, an interested party could petition EPA to revise this aspect of the use condition.

*Comment:* Another commenter stated that appliances manufactured for export should be allowed to have a larger charge size corresponding to the charge size requirements that apply at the point of installation. The commenter claims that prohibiting a larger charge size for export would be a disadvantage for U.S. companies selling appliances overseas.

*Response:* Under section 612 of the Clean Air Act, the SNAP program is applicable to any person introducing a substitute into interstate commerce. Interstate commerce is defined in 40 CFR 82.104(n) as:

> The distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or the District of Columbia. The entry points for which the product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

This definition applies to any appliances produced in the U.S., including appliances that will be exported. Therefore EPA cannot support the comment to apply different use conditions based on where an appliance is being exported.

*Comment:* One commenter observed that because an appliance might have two or more independent refrigeration systems, EPA's charge size limitation should apply to each refrigeration system in an appliance and not to each appliance.

*Response:* EPA received a similar comment with respect to the household refrigeration end-use, as described in Section V.D above. As was the case for the household refrigeration end-use, EPA agrees that the charge size limitation for the retail food refrigeration end-use should apply to each sealed system in an appliance. EPA is modifying the wording of the use condition to reflect this clarification.

*F. Labeling*

EPA received 11 sets of comments on its proposal to require that ''Danger'' and ''Caution'' labels be permanently attached at specified locations on household and retail appliances using hydrocarbon refrigerants. The proposed wording was identical to that of UL 250 Supplement SA (household refrigeration) and UL 471 Supplement SB (retail food refrigeration), except that EPA proposed that the lettering be ¼ inch (6.4 mm) rather than the ⅛ inch (3.2 mm) specified in the UL standards. Seven commenters expressed support for the proposed labeling use conditions, including the lettering size.

*Comment:* Two commenters stated that EPA and UL should require the same print color and size. Another commenter supported the proposal except for the language reflecting clause (a) in UL 471 (retail food refrigeration) for evaporators that can be contacted by a consumer; the comment stated that evaporators are never accessible to a customer in units that are ''cold wall design.'' Finally, one commenter specifically opposed use of the words ''Danger'' and ''Caution.'' The commenter stated that equipment is safe if it meets UL standards, that the words would scare consumers, and that service technicians know what they are dealing with.

*Response:* EPA is finalizing the labeling use condition as proposed (with the exception of a minor technical correction to the wording of one of the labels, described in Section VI below). EPA believes that notification is necessary to alert technicians and personnel who dispose of or recycle appliances that a refrigerant has the potential to ignite if a sparking source is nearby. This is particularly true during the years these products are first introduced into the market because most technicians in the U.S., as well as those involved in the disposal chain, are not yet familiar with flammable refrigerants.

EPA consults with UL and other national safety standards as often as possible, recognizing that the organizations differ in functions and goals. With the exception of the lettering size, EPA is adopting label wording and requirements that are identical to those in the UL 250 and UL 471 standards. The UL standards include a requirement to label evaporators in the retail end-use, and EPA is mirroring that requirement, noting that even if a customer does not have access to the labeled area, service technicians with such access still need to be made aware that a flammable refrigerant is present.

Regarding the lettering size, EPA continues to believe that it would be difficult to see warning labels with the ⅛-inch lettering stipulated by UL 250 and UL 471. Three commenters specifically endorsed the ¼-inch minimum height proposed, and EPA is finalizing that requirement, making it easier for technicians, consumers, retail store-owners, and emergency first responders to see the warning labels.

*G. Color-Coded Hoses and Piping*

EPA received 11 sets of comments on its proposed requirement that an appliance containing hydrocarbon refrigerants have red Pantone Matching System (PMS) #185-marked pipes, hoses, and other devices through which the refrigerant passes to indicate the use of a flammable refrigerant. The color would be required at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere would be expected to occur, and would extend a minimum of 1 inch in both directions from such locations. The proposed rule observed that no industry standard exists for color-coded hoses or pipe for flammable refrigerants, and sought comment on potential development of such a standard.

Three commenters supported the proposed requirement. One of the supporting commenters stated that EPA's use condition would also suffice in lieu of an industry standard. Other commenters opposed various aspects of the color-coding requirement.

*Comment:* One commenter stated that mandatory color-coding would impose a burdensome additional cost and is not a requirement under international standards. A second commenter stated that color-coding would be superfluous in light of the proposed labeling requirement. A third commenter stated that leak testing requirements obviate the need for color-coding. A fourth commenter identified several concerns: that hose materials could be potentially incompatible with the paint used, that the marking could be obscured by ice or insulation, and that paint on heat exchange surfaces could change the thermal resistance and water retention properties of the heat exchanger, affecting performance.

Other commenters recommended a more precise interpretation of the requirement to ensure that color-coding need only be provided where beneficial and not in locations where system performance could be hindered. One commenter observed that coloring all tubing would be costly and that locations should be selected that do not present problems for sealing of valves or for operational efficiency. Another commenter suggested that since UL 471 already requires labels near the compressor, coloring would only be necessary at discharge and charge locations. The commenter further stated that self-contained units with one compressor only need markings at two locations—at the filling tube and after the filter dryer (in the flow direction)—because such units only use one refrigerant and present no risk of mixing.

Several commenters observed that an equally effective and less costly option for some manufacturers might be to use a colored sleeve or cap that must be forcibly removed in order to access the service tube. If a manufacturer removed the sleeve or cap during service, a similar replacement would be required.

*Response:* EPA is finalizing a requirement to use red PMS #185 coloring on hoses and tubing. This is the same color specified in AHRI Guideline N–2008, ''Assignment of Refrigerant Container Colors,'' to identify containers of flammable refrigerant, such as propane, isobutane, and R–441A (AHRI, 2008). The purpose of the colored hoses and tubing in this case is to enable service technicians to identify the use of a flammable refrigerant and to take additional precautions (*e.g.,* reducing the use of sparking equipment) as appropriate to avert accidents, and particularly in the event that labels are no longer legible. The air-conditioning and refrigeration industry currently uses distinguishing colors to identify different refrigerants. Likewise, distinguishing coloring is used elsewhere to indicate an unusual and potentially dangerous situation, such as the use of orange-insulated wires in hybrid electric vehicles. In the U.S., household and retail appliances contain various refrigerants and it is not always clear what type of refrigerant an appliance uses.

Since red coloring is understood to represent ''hot,'' ''stop,'' or ''danger,'' red coloring will provide technicians, consumers, and emergency responders with an unambiguous signal that a potential hazard is present. The labeling requirement discussed in Section V.F will complement the color-coding requirement by providing a more precise warning of the potential hazards and necessary precautions. Further, it is possible that labels, particularly those on the outside of the appliance, may fall off or become illegible over time; adding red coloring on tubing inside the appliance provides additional assurance that technicians will be aware that a flammable refrigerant is present.

In response to concerns about the location of the color-coding, EPA is modifying the language for this use condition to reflect its intent more precisely. Instead of requiring PMS #185 coloration at all locations ''through which the refrigerant passes,'' this final rule requires coloration at locations ''through which the refrigerant is serviced,'' as well as areas where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected. EPA is also clarifying the location and extent of the coloring on the hose or process tube (if one exists).[30] This does not mean that the entire hose or process tube must be colored. Rather, for process tubes the tube must be colored for at least one inch with the red mark to extend from the compressor. This way, if the process tube is cut for service, the red marking still remains after the tube is welded back together. If further servicing would leave the colored portion of the process tube less than 2.5 centimeters (1 inch) long, a new process tube would be required, with the red marking as described above. For other locations—for example, if a service port or refrigerant access valve is added to the system[31]—the red mark must extend at least 1 inch in all directions from the port or valve.

To clarify that the red coloring must always be present (not just applied initially at installation), we are providing more specificity in the language of the use condition than proposed. We are changing ''must be applied'' to ''must be present'' to correct any misperceptions that once the coloring is initially placed (''applied'') at a location, it need not be replaced if damaged or removed. The word ''present'' conveys that the red coloring must always be at the specified location.

EPA does not believe that this requirement will impose a burdensome additional cost. The only commenter to raise this point did not provide any information about what such costs might be and why the commenter thought they would be burdensome. In this preamble we are clarifying one aspect of flexibility that could mitigate potential cost concerns. Specifically, EPA agrees with the commenters' observation that a colored sleeve or cap could be equally effective and may offer a less costly option for some manufacturers. The proposed rule specified the type, location, and dimensions of the coloration but did not specify the physical manner in which the tube should be colored. EPA believes that the use of a sleeve or cap is consistent with this use condition as long as the requirements of the use condition (use of PMS #185, location, and dimension) are met. However, in order to remain in compliance with the use condition, a technician who removes a sleeve during servicing is required to replace that sleeve on the serviced tube with another. Allowing the use of a sleeve instead of paint will also help alleviate the concern expressed by one commenter over the potential incompatibility of red paint with hose materials.

EPA recognizes that labeling is another way to provide warning of the presence of a flammable refrigerant, and—as discussed in Section V.F above—is finalizing a labeling requirement. However, since over time labels can come off or become illegible, labeling should not be the sole means of

[30] A process tube extends from the compressor and is used to add or remove refrigerant. After refrigerant is added or removed, the process tube is usually pinched to stop refrigerant flow and then could be soldered to provide a long-lasting seal. The tube is used as an access point for service technicians and does not serve any refrigerant-flow or heat transfer purposes.

[31] The UL Standards referenced in this rule do not allow the inclusion of service ports in finished products using flammable refrigerants; however, the coloring use condition would still apply if a service port or access valve were added after the product was sold.

alerting users and service technicians of the presence of a flammable refrigerant.

*Comment:* One commenter supported the proposed color-coding requirement but pointed out that the American Academy of Ophthalmology and the Centers for Disease Control and Prevention report that 8 percent of American males are color-blind, primarily in the colors green and red, making the need for labels even more important.

*Response:* The Agency recognizes that there is a color-blind population. This is one reason to use both labeling and coloring to signal that a flammable refrigerant is being used.

*H. Unique Fittings*

EPA received 13 sets of comments on its proposed requirement that appliances using isobutane or R–441A in household refrigeration and propane in retail food refrigeration end-uses have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. The proposed rule defined ''differ'' to mean that either the diameter must differ by at least 1/16 inch or the thread direction must be reversed (*i.e.,* right-handed vs. left-handed). The proposed rule specified that these different fittings must be permanently affixed to the unit and may not be accessed with an adaptor until the end-of-life of the unit.

*Comments:* Twelve commenters opposed the proposed requirement for various combinations of the following reasons: Adding fittings at the time of manufacture is not appropriate for certain appliance types; additional fittings presents an increased leak risk; the requirement could be easily circumvented; the risk of cross-contamination is overstated; international standards do not require unique fittings; and the requirement would be inconsistent with UL standards. One commenter, while neither supporting nor opposing the proposal, stated that if unique fittings are installed they should require the use of special tools to dissuade unauthorized personnel from opening the fittings.

*Response:* EPA is persuaded by the comments opposing a use condition to require unique fittings. The Agency is removing the requirement for unique fittings from the list of use conditions and is instead providing a recommendation for unique fittings in the ''Further Information'' column of Appendix R. The following paragraphs describe the comments and EPA's response in more detail.

*Comments:* Most commenters interpreted the language of the proposed requirement to mean that all appliances subject to this rule must be manufactured with unique fittings, even appliances that would not require servicing and thus would otherwise not need fittings. They observed that household and retail appliances, whether they use hydrocarbons or another type of refrigerant, typically are hermetically sealed and are manufactured without maintenance fittings or service valves. They pointed out that any service port with a mechanical connection (such as a lock ring) presents a leak risk and that requiring additional service ports for the purpose of installing unique fittings would add to that risk. One commenter also observed that equipment is highly sensitive to charge size and any leak could cause malfunction or failure. (The commenter stated that in its past experience, three-fourths of service calls were related to service ports.) One commenter observed that the presence of service ports could create incentives for untrained technicians to attempt servicing. Another commenter pointed out that UL 250 and UL 471 prohibit refrigerators or freezers that use a flammable refrigerant from employing quick-connect fittings, flare fittings, compression fittings, or packed stem valves.

*Response:* EPA agrees with statements that a service valve installed at the point of manufacture could increase the likelihood of leaks for these types of appliances. We recognize from the comments that the proposed requirement was worded in an overly broad manner. We intended the requirement to apply only in cases where a service port or other connection is installed subsequent to manufacture. EPA is aware that the UL 250 and UL 471 standards forbid such ports at the time of manufacture on units using flammable refrigerants. EPA recognizes that service ports (whether with standard or unique fittings) are not normally used in household refrigerators or stand-alone retail food refrigerators and freezers.

However, CAA 608(b)(2) requires all small appliances containing ODS refrigerants to be equipped with service ports that allow for the proper recovery of refrigerant during service or disposal of refrigerators and freezers because service ports act as an access point for recovery equipment. Under 40 CFR 82.154(a)(1), no refrigerant or substitute may be knowingly vented unless otherwise exempted. For this reason most hermetically sealed appliances are equipped with process tubes that are used only for end-of-life recovery and which typically do not leak.

EPA does believe, however, that some hermetically sealed systems eventually will be serviced and does not assume that such systems are always completely leak-proof. Therefore EPA continues to believe that if a service port or access valve is installed after manufacture, it should employ a unique fitting that is maintained until the end-of-life of the appliance.

One commenter specifically supported a requirement for unique fittings after the equipment is serviced and for the remainder of its life. EPA believes that such fittings, if installed, should be designed specifically for flammable refrigerants, such that those fittings would not connect to service equipment designed for non-flammable refrigerants.

*Comment:* Several commenters observed that cross-contamination was not a significant risk. Two commenters stated that requiring unique fittings would not necessarily protect against cross-contamination. One commenter stated that mixing of hydrocarbons and other refrigerants would not pose a safety concern unless air or oxygen were present. Another commenter asserted that since self-contained refrigerant systems use only one refrigerant, there is no possibility that an appliance would be refilled with an incorrect refrigerant. That commenter also stated that proper refrigerant practices are in place that require separate recovery cylinders for different refrigerants, that technicians need only use one more type of cylinder, and that economic incentives can foster proper recovery practices.

*Response:* Overall, EPA disagrees with the comment that cross-contamination is unlikely. Depending on the type of equipment being serviced, and its typical servicing patterns, it is quite possible that refrigerants could be mixed, particularly where best practices are not employed. Currently, many different refrigerants are used in refrigerators and freezers. Technicians are likely to encounter numerous refrigerants—now including hydrocarbons—raising the possibility that flammable refrigerants could be mixed with non-flammable refrigerants or that flammable refrigerants could be added to an appliance designed for non-flammable refrigerants. Not only does the mixing of refrigerants pose a risk for the cooling system of the appliance, it also can limit reclamation options. Whereas—as observed by two commenters—pure refrigerants have market value, contaminated refrigerants are costly to re-purify into their individual refrigerant components, and costly to discard properly, raising the

risk of illegal venting. Nevertheless, EPA agrees with the commenters that cross-contamination itself does not pose safety issues sufficient to warrant a mandatory requirement for unique fittings.

*Comment:* Several commenters observed that technicians could defeat the intent of the requirement by using other kinds of fittings after first service. One commenter stated that service technicians have the tools to bypass unique fittings and would do so rather than purchase additional gauges and line sets to service the small number of hydrocarbon refrigerators. Another stated that most small appliances do not have fittings (unique or otherwise) and that technicians and the public could use line-piercing fittings if needed.

*Response:* EPA understands that a requirement for unique fittings would not prevent illegal or improper efforts to service appliances if a technician were determined to do so. The ''Further Information'' section in the regulation recommends that only technicians specifically trained in handling flammable refrigerants service refrigerators and freezers containing these refrigerants, and that technicians gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. We note that, in addition to preventing the mixing of refrigerants, the proposed use condition was intended to reduce the risk of fire by ensuring that flammable refrigerants are used only in appliances designed for flammable refrigerants. The proposed use condition was intended to prevent a technician from inadvertently attempting to service a refrigerator as if it contained non-flammable refrigerant when it actually contained highly flammable hydrocarbon refrigerant, or vice versa.

*Comment:* Four commenters stated that education is the best tool to prevent refrigerant contamination. One suggested creating a nationwide training program; the other, which specializes in training, observed that training had proven to be an effective option in lieu of a previous proposal to require unique fittings for high-pressure HFC refrigerants.

*Response:* EPA supports the concept of a national training program for flammable refrigerants and welcomes industry efforts to educate technicians on proper refrigerant use and proper service and disposal practices.

*I. Small Containers*

EPA received nine comments on the proposed use condition to limit the sale of the hydrocarbon refrigerants in containers designed to hold less than five pounds (2.3 kg).[32] This requirement was intended to prevent purchase by untrained people who lack the skills or equipment necessary to recover and charge refrigerant properly. Six commenters supported the proposed requirement. Other comments are discussed below.

*Comment:* Three commenters opposed this requirement, stating that a small-container sales restriction was not the appropriate vehicle to compel proper training. One observed that properly trained technicians know how to handle refrigerants safely; another noted that the proposed rule protections, such as labeling, would help mitigate the potential risk associated with technician error; and the third observed that untrained customers can already buy camping gas, which is a flammable gas like isobutane.

In addition, one of the commenters opposing the requirement stated that it would pose practicality and logistics problems for its service network for household refrigerators. The commenter stated that a five-pound minimum requirement would result in the transport of more combustibles in a service vehicle than needed and that it would be preferable to use ''right-sizing'' canisters containing the exact charge for the particular appliance to ensure efficient and accurate service, to minimize the load a technician needs to carry, and to prevent under- and over-charging.

*Response:* After considering the comments received, EPA is removing the small-container sales restriction from the use conditions. EPA agrees that requiring the sale of the three hydrocarbon refrigerants in containers of at least five pounds could cause the transport of an unnecessary amount of refrigerant and increase risks to service technicians and—in the event of a vehicular accident—to others on the road. EPA intended the proposed use condition to prevent or minimize the purchase of refrigerant by untrained people who would not have the appropriate skills or equipment to properly recover or charge the refrigerant. However, after considering the comments, EPA recognizes that an unintended consequence of restricting smaller-container sales is the prospect that appliance owners could purchase non-refrigerant-grade propane such as camping gas to service their equipment. Non-refrigerant-grade hydrocarbons could contain contaminants that might fail to be absorbed by a filter drier, mix with the oil and cause high wear on compressor bearings, or clog heat exchangers and capillary tubes. Such events could lead to equipment failure, increased servicing need, and more potential emissions of the refrigerant. These effects could increase risk to the appliance owner, service technicians, and those involved in appliance disposal.

As discussed in Section V.K of this preamble, EPA agrees with the importance of having hydrocarbon refrigerants handled only by trained technicians. The listing decisions for these three refrigerants in Appendix R to 40 CFR, part 82, subpart G, provide a recommendation that only technicians specifically trained in handling flammable refrigerants service refrigerators and freezers containing these refrigerants. We also include a recommendation that technicians gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.

*J. Use of Hydrocarbon Refrigerants in Other End-Uses*

*Comment:* Three commenters requested that isobutane and propane be considered for use in both the household refrigeration and retail food refrigeration end-uses. Six other commenters specifically requested that isobutane be allowed for use in retail food refrigeration. All of these commenters reasoned that both refrigerants have similar physical characteristics (*e.g.,* flammability limits, toxicity profiles, handling practices, safety group classification) and that the UL 250 and UL 471 standards do not distinguish between them.

*Response:* EPA is finalizing acceptability determinations only for the substitutes and end-uses identified in submissions to the Agency and in the proposed rule: Isobutane and R–441A in the household refrigeration end-use, and propane in the retail food refrigeration end-use. The submitters did not request review of isobutane or R–441A in the retail food refrigeration end-use, or propane in the household refrigeration end-use, so EPA did not review those substitutes for those end-uses in this rulemaking.

The SNAP regulations at 40 CFR part 82, subpart G establish a process for the submission and review of SNAP applications and the finalization of acceptability determinations. EPA makes a listing determination after evaluation of the substitute. EPA follows a notice-and-comment rulemaking process to list substitutes that are proposed as acceptable subject to use conditions, acceptable subject to

[32] As mentioned previously, the proposed rule inadvertently represented 5 pounds as 2.8 kilograms instead of 2.3 kg, which is accurate.

narrowed use limits, or unacceptable. Although EPA can issue SNAP determinations for substitutes and end-uses that were not provided by an applicant, the Agency must perform the same detailed analysis, based on the criteria described in the SNAP regulations. EPA would need to make a risk screen available to the public through the notice-and-comment rulemaking process before making a listing decision. If EPA were to find those substitutes acceptable in those specific end-uses, use conditions would probably be necessary.

We recognize the stakeholders' interest in using isobutane in the retail food refrigeration end-use and propane in the household refrigeration end-use. Preliminary information supports the observations that the use profiles and handling practices for these chemicals in these end-uses are very similar to the combinations of substitutes and end-uses being finalized today. EPA may consider a subsequent rulemaking addressing the use of isobutane and R–441A in the retail food refrigeration end-use, and propane in the household refrigeration end-use.

*Comment:* One commenter noted that it did not have sufficient information on HCR–188C and HCR–188C1 (*i.e.,* R–441A) to recommend their approval for the retail food refrigeration end-use. The commenter stated, however, that if ASHRAE Standard 34 were to classify those hydrocarbon blends as A3 refrigerants then the argument could be made that they should be listed in both end-uses.

*Response:* In February 2011, ASHRAE issued Addendum g to Standard 34–2010, classifying R–441A as an A3 refrigerant. We agree that an applicant may be able to support a petition to find R–441A acceptable subject to use conditions in the retail food refrigeration end-use based on our current understanding that R–441A has characteristics that are similar to those of propane. However, we do not currently have the appropriate technical demonstrations before us to propose, much less finalize, such a determination. If in the future a person submits a petition supported by a technical demonstration, we could take rulemaking action on such a listing.

*K. Training*

EPA received eight comments in response to its discussion of training in the preamble of the proposed rule. All acknowledged the value of training.

*Comment:* One commenter recommended against a mandatory national training program, observing that in the European Union, where hydrocarbon refrigerants are more prevalent, there is no national training program and each manufacturer handles training on its own. Another commenter, a training organization for technicians, suggested that training be a required element of a federal certification of technicians. The commenter noted that EPA intends to update the ''test bank'' of test questions for technician certification under CAA section 608, and so the Agency should recognize the merits of incorporating hydrocarbon refrigerants into existing programs. This commenter stated that without a recertification program, hundreds of thousands of technicians will not see the new test questions. Therefore the commenter suggested that EPA either create another ''type'' category of certification under CAA section 608 addressing flammable refrigerants and/or require recertification of technicians every five years because of new refrigerants. One commenter stated that EPA should strongly consider delaying any SNAP acceptability listing for isobutane until such a program can be developed and deployed industry-wide. The commenter observed that this could take two years and increase costs to consumers.

*Response:* EPA agrees that training is an important way for technicians to learn about the safe handling of flammable refrigerants. We recognize that there are some long-standing training programs on flammable refrigerants in other countries where hydrocarbon refrigerants are currently in wide use. We also recognize that the use of hydrocarbon refrigerants, and training on such use, is in its infancy in the U.S., and is generally tied directly to specific products or applications, rather than generally to multiple types of products.

Since the inception of the SNAP program and the section 608 refrigerant management program, we have continued to list a variety of new refrigerants as acceptable. EPA has not previously required that certified technicians be recertified as a result of the listing of the additional refrigerants. Moreover, the goals of the section 608 technician certification program reflect the need to reduce emissions during servicing, maintenance, repair and disposal. They do not substitute for the proper training that is normally provided through trade schools, apprenticeships, or other industry mechanisms. Given the extent of technical knowledge available within the industry, we believe that industry is better equipped than EPA to define the specific contents of such training, and that it is not necessary for EPA to require training in order for newly listed refrigerants to be used as safely as other refrigerants currently available.

Although we have determined not to require training as a use condition for these substitutes to ensure that they can be used as safely as other available refrigerants, we recommend that technicians receive training on the safe handling of hydrocarbon refrigerants through avenues such as industry-sponsored national training programs.

*L. Other Options Considered*

EPA considered, and sought comment on, several other options or related issues in the proposed rule, although we did not propose them. This section describes comments the Agency received on those options.

1. Use only in appliances specific to OEMs. EPA sought comment on an option that would allow isobutane and propane as a refrigerant for use only in OEM-specific appliances, as described in a SNAP application. The reason for such a limitation would be the concern that appliances from other manufacturers would not be designed with spark-proof engineering; nor would the manufacturers be able to develop recovery equipment compatible with flammable refrigerants.

*Comment:* EPA received two comments supporting EPA's approach to not impose such a limitation. One observed that limiting use to SNAP-reviewed equipment would be time-consuming and costly for all parties involved, with little added health and safety benefit.

*Response:* EPA agrees that limiting refrigerant use to SNAP-reviewed equipment would be time-consuming and costly for all parties involved. We believe that adherence to the UL standards and the use conditions in this rule will help ensure that equipment is designed to use these refrigerants safely, and that use of these substitutes will present risks that are lower than or comparable to the risks from other potential substitutes. Thus we believe it is not necessary to include such a limitation.

2. Recovery equipment. EPA observed that it had considered proposing a use condition requiring that recovery equipment used to recapture flammable refrigerants be compatible with flammable refrigerants, and sought information on whether there currently is an industry standard for recovery units for flammable refrigerants and whether specific recovery units are available that are compatible with the refrigerants addressed in today's rule.

*Comment:* One commenter stated a belief that there are no known manufacturers of recovery equipment for hydrocarbon refrigerants. Another commenter stated that recovery equipment used to recover flammable refrigerants must be compatible with flammable refrigerants, and in the absence of an industry standard, it has developed its own service equipment designed to recapture a flammable refrigerant in accordance with federal and state regulations. A third commenter observed that recovery units are only used in countries like the U.S. where venting is not allowed. Finally, one commenter observed that it uses a recovery device in its U.S. test market that is specifically designed for use with flammable refrigerants.

*Response:* The availability of recovery equipment is not necessary to ensure that the refrigerant will not pose more risk than other available substitutes in this end-use. EPA will continue to assess the need for, and availability of, recovery equipment that is compatible with flammable refrigerants.

3. Venting prohibition. EPA sought comment on whether, in a future rulemaking, it should consider exempting hydrocarbon refrigerants from the section 608 venting prohibition.

*Comment:* Several commenters expressed varying levels of support for exempting hydrocarbon refrigerants from the venting prohibition. Two commenters expressed unequivocal support, and four stated that they would support such an exemption if EPA were to confirm there would be no health impact. Another commenter asserted that venting would pose little environmental impact, comparing the worst-case scenario release of 150 grams from retail food refrigeration end-uses, or 57 grams from household refrigeration end-uses, to one and one-third pound, respectively, of $CO_2$ equivalent. Another commenter stated that isobutane is not dangerous, but should not be vented in enclosed spaces. Another commenter supported a venting exemption during servicing, but advocated recovery at end-of-life due to environmental risks associated with the release of refrigerant and oil captured in the refrigerant. Finally, a commenter stated that the environmental impact from venting such small charges is minimal and that safety concerns could be better mitigated through a properly designed and executed educational program. One commenter expressed reservations about allowing venting, and recommended further assessment of flammability risks as well as the potential risk associated with the release of synthetic refrigerant oil during venting.

*Response:* EPA appreciates the information provided by commenters. Venting is addressed by section 608 of the CAA and EPA will develop a separate rule under that authority if we determine that hydrocarbon refrigerants in the household refrigeration and retail food refrigeration end-uses should be exempted from the venting prohibition. EPA exercised such authority to exempt hydrocarbons used in industrial process refrigeration systems from the venting prohibition (see 69 FR 11946), but has not made a similar determination for hydrocarbons used in household and retail food refrigerators and freezers. Currently, EPA's regulations implementing section 608 at subpart F to 40 CFR part 82 would prohibit venting of isobutane, propane, and R–441A refrigerants during service, maintenance, repair, and disposal from the end-uses considered in this rule.

4. Requiring only one use condition. EPA sought comment on an approach that it considered (but did not propose): to require that the only use condition for each hydrocarbon refrigerant be to meet applicable UL 250 and UL 471 standards.

*Comment:* EPA received one comment, which opposed such a provision.

*Response:* As described above, and consistent with the proposal, EPA has not limited the use conditions to compliance with the UL standards.

5. ''Unacceptable'' finding pending industry-wide servicing standards. EPA sought comment on (but did not propose) finding hydrocarbon refrigerants unacceptable until an industry-wide standard exists for servicing appliances using hydrocarbon refrigerants.

*Comment:* EPA received two comments on this issue, one opposing and one supporting. Neither commenter provided a rationale for its recommendation.

*Response:* As described elsewhere, and consistent with the proposal, EPA is finding the three hydrocarbon refrigerants acceptable subject to use conditions.

*M. Other Comments on Proposed Rule*

*Comment:* In a comment unrelated to the specifics of the proposed rule, one commenter recommended consideration of the type of automated system it uses on its production line. This system sounds a pre-warning alarm when 20 percent of the LFL is reached and shuts down the system if 40 percent of the LFL is reached. The commenter noted that this system conforms to the European standard and is approved by TUV (Technischer Überwachungs-Verein (Technical Inspection Association)), a German safety monitoring agency.

*Response:* EPA does not believe it is necessary to establish a use condition requiring the type of system suggested by the commenter. OSHA addresses the use of flammable substances in the workplace, including through its regulations at 29 CFR 1910.106, as discussed in response to other comments below. To the extent a manufacturer believes that additional precautions are appropriate, we believe the manufacturer is in the best position to determine how to address the risks of installing a hydrocarbon refrigerant considering the specific characteristics of its production facilities and personnel. We note that in addition to OSHA requirements, other forces such as concerns for liability; costs of fire and casualty insurance; and reputational interests may also dictate a firm's behavior with respect to worker health and safety protections.

This final rule includes, in the ''Further Information'' column of Appendix R, recommendations that OEMs institute safety precautions as needed in their facilities to address potential hazards in the production of appliances using hydrocarbon refrigerants. EPA notes that OSHA regulations are in place to address such hazards. The table in Appendix M references OSHA requirements at 29 CFR part 1910, including those at 29 CFR 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances). Nothing in these final listing decisions, including the ''Further Information'' column, supersedes other regulations such as these OSHA requirements.

*Comment:* Another commenter recommended that the use conditions in the final rule address the use of an odorant as a warning agent to alert manufacturing personnel or technicians of the presence of a leak. Without recommending how the issue should be addressed in this final rule, the commenter offered the following observations:

- Technicians or manufacturers may use mercaptan as an odor warning agent;
- Mercaptan is corrosive and is removed by filters and driers in refrigeration systems;
- Refrigerant classification standards for Australia and New Zealand require that Group A3 refrigerants be odorized

or subject to alternative safety provisions.

*Response:* EPA agrees that odorization is one way to alert manufacturing or servicing personnel of the presence of a hydrocarbon refrigerant. EPA's risk screen did not evaluate these refrigerants with the addition of an odorant, nor did our proposed rule address odorants in its discussion of refrigerant composition or in its proposed use conditions. Today's final rule does not prohibit the introduction of an odorant into isobutane, propane, or R–441A refrigerant as long as the refrigerant remains within purity specifications. The use conditions in today's final rule, such as red coloring and adherence to UL standards, provide ample safeguards to alert manufacturers, service personnel, and customers of the presence of a flammable refrigerant.

## VI. What other changes is EPA making in the final rule?

In addition to changes made in response to comments, as described in Section V above, EPA is making the following minor changes:

### *A. Propane as Substitute for R–502*

EPA is revising the wording in the Appendix R table to correct a typographical error. As discussed above, this final rule lists propane as acceptable subject to use conditions as a substitute for CFC–12, HCFC–22, and R–502 in the retail food refrigeration end-use. In the NPRM, the proposed Appendix R table erroneously omitted R–502 (a blend of HCFC–22 and CFC–115) from the listing, although it was included in the preamble discussion. This final rule corrects the error by including R–502 as one of the refrigerants for which propane is listed as a substitute in the retail food refrigeration end-use.

### *B. Wording of Use Conditions for Labeling*

The use conditions in the proposed rule included requirements for marking (*e.g.,* labeling) of appliances using isobutane and HCR–188C1 (*i.e.,* R–441A) in the household refrigeration end-use, and propane in the retail food refrigeration end-use. EPA intended that language to mirror that of the UL standards. We are making two minor changes to this requirement.

First, we are restructuring the language for the requirement. The language of the proposed rule first listed the wording required for five different types of labels, and then described where each of the labels was to be placed. For the final rule, we have moved the location requirements, so they are specified immediately before the corresponding label wording. EPA believes this minor revision in the regulatory language provides more clarity and makes the use condition easier to implement.

Second, EPA is making a minor technical correction to the wording of one of the labels. In the proposed rule, one of the labels was to read as follows:

''(b) Near the machine compartment: ''DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.''

The phrase ''Do Not Use Mechanical Devices'' was included erroneously in the proposed requirement. EPA recognizes that trained personnel may need to use mechanical devices to service the machine compartment. We have removed that phrase from the use condition in the final listing decision, making the condition consistent with the UL 250 and UL 471 requirements.

### *C. ''Further Information'' Column in Listing Decisions*

EPA is also modifying the recommendations listed under ''Further Information'' to more appropriately cross-reference existing OSHA regulations and to avoid confusion about the relationship between EPA and OSHA requirements.

The proposed rule contained, under ''Further Information,'' the following recommendations:

- Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves when handling isobutane, HCR–188C, and HCR–188C1. Special care should be taken to avoid contact with the skin since isobutane, HCR–188C, and HCR–188C1 like many refrigerants, can cause freeze burns on the skin.
- A class B dry powder type fire extinguisher should be kept nearby.
- Proper ventilation should be maintained at all times during the manufacture of appliances containing hydrocarbon refrigerant through adherence to good manufacturing practices as per 29 CFR 1910.110.[33] If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated, and re-entry should only occur after the space has been properly ventilated.
- Technicians should only use spark-proof tools when working refrigerators and freezers with R–600a, HCR–188C, and HCR–188C1.
- Recovery equipment designed for flammable refrigerants should be used.
- Only technicians specifically trained in handling flammable refrigerants should service refrigerators and freezers containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely.
- In production facilities or other facilities where large quantities of the refrigerant would be stored, proper safety precautions should be in place to minimize the risk of explosion. These facilities should be equipped with proper ventilation systems to minimize the risks of explosion and should be properly designed and operated to reduce possible ignition sources.
- Room occupants should evacuate the space immediately following the accidental release of this refrigerant.

The Agency did not receive any comments on these recommendations. EPA believes that they are appropriate and that they serve as useful reminders of safe practices for technicians and manufacturers. EPA recognizes that some of these recommendations are reflected in OSHA regulations for worker health and safety. For this reason, EPA is adding a cross-reference to OSHA regulations at 29 CFR part 1910 (Occupational Health and Safety Standards) in order to ensure that regulated entities are aware of these requirements. Specifically, Appendix R provides a cross-reference to 29 CFR 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances).

## VII. Statutory and Executive Order Reviews

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

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' It raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866

[33] OSHA regulations at 29 CFR 1910.110 consider ventilation adequate ''when the concentration of the gas in a gas-air mixture does not exceed 25 percent of the lower flammable limit.''

and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

*B. Paperwork Reduction Act*

This action does not impose any new information collection burden. This final rule is an Agency determination. It contains no new requirements for reporting. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0226. This Information Collection Request (ICR) included five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: Submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, recordkeeping for substitutes acceptable subject to use restrictions, and recordkeeping for small-volume uses. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.C.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by Small Business Administration regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The requirements of this final rule affect the manufacturers of household refrigerators and freezers and retail food refrigerators and freezers. Today's action allows users the additional options of using isobutane, propane, and R–441A, but does not mandate such use. Because isobutane, propane, and R–441A refrigeration systems are not yet manufactured in the U.S. (with the exception of limited test-marketing), and because the final rule actually imposes fewer requirements than the proposed rule (*i.e.,* removal of the unique fittings requirement), manufacturers would not be required to change business practices to meet the use conditions and thus the rule would not impose any new costs on small entities.

*D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

The enforceable requirements of this final rule related to integrating risk mitigation devices, markings, and procedures for maintaining the safety of household refrigerators and freezers and retail food refrigerators and freezers using hydrocarbon refrigerants affect only small number of manufacturers of these appliances and their technicians. This rule provides additional refrigerant options, allowing greater flexibility for industry in designing consumer products. Further, since appliances using hydrocarbon refrigerants are not yet widely produced in the U.S., we do not expect impacts on existing users. Thus this rule is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation applies directly to facilities that use these substances and not to governmental entities. The finding of ''acceptability subject to use conditions'' for isobutane, propane, and R–441A does not impact the private sector because manufacturers are not producing systems under the current regulation. This final rule does not mandate a switch to these substitutes; consequently, there is no direct economic impact on entities from this rulemaking.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This regulation applies directly to facilities that use these substances and not to governmental entities. Thus Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This final rule provides both regulatory restrictions and recommended guidelines based upon risk screens conducted in order to reduce risk of fire and explosion.

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

This action is not a ''significant energy action'' as defined in Executive

Order 13211 (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Preliminary information indicates that appliances using these hydrocarbon refrigerants may be more energy-efficient than currently available systems in some climates. Therefore, we have concluded that this rule is not likely to have any adverse energy effects.

*I. National Technology Transfer and Advancement Act*

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

This final rule involves incorporation by reference of technical standards issued by Underwriters Laboratories (UL) concerning the safety and reliability of flammable refrigerants. UL standards are voluntary consensus standards. The use conditions in the rule require, for the household refrigeration end-use, adherence to the UL Standard for Household Refrigerators and Freezers, UL 250, 10th edition, 1993, updated August 2000. The use conditions also require, for the retail food refrigeration end-use, adherence to the UL Standard for Commercial Refrigerators and Freezers, UL 471, 10th edition, November 2010. Copies of UL 250 and UL 471 may be purchased at *http://ulstandardsinfonet.ul.com/.*

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule would allow sale of appliances with refrigerant substitutes that have no ODP and low GWPs. The reduction in ODS and GHG emissions would assist in restoring the stratospheric ozone layer and provide climate benefits.

*K. Congressional Review Act*

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

This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 21, 2012.

## VIII. References

This preamble references the following documents, which are also in the Air and Radiation Docket at the address listed in Section I.B.1. Unless specified otherwise, all documents are available electronically through the Federal Docket Management System, Docket # EPA–HQ–OAR–2009–0286.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### List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: December 9, 2011.

**Lisa P. Jackson,**

*Administrator.*

For the reasons set out in the preamble, EPA is amending 40 CFR part 82 as follows:

## PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671—7671q.

## Subpart G—Significant New Alternatives Policy Program

■ 2. Subpart G is amended by adding Appendix R to read as follows:

### Appendix R to Subpart G of Part 82—Substitutes Subject to Use Restrictions Listed in the December 20, 2011 Final Rule, Effective February 21, 2012

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

| End-use | Substitute | Decision | Use conditions | Further information |
|---|---|---|---|---|
| Household refrigerators, freezers, and combination refrigerators and freezers. (New equipment only) | Isobutane (R–600a) as a substitute for CFC–12 and HCFC–22.<br>R–441A as a substitute for CFC–12 and HCFC–22 | Acceptable Subject To Use Conditions. | These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment designed for a different refrigerant)<br>These refrigerants may be used only in a refrigerator or freezer, or combination refrigerator and freezer, that meets all requirements listed in Supplement SA to the 10th edition of the Underwriters Laboratories (UL) Standard for Household Refrigerators and Freezers, UL 250, dated 1993 updated August 2000. In cases where the final rule includes requirements more stringent than those of the 10th edition of UL 250, the appliance must meet the requirements of the final rule in place of the requirements in the UL Standard<br>The quantity of the substitute refrigerant (*i.e.,* ''charge size'') shall not exceed 57 grams (2.0 ounces) in any refrigerator, freezer, or combination refrigerator and freezer for each circuit | Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), 1910.157 (portable fire extinguishers), and 1910.1000 (toxic and hazardous substances).<br>Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and re-entry should occur only after the space has been properly ventilated.<br>Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling isobutane and R–441A. Special care should be taken to avoid contact with the skin since these refrigerants, like many refrigerants, can cause freeze burns on the skin. |

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

| End-use | Substitute | Decision | Use conditions | Further information |
|---|---|---|---|---|
| | | | | A class B dry powder type fire extinguisher should be kept nearby.<br>Technicians should only use spark-proof tools when working on refrigerators and freezers with isobutane and R–441A.<br>Recovery equipment designed for flammable refrigerants should be used.<br>Only technicians specifically trained in handling flammable refrigerants should service refrigerators and freezers containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. |
| Household refrigerators, freezers, and combination refrigerators and freezers.<br>(New equipment only) | Isobutane (R–600a) as a substitute for CFC–12 and HCFC–22.<br>R–441A as a substitute for CFC–12 and HCFC–22 | Acceptable Subject To Use Conditions. | As provided in clauses SA6.1.1 and SA6.1.2 of UL Standard 250, the following markings shall be attached at the locations provided and shall be permanent:<br>(a) On or near any evaporators that can be contacted by the consumer: ''DANGER-Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing.''<br>(b) Near the machine compartment: ''DANGER-Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.''<br>(c) Near the machine compartment: ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed.''<br>(d) On the exterior of the refrigerator: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.''<br>(e) Near any and all exposed refrigerant tubing: ''CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used.''<br>All of these markings shall be in letters no less than 6.4 mm (¼ inch) high.<br>The refrigerator, freezer, or combination refrigerator and freezer must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, or other devices through which the refrigerant is serviced (typically known as the service port) to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (*e.g.,* process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed. | Room occupants should evacuate the space immediately following the accidental release of this refrigerant.<br>If a service port is added then household refrigerators, freezers, and combination refrigerator and freezers using these refrigerants should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. ''Differ'' means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (*i.e.,* right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. |

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

| End-use | Substitute | Decision | Use conditions | Further information |
|---|---|---|---|---|
| Retail food refrigerators and freezers (stand-alone units only). (New equipment only) | Propane (R–290) as a substitute for CFC–12, HCFC–22, and R–502. | Acceptable subject to use conditions. | These refrigerants may be used only in new equipment specifically designed and clearly identified for the refrigerants (*i.e.,* none of these substitutes may be used as a conversion or ''retrofit'' refrigerant for existing equipment designed for other refrigerants).<br>These substitutes may only be used in equipment that meets all requirements in Supplement SB to the 10th edition of the Underwriters Laboratories (UL) Standard for Commercial Refrigerators and Freezers, UL 471, dated November 2010. In cases where the final rule includes requirements more stringent than those of the 10th edition of UL 471, the appliance must meet the requirements of the final rule in place of the requirements in the UL Standard.<br>The charge size for the retail food refrigerator or freezer shall not exceed 150 grams (5.3 ounces) in each circuit. | Applicable OSHA requirements at 29 CFR part 1910 must be followed, including those at 29 CFR 1910.94 (ventilation) and 1910.106 (flammable and combustible liquids), 1910.110 (storage and handling of liquefied petroleum gases), and 1910.1000 (toxic and hazardous substances).<br>Proper ventilation should be maintained at all times during the manufacture and storage of equipment containing hydrocarbon refrigerants through adherence to good manufacturing practices as per 29 CFR 1910.106. If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit, the space should be evacuated and reentry should occur only after the space has been properly ventilated.<br>Technicians and equipment manufacturers should wear appropriate personal protective equipment, including chemical goggles and protective gloves, when handling propane. Special care should be taken to avoid contact with the skin since propane, like many refrigerants, can cause freeze burns on the skin.<br>A class B dry powder type fire extinguisher should be kept nearby.<br>Technicians should only use spark-proof tools when working on refrigerators and freezers with propane.<br>Recovery equipment designed for flammable refrigerants should be used.<br>Only technicians specifically trained in handling flammable refrigerants should service refrigerators and freezers containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. |
| Retail food refrigerators and freezers (stand-alone units only). (New equipment only) | Propane (R–290) as a substitute for CFC–12, HCFC–22, and R–502. | Acceptable subject to use conditions. | As provided in clauses SB6.1.2 to SB6.1.5 of UL Standard 471, the following markings shall be attached at the locations provided and shall be permanent:<br>(a) Attach on or near any evaporators that can be contacted by the consumer: ''DANGER-Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing.''<br>(b) Attach near the machine compartment: ''DANGER-Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing.''<br>(c) Attach near the machine compartment: ''CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed.''<br>(d) Attach on the exterior of the refrigerator: ''CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used.''<br>(e) Attach near any and all exposed refrigerant tubing: ''CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used.''<br>All of these markings shall be in letters no less than 6.4 mm (¼ inch) high. | Room occupants should evacuate the space immediately following the accidental release of this refrigerant.<br>If a service port is added then household refrigerators, freezers, and combination refrigerator and freezers using these refrigerants should have service aperture fittings that differ from fittings used in equipment or containers using non-flammable refrigerant. ''Differ'' means that either the diameter differs by at least 1/16 inch or the thread direction is reversed (*i.e.,* right-handed vs. left-handed). These different fittings should be permanently affixed to the unit at the point of service and maintained until the end-of-life of the unit, and should not be accessed with an adaptor. |

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

| End-use | Substitute | Decision | Use conditions | Further information |
|---|---|---|---|---|
| | | | The refrigerator or freezer must have red, Pantone® Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant is serviced, typically known as the service port, to indicate the use of a flammable refrigerant. This color must be present at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected (*e.g.,* process tubes). The color mark must extend at least 2.5 centimeters (1 inch) from the compressor and must be replaced if removed. | |

**Note:** In accordance with the limitations provided in section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this table shall affect the Occupational Safety and Health Administrations' authority to promulgate and enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*).

**Note:** The use conditions in this appendix contain references to certain standards from Underwriters Laboratories Inc. (UL). The standards are incorporated by reference, and the referenced sections are made part of the regulations in part 82:

1. UL 250: Household Refrigerators and Freezers. 10th edition. Supplement SA: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System. Underwriters Laboratories, Inc. August 25, 2000.

2. UL 471. Commercial Refrigerators and Freezers. 10th edition. Supplement SB: Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System. Underwriters Laboratories, Inc. November 24, 2010.

The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of UL Standards 250 and 471 may be purchased by mail at: COMM 2000; 151 Eastern Avenue, Bensenville, IL 60106; Email: *orders@comm-2000.com;* Telephone: 1 (888) 853–3503 in the U.S. or Canada (other countries dial +1 (415) 352–2168); Internet address: *http://ulstandardsinfonet.ul.com/* or *www.comm-2000.com.*

You may inspect a copy at U.S. EPA's Air and Radiation Docket; EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington DC or at the National Archives and Records Administration (NARA). For questions regarding access to these standards, the telephone number of EPA's Air and Radiation Docket is (202) 566–1742. For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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## DEPARTMENT OF DEFENSE

## Defense Acquisition Regulations System

## 48 CFR Parts 212, 225, and 252

**RIN 0750–AH43**

## Defense Federal Acquisition Regulation Supplement; Utilization of Domestic Photovoltaic Devices (DFARS Case 2011–D046)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule.

**SUMMARY:** DoD is issuing an interim rule to implement a section of the National Defense Authorization Act for Fiscal Year 2011. The section provides that photovoltaic devices to be utilized in performance of any covered contract shall comply with the Buy American statute, subject to the exceptions provided in the Trade Agreements Act of 1979 or otherwise provided by law.

**DATES:** *Effective date:* December 20, 2011.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before February 21, 2012, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2011–D046, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inserting ''DFARS Case 2011–D046'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D046.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D046'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2011–D046 in the subject line of the message.

○ *Fax:* 703–602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Amy G. Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Amy G. Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–0328; facsimile 703–602–0350.''

**SUPPLEMENTARY INFORMATION:**

### I. Background

In order to implement section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383), this interim rule amends DFARS subpart 225.70 by adding a new section 225.7017, Utilization of domestic photovoltaic devices, as well as an associated provision and clause in DFARS part 252 and conforming changes to DFARS part 212.

Photovoltaic devices produce direct current electricity from sunlight, which can be used to provide power to things such as DoD-owned facilities or private housing.

As specified in section 846, a ''covered contract'' is defined in this interim rule as an energy savings performance contract, a utility service contract, or a private housing contract, if such contract will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products. DoD is deemed to own a photovoltaic device if the device is—

(1) Installed on DoD property or in a facility owned by DoD; and

(2) Reserved for the exclusive use of DoD for the full economic life of the device.

Prior to this definition, ownership would have required transfer of title for the equipment to the Government. Under section 846, exclusive use of the

power for the full economic life of the equipment equates to ownership and would then require compliance with 41 U.S.C. chapter 83, Buy American, unless DoD does not have exclusive rights to the power generated from the device (could be under any of the scenarios identified in (1) or (2) above) or the contract term is less than the full economic life of the photovoltaic device.

Land leases are not included in the DFARS definition of ''covered contract,'' because the DFARS does not cover land leases. Contracts that include purchase of photovoltaic devices as end products are covered under the standard DFARS Buy American—trade agreements provisions and clauses.

Photovoltaic devices provided under any covered contract shall comply with the Buy American statute, subject to the exceptions to that statute provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*) or otherwise provided by law.

Exceptions are provided for qualifying country photovoltaic devices, Free Trade Agreement or designated country photovoltaic devices (depending on the estimated value of the photovoltaic devices), and other foreign photovoltaic devices, if covered by the Buy American statute and the cost of a domestic photovoltaic device would be unreasonable (*i.e.,* 50 percent more than the cost of the foreign photovoltaic device).

## II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## III. Determination of Applicability

DoD has not made a determination to apply the requirement of section 846 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011 to contracts at or below the simplified acquisition threshold (SAT), but has determined to apply the rule to contracts for the acquisition of commercial items.

### *A. Applicability to Contracts at or Below the Simplified Acquisition Threshold*

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. DoD has not made that determination. Therefore, this rule does not apply below the simplified acquisition threshold.

### *B. Applicability to Contracts for the Acquisition of Commercial Items*

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if DoD makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Therefore, given that the requirements of section 846 of the NDAA for FY 2011 were enacted to promote utilization of domestic photovoltaic devices, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial items, as defined at FAR 2.101. An exception for contracts for the acquisition of commercial items would exclude a significant portion of contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

## IV. Regulatory Flexibility Act

DoD expects that this interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an initial regulatory flexibility analysis has been prepared and is summarized as follows:

This interim rule implements section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383), by providing regulatory coverage on utilization of domestic photovoltaic devices under certain covered contracts.

The objective of the rule is to promote utilization of domestic photovoltaic devices under an energy savings contract, a utility service contract, or a private housing contract, if such contract does not include DoD purchase of photovoltaic devices as end products, but will nevertheless result in DoD ownership of photovoltaic devices. According to the statute, DoD is deemed to own a photovoltaic device if the device is—

(1) Installed on DoD property or in a facility owned by DoD; and

(2) Reserved for the exclusive use of DoD for the full economic life of the device.

The legal basis for the rule is section 846 of the National Defense Authorization Act for Fiscal Year 2011.

This rule generally applies to other than small entities. When purchasing renewable power generated via on-site photovoltaic devices, DoD can either purchase the photovoltaic devices and thereby own, operate, and maintain the devices for their full economic life (already covered in DFARS part 225) or can do variations of the following:

a. Enter into an energy savings performance contract, which is a contracting method in which the contractor provides capital to facilitate energy savings projects and maintains them in exchange for a portion of the energy savings generated. Under this arrangement, the Government would take title to the devices during contract performance or at the conclusion of the contract. For example, the Defense Logistics Agency-Energy uses the master Department of Energy indefinite delivery-indefinite quantity contract and awards task orders off that contract. Of the 16 contractors, all are large businesses. There are subcontracting goals that each contractor has to meet, but the ultimate task order award is made to a large business.

b. Enter into a power purchase agreement, also referred to as a utility service contract, for the purchase of the power output of photovoltaic devices that are installed on DoD land or buildings, but owned, operated, and maintained by the contractor. At the conclusion of the contract, DoD would either require the contractor to dismantle and remove the photovoltaic equipment, abandon the equipment in place, or would re-compete the requirement and if the incumbent contractor is the successful offeror, the follow-on contract would allow for continued power purchase from the existing devices. If the incumbent contractor is not the successful offeror,

the contractor would be required to dismantle and remove the devices. Prime contractors for this type of contract would generally be large businesses, based on the capital costs involved in these projects. However, many developers tend to subcontract out the majority of work to smaller companies.

We do not currently have data available on whether any of the manufacturers of photovoltaic devices are small entities. This rule will promote utilization of domestic photovoltaic devices, even when the Government does not take title to the devices.

The requirements of the rule will not apply below the simplified acquisition threshold.

Since the prime contractors subject to this rule are large businesses, the reporting requirements will not impact small entities. Since the photovoltaic devices are commercially available off-the-shelf items, there will be no requirement to track to the origin of the components, but just to inform the prime contractor of the place of manufacture.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD did not identify any significant alternatives that would accomplish the objectives of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D046), in correspondence.

## V. Paperwork Reduction Act

The rule imposes an information collection requirement that requires the approval of the Office of Management and Budget under 44 U.S.C. chapter 35. However, the new DFARS provision at 252.225–7018, Photovoltaic Devices—Certificate, does not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0229, entitled ''Defense Federal Acquisition Regulation Supplement Part 225, Foreign Acquisition, and related clauses,'' currently approved through November 30, 2013, in the amount of 147,944 hours. The proposed provision is a variant of the Buy American-trade agreements provisions that are already cleared.

## VI. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements section 846 of the National Defense Authorization Act for Fiscal Year 2011. This requirement became effective upon enactment, January 7, 2011. This action is necessary in order to enable contracting officers to prevent violations of the Anti-Deficiency Act by inadvertent award of a covered contract that does not contain the appropriate restrictions with regard to country of origin of photovoltaic devices to be utilized in performance of the contract. Failure to implement this requirement promptly can also have adverse effects on the U.S. photovoltaic industry, which this statute was designed to protect. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

## List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 in paragraph by redesignating paragraphs (f)(iv)(F) through (L) as paragraphs (f)(iv)(G) through (M), and adding new paragraph (f)(iv)(F) to read as follows:

### 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(iv) * * *

(F) Use the provision at 252.225–7018, Photovoltaic Devices—Certificate, as prescribed in 225.7017–4(b).

* * * * *

## PART 225—FOREIGN ACQUISITION

■ 3. Add sections 225.7017 through 225.7017–4 to subpart 225.70 to read as follows:

## Subpart 225.70—Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisition

Sec.

* * * * *

225.7017 Utilization of domestic photovoltaic devices.
225.7017–1 Definitions.
225.7017–2 Restriction.
225.7017–3 Exceptions.
225.7017–4 Solicitation provisions and contract clauses.

### 225.7017 Utilization of domestic photovoltaic devices.

### 225.7017–1 Definitions.

As used in this section—

*Covered contract* means an energy savings performance contract, a utility service contract, or a private housing contract awarded by DoD, if such contract results in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products. DoD is deemed to own a photovoltaic device if the device is—

(1) Installed on DoD property or in a facility owned by DoD; and

(2) Reserved for the exclusive use of DoD for the full economic life of the device.

*Designated country photovoltaic device, domestic photovoltaic device, foreign photovoltaic device, Free Trade Agreement country photovoltaic device, photovoltaic device, qualifying country photovoltaic device,* and *U.S.-made photovoltaic device* are defined in the clause at 252.225–7017, Photovoltaic Devices.

### 225.7017–2 Restriction.

In accordance with section 846 of the National Defense Authorization Act for Fiscal Year 2011, photovoltaic devices provided under any covered contract shall comply with 41 U.S.C. chapter 83, Buy American, subject to the exceptions to that statute provided in the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*) or otherwise provided by law.

### 225.7017–3 Exceptions.

DoD requires the contractor to utilize domestic photovoltaic devices in covered contracts, with the following exceptions:

(a) *Qualifying country.* Qualifying country photovoltaic devices may be utilized in any covered contract, because 225.103(a)(i)(A) provides an exception to the Buy American Act for products of qualifying countries, as defined in 225.003.

(b) *Buy American–unreasonable cost.* For a covered contract that utilizes photovoltaic devices valued at less than $203,000, the exception for

unreasonable cost may apply (see FAR 25.103(c)). If the cost of a foreign photovoltaic device plus 50 percent is less than the cost of a domestic photovoltaic device, then the foreign photovoltaic device may be utilized.

(c) *Trade agreements.* (1) *Free Trade Agreements.* For a covered contract that utilizes photovoltaic devices valued at $25,000 or more, photovoltaic devices may be utilized from a country covered under the acquisition by a Free Trade Agreement, depending upon dollar threshold (see FAR 25.4).

(2) *World Trade Organization—Government Procurement Agreement.* For covered contracts that utilize photovoltaic devices that are valued at $203,000 or more, only U.S.-made photovoltaic devices, designated country photovoltaic devices, or qualifying country photovoltaic devices may be utilized.

**225.7017–4 Solicitation provisions and contract clauses.**

(a)(1) Use the clause at 252.225–7017, Photovoltaic Devices, in solicitations for a contract that—

(i) Is expected to exceed the simplified acquisition threshold; and

(ii) May be a covered contract, *i.e.,* an energy savings performance contract, a utility service contract, or a private housing contract awarded by DoD, if such contract results in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products.

(2) Use the clause in the resultant contract if it is a covered contract (*i.e.,* will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products).

(b) Use the provision at 252.225–7018, Photovoltaic Devices—Certificate, in solicitations containing the clause at 252.225–7017.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 252.212–7001 by redesignating paragraphs (b)(12) through (30) as paragraphs (b)(13) through (31), and adding new paragraph (b)(12) to read as follows:

**252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.**

* * * * *

(b) * * *

(12) ___252.225–7017, Photovoltaic Devices (DEC 2011) (Section 846 of Pub. L. 111–383).

* * * * *

■ 5. Add sections 252.225–7017 and 252.225–7018 to read as follows:

**252.225–7017 Photovoltaic Devices.**

As prescribed in 225.7017–4(a), use the following clause:

**Photovoltaic Devices (DEC 2011)**

(a) *Definitions.* As used in this clause—

*Bahrainian photovoltaic device* means an article that—

(i) Is wholly manufactured in Bahrain; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Canadian photovoltaic device* means an article that has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Caribbean Basin country photovoltaic device* means an article that—

(i) Is wholly manufactured in a Caribbean Basin country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Designated country* means—

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), or the United Kingdom);

(ii) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Peru, or Singapore);

(iii) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(iv) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

*Designated country photovoltaic device* means a WTO GPA country photovoltaic device, a Free Trade Agreement country photovoltaic device, a least developed country photovoltaic device, or a Caribbean Basin country photovoltaic device.

*Domestic photovoltaic device* means a photovoltaic device manufactured in the United States.

*Foreign photovoltaic device* means a photovoltaic device other than a domestic photovoltaic device.

*Free Trade Agreement country* means Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Morocco, Nicaragua, Peru, or Singapore.

*Free Trade Agreement country photovoltaic device* means an article that—

(i) Is wholly manufactured in a Free Trade Agreement country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Least developed country photovoltaic device* means an article that—

(i) Is wholly manufactured in a least developed country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Moroccan photovoltaic device* means an article that—

(i) Is wholly manufactured in Morocco; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Morocco into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Peruvian photovoltaic device* means an article that—

(i) Is wholly manufactured in Peru; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*Photovoltaic device* means a device that converts light directly into electricity through a solid-state, semiconductor process.

*Qualifying country* means any country listed in the definition of ''qualifying country'' at 225.003 of the Defense Federal Acquisition Regulation Supplement (DFARS).

*Qualifying country photovoltaic device* means a photovoltaic device manufactured in a qualifying country.

*United States* means the 50 States, the District of Columbia, and outlying areas.

*U.S.-made photovoltaic device* means a photovoltaic device that—

(i) Is manufactured in the United States; or

(ii) Is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

*WTO GPA country photovoltaic device* means an article that—

(i) Is wholly manufactured in a WTO GPA country; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(b) This clause implements section 846 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111–383).

(c) *Restriction.* If the Contractor specified in its offer in the Photovoltaic Devices—Certificate provision of the solicitation that the estimated value of the photovoltaic devices to be utilized in performance of this contract would be—

(1) More than $3,000 but less than $25,000, then the Contractor shall utilize only domestic or qualifying country photovoltaic devices unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(2)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation;

(2) $25,000 or more but less than $70,079, then the Contractor shall utilize in the performance of this contract only domestic or qualifying country photovoltaic devices unless, in its offer, it specified utilization of Canadian or other foreign photovoltaic devices in paragraph (c)(3)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Canadian photovoltaic device, the Contractor shall utilize a qualifying country photovoltaic device, a Canadian photovoltaic device, or, at the Contractor's option, a domestic photovoltaic device;

(3) $70,079 or more but less than $203,000, then the Contractor shall utilize under this contract only domestic photovoltaic devices, qualifying country photovoltaic devices, or Free Trade Agreement country photovoltaic devices (other than Bahrainian, Moroccan, or Peruvian photovoltaic devices), unless, in its offer, it specified utilization of other foreign photovoltaic devices in paragraph (c)(4)(ii) of the Photovoltaic Devices—Certificate provision of the solicitation. If the Contractor certified in its offer that it will utilize a qualifying country photovoltaic device or a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, or Peruvian photovoltaic device), the Contractor shall utilize a qualifying country photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, or Peruvian photovoltaic device), or, at the Contractor's option, a domestic photovoltaic device; or

(4) $203,000 or more, then the Contractor shall utilize under this contract only U.S.-made, qualifying country, or designated country photovoltaic devices.

(End of clause)

### 252.225–7018 Photovoltaic Devices—Certificate.

As prescribed in 225.7017–4(b), use the following provision:

### Photovoltaic Devices—Certificate (DEC 2011)

(a) *Definitions. Bahrainian photovoltaic device, Canadian photovoltaic device, Caribbean Basin photovoltaic device, designated country, domestic photovoltaic device, foreign photovoltaic device, Free Trade Agreement country, Free Trade Agreement photovoltaic device, least developed country photovoltaic device, Moroccan photovoltaic device, Peruvian photovoltaic device, photovoltaic device, qualifying country, qualifying country photovoltaic device, United States, U.S.-made photovoltaic device,* and *WTO GPA country photovoltaic device* have the meanings given in the Photovoltaic Devices clause of this solicitation.

(b) *Restrictions.* The following restrictions apply, depending on the estimated value of any photovoltaic devices to be utilized under a resultant contract:

(1) If more than $3,000 but less than $203,000, then the Government will not accept an offer specifying the use of other foreign photovoltaic devices in paragraph (c)(2)(ii), (c)(3)(ii), or (c)(4)(ii) of this provision, unless the offeror documents to the satisfaction of the Contracting Officer that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.

(2) If $203,000 or more, then the Government will consider only offers that utilize photovoltaic devices that are U.S.-made, qualifying country, or designated country photovoltaic devices.

(c) *Certification and identification of country of origin.* [*The offeror shall check the block and fill in the blank for one of the following paragraphs, based on the estimated value and the country of origin of photovoltaic devices to be utilized in performance of the contract:*]

___ (1) No photovoltaic devices will be utilized in performance of the contract, or such photovoltaic devices have an estimated value of $3,000 or less.

(2) If more than $3,000 but less than $25,000—

___ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device or a qualifying country photovoltaic device [*Offeror to specify country of origin* _____]; or

___ (ii) The foreign (other than qualifying country) photovoltaic devices to be utilized in performance of the contract are the product of _____. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.*]

(3) If $25,000 or more but less than $70,079—

___ (i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country photovoltaic device; or a Canadian photovoltaic device [*Offeror to specify country of origin*_____]; or

___ (ii) The foreign (other than qualifying country or Canadian) photovoltaic devices to be utilized in performance of the contract are the product of _____. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.*]

(4) If $70,079 or more but less than $203,000—

___(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device; a qualifying country (except Australian or Canadian) photovoltaic device; a Free Trade Agreement country photovoltaic device (other than a Bahrainian, Moroccan, or Peruvian photovoltaic device) [*Offeror to specify country of origin* _____]; or

___(ii) The offered foreign photovoltaic devices (other than those from countries listed in paragraph (c)(4)(i) of this provision) are the product of _____. [*Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device.*]

(5) If $203,000 or more—

___The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a U.S.-made, qualifying country, or designated country photovoltaic device. [*Offeror to specify country of origin* _____.]

(End of provision)

[FR Doc. 2011–32396 Filed 12–19–11; 8:45 am]

BILLING CODE 5001–06–P

# Proposed Rules

Federal Register

Vol. 76, No. 244

Tuesday, December 20, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2011–0961; Directorate Identifier 2011–NE–22–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Rolls-Royce Corporation Turboshaft Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for certain Rolls-Royce Corporation (RRC) 250–C20, –C20B, and –C20R/2 turboshaft engines. This proposed AD was prompted by seven cases reported of released turbine blades and shrouds, which led to loss of power and engine in-flight shutdowns (IFSDs). This proposed AD would require a one-time visual inspection and fluorescent penetrant inspection (FPI) on certain 3rd and 4th stage turbine wheels for cracks in the turbine blades. We are proposing this AD to prevent failure of 3rd or 4th stage turbine wheel blades which could cause engine failure and damage to the airplane.

**DATES:** We must receive comments on this proposed AD by February 21, 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 NPRM, contact Rolls-Royce Corporation Customer Support, P.O. Box 420, Indianapolis, IN 46206–0420; phone: (888) 255–4766 or (317) 230–2720; fax: (317) 230–3381, email: *helicoptercustsupp@rolls-royce.com,* and Web site: *www.rolls-royce.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. 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:** John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: (847) 294–8180; fax: (847) 294–7834; email: *john.m.tallarovic@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–2011–0961; Directorate Identifier 2011–NE–22–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 reports of seven cases of released turbine blades and shrouds due to fatigue on certain RRC 250–C20, –C20B, and –C20R/2 turboshaft engines. These cases resulted in loss of power and engine IFSDs. This condition, if not corrected, could result in IFSDs. We are proposing a one-time visual and FPI on the 3rd stage turbine wheel, part number (P/N) 23065818, and on the 4th stage turbine wheel, P/N 23055944.

Since the original approval of these parts, speed avoidance restrictions have been established for these engines to prevent fatigue damage. In trying to identify the cause of this failure, RRC conducted an extensive product review. This product review determined the cause of the problem and instituted corrective actions. However, latent damage may still be present. Therefore, this unsafe condition may still exist.

### Relevant Service Information

We reviewed RRC Alert Commercial Engine Bulletin (CEB) No. CEB–A–1407, Revision 1, dated February 7, 2011 and CEB–A–72–4098, Revision 1, dated February 7, 2011 (combined in one document). Alert CEB–A–1407 describes procedures for performing a one-time visual inspection and FPI on the 3rd stage turbine wheel, P/N 23065818, and on the 4th stage turbine wheel, P/N 23055944 for cracks in the turbine blades on the model 250–C20 and –C20B turboshaft engines. Alert CEB–A–72–4098 describes procedures for performing a one-time visual inspection and FPI on the 3rd stage turbine wheel, P/N 23065818, and on the 4th stage turbine wheel, P/N 23055944 for cracks in the turbine blades on the model 250–C20R/2 turboshaft engine.

### 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 accomplishing the actions specified in the service information described previously.

### Costs of Compliance

We estimate that this proposed AD would affect 500 RRC C250–C20, –C20B, and –C20R/2 turboshaft engines installed on aircraft of U.S. registry. We also estimate that it would take about 5 hours to perform a one-time visual inspection and FPI of the 3rd stage turbine wheel and the 4th stage turbine wheel for cracks in the turbine blades, for each engine. The average labor rate is $85 per work-hour. We anticipate no required parts cost. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $212,500.

### 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):

**Rolls-Royce Corporation (Formerly Allison Engine Company and Allison Gas Turbine Division of General Motors):** Docket No. FAA–2011–0961; Directorate Identifier 2011–NE–22–AD.

**(a) Comments Due Date**

We must receive comments by February 21, 2012.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies only to Rolls-Royce Corporation 250–C20, –C20B, and –C20R/2 turboshaft engines with 3rd stage turbine wheel, part number (P/N) 23065818, and 4th stage turbine wheel, P/N 23055944.

**(d) Unsafe Condition**

This AD was prompted by seven cases reported of released turbine blades and shrouds, which led to loss of power and engine in-flight shutdowns. We are issuing this AD to prevent failure of 3rd or 4th stage turbine wheel blades which could cause engine failure and damage to the airplane.

**(e) Compliance**

Comply with this AD within the compliance times specified, unless already done.

(1) Remove the 3rd stage turbine wheel, P/N 23065818, and the 4th stage turbine wheel, P/N 23055944, at the next 1,750-hour overhaul.

(2) Perform a one-time visual inspection and a fluorescent penetrant inspection on the 3rd and 4th stage turbine wheels for cracks at the trailing edge of the turbine blades near the fillet at the rim.

(3) If any cracks in the trailing edge near the rim are detected, do not return the wheel to service.

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

The Manager, Chicago Aircraft Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

**(g) Related Information**

(1) For more information about this AD, contact John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 E. Devon Ave., Des Plaines, IL 60018; phone: (847) 294–8180; fax: (847) 294–7834; email: *john.m.tallarovic@faa.gov.*

(2) Rolls-Royce Corporation Alert Commercial Engine Bulletin No. CEB–A–1407, Revision 1, dated February 7, 2011 and CEB–A–72–4098, Revision 1, dated February 7, 2011 (combined in one document) pertain to the subject of this AD.

(3) For service information identified in this AD, contact Rolls-Royce Corporation Customer Support, P.O. Box 420, Indianapolis, IN 46206–0420; phone: (888) 255–4766 or (317) 230–2720; fax: (317) 230–3381; email: *helicoptercustsupp@rolls-royce.com,* and Web site: *www.rolls-royce.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call (781) 238–7125.

Issued in Burlington, Massachusetts, on December 14, 2011.

**Thomas A. Boudreau,**

*Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 2011–32491 Filed 12–19–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2011–1262; Airspace Docket No. 11–ANM–25]**

## Proposed Amendment of Class E Airspace; Lamar, CO

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace at Lamar Municipal Airport, Lamar, CO. Decommissioning of the Lamar Tactical Air Navigation System (TACAN) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also would adjust the geographic coordinates of the airport.

**DATES:** Comments must be received on or before February 3, 2012.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–

1262; Airspace Docket No. 11–ANM–25, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–1262 and Airspace Docket No. 11–ANM–25) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–1262 and Airspace Docket No. 11–ANM–25''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

## Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

## The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface at Lamar Municipal Airport, Lamar, CO. Airspace reconfiguration is necessary due to the decommissioning of the Lamar TACAN. The geographic coordinates of the airport would also be updated to coincide with the FAA's aeronautical database. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Lamar Municipal Airport, Lamar, CO.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ANM CO E5 Lamar, CO [Amended]**

Lamar Municipal Airport, CO
(Lat. 38°04′11″ N., long. 102°41′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Lamar Municipal Airport and within 3.1 miles each side of the Lamar Municipal Airport 001° bearing extending from the 6.8-mile radius to 16.5 miles north of the airport; that airspace extending upward from 1,200 feet above the surface beginning on the Colorado/Kansas state

boundary at lat. 38°34′00″ N.; thence along the Colorado/Kansas state boundary to lat. 37°11′00″ N.; to lat. 37°11′00″ N., long. 103°24″00″ W.; to lat. 38°34′00″ N., long. 103°24′00″ W.; thence to the point of beginning.

Issued in Seattle, Washington, on December 12, 2011.

**John Warner,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2011–32501 Filed 12–19–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 172

**[Docket No. FDA–2011–F–0765]**

### Nexira; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of petition.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Nexira has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of acacia gum (gum arabic) in food.

**FOR FURTHER INFORMATION CONTACT:** Celeste Johnston, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, (240) 402–1282.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 1A4784) has been filed by Nexira, c/o Keller and Heckman LLP, 1001 G St. NW., Suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 172.780 *Acacia (gum arabic)* (21 CFR 172.780), to provide for the expanded safe use of acacia gum (gum arabic) in food.

The Agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: December 5, 2011.

**Dennis M. Keefe,**

*Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.*

[FR Doc. 2011–32542 Filed 12–19–11; 8:45 am]

**BILLING CODE 4160–01–P**

## LIBRARY OF CONGRESS

### Copyright Office

### 37 CFR Part 201

**[Docket No. RM 2011–7]**

### Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Copyright Office (''Office'') seeks comments on proposals to exempt certain classes of works from the prohibition on circumvention of technological measures that control access to copyrighted works. The Office has initiated a rulemaking proceeding in accordance with provisions added by the Digital Millennium Copyright Act (''DMCA'') which provide that the Librarian of Congress (''Librarian''), upon the recommendation of the Register of Copyrights, may exempt certain classes of works from the prohibition against circumvention. The purpose of this proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. This notice publishes the classes of works received by the Office, which were proposed by several parties in the comment period that ended on December 1, 2011.

**DATES:** Comments addressing the Proposed Classes of Works are due by 5 p.m. E.S.T., February 10, 2012. Reply comments addressing points made in the initial comments are due by 5 p.m. E.S.T. on March 2, 2012.

**ADDRESSES:** All Proposed Classes of Works are available on the Copyright Office Web site at: *http://www.copyright.gov/1201/2011/initial/* and at the U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue SE., Washington, DC. The Copyright Office strongly prefers that comments filed in response to the Proposed Classes of Works be submitted electronically. A comment page containing a comment form will be posted on the Copyright Office Web site at *http://www.copyright.gov/1201/comment-forms.* The online form contains fields for required information including the name and organization of the commenter, as applicable, and the ability to upload comments as an attachment. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–8380 for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Ben Golant, Assistant General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024–0400. Telephone (202) 707–8380; telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:** On September 29, 2011, the Office published a Notice of Inquiry in the **Federal Register** to initiate the fifth triennial rulemaking proceeding required by § 1201(a)(1)(C) of the Copyright Act. *See* 76 FR 60398 (Sept. 29, 2011). That notice requested comments from interested parties proposing classes of works that should be considered for exemption for the next three-year period. The Office received 20 separate filings, proposing 26 classes of works for exemption.[1] On December 5, 2011, the Copyright Office posted all of the filings received (the ''Proposed Classes of Works'') on its Web site. *See http://www.copyright.gov/1201/2011/initial/.* In order to provide additional notice to interested parties, the Copyright Office is hereby publishing the Proposed Classes of Works with identification of the person(s) and/or

[1] This is an approximation based on the manner in which the proposed classes were articulated. In some cases, the proposed class involved multiple categories of works within the class that could have been articulated as multiple classes. In other cases, there were multiple proposals that were variations on the same theme that could have been expressed as one class. In addition, a number of parties proposed similar classes. The Office has chosen to group together related classes in this Notice in order to help focus the many exemption requests.

entities that proposed each class. In certain instances, such as with proposals submitted by some individuals who did not propose specific language describing a Proposed Class, the Office has fashioned language describing the Proposed Class based upon the substance of the submitted comments. The Office is taking this action, in part, to clarify the proposal to the best of the Office's ability. The Office encourages all persons responding to proposals to read the entire comment, as submitted, to make an independent assessment of the class proposed.

The comments received by the Copyright Office propose the following classes:

1. Literary works in the public domain that are made available in digital copies. Proponent: The Open Book Alliance.

2. Literary works, distributed electronically, that: (1) Contain digital rights management and/or other access controls which either prevent the enabling of the book's read-aloud functionality or which interfere with screen readers or other applications or assistive technologies that render the text in specialized formats; and (2) are legally obtained by blind or other persons with print disabilities (as such persons are defined in section 121 of Title 17, United States Code), or are legally obtained by authorized entities (as defined in such section) distributing such work exclusively to such persons. Proponent: American Council of the Blind and the American Foundation for the Blind.

3. Computer programs that enable lawfully acquired video game consoles to execute lawfully acquired software applications, where circumvention is undertaken for the purpose of enabling interoperability of such applications with computer programs on the gaming console. Proponent: The Electronic Frontier Foundation.

4. Computer programs that enable the installation and execution of lawfully obtained software on a personal computing device, where circumvention is performed by or at the request of the device's owner. Proponent: Software Freedom Foundation.

5. Computer programs that enable wireless telephone handsets (''smartphones'') and tablets to execute lawfully obtained software applications, where circumvention is undertaken for the purpose of enabling interoperability of such applications with computer programs on the handset or tablet. Proponent: The Electronic Frontier Foundation.

6A. Computer programs, in the form of firmware or software, including data used by those programs, that enable mobile devices to connect to a wireless communications network, when circumvention is initiated by the owner of the device to remove a restriction that limits the device's operability to a limited number of networks, or circumvention is initiated to connect to a wireless communications network. Proponent: Consumers Union.

6B. Computer programs, in the form of firmware or software, including data used by those programs, that enable wireless devices to connect to a wireless communications network, when circumvention is initiated by the owner of the copy of the computer program principally in order to connect to a wireless communications network and access to such communications network is authorized by the operator of such communications network. Proponent: Youghiogheny Communications, LLC.

6C. Computer programs, in the form of firmware or software, including data used by those programs, that enable wireless devices to connect to a wireless communications network, when circumvention is initiated by the owner of the copy of the computer program solely in order to connect to a wireless communications network and access to such communications network is authorized by the operator of such communications network. Proponents: MetroPCS Communications, Inc./RCA-The Competitive Carriers Association (filing separately).

7A. Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use in the following instances:

(i) Educational uses by college and university professors and by college and university film and media studies students;

(ii) Documentary filmmaking;

(iii) Noncommercial videos.

Proponent: University of Michigan Library.

7B. Audiovisual works on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use. Proponent: The Electronic Frontier Foundation.

7C. Audiovisual works that are lawfully made and acquired via online distribution services, where circumvention is undertaken for the purpose of extracting clips for inclusion in primarily noncommercial videos that do not infringe copyright, and the person engaging in the circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of the use, and the works in question are not readily available on DVD. Proponent: The Electronic Frontier Foundation.

7D. Motion pictures that are lawfully made and acquired from DVDs protected by the Content Scrambling System and Blu-Ray discs protected by Advanced Access Content System, or, if the motion picture is not reasonably available on DVD or Blu-Ray or not reasonably available in sufficient audiovisual quality on DVD or Blu-Ray, then from digitally transmitted video protected by an authentication protocol or by encryption, when circumvention is accomplished solely in order to incorporate short portions of motion pictures into new works for the purpose of fair use, and when the person engaging in circumvention reasonably believes that circumvention is necessary to obtain the motion picture in the following instances: (1) Documentary filmmaking; OR (2) fictional filmmaking. Proponent: International Documentary Association, Kartemquin Educational Films, Inc., National Alliance for Media Arts and Culture, and Independent Filmmaker Project (filing jointly).

7E. Motion pictures that are lawfully made and acquired from DVDs protected by the Content Scrambling System or, if the motion picture is not reasonably available on or not reasonably available in sufficient audiovisual quality on DVD, then from digitally transmitted video protected by an authentication protocol or by encryption, when circumvention is accomplished solely in order to incorporate short portions of motion pictures into new works for the purpose of fair use, and when the person engaging in circumvention reasonably believes that circumvention is necessary to obtain the motion picture for multimedia e-book authorship. Proponent: Mark Berger, Bobette Buster, Barnet Kellman, and Gene Rosow (filing jointly) (contained in comment

submitted by the International Documentary Association *et al.*).

7F. Motion pictures on DVDs that are lawfully made and acquired and that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the incorporation of short portions of motion pictures into new works for the purpose of criticism or comment, and where the person engaging in circumvention believes and has reasonable grounds for believing that circumvention is necessary to fulfill the purpose of educational uses by college and university professors and by college and university film and media studies students. Proponent: Library Copyright Alliance.

7G. Audiovisual works (optical discs, streaming media, and downloads) that are lawfully made and acquired when circumvention is accomplished by college and university students or faculty (including teaching and research assistants) solely in order to incorporate short portions of video into new works for the purpose of criticism or comment. Proponent: Peter Decherney, Katherine Sender, Michael Delli Carpini, International Communication Association, Society for Cinema and Media Studies, and American Association of University Professors (filing jointly).

8. Lawfully accessed audiovisual works used for educational purposes by kindergarten through twelfth grade educators. Proponent: Media Education Lab at the Harrington School of Communication and Media at the University of Rhode Island.

9A. Motion pictures and other audiovisual works delivered via Internet protocol (IP) protected by technological measures that control access to such works when circumvention is accomplished to facilitate the creation, improvement, or rendering of visual representations or descriptions of audible portions of such works for the purpose of improving the ability of individuals who may lawfully access such works to perceive such works. Proponent: Telecommunications for the Deaf and Hard of Hearing, Inc., Gallaudet University, and Participatory Culture Foundation (filing jointly).

9B. Motion pictures and other audiovisual works delivered via Internet protocol (IP) protected by technological measures that control access to such works when circumvention is accomplished to facilitate the creation, improvement, or rendering of audible representations or descriptions of visual portions of such works for the purpose of improving the ability of individuals who may lawfully access such works to perceive such works. Proponent: Telecommunications for the Deaf and Hard of Hearing, Inc., Gallaudet University, and Participatory Culture Foundation (filing jointly).

9C. Motion pictures and other audiovisual works on fixed disc-based media protected by technological measures that control access to such works when circumvention is accomplished to facilitate the creation, improvement, or rendering of visual representations or descriptions of audible portions of such works for the purpose of improving the ability of individuals who may lawfully access such works to perceive such works. Proponent: Telecommunications for the Deaf and Hard of Hearing, Inc., Gallaudet University, and Participatory Culture Foundation (filing jointly).

9D. Motion pictures and other audiovisual works on fixed disc-based media protected by technological measures that control access to such works when circumvention is accomplished to facilitate the creation, improvement, or rendering of audible representations or descriptions of visual portions of such works for the purpose of improving the ability of individuals who may lawfully access such works to perceive such works. Telecommunications for the Deaf and Hard of Hearing, Inc., Gallaudet University, and Participatory Culture Foundation (filing jointly).

10A. Motion pictures on lawfully made and lawfully acquired DVDs that are protected by the Content Scrambling System when circumvention is accomplished solely in order to accomplish the noncommercial space shifting of the contained motion picture. Proponent: Public Knowledge.

10B. Legally acquired digital media (motion pictures, sound recordings, and e-books) for personal use and for the purposes of making back-up copies, format shifting, access, and transfer. Proponents: Cassiopaea Tambolini, Susan Fuhs, Kellie Heistand, Andy Kossowsky, and Curt Wiederhoeft (filing separately).

These Proposed Classes of Works represent a starting point for further consideration in this rulemaking proceeding. The Office does not represent that any particular class proposed for exemption will ultimately be recommended by the Register of Copyrights to the Librarian of Congress. Moreover, the delineation of any class as proposed by a commenter will be considered in relation to the facts presented in the entire rulemaking process. To the extent that an exemption is deemed warranted by the evidence, a Proposed Class listed herein may be developed and/or refined by the Register in her final recommendation to the Librarian.

This Notice hereby requests responsive written initial comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public, in order to elicit additional evidence either supporting or opposing the classes of works proposed for exemption. The forthcoming initial comment period allows the introduction of additional factual information that would assist the Office in assessing whether a Proposed Class is warranted for exemption and, if it is, how such a class already proposed should be properly tailored. Comments responsive to the Proposed Classes may also suggest modest refinements to the Proposed Classes and supply additional evidence, but may not propose completely new classes of works.

It is important to reiterate that Proponents of the exemptions enumerated above should have presented their entire case in their initial filings. A proponent of a particular class of works will not be permitted to submit an initial comment in support of that class in response to this Notice unless, at least 15 days before the deadline for comments (*i.e.,* before January 27, 2012), the proponent has submitted a written request for permission to submit an initial comment demonstrating good cause to permit the submission of the comment, and the Office has approved the submission of the comment. The purpose of this requirement is to provide for the orderly presentation of evidence and arguments, and to permit both proponents and opponents to present their best cases. *See* 76 FR 60398, 60403 (Sept. 29, 2011).

Persons submitting comments should thoroughly review the Notice of Inquiry published in the **Federal Register** on September 29, 2011 to familiarize themselves with the substantive and formal requirements for the submission of comments.

Reply comments may be submitted by any person, including the initial proponent of a Proposed Class of Works, but should respond only to points made in the initial comments.

Dated: December 15, 2011.

**Maria A. Pallante,**

*Register of Copyrights.*

[FR Doc. 2011–32509 Filed 12–19–11; 8:45 am]

**BILLING CODE 1410–30–P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R07–OAR–2011–0627; FRL–9608–5]**

# Approval and Promulgation of Implementation Plans and Designations of areas for Air Quality Planning Purposes; Missouri and Illinois; St. Louis Nonattainment Area; Determination of Attainment by Applicable Attainment Date for the 1997 Annual Fine Particulate Standards

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine, pursuant to the Clean Air Act (CAA), that the bi-state St. Louis, Missouri-Illinois, fine particulate ($PM_{2.5}$) nonattainment area (hereafter referred to as ''the St. Louis area'' or ''the area'') has attained the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS) by its applicable attainment date of April 5, 2010. This proposed determination is based on quality-assured and certified monitoring data for the 2007–2009 monitoring period. Based on this data, EPA previously determined on May 23, 2011, that the area attained the 1997 standards, and EPA suspended certain planning requirements for the area based on that determination. EPA is now proposing to find that the St. Louis area attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date. EPA is proposing this action because it is consistent with the CAA and its implementing regulations.

**DATES:** Comments must be received on or before January 19, 2012.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R07–OAR–2011–0627, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: brown.steven@epa.gov*
3. *Fax:* (913) 551–9460.
4. *Mail:* Steven Brown, Atmospheric Section, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.
5. *Hand Delivery or Courier:* Steven Brown, Atmospheric Section, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R07–OAR–2011–0627. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Atmospheric Section, Air Planning and Development Branch, Air Waste and Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** In Region 7, Steven Brown, Atmospheric Section, Air Planning And Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Steven Brown may be reached by telephone at (913) 551–7718 or via electronic mail at *brown.steven@epa.gov.* In Region 5, John Summerhays, Attainment Planning and Maintenance Section, Air Programs Branch (AR 18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. The telephone number is (312) 886–6067. Mr. Summerhays can also be reached via electronic mail at *summerhays.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

I. What action is EPA taking?
II. What is the background for this action?
III. What is the air quality in the St. Louis area for the 1997 annual $PM_{2.5}$ NAAQS for the 2007–2009 monitoring period?
IV. What is the proposed action, and what is the effect of this action?
V. Statutory and Executive Order Reviews

## I. What action is EPA taking?

Based on EPA's review of the quality-assured and certified monitoring data for 2007–2009, and in accordance with section 179(c)(1) of the CAA, EPA proposes to determine that the St. Louis area has attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. The St. Louis area is comprised of Jefferson County, Franklin County, St. Louis County, St. Louis City, and St. Charles in Missouri, and Madison, Monroe and St. Clair Counties, and Baldwin Township in Randolph County in Illinois.

It is important to distinguish between two different types of attainment determinations that EPA makes for areas that are designated nonattainment. Both types require notice-and-comment rulemaking.

(1) Determinations of attainment by an area's attainment date, and

(2) Determinations of attainment for purposes of suspending the State's obligation to submit certain planning SIPs linked to attainment.

This proposed action is with respect to Type 1 above. The CAA requires EPA to determine whether a nonattainment

area has attained the standard as of its applicable attainment date. These determinations of attainment provide a historical snapshot—they evaluate attainment only as of an area's attainment deadline, and are issued to comply with section 181(b)(2)of the CAA for ozone and sections 172 and 179 of the CAA for $PM_{2.5}$. Determinations of attainment by an attainment deadline are separate and independent of the second type of attainment determinations, as described below.

On May 23, 2010, EPA published a final rulemaking making a determination that the St. Louis area attained the 1997 annual $PM_{2.5}$ NAAQS based on quality-assured, quality controlled and certified ambient air monitoring data for the 2007–2009 monitoring period and thereby suspended the requirements for the St. Louis area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS so long as the area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS. See 76 FR 29652. Further information regarding that action is available in the notice proposing that action, published on March 7, 2011, at 76 FR 12302.

Today's proposed action merely makes a determination that the St. Louis area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date. This action is not a re-proposal of the prior attainment determination or of the effects of suspending the requirements for the St. Louis area to submit an attainment demonstration and associated RACM, an RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard. More information regarding the 1997 annual $PM_{2.5}$ NAAQS and the area's attainment of that NAAQS is available at 76 FR 29652 (May 23, 2011). A detailed discussion of EPA's review of the monitoring data showing attainment of the standard can be found in the March 7, 2011 proposed action and the May 23, 2011 final action.

## II. What is the background for this action?

On January 5, 2005, EPA designated the St. Louis area as nonattainment for the 1997 annual $PM_{2.5}$ NAAQS. (70 FR 944) The designation was effective April 5, 2005. Section 172(a) of the CAA requires a state to achieve attainment no later than 5 years from the nonattainment designation. Thus, the St. Louis area had an applicable attainment date of April 5, 2010. Pursuant to section 179(c) of the CAA, EPA is required to make a determination whether the area attained the standard by its applicable attainment date. Specifically, section 179(c)(1) of the CAA reads as follows: ''As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.'' Today's action makes this determination.

## III. What is the air quality in the St. Louis area for the 1997 annual $PM_{2.5}$ NAAQS for the 2007–2009 monitoring period?

Under EPA regulations at 40 CFR 50.7, the 1997 annual primary and secondary PM2.5 standards are met when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 micrograms per cubic meter (μg/m3) at all relevant monitoring sites in the subject area.

EPA reviewed the ambient air monitoring data for the St. Louis area in accordance with the provisions of 40 CFR part 50, Appendix N. All data considered have been quality-assured, certified, and recorded in EPA's Air Quality System database. This review addresses air quality data collected in the 3-year period from 2007–2009. The 3-year period from 2007–2009 provides the latest 3-year set of data that EPA may use to determine whether the St. Louis area attained the standard by its applicable attainment date of April 5, 2010.

TABLE 1—ANNUAL AVERAGE CONCENTRATIONS IN THE ST. LOUIS AREA (2007–2009)

[Annual $PM_{2.5}$ design values for Saint Louis area monitors with complete data for 2007 to 2009]

| State | County | Monitor | Site name | Annual design value 2007–2009 |
|---|---|---|---|---|
| IL | Madison | 17–119–1007 | 23rd and Madison | 14.1 |
| | | 17–119–2009 | 1700 Annex St | 12.5 |
| | | 17–119–3007 | 54 N. Walcott | 12.5 |
| | Randolph | 17–157–0001 | | 11.4 |
| | Saint Clair | 17–163–0010 | 13th and Tudor | 13.3 |
| | | 17–163–4001 | 1500 Caseyville Ave | 12.5 |
| MO | City of Saint Louis | 29–510–0007 | Broadway | 12.8 |
| | | 29–510–0085 | Blair Street | 12.7 |

As shown above in Table 1, during the 2007–2009 design period, the St. Louis area met the 1997 annual $PM_{2.5}$ NAAQS. The official annual design value for the St. Louis area for the 2007–2009 period is 14.1 μg/m³. More detailed information on the monitoring data for the St. Louis area during the 2007–2009 design period is provided in EPA's March 7, 2011, proposed rulemaking, and EPA's May 23, 2011, final rulemaking regarding the determination of attainment for the St. Louis area for the 1997 annual $PM_{2.5}$ NAAQS. See 76 FR 12302 and 76 FR 29652.

## IV. What is the proposed action, and what is the effect of this action?

This action is a proposed determination that the St. Louis area has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010, consistent with the CAA section 179(c)(1). Finalizing this proposed action would not constitute a redesignation of the St. Louis area to attainment of 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the CAA because EPA would not have yet approved a maintenance plan for the St. Louis area as required under CAA section 175A, nor a determination that the St. Louis area has met all other requirements for redesignation under the CAA. Even if EPA finalizes today's proposed action, the designation status

of the St. Louis area will remain nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the CAA requirements for redesignation to attainment are met, and takes action to finalize that determination through a redesignation.

## V. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

In addition, this proposed determination that the St. Louis area attained the 1997 annual average $PM_{2.5}$ NAAQS by its applicable attainment date does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIPs are not approved to apply in Indian country located in the states, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: November 1, 2011.

**Mark Hague,**

*Acting Regional Administrator, Region 7.*

Dated: December 9, 2011.

**Susan Hedman,**

*Regional Administrator, Region 5.*

[FR Doc. 2011–32561 Filed 12–19–11; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2011–0897; FRL–9499–8]**

## Revisions to the California State Implementation Plan, South Coast Air Quality Management District

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen ($NO_X$) and oxides of sulfur ($SO_X$) emissions from facilities emitting 4 tons or more per year of $NO_X$ or $SO_X$ in the year 1990 or any subsequent year under the SCAQMD's Regional Clean Air Incentives Market (RECLAIM) program. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by January 19, 2012.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2011–0897, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Lily Wong, EPA Region IX, (415) 947–4114, *wong.lily@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rule: SCAQMD Rule 2005, New Source Review for RECLAIM. In the Rules and Regulations section of this **Federal Register,** we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is

planned. For further information, please see the direct final action.

Dated: November 18, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011–32476 Filed 12–19–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 63

**[EPA–HQ–OAR–2010–1042; FRL–9609–1]**

**RIN 2060–AQ90**

## National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing

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

**ACTION:** Proposed rule; notice of public hearings and extension of public comment period.

**SUMMARY:** The EPA published in the **Federal Register** on November 25, 2011, the proposed rules, ''National Emission Standards for Hazardous Air Pollutants: Mineral Wool Production and Wool Fiberglass Manufacturing.'' The EPA was asked to hold a public hearing only on the wool fiberglass rule. Therefore, EPA is making two announcements: first, a public hearing for the proposed Wool Fiberglass Manufacturing rule will be held on January 4, 2012 in Kansas City Kansas, and second, the comment period for the Wool Fiberglass Manufacturing proposed rules will be extended until February 3, 2012.

**DATES:** The public hearing will be held on January 4, 2012. Comments must be received by February 3, 2012.

**ADDRESSES:** The public hearing to be held on January 4, 2012, will be held at the Hilton Garden Inn, 520 Minnesota Avenue, Kansas City, Kansas 66101; telephone: (913) 342–7900.

The public hearing will convene at 2 p.m. and will continue until 8 p.m. A dinner break is scheduled from 5 p.m. until 6:30 p.m. The EPA will make every effort to accommodate all speakers that arrive and register before 8 p.m. The EPA's Web site for the rulemaking, which includes the proposal and information about the hearings, can be found at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html*.

**FOR FURTHER INFORMATION CONTACT:** If you would like to present oral testimony at the public hearing, please contact Ms. Pamela Garrett, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D243–01), Research Triangle Park, North Carolina 27711; telephone: (919) 541–7966; fax number: (919) 541–5450; email address: *garrett.pamela@epa.gov* (preferred method for registering). The last day to register to present oral testimony in advance will be Friday, December 30, 2011. If using email, please provide the following information: the time you wish to speak (afternoon or evening), name, affiliation, address, email address and telephone and fax numbers. Time slot preferences will be given in the order requests are received. Requests to speak will be taken the day of each of the hearings at the hearing registration desk, although preferences on speaking times may not be able to be fulfilled. If you will require the service of a translator, please let us know at the time of registration.

Questions concerning the November 25, 2011, proposed rule should be addressed to Susan Fairchild, Office of Air Quality Planning and Standards, Sector Policies and Programs Division (D 243–04), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5167; facsimile number: (919) 541–3207; email address: *Fairchild.susan@epa.gov*.

*Public hearing:* The proposal for which the EPA is holding the public hearing was published in the **Federal Register** on November 25, 2011, and is available at: *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html* and also in the docket identified below. The public hearing will provide interested parties the opportunity to present oral comments regarding the EPA's proposed standards, including data, views or arguments concerning the proposal. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing.

Commenters should notify Ms. Garrett if they will need specific equipment or if there are other special needs related to providing comments at the public hearing. The EPA will provide equipment for commenters to make computerized slide presentations if we receive special requests in advance. Oral testimony will be limited to 5 minutes for each commenter. The EPA encourages commenters to bring a copy of their oral testimony along with any other information supporting their statements in electronic (via email or CD) or in hard copy form. A recorder will be present during the public hearing to record oral statements. All information submitted to the EPA during the public hearing and a transcribed copy of the oral statements will be entered into the docket.

The public hearing schedule, including lists of speakers, will be posted on the EPA's Web site at *http://www.epa.gov/ttn/atw/rrisk/rtrpg.html*. Verbatim transcripts of the hearing and written statements will be included in the docket for the rulemaking. The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearing to run either ahead of schedule or behind schedule.

### How can I get copies of this document and other related information?

The EPA has established a docket for the proposed rule, ''National Emission Standards for Hazardous Air Pollutants: Wool Fiberglass Manufacturing Risk and Technology Review,'' under No. EPA–HQ–OAR–2010–1042, available at *www.regulations.gov.*

### List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 15, 2011.

**Mary E. Henigin,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. 2011–32630 Filed 12–19–11; 8:45 a.m.]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[EPA–HQ–OAR–2008–0476; FRL– 9608–6]**

## EPA Responses to State and Tribal 2008 Ozone Designation Recommendations: Notice of Availability and Public Comment Period

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

**ACTION:** Notice of availability and public comment period.

**SUMMARY:** Notice is hereby given that the EPA has posted its responses to state and tribal designation recommendations for the 2008 Ozone National Ambient Air Quality Standards (NAAQS) on the Agency's Internet Web site. The EPA invites public comments on its responses during the comment period

specified in the **DATES** section. The EPA sent responses directly to the states and tribes on or about December 9, 2011, and intends to make final designation determinations for the 2008 Ozone NAAQS in spring 2012.

**DATES:** Comments must be received on or before January 19, 2012. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–OAR–HQ–2008–0476, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov. Attention Docket ID No. EPA–HQ–OAR–2008–0476.*
- *Fax:* (202) 566–9744. *Attention Docket ID No. EPA–HQ–OAR–2008–0476.*
- *Mail:* Air Docket, *Attention Docket ID No. EPA–HQ–OAR–2008–0476,* Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0476. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information or other information whose disclosure is restricted by statute. Do not submit information that you consider to be confidential business information or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* web site is an ''anonymous access'' system, which means the 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 the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the 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 the EPA is unable to read your comment and cannot contact you for clarification due to technical difficulties, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section II of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For general questions concerning this action, please contact Carla Oldham, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C539–04, Research Triangle Park, NC 27711, telephone (919) 541–3347, email at *oldham.carla@epa.gov.* For questions about areas in the EPA Region 1, please contact Richard Burkhart, U.S. EPA, telephone (617) 918–1664, email at *burkhart.richard@epa.gov.* For questions about areas in the EPA Region 2, please contact Bob Kelly, U.S. EPA, telephone (212) 637–3709, email at *kelly.bob@email.gov.* For questions about areas in the EPA Region 3, please contact Maria Pino, U.S. EPA, telephone (215) 814–2181, email at *pino.maria@epa.gov.* For questions about areas in the EPA Region 4, please contact Jane Spann, U.S. EPA, telephone (404) 562–9029, email at *spann.jane@epa.gov.* For questions about areas in the EPA Region 5, please contact Edward Doty, U.S. EPA, telephone (312) 886–6057, email at *doty.edward@epa.gov.* For questions about areas in the EPA Region 6, please contact Guy Donaldson, U.S. EPA, telephone (214) 665–7242, email at *donaldson.guy@epa.gov.* For questions about areas in the EPA Region 7, please contact Lachala Kemp, U.S. EPA, telephone (913) 551–7214, email at *kemp.lachala@epa.gov.* For questions about areas in the EPA Region 8, please contact Scott Jackson, U.S. EPA, telephone (303) 312–6107, email at *jackson.scott@epa.gov.* For questions about areas in the EPA Region 9, please contact John J. Kelly, U.S. EPA, telephone (415) 947–4151, email at *kelly.johnj@epa.gov.* For questions about areas in EPA Region 10, please contact Claudia Vaupel, U.S. EPA, telephone (206) 553–6121, email at *vaupel.claudia@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background and Purpose

On March 12, 2008, the EPA revised the NAAQS for ozone to provide increased protection of public health and welfare from ozone pollution (73 FR 16436; March 27, 2008). The process for designating areas following promulgation of a new or revised NAAQS is contained in Clean Air Act (CAA) section 107(d) (42 U.S.C. 7407). Following the promulgation of a new or revised standard, each governor or tribal leader has an opportunity to recommend air quality designations, including the appropriate boundaries for nonattainment areas, to the EPA. The EPA considers these recommendations as part of its duty to promulgate the formal area designations and boundaries for the new or revised standards. By no later than 120 days prior to promulgating designations, the EPA is required to notify states and tribes of any intended modification to an area designation or boundary recommendation that the EPA deems necessary. On or around December 9, 2011, the EPA notified states and tribes of its intended area designations for the 2008 Ozone NAAQS. States and tribes now have an opportunity to demonstrate why they believe an intended modification by the EPA may be inappropriate. The EPA encouraged states and tribes to provide comments and additional information for consideration by the EPA in finalizing designations. The EPA plans to make final designation decisions for the 2008 Ozone NAAQS in spring 2012.

The purpose of this notice is to solicit public comments from interested parties other than states and tribes on the EPA's recent responses to the state and tribal

designation recommendations for the 2008 Ozone NAAQS. These responses can be found on the EPA's Internet Web site at *http://www.epa.gov/ozonedesignations* and also in the public docket for ozone designations at Docket ID No. EPA–HQ–OAR–2008–0476. The CAA section 107(d) provides a process for designations that involves recommendations by states and tribes to the EPA and responses from the EPA to those parties, prior to the EPA promulgating final designations and boundaries. The EPA is not required under the CAA section 107(d) to seek public comment during the designation process, but is electing to do so for the 2008 Ozone NAAQS in order to gather additional information for the EPA to consider before making final designations. The EPA invites public comment on its responses to states and tribes during the 30-day comment period provided by this notice. Due to the statutory timeframe for promulgating designations set out in the CAA section 107(d), the EPA will not be able to consider any public comments submitted after January 19, 2012. This notice and opportunity for public comment does not affect any rights or obligations of any state, tribe or the EPA which might otherwise exist pursuant to the CAA section 107(d).

Please refer to the **ADDRESSES** section above in this document for specific instructions on submitting comments and locating relevant public documents.

In establishing nonattainment area boundaries, the EPA is required to identify the area that does not meet the 2008 Ozone NAAQS and any nearby area that is contributing to the area that does not meet that standard. We are particularly interested in receiving comments, supported by relevant information, if you believe that a specific geographic area that the EPA is proposing to identify as a nonattainment area should not be categorized by the CAA section 107(d) criteria as nonattainment, or if you believe that a specific area not proposed by the EPA to be identified as a nonattainment area should in fact be categorized as nonattainment using the CAA section 107(d) criteria. Please be as specific as possible in supporting your views.

- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to submit your comments by the comment period deadline identified in the **DATES** section above.

## II. Instructions for Submitting Public Comments

*What should I consider as I prepare my comments for the EPA?*

1. *Submitting Confidential Business Information.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be confidential business information. For confidential business information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as confidential business information and then identify electronically within the disk or CD–ROM the specific information that is claimed as confidential business information. In addition to one complete version of the comment that includes information claimed as confidential business information, a copy of the comment that does not contain the information claimed as confidential business information 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. Send or deliver information identified as confidential business information only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, email at *morales.roberto@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2008–0476.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

## III. Internet Web Site for Rulemaking Information

The EPA has also established a Web site for this rulemaking at *www.epa.gov/ozonedesignations.* The Web site includes the state and tribal designation recommendations, information supporting the EPA's preliminary designation decisions, as well as the rulemaking actions and other related information that the public may find useful.

Dated: December 13, 2011.

**Jennifer Noonan Edmonds,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. 2011–32557 Filed 12–19–11; 8:45 am]

**BILLING CODE 6560–50–P**

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

### 48 CFR Parts 201, 203, 204, 212, 213, 217, 219, 222, 225, 233, 243, 252, Appendix I to Chapter 2

**RIN 0750–AH55**

### Defense Federal Acquisition Regulation Supplement: Title 41 Positive Law Codification—Further Implementation (DFARS Case 2012–D003)

**AGENCIES:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to conform statutory titles to the new Positive Law Codification of Title 41, United States Code, ''Public Contracts.''

**DATES:** *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before February 21, 2012, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2012–D003, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2012–D003'' under the heading ''Enter keyword or

ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2012–D003.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2012–D003'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2012–D003 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy G. Williams, telephone (703) 602–0328.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On January 4, 2011, Public Law 111–350 enacted a new codified version of Title 41 United States Code (U.S.C.), entitled ''Public Contracts.'' Title 41 U.S.C. citations were updated under DFARS Case 2011–D036 (76 FR 58137, September 20, 2011).

This case proposes to make further changes to the previous titles of Acts that have changed in titles 40 and 41 (comparable to the proposed Federal Acquisition Regulation (FAR) rule under FAR Case 2011–018), and other edits, as necessary.

## II. Discussion and Analysis

DoD is updating the historical names of the Acts in the Defense Federal Acquisition Regulation Supplement (DFARS) (*e.g.,* the ''Service Contract Act of 1965'' is now the ''Service Contract Labor Standards statute''). A table providing the historical titles of the acts, the present statutory citation, and the new titles of the statutes is being proposed under FAR case 2011–018 for inclusion at FAR 1.110. That table will cover acts under both titles 40 and 41.

Although there were no substantive changes to the meaning of the statutes, there were some changes in terminology.

## III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## IV. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not change any policies or requirements. It just changes and updates references and terminology. Therefore, an initial regulatory flexibility analysis has not been performed. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2012–D003), in correspondence.

## V. Paperwork Reduction Act

The rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## List of Subjects in 48 CFR Parts 201, 203, 204, 212, 213, 217, 219, 222, 225, 233, 243, 252, Appendix I to Chapter 2

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 201, 203, 204, 212, 213, 217, 219, 222, 225, 233, 243, 252, and Appendix I are proposed for amendment as follows:

1. The authority citation for 48 CFR parts 201, 203, 204, 212, 213, 217, 219, 222, 225, 233, 243, 252, and Appendix I continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

## PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

### 201.107 [Amended]

2. Section 201.107 is amended by removing from the introductory sentence ''section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 1304)'' and adding ''41 U.S.C. 1304'' in its place.

### 201.304 [Amended]

3. Section 201.304 is amended by removing from introductory paragraph (2) ''section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 1304)'' and adding ''41 U.S.C. 1304'' in its place.

## PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

### 203.070 [Amended]

4. Section 203.070 is amended by removing from paragraph (f) ''Anti-kickback Act'' and adding ''Kickbacks'' in its place.

### 203.502–2 [Amended]

5. Section 203.502–2 is amended by removing from introductory paragraph (h) ''the Anti-Kickback Act of 1986'' and adding ''41 U.S.C. chapter 87, Kickbacks'' in its place.

## PART 204—ADMINISTRATIVE MATTERS

### 204.1202 [Amended]

6. Section 204.1202 is amended by—

a. Removing from paragraph (2)(v) ''Buy American Act—Balance of Payments Program Certificate'' and adding ''Buy American—Balance of Payments Program Certificate'' in its place; and

b. Removing from paragraph (2)(ix) ''Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program Certificate'' in its place.

7. Section 204.7003 is amended by revising paragraph (a)(3)(vi) to read as follows:

### 204.7003 Basic PII number.

(a) * * *

(3) * * *

(vi) Contracting actions placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside the DoD (including actions from nonprofit agencies employing people who are blind or severely disabled (AbilityOne), and the Federal Prison Industries (UNICOR))—F

* * * * *

## PART 212—ACQUISITION OF COMMERCIAL ITEMS

### 212.301 [Amended]

8. Section 212.301 is amended by—

a. Removing from paragraph (f)(i)(A) ''Buy American Act—Balance of Payments Program Certificate'' and adding ''Buy American—Balance of Payments Program Certificate'' in its place; and

b. Removing from paragraph (f)(i)(C) ''Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program Certificate'' in its place.

### 212.7102–1 [Amended]

9. Section 212.7102–1 is amended by removing from paragraph (e)(2) ''section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. 1502)'' and adding ''41 U.S.C. 1502'' in its place.

## PART 213—SIMPLIFIED ACQUISITION PROCEDURES

### 213.301 [Amended]

10. Section 213.301 is amended by removing from paragraph (1) ''Continental Shelf lands'' and adding ''Continental Shelf'' in its place.

### 213.302–5 [Amended]

11. Section 213.302–5 is amended by—

a. Removing from the first sentence of introductory paragraph (d) ''Buy American Act—Supplies'' and adding ''Buy American—Supplies'' and removing from the second sentence ''Buy American Act'' and adding ''Buy American statute'' in its place;

b. Removing from paragraph (d)(i) ''Buy American Act and Balance of Payments Program'' and adding ''Buy American and Balance of Payments Program'' in its place: and

c. Removing from paragraph (d)(ii) ''Buy American Act—Free Trade Agreements—Balance of Payments Program'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program'' in its place.

## PART 217—SPECIAL CONTRACTING METHODS

### 217.7000 [Amended]

12. Section 217.7000 is amended by removing ''Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c))'' and adding ''40 U.S.C. 503'' in its place.

## PART 219—SMALL BUSINESS PROGRAMS

### 219.703 [Amended]

13. Section 219–703 is amended by removing from paragraph (a) ''Javits-Wagner-O'Day Act (41 U.S.C. 8502–8504)'' and adding ''41 U.S.C. chapter 85'' in its place.

## PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

14. Subpart 222.3 is amended by revising the heading to read as follows:

## Subpart 222.3—Contract Work Hours and Safety Standards

### 222.302 [Amended]

15. Section 222.302 is amended by removing from the introductory sentence ''Contract Work Hours and Safety Standards Act'' and adding ''Contract Work Hours and Safety Standards'' in its place.

16. Section 222.402–70 is amended by revising introductory paragraph (a), and paragraphs (b),(c),(d)(1) through (d)(3) and (f) to read as follows:

### 222.402–70 Installation support contracts.

(a) Apply both the Service Contract Labor Standards statute and the Construction Wage Rate Requirements statute to installation support contracts if—

* * * * *

(b) *Service Contract Labor Standards statute coverage under the contract.* Contract installation support requirements, such as plant operation and installation services (*i.e.,* custodial, snow removal, etc.) are subject to the Service Contract Labor Standards. Apply Service Contract Labor Standards clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) *Construction Wage Rate Requirements statute coverage under the contract.* Contract construction, alteration, renovation, painting, and repair requirements (*i.e.,* roof shingling, building structural repair, paving repairs, *etc.*) are subject to the Construction Wage Rate Requirements statute. Apply Construction Wage Rate Requirements clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) *Repairs versus maintenance.* Some contract work may be characterized as either Construction Wage Rate Requirements painting/repairs or Service Contract Labor Standards maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the Construction Wage Rate Requirements or the Service Contract Labor Standards. In those instances where a contract service call or order requires construction trade skills (*i.e.,* carpenter, plumber, painter, etc.), but it is unclear whether the work required is Service Contract Labor Standards maintenance or Construction Wage Rate Requirements painting/repairs, apply the following rules:

(1) Individual service calls or orders which will require a total of 32 or more work hours to perform shall be considered to be repair work subject to the Construction Wage Rate Requirements.

(2) Individual service calls or orders which will require less than 32 work hours to perform shall be considered to be maintenance subject to the Service Contract Labor Standards.

(3) Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the Construction Wage Rate Requirements statute regardless of the total work hours required.

* * * * *

(f) Contracting officers may not avoid application of the Construction Wage Rate Requirements statute by splitting individual tasks between orders or contracts.

* * * * *

17. Section 222.404 is amended by revising the section heading to read as follows:

### 222.404 Construction Wage Rate Requirements statute wage determinations.

### 222.406–1 [Amended]

18. Section 222.406–1 is amended by—

a. Removing from paragraph (b)(1)(A)(*1*) ''Davis Bacon Act'' and adding ''Construction Wage Rate Requirements statute'' in its place; and

b. Removing from paragraph (b)(1)(A)(*2*) ''Contract Work Hours and Safety Standards Act'' and adding ''Contract Work Hours and Safety Standards statute'' in its place.

### 222.406–8 [Amended]

19. Section 222.406–8 is amended by removing from introductory paragraph (c)(4)(A) ''Contract Work Hours and Safety Standards Act (CWHSSA)'' and adding ''Contract Work Hours and Safety Standards (CWHSS) statute'' in its place.

**222–406–9 [Amended]**

20. Section 222–406–9 is amended by removing from paragraph (a) ''Davis-Bacon or CWHSSA'' and adding ''Construction Wage Rate Requirements or CWHSS statute'' in its place.

**222.406–13 [Amended]**

21. Section 222.406–13 is amended by—

a. Removing from the introductory paragraph ''Davis-Bacon Act and the CWHSSA'' and adding ''Construction Wage Rate Requirements statute and the CWSS statute'' in its place;

b. Removing from paragraph (7)(i) ''Davis-Bacon Act'' and adding ''Construction Wage Rate Requirements statute; and'' in its place;

c. Removing from paragraph (7)(ii) ''CWSSA'' and adding ''CWSS statute'' in its place;

d. Removing from paragraph (8)(i) ''Davis Bacon Act'' and adding ''Construction Wage Rate Requirements statute; and CWSS statute'' in its place; and removing from paragraph (8)(ii) ''CWHSSA'' and adding ''CWHSS statute'' in its place;

e. Removing from introductory sentence (9) ''CWHSSA'' and adding ''CWSS statute'' in its place and from paragraph (9)(i) ''; and'';

f. Removing from paragraph (10)(i) ''Davis-Bacon Act'' and adding ''Construction Wage Rate Requirements statute;'' in its place; and removing from paragraph (10)(ii) ''CWHSSA'' and adding ''CWSS statute; and'' in its place.

22. Subpart 222.10 is amended by revising the subpart heading to read as follows:

## Subpart 222.10—Service Contract Labor Standards

23. Subpart 222.14 is amended by revising the subpart heading to read as follows:

## Subpart 222.14—Employment of Workers With Disabilities

## PART 225—FOREIGN ACQUISITION

**225.003 [Amended]**

24. Section 225.003 is amended by—

a. Removing from paragraph (4) ''252.225–7001, Buy American Act and Balance of Payments Program; and 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program'' and adding ''252.225–7001, Buy American and Balance of Payments Program; and 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program'' in its place; and

b. Removing from paragraph (11) ''252.225–7001, Buy American Act and Balance of Payments Program; and 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program'' and adding ''252.225–7001, Buy American and Balance of Payments Program; and 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program'' in its place.

25. Subpart 225.1 is amended by revising the subpart heading to read as follows:

## Subpart 225.1—Buy American—Supplies

**225.103 [Amended]**

26. Section 225.103 is amended by—

a. Removing from paragraph (a)(i)(B) ''Buy American Act'' and adding ''Buy American statute'' in its place; and

b. Removing from introductory paragraph (a)(ii)(A) ''Subpart 225.5'' and adding ''subpart 225.5'' in its place and removing ''Buy American Act'' and adding ''Buy American statute'' in its place.

**225.502 [Amended]**

27. Section 225.502 is amended by—

a. Removing from introductory paragraph (c), and (c)(iii)(C) ''Buy American Act'' and adding ''Buy American statute'' in its place;

b. Removing from paragraph (c)(i)(A) ''Buy American Act'' and ''Buy American Act or Balance of Payments Program'' and adding ''Buy American statute'' and ''Buy American or Balance of Payments Program'', respectively, in its place; and

c. Removing from paragraphs (c)(i)(B), (c)(ii)(C), (c)(ii)(D), and (c)(iii)(A) ''Buy American Act or Balance of Payments Program'' and adding ''Buy American or Balance of Payments Program'' in its place.

**225.872–1 [Amended]**

28. Section 225.872–1 is amended by removing from introductory paragraphs (a) and (b) ''Buy American Act'' and adding ''Buy American statute'' in its place.

**225.872–4 [Amended]**

29. Section 225.872–4 is amended by removing from introductory paragraph (a) ''Buy American Act'' and adding ''Buy American statute'' in its place.

30. Section 225.1101 is amended by—

a. Removing from paragraph (1)(i) in the first sentence ''Buy American Act—Balance of Payments Program Certificate'' and adding ''Buy American—Balance of Payments Program Certificate'' in its place and removing ''FAR 52.225–2, Buy American Act Certificate'' and adding ''FAR 52.225–2, Buy American Certificate'' in its place; and in the second sentence removing ''Buy American Act and Balance of Payments Program'' and adding ''Buy American and Balance of Payments Program'' in its place;

b. Removing from introductory paragraph (2)(i) ''Buy American Act and Balance of Payments Program'' and adding ''Buy American and Balance of Payments Program'' in its place and removing ''FAR 52.225–1, Buy American Act—Supplies'' and adding ''FAR 52.225–1, Buy American—Supplies'' in its place;

c. Removing from paragraph (2)(i)(C) ''Buy American Act'' and adding ''Buy American'' in its place;

d. Removing from paragraph (2)(i)(D)(*2*) ''Buy American Act—Free Trade Agreements—Balance of Payments Program'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program'' in its place;

e. Removing from paragraph (3)(i) ''Buy American Act and Balance of Payments Program'' and adding ''Buy American and Balance of Payments Program'' in its place;

f. Removing from paragraph (3)(iii) ''Buy American Act—Free Trade Agreements—Balance of Payments Program'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program'' in its place; and

g. Revising paragraphs (10)(i), (11)(i), and (11)(iii) to read as follows:

**225.1101 Acquisition of supplies.**

* * * * *

(10)(i) Use the provision at 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations that include the clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program.

* * * * *

(11)(i) Except as provided in paragraph (11)(ii) of this section, use the clause at 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401–70, when the estimated value equals or exceeds $25,000, but is less than $203,000, and a Free Trade Agreement applies to the acquisition.

* * * * *

(iii) The acquisition of eligible and noneligible products under the same

contract may result in the application of a Free Trade Agreement to only some of the items acquired. In such case, indicate in the Schedule those items covered by the Buy American—Free Trade Agreements—Balance of Payments Program clause.

**225.7000 [Amended]**

31. Section 225.7000 is amended by removing from paragraph (b) ''Buy American Act'' and adding ''Buy American'' in its place.

## PART 233—PROTESTS, DISPUTES, AND APPEALS

**233.204–70 [Amended]**

32. Section 233.204–70 is amended by removing ''the Contract Disputes Act of 1978'' and adding ''41 U.S.C. chapter 71 (Contract Disputes)'' in its place.

## PART 243—CONTRACT MODIFICATIONS

**243.204–71 [Amended]**

33. Section 243.204–71 is amended at paragraph (c) by removing from the first sentence ''the Contract Disputes Act of 1978 (41 U.S.C. 7103)'' and adding ''41 U.S.C. 7103, Disputes'' in its place and removing from the second sentence ''the Contract Disputes Act'' and adding ''41 U.S.C. 7103, Disputes'' in its place.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**252.204–7007 [Amended]**

34. Section 252.204–7007 is amended by—

a. Removing the clause date ''(NOV 2011)'' and adding ''(DATE)'' in its place;

b. Removing from paragraph (d)(2)(ii) ''Buy American Act—Balance of Payments Program Certificate'' and adding ''Buy American—Balance of Payments Program Certificate'' in its place; and

c. Removing from paragraph (d)(2)(vi) ''Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program Certificate'' in its place.

**252.212–7001 [Amended]**

35. Section 252.212–7001 is amended by—

a. Removing from paragraphs (b)(4), (b)(21), and (c)(4) the clause date ''(SEP 2011)'' and adding ''(DATE)'' in its place;

b. Removing from paragraphs (b)(6)(i), (b)(12)(i), and (b)(15)(i) through (iv) the clause date ''(OCT 2011)'' and adding ''(DATE)'' in its place; and

c. Removing from paragraph (b)(8) the clause date ''(JAN 2011)'' and adding ''(DATE)'' in its place.

**252.212–7002 [Amended]**

36. Section 252.212–7002 is amended by removing the clause date ''(JUN 2011)'' and adding ''(DATE)'' in its place and removing from paragraph (1) of the definition ''Nontraditional defense contractor'' ''Section 26 of the Office of Federal Procurement Policy Act (41 U.S.C. section 1502)'' and adding ''41 U.S.C. section 1502'' in its place.

**252.217–7002 [Amended]**

37. Section 252.217–7002 is amended by removing the clause date ''(DEC 1991)'' and adding ''(DATE)'' in its place and removing from paragraph (a) ''Section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384 (40 U.S.C. 481(c))'' and adding ''40 U.S.C. 503'' in its place.

**252.219–7003 [Amended]**

38. Section 252.219–7003 is amended by removing the clause date ''(SEP 2011)'' and adding ''(DATE)'' in its place, removing from introductory paragraph (e) ''Section 831'' and adding ''section 831'' in its place and adding at the end ''to'', and removing from paragraph (e)(1) ''handicapped'' and adding ''disabled'' in its place.

**252.225–7000 [Amended]**

39. Section 252.225–7000 is amended by removing ''Act'' from the section heading and provision title, removing the clause date ''(DEC 2009)'' and adding ''(DATE)'' in its place, and removing from paragraphs (b)(2) and introductory paragraph (c)(1) ''Buy American Act'' and adding ''Buy American statute'' in its place.

40. Section 252.225–7001 is amended by—

a. Revising the section heading, clause title, and clause date;

b. Removing from paragraph (ii) of the definition ''Commercially available off-the-shelf (COTS) item'', ''section 3 of the Shipping Act of 1984 (46 U.S.C. 40102)'' and adding ''46 U.S.C. 40102(4)'' in its place;

c. Removing from paragraph (ii)(A)(*2*) of the definition ''Domestic end product'' ''Buy American Act'' and adding ''Buy American statute'' in its place;

d. Removing from paragraph (b) in the first sentence ''the Buy American Act (41 U.S.C. chapter 83)'' and adding ''41 U.S.C. chapter 83, Buy American'' in its place, and in the second sentence ''Buy American Act'' and adding ''Buy American statute'' in its place; and

e. Removing from paragraph (c) ''Buy American Act—Balance of Payments Program Certificate'' and adding ''Buy American—Balance of Payments Program Certificate'' in its place.

The revisions read as follows:

**252.225–7001 Buy American and Balance of Payments Program.**

* * * * *

BUY AMERICAN AND BALANCE OF PAYMENTS PROGRAM (DATE)

* * * * *

**252.225–7009 [Amended]**

41. Section 252.225–7009 is amended by removing the clause date ''(JAN 2011)'' and adding ''(DATE)'' in its place and removing from paragraph (a)(4)(ii) ''section 3 of the Shipping Act of 1984 (46 U.S.C. App 1702)'' and adding ''46 U.S.C. 40102(4)'' in its place.

42. Section 252.225–7013 is amended by—

a. Removing the clause date ''(DEC 2009)'' and adding ''(DATE)'' in its place, removing the numbers in front of each definition at paragraph (a) and revising paragraphs (ii) and (iii) of the definition ''Eligible product'' and the definition ''Qualifying country'' and ''qualifying country end product'' to read as follows:

**252.225–7013 Duty-Free Entry.**

* * * * *

*Eligible product* means—* * *

(ii) *Free Trade Agreement country end product,* other than a *Bahrainian end product,* a *Moroccan end product,* or a *Peruvian end product,* as defined in the Buy American—Free Trade Agreements—Balance of Payments Program clause of this contract; or

(iii) *Canadian end product* as defined in Alternate I of the Buy American—Free Trade Agreements—Balance of Payments Program clause of this contract.

*Qualifying country* and *qualifying country end product* have the meanings given in the Trade Agreements clause, the Buy American and Balance of Payments Program clause, or the Buy American—Free Trade Agreements—Balance of Payments Program clause of this contract.

**252.225–7021 [Amended]**

43. Section 252.225–7021 is amended by removing the clause date ''(OCT 2011)'' and adding ''(DATE)'' in its place and removing from paragraph (ii) of the definition ''Commercially available off-the-shelf (COTS) item'' ''section 4 of the Shipping Act of 1984 (46 U.S.C. 40102)'' and adding ''46 U.S.C. 40102(4)'' in its place.

44. Section 252.225–7035 is amended by—

a. Revising the section heading, provision title, and clause date;

b. Removing from paragraph (a) ''Buy American Act—Free Trade Agreements—Balance of Payments Program'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program'' in its place;

c. Removing from paragraph (b)(2) ''Buy American Act'' and adding ''Buy American'' in its place;

d. Removing from ALTERNATE II the clause date ''(DEC 2010)'' and adding ''(DATE)'' in its place and in paragraph (b)(2) removing ''Buy American Act'' and adding ''Buy American'' in its place;

e. Removing from ALTERNATE III the clause date ''(DEC 2010)'' and adding ''(DATE)'' in its place, removing from paragraph (a) ''Buy American Act—Free Trade Agreements—Balance of Payments Program'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program'' in its place, and removing from paragraph (b)(2) ''Buy American Act'' and adding ''Buy American'' in its place.

The revisions read as follows:

**252.225–7035 Buy American—Free Trade Agreements—Balance of Payments Program Certificate.**

* * * * *

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM CERTIFICATE (DATE)

* * * * *

45. Section 252.225–7036 is amended by—

a. Revising the section heading, clause title, and clause date;

b. Removing from paragraph (ii) of the definition ''Commercially available off-the-shelf (COTS) item'', ''section 3 of the Shipping Act of 1984 (46 U.S.C. 40102)'' and adding ''46 U.S.C. 40102(4)'' in its place;

c. Removing from paragraph (ii)(A)(2) of the definition for ''Domestic end product'', ''Buy American Act'' and adding ''Buy American statute'' in its place;

d. Removing from paragraph (c) ''Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program Certificate'' in its place;

e. Removing from ALTERNATE I the clause date ''(OCT 2011)'' and adding ''(DATE)'' in its place and removing from paragraph (c) ''Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program Certificate'' in its place;

f. Removing from Alternate II the clause date ''(OCT 2011)'' and adding ''(DATE)'' in its place and removing from paragraph (c) ''Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program Certificate'' in its place; and

g. Removing from ALTERNATE III the clause date ''(OCT 2011)'' and adding ''(DATE)'' in its place and removing from paragraph (c) ''Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate'' and adding ''Buy American—Free Trade Agreements—Balance of Payments Program Certificate'' in its place.

The revisions read as follows:

**252.225–7036 Buy American—Free Trade Agreements—Balance of Payments Program.**

* * * * *

BUY AMERICAN—FREE TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (DATE)

* * * * *

**252.225–7044 [Amended]**

46. Section 252.225–7044 is amended by removing the clause date ''(DEC 2010)'' and adding ''(DATE)'' in its place and removing from paragraph (2) of the definition ''Commercially available off-the-shelf (COTS) item'' ''in section 3 of the Shipping Act of 1984 (46 U.S.C. 40102'' and adding ''46 U.S.C. 40102(4)'' in its place.

47. Section 252.227–7037 is amended by removing the clause date ''(SEP 2011)'' and adding ''(DATE)'' in its place, removing from paragraph (e)(3) ''the Contract Disputes Act of 1978 (41 U.S.C. 7101)'' and adding ''41 U.S.C. 7101, Contract Disputes'' in its place, and removing from paragraph (g)(2)(iv) ''Contract Disputes Act'' and adding ''Contract Disputes statute'' in its place.

**252.227–7038 [Amended]**

48. Section 252.227–7038 is amended by removing the clause date ''(DEC 2007)'' and adding ''(DATE)'' in its place and removing from paragraph (l)(2)(ii) ''Contract Disputes Act'' and adding ''Contract Disputes statute'' in its place.

**252.244–7001 [Amended]**

49. Section 252.244–7001 is amended by removing the clause date ''(MAY 2011)'' and adding ''(DATE)'' in its place and removing from paragraph (c)(17) ''the Anti-Kickback Act'' and adding ''41 U.S.C. chapter 87, Kickbacks'' in its place.

## APPENDIX I TO CHAPTER 2—POLICY AND PROCEDURES FOR THE DOD PILOT MENTOR–PROTEGE PROGRAM

50. Section I–101.4 is revised to read as follows:

**I–101.4 Severely disabled individual.**

An individual who has a physical or mental disability which constitutes a substantial handicap to employment and which, in accordance with criteria prescribed by the Committee for Purchase from People Who Are Blind or Severely Disabled established by the first section of the Act of June 25, 1938 (41 U.S.C. 8502), is of such a nature that the individual is otherwise prevented from engaging in normal competitive employment.

[FR Doc. 2011–32398 Filed 12–19–11; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 622

**[Docket No. 110511280–1727–01]**

**RIN 0648–BB10**

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

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

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

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

speckled hind and warsaw grouper in the South Atlantic.

**DATES:** Written comments on this proposed rule must be received on or before January 19, 2012.

**ADDRESSES:** You may submit comments on the proposed rule identified by ''NOAA–NMFS–2011–0209'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: *http://www.regulations.gov,* click on ''submit a comment,'' then enter ''NOAA–NMFS–2011–0209'' in the keyword search and click on ''search.'' NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this rule will not be considered.

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

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

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

## Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing of federally managed fish stocks, while minimizing bycatch and bycatch mortality to the extent practicable. These mandates are intended to ensure fishery resources are managed for the greatest overall benefit to the Nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to establish a mechanism of specifying Annual Catch Limits (ACLs) at a level that prevents overfishing and does not exceed the fishing level recommendation of the respective Council's Scientific and Statistical Committee (SSC) or other established peer review processes. An ACL is the level of annual catch of a stock or stock complex that is set to prevent overfishing from occurring.

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

However, recent analysis of landings data (June 1, 2011, SERO–LAPP–2011–06 Report) indicate that speckled hind and warsaw grouper are rarely caught with snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, or silk snapper. The low association between speckled hind and warsaw grouper landings and blueline tilefish may be attributable to the unique habitat preferences of speckled hind and warsaw grouper compared to blueline tilefish. Speckled hind and warsaw grouper generally prefer hard bottom structure with habitat features such as steep cliffs, notches, and rocky ledges of the continental shelf break. Blueline tilefish, which is targeted for harvest by the deep-water component of the snapper-grouper fishery, inhabit irregular bottoms composed of troughs and terraces inter-mingled with sand, mud, or shell hash bottom where they live in burrows. In addition, the majority of snowy grouper landings in the South Atlantic are from waters deeper than 500 ft (152 m), where landings of speckled hind and warsaw grouper are extremely rare. Based on this information, at its August 2011 meeting, the Council concluded that allowing the harvest of deep-water species, including blueline tilefish and snowy grouper, beyond a depth of 240 ft (73 m), would not likely result in significant increases in the bycatch mortality of speckled hind or warsaw grouper, although low levels of bycatch of these species might occur. Even though yellowedge grouper, misty grouper, queen snapper, and silk snapper primarily share the same hard bottom habitat preference as speckled hind and warsaw grouper, these four species are rarely encountered and are not targeted by commercial or recreational fishermen.

The purpose of the removal of the deep-water snapper-grouper harvest and possession prohibition in Regulatory Amendment 11 is to reduce the socio-economic impacts expected from the Amendment 17B deep-water closure while maintaining the biological protection to speckled hind and warsaw grouper in the South Atlantic. At its August 2011 meeting, the Council voted to approve Regulatory Amendment 11 based upon the recent data analyses, to remove the deep-water snapper-grouper harvest and possession prohibition implemented through Amendment 17B.

The speckled hind and warsaw grouper harvest and possession prohibition, implemented through Amendment 17B, is not being changed and is expected to reduce fishing mortality of these two species even without the additional deep-water snapper-grouper harvest and possession prohibition. Therefore, if implemented, Regulatory Amendment 11 would seek to prevent significant direct economic loss to snapper-grouper fishermen and continue to achieve optimum yield for the fishery, without subjecting the speckled hind and warsaw grouper resource to overfishing.

The Council will continue to explore management alternatives to enhance the biological protections for speckled hind and warsaw grouper.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Regulatory Amendment 11, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to

further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

A description of the action, why it is being considered, and the objectives of, and legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

This rule would directly affect businesses that fish for, possess, and retain snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper in the South Atlantic EEZ. Under the North American Industry Classification System (NAICS), these businesses are in the finfish fishing (NAICS 11411) and charter fishing (NAICS 487210) industries. The Small Business Administration size standards for these businesses are $4.0 million and $7.0 million in annual receipts, respectively. NMFS estimates that from 890 to 944 businesses in the finfish fishing industry and up to 1,754 businesses in the charter fishing industry participate in the affected snapper-grouper fishery. All businesses expected to be directly affected by this rule are determined, for the purpose of this analysis, to be small entities.

Since January 31, 2011, fishing for, possession, and retention of snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper in the South Atlantic EEZ beyond a depth of 240 ft (73 m) has been prohibited. This rule would eliminate this prohibition and would be expected to result in a restoration of landings and associated ex-vessel revenue of approximately $348,000 annually, as detailed in the RIR contained in Regulatory Amendment 11 to the FMP.

As a result, this rule would have a beneficial economic impact on small entities and would not result in a significant direct adverse economic impact on a substantial number of small entities.

Because this rule, if implemented, is not expected to have a direct adverse economic impact on any small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

**List of Subjects in 50 CFR Part 622**

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

Dated: December 14, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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

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

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

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

### § 622.35 [Amended]

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

[FR Doc. 2011–32533 Filed 12–19–11; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 76, No. 244

Tuesday, December 20, 2011

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

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

December 14, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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

#### Risk Management Agency

*Title:* Community Outreach and Assistance Partnership Program.

*OMB Control Number:* 0563–0066.

*Summary of Collection:* Section 522(d) of the Federal Crop Insurance Act of 2002 authorizes the Federal Crop Insurance Corporation (FCIC) to enter into partnerships with public and private entities for the purpose of increasing the availability of risk management tools for producers of agricultural commodities. The Risk Management Agency has developed procedures for the preparation, submission and evaluation of applications for partnership agreements that will be used to provide outreach and assistance to under served producers, farmers, ranchers and women, limited resource, socially disadvantaged.

*Need and Use of the Information:* Applicants are required to submit materials and information necessary to evaluate and rate the merit of proposed projects and evaluate the capacity and qualification of the organization to complete the project. The application package should include: a project summary and narrative, a statement of work, a budget narrative and OMB grant forms. RMA and a review panel will evaluate and rank applicants as well as use the information to properly document and protect the integrity of the process used to select applications for funding.

*Description of Respondents:* Not-for-profit institutions; Business or other for-profit.

*Number of Respondents:* 120.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 1,216.

**Charlene Parker,**

*Departmental Information Clearance Officer.*

[FR Doc. 2011–32477 Filed 12–19–11; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–830]**

### Carbon and Certain Alloy Steel Wire Rod From Mexico: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order

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

**SUMMARY:** We preliminarily determine that carbon and certain alloy steel wire rod (wire rod) with an actual diameter between 4.75 mm and 5.00 mm produced in Mexico and exported to the United States by Deacero S.A. de C.V. (Deacero) is circumventing the antidumping duty order on wire rod from Mexico (*Wire Rod Order*) within the meaning of section 781(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(i).[1]

**DATES:** *Effective Date:* December 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Eric B. Greynolds, Program Manager, or Jolanta Lawska, Trade Analyst, Office 3, Antidumping and Countervailing Duty Operations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6071 or (202) 482–8362, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On June 8, 2011, the Department of Commerce (the Department) initiated a circumvention inquiry into whether Deacero S.A. de C.V. (Deacero) and Ternium Mexico S.A. de C.V. (Ternium) shipped wire rod with an actual between 4.75 and 5.00 mm[2] in a manner that constitutes merchandise altered in form or appearance in such minor respects that it should be

[1] *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002) (*Wire Rod Order*).

[2] The Department is using slightly different wording in this **Federal Register** notice from the wording in the initiation notice to clarify that Deacero's shipments of 4.75 mm wire rod are covered by this circumvention inquiry.

included within the scope.[3] In its June 15, 2011, submission Ternium stated that it does not produce or sell wire rod with an actual diameter between 4.75 and 5.00 mm. Ternium included a product brochure which lists the diameter ranges and diameter tolerances of its wire products. The brochure does not include wire rod with actual diameters less than 5.5 mm.

On July 22, 2011, Deacero submitted its response to the Department's June 1, 2011, questionnaire. *See* Deacero's July 22, 2011, Questionnaire Response (First QNR Response). On July 27, 2011, Illinois Tool Works Inc. (ITW) submitted comments in support of Deacero's claim that the products at issue do not constitute merchandise altered in form or appearance in such minor respects that it should be included within the scope.

On August 16, 2011, ArcelorMittal USA LLC, Gerdau Ameristeel U.S. Inc, Rocky Mountain Steel, and Members of the Wire Rod Producers Coalition (collectively, the Coalition) submitted comments on the First QNR Response. On August 25, 2011, Nucor Corporation and Cascade Steel Rolling Mills, Inc. (collectively, Petitioners) submitted comments on the First QNR Response. On August 26, 2011, Deacero responded to the Coalition's August 16, 2011, submission. On September 2, 2011, ITW submitted comments in response to the submissions of the Coalition and Petitioners. On September 6, 2011, Deacero responded to Petitioners' August 25, 2011, comments. On September 9, 2011, the Coalition responded to Deacero's August 26, 2011, submission. On October 5, 2011, Deacero submitted its response to the Department's September 7, 2011, questionnaire. *See* Deacero's October 5, 2011, Questionnaire Response (Second QNR Response). On October 17, 2011, Petitioners submitted comments regarding the Second QNR Response. On October 18, 2011, the Coalition submitted comments regarding the Second QNR Response.

On November 18, 2011, Deacero submitted comments for the Department to consider in preparing the preliminary determination. On December 2, 2011, the Coalition responded to Deacero's November 18, 2011, submission. On December 5, 2011, Petitioners submitted comments for the Department's preliminary determination in the minor alteration circumvention inquiry. The Department will consider these submissions for the final determination of this circumvention inquiry.

**Scope of the Order**

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.,* products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products within the scope of this order are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

**Scope of the Circumvention Inquiry**

The merchandise subject to this circumvention inquiry consists of wire rod with actual an diameter between 4.75 mm and 5.00 mm. This

[3] *See Carbon and Certain Alloy Steel Wire Rod From Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order,* 76 FR 33218 (June 8, 2011) (*Initiation*).

merchandise produced by Deacero, entered the United States under Harmonized Tariff Schedule (HTS) classification 7213.91.3093.

**Statutory and Regulatory Framework**

Section 781(c) of the Act, dealing with minor alterations of merchandise, states that: (1) In general: The class or kind of merchandise subject to (A) an investigation under this title, (B) an antidumping duty order issued under section 736, (C) a finding issued under the Antidumping Act, 1921, or (D) a countervailing duty order issued under section 706 or section 303, shall include articles altered in form or appearance in minor respects (including raw agricultural products that have undergone minor processing), whether or not included in the same tariff classification. (2) Exception. Paragraph (1) shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the investigation, order, or finding.

As stated under 19 CFR 351.225(a), issues may arise as to whether a particular product is included within the scope of an antidumping or countervailing duty order or a suspended investigation. Such issues can arise because the descriptions of subject merchandise contained in the Department's determinations must be written in general terms. At other times, a domestic interested party may allege that a change to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act. When such issues arise, the Department conducts circumvention inquiries that clarify the scope of an order or suspended investigation with respect to particular products. Pursuant to 19 CFR 351.225(i) and section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects.

While the statute is silent regarding what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates there are certain factors which should be considered before reaching a circumvention determination. Previous circumvention cases [4] have relied on the factors listed in the Senate Finance Committee report on the Omnibus Trade and Competitiveness Act of 1988 (which amended the Act to include the circumvention provisions contained in section 781of the Act), which states:

> {i}n applying this provision, the Commerce Department should apply practical measurements regarding minor alterations, so that circumvention can be dealt with effectively, even where such alterations to an article technically transform it into a differently designated article. The Commerce Department should consider such criteria as *the* overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.[5]

In the case of an allegation of a ''minor alteration'' under section 781(c) of the Act, it is the Department's practice to look at the five factors listed in the Senate Finance Committee report to determine if circumvention exists in a particular case.[6]

**Preliminary Determination**

We preliminarily determine that wire rod with an actual diameter between 4.75 mm and 5.0 mm and subject wire rod are indistinguishable in any meaningful sense in terms of overall physical characteristics of the merchandise. By Deacero's own admission, the 0.25 mm difference in diameter constitutes the sole physical difference between the wire rod products at issue (*e.g.,* 4.75 mm wire rod) and subject wire rod. Our preliminary analysis indicates that other physical characteristics, such as tensile strength, ductility, and chemical content (which determines product grade), do not vary by diameter. In addition, we preliminarily determine that the 0.25 mm difference between the wire rod products at issue and subject wire rod do not alter the expectations of the ultimate users, the use of the merchandise, and the channels of marketing in any meaningful way. We further preliminarily determine that the costs incurred to produce wire rod with a 0.25 mm smaller diameter are not significant. Accordingly, pursuant to section 781(c) of the Act and 19 CFR 351.225(i) we preliminarily determine that shipments of wire rod with an actual diameter between 4.75mm and 5.00 mm by Deacero constitutes merchandise altered in form or appearance in such minor respects that it should be included within the scope of the order on wire rod from Mexico.

This affirmative finding applies solely to Deacero because information supplied by Ternium indicates that it did not produce or sell merchandise subject to this circumvention inquiry.

For further discussion of the Department's preliminary findings, see the Memorandum to Paul Piquado, Assistant Secretary for Import Administration, ''Preliminary Results of Minor Alteration Circumvention Inquiry on Carbon and Certain Alloy Steel Wire Rod with an Actual Diameter between 4.75 and 5.00 Millimeters,'' a proprietary document of which the public version is available via IA ACCESS in room 7046 of the main Commerce Building.

**Suspension of Liquidation**

In accordance with section 351.225(l)(2) of the Department's regulations, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of wire rod with an actual diameter between 4.75 mm and 5.00 mm produced and/or exported by Deacero that are entered, or withdrawn from warehouse, for consumption on or after June 8, 2011, the publication date of the *Initiation* in the **Federal Register**. Pursuant to 19 CFR 351.225(l)(2), we will also instruct CBP to require a cash deposit of estimated duties equal to the all others rate of 20.11 percent *ad valorem* for each unliquidated entry of wire rod with an actual diameter between 4.75 mm and 5.00 mm produced and/or exported by Deacero entered, or withdrawn from warehouse, for consumption on or after June 8, 2011.[7]

**Public Comment**

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 20 days of the publication of this notice. *See* 19 CFR 351.225(f)(3). Interested parties may file rebuttal briefs limited to issues raised in the case briefs no later than 10 days after the date on which the case briefs

[4] *See, e.g., Final Determination of Circumvention of the Antidumping Order: Cut-to-Length Carbon Steel Plate From Canada,* 66 FR 7617, 7618 (January 24, 2001)) (*Canadian Plate*), and accompanying Issued and Decision Memorandum (Canadian Plate Decision Memorandum) at Comment 4, in which the Department discusses its application of the factors discussed in the Senate Finance Committee report; *Final Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products From Japan,* 68 FR 33676, 33677 (June 5, 2003) (*Japanese CORE*); and *Affirmative Final Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China,* 74 FR 40565, 40566 (August 12, 2009)) (*Tianjin Plate*), and accompanying Issues and Decision Memorandum (Tianjin Plate Decision Memorandum).

[5] Omnibus Trade Act of 1987, Report of the Senate Finance Committee, S. Rep. No. 71, 100th Cong., 1st Sess. 100 (1987).

[6] *See, e.g., Canadian Plate,* and Canadian Plate Decision Memorandum at Comment 4.

[7] Deacero has never been individually examined by the Department during the history of the *Order.* For this reason Deacero's shipments of subject merchandise are subject to the all others rate.

are due. *Id.* Interested parties may request a hearing within 20 days of the publication of this notice. Interested parties will be notified by the Department of the location and time of any hearing, if one is requested.

This affirmative preliminary circumvention determination is in accordance with section 781(c) of the Act and 19 CFR 351.225.

Dated: December 13, 2011.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2011–32536 Filed 12–19–11; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–837]**

### Certain Magnesia Carbon Bricks From Mexico: Notice of Rescission of Antidumping Duty Administrative Review

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

**FOR FURTHER INFORMATION CONTACT:** David Goldberger or Brandon Custard, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–1823, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 2, 2011, the Department of Commerce (the Department) published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on certain magnesia carbon bricks from Mexico for the period of review (POR) of March 11, 2010, through September 6, 2010, and September 16, 2010, through August 31, 2011. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review, 76 FR 54735 (September 2, 2011).

On September 30, 2011, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), the Department received a timely request from Resco Products, Inc., the petitioner and a domestic interested party, to conduct an administrative review of the sales of RHI–Refmex S.A. de C.V. Resco Products, Inc. was the only party to request this administrative review.

On October 31, 2011, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on certain magnesia carbon bricks from Mexico with respect to RHI–Refmex S.A. de C.V. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 76 FR 67133 (October 31, 2011).

On November 22, 2011, Resco Products, Inc. timely withdrew its request for a review of RHI–Refmex S.A. de C.V.

#### Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of notice of initiation of the requested review. Resco Products, Inc. withdrew its request for review before the 90-day deadline, and no other party requested an administrative review of the antidumping duty order on certain magnesia carbon bricks from Mexico for the POR. Therefore, in response to Resco Products, Inc.'s withdrawal of its request for review, and pursuant to 19 CFR 351.213(d)(1), the Department is rescinding in whole the administrative review of the antidumping duty order on certain magnesia carbon bricks for the period March 11, 2010, through September 6, 2010, and September 16, 2010, through August 31, 2011.

#### Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

#### Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

#### Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: December 9, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–32190 Filed 12–19–11; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–821–801, A–823–801]**

### Solid Urea From the Russian Federation and Ukraine: Continuation of Antidumping Duty Orders

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

**SUMMARY:** As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty orders on solid urea from the Russian Federation (Russia) and Ukraine would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty orders.

**DATES:** *Effective Date:* December 20, 2011.

**FOR FURTHER INFORMATION:** Dustin Ross or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0747 or (202) 482–1690, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On December 1, 2010, the Department initiated and the ITC instituted sunset reviews of the antidumping duty orders on solid urea from Russia and Ukraine,[1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year (''Sunset'') Review,* 75 FR 74685 (December 1, 2010); *see also Solid Urea From Russia and Ukraine,* 75 FR 74746 (December 1, 2010).

As a result of these sunset reviews, the Department determined that revocation of the antidumping duty orders on solid urea from Russia and Ukraine would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail should the orders be revoked. *See Solid Urea From the Russian Federation and Ukraine: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders,* 76 FR 19747 (April 8, 2011).

On November 15, 2011, pursuant to section 752(a) of the Act, the ITC determined that revocation of the antidumping duty orders on solid urea from Russia and Ukraine would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Solid Urea From Russia and Ukraine,* 76 FR 77015 (December 9, 2011), and ITC Publication 4279 (December 2011) entitled *Solid Urea from Russia and Ukraine: Investigation Nos.* 731–TA–340–E and 340–H *(Third Review).*

## Scopes of the Orders

The merchandise subject to the orders is solid urea, a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item number 3102.10.00.00. Previously such merchandise was classified under item number 480.3000 of the Tariff Schedules of the United States. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the orders is dispositive.

## Continuation of the Orders

As a result of the determinations by the Department and the ITC that revocation of these antidumping duty orders would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on solid urea from Russia and Ukraine.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: December 13, 2011.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2011–32540 Filed 12–19–11; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] On July 14, 1987, the Department published the following antidumping duty order: *Antidumping Duty Order; Urea From the Union of Soviet Socialist Republics,* 52 FR 26367 (July 14, 1987). In December 1991, the Soviet Union divided into fifteen independent states. On June 29, 1992, the Department transferred the antidumping duty order on solid urea from the Soviet Union to the Commonwealth of Independent States and the Baltic States. *See Solid Urea From the Union of Soviet Socialist Republics; Transfer of the Antidumping Duty Order on Solid Urea From the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment,* 57 FR 28828 (June 29, 1992).

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–489–502]**

### Certain Welded Carbon Steel Standard Pipe and Tube From Turkey: Intent To Rescind Countervailing Duty Administrative Review, in Part

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

**DATES:** *Effective Date:* December 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4793

**SUPPLEMENTARY INFORMATION:**

## Background

On March 1, 2011, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the countervailing duty (CVD) order on certain welded carbon steel pipe and tube from Turkey. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 76 FR 11197 (March 1, 2011). On March 30, 2011, we received a letter from Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (ERBOSAN) requesting that the company's entries for the period of review be reviewed by the Department. On April 27, 2011, the Department published the notice of initiation of the administrative review of this CVD order for the period of review (POR) of January 1, 2010, through December 31, 2010, which included ERBOSAN.[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 23545 (April 27, 2011).

On October 27, 2011, the Department requested U.S. Customs and Border Protection (CBP) data on Type 3 entries of subject merchandise to the United States produced by EROBSAN during the POR. *See* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Request for Customs Data in the Countervailing Duty Administrative Review of Certain Welded Carbon Steel Standard Pipe from Turkey,'' (October 27, 2011). A Type 3 entry is an entry of merchandise imported into the United States which is subject to antidumping or countervailing duties, as the case may be, and for which liquidation is suspended until after the completion of an administrative review in which the assessment rate is calculated. We reviewed the customs data provided by CBP and found that there were no suspended entries of subject merchandise produced by ERBOSAN for the POR.

On November 3, 2011, we issued a letter to ERBOSAN explaining that the Department's practice requires there to be a suspended entry during the POR upon which to assess duties in order to conduct an administrative review.[2] As

[1] A review of the following companies was also initiated: Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A.S., Tosyali dis Ticaret A.S., and Toscelik Profil ve Sac Endustrisi A.S.

[2] *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Antidumping Duty Administrative Review,* 76 FR 42679 (July 19, 2011), and accompanying Issues and Decision Memorandum at Comment 1; *see also Certain Cut-to-Length Carbon-Quality Steel Plate Products from Italy: Final Results and Partial Rescission of*

such, we requested that EROBSAN submit evidence demonstrating that the company had a Type 3 entry of subject merchandise to the United States during the CVD POR. We also explained that if ERBOSAN is unable to provide such documentation, the Department will find that there are no suspended entries of subject merchandise produced by EROBSAN against which to assess duties and will rescind the 2010 CVD administrative review with respect to the company. *See* Letter from the Department to ERBOSAN regarding ''Entry Documentation,'' (November 3, 2011). On November 17, 2011, ERBOSAN reported that because the exports of subject merchandise to the United States during the POR were to an unrelated importer, the company does not have any entry documentation. *See* ERBOSAN's ''Response to Entry Documentation Request,'' (November 17, 2011) at 2.

On December 2, 2011, officials of Import Administration met with ERBOSAN's counsel to discuss the company's entries of subject merchandise during the POR. *See* Memorandum to the File from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Meeting with Counsel for ERBOSAN,'' (December 5, 2011).

**Scope of the Order**

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

**Intent To Rescind the 2010 Administrative Review, in Part**

Because ERBOSAN is unable to provide evidence that the company had a Type 3 entry of subject merchandise to the United States during the POR, we preliminarily determine that we will rescind the review for ERBOSAN.[3] In *Allegheny Ludlum Corp.* v. *United States,* 346 F.3d 1368 (Fed. Cir. 2003), the Court of Appeals for the Federal Circuit upheld the Department's practice of rescinding annual reviews when there are no entries of subject merchandise during the POR. Accordingly, we will continue this administrative review with respect to the Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A.S., Tosyali dis Ticaret A.S., and Toscelik Profil ve Sac Endustrisi A.S.

**Public Comment**

The Department is setting aside a period for interested parties to raise issues regarding the preliminary determination to rescind the administrative review for ERBOSAN. Interested parties may submit such comments within 20 calendar days of the publication of this notice. Comments must be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS).

We are issuing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: December 13, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–32545 Filed 12–19–11; 8:45 am]

BILLING CODE 3510–DS–P

*Antidumping Duty Administrative Review,* 71 FR 39299, 39302 (July 12, 2006), and *Portable Electric Typewriters from Japan; Final Results of Antidumping Duty Administrative Review,* 56 FR 14072, 14073 (April 5, 1991).

[3] We also intend to notify CBP about the status of entries of subject merchandise produced/exported by ERBOSAN.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–911]**

### Circular Welded Carbon Quality Steel Pipe From the People's Republic of China: Rescission of Countervailing Duty Administrative Review

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

**DATES:** *Effective Date:* December 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Joshua Morris at (202) 482–1779; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**Background**

On July 1, 2011, the Department of Commerce (''the Department'') published a notice announcing the opportunity to request an administrative review of the countervailing duty order on circular welded carbon quality steel pipe (''CWP'') from the People's Republic of China (''PRC'') for the period January 1, 2010, through December 31, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 38609 (July 1, 2011). On August 1, 2011, the Wheatland Tube Company (''Wheatland''), a domestic producer of CWP, timely requested that the Department conduct a review of nineteen producers and/or exporters of the subject merchandise. In accordance with 19 CFR 351.221(c)(1)(i), the Department published a notice initiating this administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011).

**Rescission of Review**

Pursuant to 19 CFR 351.213(d)(l), the Secretary will rescind an administrative review, in whole or in part, if the party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On November 22, 2011, Wheatland withdrew its request for review of all nineteen exporters and producers within the 90-day period. Therefore, in response to Wheatland's timely withdrawal, and as no other party requested a review, the Department is rescinding this administrative review.

**Assessment**

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess countervailing duties on all appropriate entries. For the companies for which this review is rescinded, countervailing duties shall be assessed at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of this notice.

**Notification Regarding Administrative Protective Order**

This notice serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or

conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice of rescission is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act, as amended, and 19 CFR 351.213(d)(4).

Dated: December 12, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–32547 Filed 12–19–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–821–807]**

### Final Results of Expedited Sunset Review: Ferrovanadium and Nitrided Vanadium From Russia

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

**SUMMARY:** On September 1, 2011, the Department of Commerce (the Department) initiated the third sunset review of the antidumping duty order on ferrovanadium and nitrided vanadium from the Russian Federation (Russia), pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). The Department has conducted an expedited (120-day) sunset review for this order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping.

**FOR FURTHER INFORMATION CONTACT:** David Goldberger, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4136.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 1, 2011, the Department published the notice of initiation of the third sunset review of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia, pursuant to section 751(c) of the Act. *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 54430 (September 1, 2011).

The Department received notices of intent to participate from the following domestic parties within the deadline specified in 19 CFR 351.218(d)(1)(i): AMG Vanadium Inc., and Gulf Chemical and Metallurgical Corporation and its wholly owned subsidiary, Bear Metallurgical Corporation (collectively ''the domestic interested parties''). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers or wholesalers of a domestic like product in the United States.

The Department received complete substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no response from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order.

#### Scope of the Order

The products covered by the order are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of the order. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (*i.e.,* more weight than any other element, except iron in some instances) and at least 4 percent by weight of iron. Nitrided vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen.

Excluded from the scope of the order are vanadium additives other than ferrovanadium and nitrided vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues, fly ash, and vanadium oxides.

The products subject to the order are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.5040, 8112.40.3000, and 8112.40.6000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

#### Analysis of Comments Received

All issues raised in this review are addressed in the ''Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Ferrovanadium and Nitrided Vanadium from Russia'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Decision Memorandum), which is hereby adopted by, and issued concurrently with, this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. The Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed on the Internet at *http://www.trade.gov/ia/.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

#### Final Results of Review

We determine that revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

| *Exporter/Manufacturer* | *Margin Percentage* |
|---|---|
| Galt Alloys, Inc | 3.75 |
| Gesellschaft für Elektrometallurgie m.b.H. (and its related companies Shieldalloy Metallurgical Corporation and Metallurg, Inc.) | 11.72 |
| Odermet | 10.10 |
| All Other Russian Manufacturers and Exporters[1] | 108.00 |

[1] Prior to Russia's graduation to market-economy status, this rate was referred to as the Russia-wide rate.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: December 13, 2011.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2011–32552 Filed 12–19–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

**[Docket Number: 111208744–1741–01]**

### Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public that the National Institute of Standards and Technology (NIST) is extending for six (6) months beginning on January 5, 2012, its APMS direct-hire authority pilot. NIST will continue piloting direct-hire authority under Title 5, CFR, Part 337, Subpart B for all positions within NIST in the Scientific and Engineering (ZP) career path at the Pay Band III and above, for Nuclear Reactor Operator positions in the Scientific and Engineering (ZT) career path at Pay Band III and above, and for all occupations for which there is a special rate under the General Schedule pay system.

**DATES:** This notice is effective on December 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Janet Hoffman at the National Institute of Standards and Technology, (301) 975–3185; or Valerie Smith at the U.S. Department of Commerce, (202) 482–0272.

**SUPPLEMENTARY INFORMATION:**

### Background

In accordance with Public Law 99–574, the NIST Authorization Act for 1987, the Office of Personnel Management (OPM) approved a demonstration project plan, ''Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology (NIST),'' and published the plan in the **Federal Register** on October 2, 1987. 52 FR 37082. The project plan has been modified twice to clarify certain NIST authorities (54 FR 21331 of May 17, 1989, and 55 FR 39220 of Sept. 25, 1990). The project plan and subsequent amendments were consolidated in the final APMS plan, which became permanent on October 21, 1997, 62 FR 54604. NIST amended the plan on May 6, 2005, 70 FR 23996, which became permanent on June 6, 2005. NIST amended the plan again on July 15, 2008, 73 FR 40502, and that amendment became permanent on October 1, 2008.

On December 3, 2010, the Department of Commerce approved NIST's request to pilot direct-hire under Title 5, CFR, Part 337, Subpart B, for a period of one year for all positions within the Scientific and Engineering (ZP) career path at the Pay Band III and above, for Nuclear Reactor Operator positions in the Scientific and Engineering Technician (ZT) career path at Pay Band III and above, and for all occupations for which there is a special rate under the General Schedule (GS) pay system.

NIST received approval to gather data on the impact of direct-hire authority on preference eligibles, as well as information supporting the finding of a severe shortage of candidates for the positions covered under the direct-hire authority. On January 5, 2011, NIST published a **Federal Register** notice implementing the direct-hire pilot for a period of one year.

The APMS plan provides for modifications to be made as experience is gained, results are analyzed, and conclusions are reached on how the system is working. This notice formally modifies the APMS plan to align direct-hire procedures with OPM's direct-hire authority on a pilot basis for an additional six months. During this extended pilot period, NIST will be submitting a request to the Department of Commerce to implement direct-hire authority under Title 5, CFR, Part 337, Subpart B, on a permanent basis. The request will include a statistical analysis determining the impact of direct-hire authority on preference eligibles as well as a justification supporting the finding of a severe shortage of candidates in the covered positions. If additional time is required to complete review of NIST's request, the pilot may be extended for an additional six (6) months.

Dated: December 15, 2011.

**Kevin Kimball,**

*Chief of Staff.*

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### I. Executive Summary

The National Institute of Standards and Technology's (NIST) Alternative Personnel Management System (APMS) is designed to (1) improve hiring and allow NIST to compete more effectively for high-quality researchers through direct hiring, selective use of higher entry salaries, and selective use of recruiting allowances; (2) motivate and retain staff through higher pay potential, pay-for-performance, more responsive personnel systems, and selective use of retention allowances; (3) strengthen the manager's role in personnel management through delegation of personnel authorities; and (4) increase the efficiency of personnel systems through installation of a simpler and more flexible classification system based on pay banding through reduction of guidelines, steps, and paperwork in classification, hiring, and other personnel systems, and through automation.

Since implementing the APMS in 1987, according to findings in the Office of Personnel Management's ''Summative Evaluation Report National Institute of Standards and Technology Demonstration Project: 1988–1995,'' NIST has accomplished the following: NIST is more competitive for talent; NIST retained more top performers than a comparison group; and NIST managers reported significantly more authority to make decisions concerning employee pay. This modification builds on this success by extending the pilot on direct-hire authority under Title 5, CFR, Part 337, Subpart B, for a period of six (6) additional months.

This amendment modifies the October 21, 1997 **Federal Register** notice. Specifically, it enables NIST to hire, after public notice is given, any qualified applicant without regard to 5 U.S.C. 3309–3318, 5 CFR part 211, or 5 CFR part 337, subpart A for an additional period of six (6) months.

During this extended pilot period, NIST will be submitting a request to the Department of Commerce to implement direct-hire authority under Title 5, CFR, Part 337, Subpart B, on a permanent basis. The request will include a statistical analysis determining the impact of direct-hire authority on preference eligibles as well as a justification supporting the finding of a severe shortage of candidates in the covered positions. If additional time is required to complete review of NIST's request, the pilot may be extended for an additional six (6) months.

NIST will continually monitor the effectiveness of this amendment.

### II. Basis for APMS Plan Modification

Section 3304 (c) of title 5, United States Code, provides agencies with the authority to appoint candidates directly to jobs for which OPM determines that there is a severe shortage of candidates or a critical hiring need.

In 1987 with the approval of the NIST APMS (52 FR 37082), and in 1997 when the APMS plan was modified (62 FR 54604), OPM concurred that all occupations in the ZP career path at the band III and above constitute a shortage category; Nuclear Reactor Operator positions in the ZT Career Path at the Pay Band III and above constitute a shortage category; and all occupations for which there is a special rate under the General Schedule pay system constitute a shortage category.

OPM's direct-hire authority enables agencies to hire, after public notice is given, any qualified application without regard to 5 U.S.C. 3309–3318, 5 CFR part 211, or 5 CFR part 337, subpart A. NIST's APMS allows the NIST Director to modify procedures if no new waiver from law or regulation is added. Given this modification is in accordance with existing law and regulation, the NIST Director is authorized to make the changes described in this notice. The modification to our final **Federal Register** Notice, dated October 21, 1997, with respect to our Staffing authorities is provided below.

### III. Changes in the APMS Plan

The APMS at the NIST, published in the **Federal Register** October 21, 1997 (62 FR 54604) is amended as follows:

1. The subsection titled: ''Direct Examination and Hiring'' is deleted.

2. The subsection titled ''Direct Hire: Critical Shortage Highly Qualified Candidates'' is deleted.

3. The information under the subsection titled: ''NIST Applicant Supply File'' is replaced with: NIST advertises the availability of job opportunities in Direct-Hire occupations by posting on the OPM USAJOBS Web site. NIST will follow internal Direct Hire procedures for accepting applications.

4. The subsection titled: ''Referral Procedures for Direct Examination and Hiring and Agency Based Staffing Authorities'' is deleted.

5. A new subsection titled: ''Referral Procedures for Direct-Hire'' is added and the information under this subsection is as follows: After public notice is given, a qualified candidate may be referred without regard to 5 U.S.C. 3309–3318, 5 CFR part 211, or 5 CFR part 337, subpart A.

6. The subsection titled: ''Direct Referral'' is deleted.

7. The subsection titled: ''Rating and Ranking'' is deleted.

[FR Doc. 2011–32525 Filed 12–19–11; 8:45 am]

BILLING CODE 3510–13–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA873**

### Endangered Species; File No. 15566

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

**ACTION:** Notice; receipt of application for a permit modification.

**SUMMARY:** Notice is hereby given that South Carolina Department of Natural Resources, Marine Resources Division, Charleston, SC 29422–2559 [Responsible Party: Mike Arendt], has requested a modification to scientific research Permit No. 15566.

**DATES:** Written, telefaxed, or email comments must be received on or before January 19, 2012.

**ADDRESSES:** The modification request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/,* and then selecting File No. 15566 from the list of available applications. These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Ave. South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division:

- By email to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the email),
- By facsimile to (301) 713–0376, or
- At the above address.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Kristy Beard or Amy Hapeman, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject modification to Permit No. 15566, issued on April 8, 2011 (76 FR 22877), is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 15566 authorizes capture by trawl up to 345 loggerhead (*Caretta caretta*), 29 Kemp's ridley (*Lepidochelys kempii*), 9 green (*Chelonia mydas*), 1 leatherback (*Dermochelys coriacea*), and 1 hawksbill (*Eretmochelys imbricata*) sea turtle in order to assess temporal change in catch rates, size distributions, sex and genetic ratios, and health of sea turtles. Captures occur annually in coastal waters between Winyah Bay, SC and St. Augustine, FL. Turtles may be handled, blood sampled, measured, flipper and passive integrated transponder (PIT) tagged, photographed, and released. A subsample of animals are subject to barnacle, keratin, fecal, and tissue sampling, cloacal swabs, and attachment of satellite and/or VHF transmitters. Up to five loggerhead, one Kemp's ridley, one green, one leatherback, and one hawksbill sea turtle could be accidentally killed over the life of the permit. The permit holder requests authorization to increase the number of authorized Kemp's ridleys from 29 to 79 turtles annually. The 50 additional sea turtles would be captured, handled, blood sampled, measured, flipper and PIT tagged, photographed, and released. No other changes would be made to the permit. The purpose of the proposed research remains the same.

Dated: December 14, 2011.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–32543 Filed 12–19–11; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA874**

### Marine Mammals; File No. 15240

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that the NMFS Pacific Islands Fisheries Science Center (PIFSC), 2570 Dole Street, Honolulu, Hawaii 96822 (Responsible Party: Frank A. Parrish,

Ph.D.), has applied in due form for a permit to conduct research on cetaceans.

**DATES:** Written, telefaxed, or email comments must be received on or before January 19, 2012.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15240 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941;

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Carrie Hubard or Laura Morse, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The PIFSC is requesting a five-year permit to conduct research on 20 cetacean species, including six species listed as endangered [blue (*Balaenoptera musculus*), fin (*B. physalus*), sei (*B. borealis*), humpback (*Megaptera novaeangliae*), sperm (*Physeter macrocephalus*), and North Pacific right (*Eubalaena japonica*) whales] and one stock proposed to be listed as endangered, Hawaiian insular false killer whales (*Pseudorca crassidens*). Takes would also be authorized for five categories of unidentified cetaceans (dolphins, beaked whales, Mesoplodon spp., rorquals, and Kogia spp.). Endangered Hawaiian monk seals (*Monachus schauinslandi*) may be harassed incidental to the cetacean research. The purpose of the research is to determine the abundance, distribution, stock structure, movement patterns, and ecological relationships of cetaceans occurring in U.S. and international waters of the Pacific Islands Region. The action area includes places such as Hawaii, Palmyra, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Johnston Atoll, Kingman Reef, Howland Island, Baker Island, Jarvis Island, and Wake Island. Research methodologies include aerial and vessel surveys, behavioral observations, photo-identification, acoustic recordings, biological sample collection, and dart and suction cup tagging. Salvage and import/export of cetacean parts, specimens, and biological samples would also occur.

A draft environmental assessment (EA) has been prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. The draft EA is available for review and comment simultaneous with the scientific research permit application.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 14, 2011.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–32538 Filed 12–19–11; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 111205720–1718–01]

RIN 0648–XA740

## Listing Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petitions To List the Thorny Skate (*Amblyraja radiata*) Under the Endangered Species Act

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, NMFS, announce 90-day finding for petitions to list the thorny skate (*Amblyraja radiata*) under the Endangered Species Act (ESA). We find that the petitions do not present substantial scientific information indicating the petitioned actions may be warranted. Accordingly, we will not initiate a review of the status of thorny skate at this time.

**FOR FURTHER INFORMATION CONTACT:** Kim Damon-Randall, NMFS, Northeast Regional Office (978) 282–8485 or Marta Nammack, NMFS, Office of Protected Resources (301) 427–8469. The petition and other pertinent information are also available electronically at the NMFS Web site at *http://www.nero.noaa.gov/prot_res/CandidateSpeciesProgram/csr.htm.*

**SUPPLEMENTARY INFORMATION:**

### Background

On August 11, 2011, we received a petition from the Animal Welfare Institute (AWI) requesting that we list, as a Distinct Population Segment (DPS), the Northwest Atlantic population of thorny skates as endangered or threatened throughout all or a significant portion of its range. In the alternative, AWI asked that we list the U.S. DPS of the thorny skate as endangered. AWI also requests the designation of critical habitat for the thorny skate in U.S. waters.

On August 23, 2011, we received a petition from WildEarth Guardians and Friends of Animals (WEG & FA) requesting that we list thorny skate, barndoor skate, winter skate and smooth skate as threatened or endangered. In the alternative, the petitioners request that we list any and all DPSs of these species that may exist, and, in particular, the petitioners requested that we list the U.S. population of thorny

skate as a threatened or endangered DPS.

The joint USFWS/NMFS petition management handbook states that if we receive two petitions for the same species and a 90-day finding has not yet been made on the earlier petition, then the later petition will be combined with the earlier petition and a combined 90-day finding will be prepared. Given that, this 90-day finding will address the AWI petition for thorny skate and the portion of the petition from WEG & FA that addresses thorny skate. The remainder of the WEG&FA petition will be addressed in a separate 90-day finding. In this finding, the AWI and WEG & FA petitions will be referred to as ''the petitions,'' and the three organizations will be referred to collectively as ''the petitioners.''

The petitioners state that there can be no reasonable dispute that the available information, in particular the International Union for Conservation of Nature's (IUCN) assessment that each of the petitioned species is ''Critically Endangered'' or ''Endangered,'' indicates that listing these skates as either threatened or endangered may be warranted. The petitioners claim that the species' life history characteristics and limited ability to recover in response to abrupt population declines makes the thorny skate particularly vulnerable to overexploitation. The petitions cite steady declines in biomass indices in the United States since the mid-1970s and claim that unsustainable bycatch mortality and illegal landings threaten the species' survival. The petitioners also state that regulatory mechanisms in the United States and Canada have been insufficient to promote significant stock rebuilding and improve the species' status.

## ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. ESA implementing regulations define substantial information as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists for a petition to list a species, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (ESA Section 4(b)(3)(A)), and the finding is to be published promptly in the **Federal Register**. If we find that the petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(A) of the ESA requires the Secretary of Commerce (Secretary) to conduct a review of the status of the species. Section 4(b)(3)(B) requires the Secretary to make a finding as to whether the petitioned action is warranted within 12 months of the receipt of the petition. The Secretary has delegated authority for these actions to the NOAA Assistant Administrator for Fisheries.

To be considered for listing under the ESA, a group of organisms must constitute a ''species.'' A ''species'' is defined in section 3 of the ESA to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (collectively, the ''Services'') adopted a policy to clarify their interpretation of the phrase ''distinct population segment of any species of vertebrate fish and wildlife'' (61 FR 4722). The joint DPS policy describes two criteria that must be considered when identifying DPSs: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. As further stated in the joint policy, if a population segment is discrete and significant (*i.e.,* it is a DPS), its evaluation for endangered or threatened status will be based on the ESA's definitions of those terms and a review of the five factors enumerated in section 4(a)(1) of the ESA (detailed below).

Under the DPS policy, a population segment may be determined to be discrete if: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological or behavioral factors; and/or (2) the population is delimited by international boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA.

The DPS policy also cites examples of potential considerations indicating significance, including: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historic range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

The ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range (ESA section 3(6)).'' The ESA defines a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (ESA section 3(20)).'' Under the ESA, a listing determination can address a species, subspecies, or a DPS of a vertebrate species (see ESA section 3(16)). Under section 4(a)(1) of the ESA, a species may be determined to be threatened or endangered as a result of any one of the following factors: (A) Present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing determinations are to be made solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

## Species Description

The thorny skate occurs on both sides of the Atlantic. In the western North Atlantic, it ranges from western Greenland to South Carolina, and in the eastern North Atlantic, it ranges from Iceland to the southwestern coasts of Ireland and England (Bigelow and Schroeder, 1953). This species is characterized by a row of 11 to 19 large thorns running down the midline of the back and tail (Bigelow and Schroeder, 1953; Collette and Klein-MacPhee, 2002). Thorny skate are generally brown dorsally with a white ventral surface. They may reach lengths of over 39 inches (991 mm), but maximum size varies over its range.

According to Collette and Klein-MacPhee (2002), females deposit a single fertilized egg capsule which ranges in size from 2 to 4 inches (48 to

96 mm) in length and 1.33 to 3 inches (34 to 77 mm) in width. While females with fully formed egg capsules are captured year round, the percentage of mature females with capsules is highest during the summer (Collette and Klein-MacPhee, 2002). Thorny skate feed on benthic invertebrates and fish. Thorny skates are found over a wide variety of substrates including sand, broken shell, gravel, pebbles, and soft mud and are primarily found from 20 to 3,900 feet (18 to 1200 m) deep (Collette and Klein-MacPhee, 2002). They appear to make seasonal migrations that have been noted on the Scotian Shelf and the Grand Banks, but specific details on the spatial patterns and timing are lacking (NEFSC, 2003). Kulka and Miri (2003) report a change in the spring and fall distributions resulting in a higher density and greater proportion of biomass being found in deeper waters during the spring. These aggregations, they note, appear to be correlated with warmer relative temperatures.

Sulikowski *et al.* (2005) aged thorny skate in the Gulf of Maine and estimated the oldest age to be 16 years for both males and females. For females, 50 percent maturity occurred at approximately 11 years and 875 mm (34.5 inches) total length (TL); while for males, approximately 10.9 years and 865 mm (34 inches) TL (Sulikowski *et al.,* 2006).

**Analysis of Petition and Information Readily Available in NMFS Files**

The following sections contain information found in the petition and readily available in our files to determine whether a reasonable person would conclude that an endangered or threatened listing may be warranted as a result of any of the factors listed under section 4(a)(1) of the ESA.

**Analysis of DPS Information**

The AWI petition claims that the Northwest Atlantic thorny skate population, encompassing Canadian and United States waters, satisfies both the ''discrete'' and ''significant'' requirements for DPS designation. AWI argues that the Northwest Atlantic population is discrete because it is markedly separated from other populations due to physical and biological factors, and significant because loss of the DPS would result in a significant gap in the taxon's range. AWI acknowledges that scientific literature on thorny skates demarcates the Northwest and Northeast Atlantic populations. AWI states that research indicates that small groups of thorny skates may make limited seasonal migrations, but it is generally considered a sedentary species. In addition, they state that there are no scientific studies that indicate trans-Atlantic migration or significant genetic interface between the Northwest and Northeast Atlantic stocks.

The AWI petition also presents an alternative justification for considering the thorny skate population in United States waters as a DPS. The petition claims that the United States population is discrete because it is delimited by international governmental boundaries (delineating the United States and Canada) and significant differences exist in the control of exploitation, conservation status, and regulatory mechanisms. They further claim that evidence suggests that the U.S. DPS may be discrete because it is markedly separated from the Canadian population as a consequence of physical and/or ecological factors and that the U.S. population meets the significance criterion of the DPS policy because the loss of the DPS would result in a significant reduction in the range of the taxon. The AWI petition states that the thorny skate is managed as a single stock in Canada which dominates Canadian commercial catches, representing approximately 95 percent of the total skates caught. The petitioner contrasts this with the situation in the United States where there is no directed fishery, claiming the population decline is attributed to retained incidental catches, bycatch, and discard mortality. The petitioner also states that the Canadian population has stabilized, whereas the U.S. population is being overfished and continues to decline.

WildEarth Guardians and Friends of Animals request that if the Secretary determines that the thorny skate is not threatened or endangered throughout all or a significant portion of its range, that the population of thorny skates in U.S. waters be listed as threatened or endangered as a DPS. The petitioners claim that the U.S. population of thorny skate is discrete from the Canadian and Northeast Atlantic skate populations because fish in the Gulf of Maine are larger, produce larger egg capsules, and have distinct behavior characteristics. They specifically cite different diets and the year-round reproduction of thorny skates in the Gulf of Maine compared to autumn reproduction of thorny skates in the Grand Banks. Furthermore, they state that studies of skate migration demonstrate that, although thorny skates undergo seasonal migrations from shallow to deeper waters, they do not undergo any longer-range migrations, nor do they move far from their starting location during their lifetimes. The petitioners also note that the U.S. and Canadian populations of thorny skates are separated by an international boundary and state that the conservation status of thorny skates varies significantly across the U.S./Canadian border and that the regulatory regimes also differ significantly across the border.

The petitioners assert that the U.S. population of thorny skates meets several of the criteria for significance including that it persists in an unusual and unique ecological setting for the taxon because thorny skates off the U.S. coast represent the southernmost population of the species in the world. They state that, as global temperatures rise, these adaptations to warmer temperatures will become even more important to the species' survival, and, therefore, conservation of the U.S. population with its particular warm-water adaptation is essential to the conservation of the species as a whole. They further claim that loss of the U.S. population would result in a significant gap in the range of the species because it would result in the extirpation of the species from several hundred miles of the continental shelf where it is now viable. Finally, they indicate that evidence suggests that the U.S. thorny skate population exhibits genetic characteristics that differ from those of other populations of the species.

The petitioners cite thorny skate tagging studies as evidence of their relative lack of dispersal and high site fidelity, but these studies actually provide a more complex view. Templeman (1984) states that most thorny skates were recaptured within 60 miles (97 km) of their tagging location, but also that 13 percent of skates were recaptured 100 to 240 miles (161 to 386 km) from where they were tagged. Some of these moved considerable distances over short durations. Templeman (1984) concluded that thorny skates are capable of longer migrations than other skates that have been studied.

The thorny skate ranges across the entire North Atlantic Ocean, and recent population genetics research indicates that there is little structure in populations across its range (Chevolot *et al.,* 2007; Ostrow *et al.,* 2008). These results would argue against the existence of a U.S. or Northwest Atlantic DPS, and instead may indicate that these areas are components of a larger panmictic stock, connected by large-scale dispersal of individual skates (Chevolot *et al.,* 2007). The petitioners state that ''there are no scientific studies that indicate trans-Atlantic migration or significant genetic interface between the Northwest and Northeast Atlantic stocks.'' However, Chevolot *et al.* (2007)

examined the mitochondrial DNA of thorny skates sampled from Newfoundland, Iceland, Norway, and the North Sea regions, and found that genetic diversity was relatively homogeneous across all sites. They concluded that ''the migratory range [of the thorny skate] is much greater than previously acknowledged.'' Recent DNA microsatellite analysis has also revealed that there is no significant genetic structure for thorny skates within the Gulf of Maine, or between the Gulf of Maine and Canada (Ostrow *et al.,* 2008). Chevolet *et al.* (2007) note that the near absence of genetic differentiation in thorny skate over the North Atlantic does not conform to predictions based on life history characteristics and acknowledge that the lack of power related to small sample size and the use of only one molecular marker might provide an explanation. However, they note that a parallel study using the same marker for another skate species did find strong and highly significant structure at the ocean basin scale. Existence of a Northwest Atlantic or a U.S. DPS is not well supported by the available genetics studies because these do not indicate significant differences that would be evidence of discreteness.

Given these genetic and tagging study results, we do not find that the petitioners have presented substantial scientific information supporting the delineation of a Northwest Atlantic DPS or a U.S. DPS of thorny skates. The petitioners did present information about differences in management regimes in the United States and Canada for consideration of a discreteness determination under the DPS policy. The petitioners did state that ''the differences in regulatory regime, control of exploitation, and conservation status across this border further indicate that the U.S. population is ''discrete'' within the meaning of the DPS policy.'' The DPS policy requires identifying differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms and an explanation of how those differences are significant in light of section 4(a)(1)(D) of the ESA. The petitioners did not present information on differences in management regimes between the United States and Northeast Atlantic. Sufficient time is not available within the 90-day initial petition review phase to conduct a review of international regulations, so for the purposes of this finding and to err on the side of the species, we consider the species range-wide as well as assume that a U.S. population of thorny skates could be demonstrated to constitute a DPS.

**Abundance**

The petitioners cite the 2008 Skate Stock Assessment and Fishery Evaluation (SAFE) Report prepared by the NEFSC as demonstrating a precipitous decline in thorny skate abundance and biomass in U.S. waters since the late 1970s. The AWI petition states that the most recent 3-year average mean biomass survey from 2008–2010 (0.245 kg/tow) is the lowest in the time series.

The petitioners state that the IUCN lists the U.S. population of thorny skates as ''Critically Endangered'' and the Canadian population as ''Vulnerable'' throughout its range in the Northwest Atlantic Ocean. They conclude that the IUCN listing rubric is stricter than the ESA listing rubric because the IUCN designates a species as ''Critically Endangered'' when it is ''considered to be facing an extremely high risk of extinction in the wild'' and ''Vulnerable'' when it is ''considered to be facing a high risk of extinction in the wild,'' and the IUCN only lists a species or population if it is facing extinction rangewide.

The Northeast Fisheries Science Center (NEFSC) has monitored skate biomass annually in its bottom trawl survey since 1963. This survey is the only source of information on the relative abundance of thorny skates in U.S. waters, which are primarily distributed in the Gulf of Maine. Based on this information, the survey biomass index of thorny skates has steadily declined from a high 3-year average of 6.17 kg/tow in 1969–1971, to a low of 0.26 kg/tow in 2008–2010 in U.S. waters. We note that the AWI petition compares the biomass index to the formerly used reference point (4.41 kg/tow) and not the updated biomass target (defined as the stock biomass that would produce maximum sustainable yield) and thresholds (defined as an unacceptably low biomass) (4.12 kg/tow and 2.06 kg/tow, respectively) adopted by the Data Poor Stocks Working Group (DPSWG) and Amendment 3 to the Skate Fishery Management Plan (FMP) in 2009. For thorny skate, the 2008–2010 NEFSC autumn average biomass index of 0.26 kg/tow is well below the biomass threshold reference point (2.06 kg/tow), indicating that the species is in an overfished condition. The 2008–2010 index is lower than the 2007–2009 index by 4.4 percent, but overfishing is not occurring as this decline is not more than 20 percent.

AWI further states that Canadian indices of thorny skate have also demonstrated a precipitous decline over the past 4 decades and cites evidence of a hyper-aggregation with 80 percent of the biomass now concentrated in 20 percent of the area along the southwest slope of the Grand Banks (Kulka *et al.,* 2007). As noted by Kulka *et al.* (2006), in the early 1980s, thorny skates were distributed over the entire Grand Banks in moderate to high concentrations, but by the late 1990s, much of the biomass was concentrated in the southwest. The proportion of the surveyed area containing no skates increased from about 2 percent in 1980–1988 to 22 percent in 2004–2005. During 1980–1988, about 57 percent of the biomass was located within 20 percent of the survey area, and by 2001–2005, 78 percent of the biomass was located within 20 percent of the survey area. Therefore, the area occupied by thorny skates has decreased, and the population has become increasingly more concentrated in a smaller area where bottom temperatures are warmest. A very similar pattern of aggregation was observed for northern cod just prior to its collapse (Rose and Kulka, 1999). Kulka and Miri (2003) state that aggregation and reduced area of occupancy led to the cod being increasingly more vulnerable to exploitation, and they state this is very similar to what is happening to thorny skate. They do acknowledge that it is unknown whether these spatial dynamics are an indication of a skate stock under stress. The 2007 update by Kulka and Miri noted that the species had shown a minor re-expansion in its distribution in the past 3 to 4 years (Kulka and Miri, 2007).

Kulka and Miri (2006) noted that the average weight of thorny skate in Canadian surveys had declined from 2 kg in the early 1970s to 1.2 kg in 1996, with the majority of this decline occurring in the 1990s concurrent with the decline in survey biomass. They reported that average weight had increased to about 1.6 kg since 1996. They note that the decline of thorny skate, particularly on the northern Grand Banks, is concurrent in space and time with the decline of many other demersal species and occurred during a period when bottom temperatures were below average.

The IUCN reviewed the status of thorny skate in 2004 and concluded that the extent of decline warranted a global assessment of ''vulnerable,'' but ''critically endangered'' in U.S. waters. They noted that the species was relatively stable in recent years in Canada and the Northeast Atlantic, yet declining in the United States. The species was assessed as a species of Least Concern in the Northeast Atlantic. They also noted that the overall

abundance (whether divided among subpopulations or not) still constitutes several hundred million individuals. Spring surveys on the Grand Banks indicate a minimum biomass estimate for the Northwest Atlantic of 100,000 tons that has been stable or increasing slightly over the last 15 years, as reported in the 2004 IUCN assessment. The reasons cited for the ''critically endangered'' classification for U.S. waters include low relative abundance below the fisheries limit reference point, the long-term population decline, lack of population increase with strict management laws, and the inability to monitor species specific landings.

For the Northeast Atlantic, the IUCN assessment states that the species is common and is the most abundant skate in the North Sea and has shown a marked increase between 1970 and 1983 in the Central North Sea and from 1982 to 1991 in English groundfish surveys.

**ESA Section 4(a)(1) Factors**

The AWI petition presents information on the five ESA factors but states that the continued survival of the Northwest Atlantic DPS of thorny skates is endangered by the following three of the five factors enumerated in the ESA: (B) overutilization for commercial, recreational, scientific, or educational purposes; (D) inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors.

WildEarth Guardians and Friends of Animals claim that thorny skate are threatened by direct and indirect exploitation. They state that the life history of thorny skate, which makes it especially vulnerable to exploitation, argues even more urgently for the adoption of strong regulatory protections provided by the ESA.

**Present or Threatened Destruction, Modification or Curtailment of Habitat or Range**

The petitions state that bottom trawl fisheries are responsible for up to 86 percent of the thorny skate caught as bycatch in the United States and that trawling in general has been shown to have negative impacts on benthic communities, but acknowledge that there are no direct studies quantifying the impact of trawling on thorny skate habitat in the Northwest Atlantic.

The petitions state that research indicates that the use of groundfish trawling gear degrades benthic habitat structure by removing or damaging epifauna, reducing bottom roughness, and removing structure forming organisms. They claim that such habitat degradation affects the availability of the thorny skates' prey as well as the skate's ability to avoid predators. They further note that although thorny skate were once found throughout Grand Banks, 80 percent of the survey biomass in Canadian surveys is now concentrated into 20 percent of the area along the southwest slope of the Grand Bank. They cite the IUCN report statement that a similar pattern of hyper-aggregation was observed immediately before the collapse of a cod population. Information in the petitions and readily available in our files does not indicate that thorny skate may be threatened or endangered due to present or threatened habitat destruction, modification or curtailment.

**Overutilization for Commercial, Recreational, Scientific, or Educational Purposes**

The AWI petition states that population estimates for the thorny skate in Canadian waters indicate stable, but not increasing numbers; in U.S. waters, survey biomass indices have been declining for decades, despite the Federal ban on the landing and possession of thorny skates since 2003. The petition claims that reports of illegal thorny skate landings suggest that thorny skates are being exploited in the commercial wing market. AWI also cites concern over discards and discard mortality, with NEFSC assuming 50 percent discard mortality rate. WildEarth Guardians and Friends of Animals raise concern that the directed skate take will likely continue to increase as the use of other groundfish becomes more restricted and less profitable. They also claim that as long as the skate bait and wing trade continues to target the smaller little and winter skates, thorny skates will also be threatened. They also express concern over thorny skate discards and cite studies off Australia and the Falkland Islands suggesting that acute discard mortality rate may be as high as 56 percent. They cite the 2005–2007 average thorny skate biomass index reported by the NEFSC as 0.42 kg/tow and state that is well below the biomass threshold of 2.2 kg/tow. Finally, they cite the 2005–2007 average biomass index as being 24 percent lower than the previously reported average biomass (0.55 kg/tow, 2004–2006) as evidence that unsustainable take is still occurring. Skates are harvested in two very different fisheries, one for lobster bait and one for wings for food. The fishery for lobster bait is a more historical and directed skate fishery, involving vessels primarily from Southern New England ports that target a combination of little skates and to a much lesser extent juvenile winter skates. The fishery for skate wings evolved in the 1990s as skates were promoted as an underutilized species. The wing fishery is a more incidental fishery that involves a larger number of vessels located throughout the region. Vessels tend to catch skates when targeting other species such as groundfish, monkfish, and scallops and land them if the price is high enough (NEFMC, 2009).

Thorny skates in the Atlantic U.S. Exclusive Economic Zone have been managed under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by the New England Fishery Management Council's fishery management plan for the Northeast (NE) Skate Complex (Skate FMP) since September 2003. Since that time, possession and landing of thorny skates has been prohibited, but the survey biomass index has continued to decline. It is important to note that based on the limited productivity of this species (long-lived, late maturity, low fecundity, *etc.*), rebuilding to target levels (4.12 kg/tow) was estimated to take at least 25 years (*i.e.,* 2028) (NEFMC, 2009). The thorny skate's low productivity makes it vulnerable to exploitation, but also suggests that the population is inherently slow to respond to fishery management efforts. Elasmobranch fishes are very resilient and mobile species that move when environmental conditions change to suboptimal levels. This suggests that if thorny skates are sensitive to environmental changes (*e.g.,* increasing bottom water temperatures), they would likely emigrate to other more suitable habitat. Rather than dying off, the population may be shifting en masse to deeper or more northern waters outside the Gulf of Maine survey area. Such population shifts have been documented in the winter skate (Frisk *et al.,* 2008), and are also likely contributing to the increasing survey biomass for barndoor skate.

Research on the discard mortality rates of winter, little, thorny, and smooth skates in bottom trawl gear is currently being conducted by Drs. John Mandelman (New England Aquarium) and James Sulikowski (University of New England) (NOAA Saltonstall-Kennedy Grant Program). Preliminary data provided to NMFS and the Skate Plan Development Team (PDT) indicate that discard mortality rates are significantly lower than the 50 percent previously assumed by the NEFSC. The preliminary discard mortality rate estimate for thorny skate (up to 72 hours post-release) is only approximately 12 percent (n=188), suggesting that this

species is relatively resilient to discarding.

The petitions make a number of inaccurate assertions about misreporting and underreporting of discard rates. AWI incorrectly claims that the discard rate is contingent on the fishers' self-reporting. In fact, discard rates are estimated by using independent observers, who are randomly assigned to sample a fraction of the fleet using a scientific survey approach. As a result, the estimates are highly precise. AWI also erroneously assumed that the numbers in the Skate PDT Document have a large margin of error. Table 7A in the SBRM report, however, shows an overall coefficient of variation of about 5 percent for 2009, 2010, and 2011 (Wigley *et. al.,* 2011).

Amendment 3 to the Skate FMP was designed, in part, to end overfishing and promote rebuilding of overfished thorny skate to achieve the biomass target within the mandated rebuilding schedule, or earlier if possible, and to prevent overfishing of all managed skates. Amendment 3 and the associated Final Environmental Impact Statement (FEIS) conclude that the landings and catch limits proposed by the amendment have an acceptable probability of promoting biomass growth and achieving the rebuilding (biomass) targets for thorny skates.

Based on new life history parameter estimates, the Council estimated in 2003 that it takes a female thorny skate 15 years to replace its own spawning capacity, which by definition is a mean generation time. Thus, the maximum rebuilding period allowed by the MSA is 25 years (10 years plus one mean generation time), or 2028 when counted from the FMP implementation in 2003, when thorny skate was determined to be overfished. From the biomass in 2007 (0.42 kg/tow), it would take an average annual increase of 13.2 percent to rebuild to the 4.41 kg/tow target by 2028. The PDT advised the Council that the best estimate of the maximum intrinsic rate of population growth is 0.17, so achieving the biomass target within the rebuilding schedule appears to be achievable. The purpose of this analysis is to estimate the ability of the thorny skate's population to grow based on its biological limitations. It is most appropriate to use the maximum intrinsic rate of increase because that provides the benchmark for how quickly the stock can potentially rebuild to the target under optimal conditions. The fishery management plan should attempt to provide those conditions.

Regarding the petitioner's concern over the vulnerability of thorny skates to the skate wing fishery, according to port sampler data provided by the NMFS Northeast Region Analysis and Program Support Division, the occurrence of thorny skates in skate wing landings has been significantly reduced since 2006. Out of 50,653 skate wings sampled between 2007 and 2010, only 353 (0.7 percent) were identified as thorny skate wings. There has been a general decline in the presence of thorny skates in the wings sampled as reflected in the following data: 9.22 percent in 2006; 1.54 percent in 2007; 0.13 percent in 2008; 0.43 percent in 2009; and 0.61% in 2010. This suggests that the current possession prohibition is very effective at minimizing fishing mortality on this species (particularly when considered in conjunction with the recent data on discard mortality). The Skate FMP implemented species-specific reporting codes for landed skates, but most skate wing landings are reported as Skate Wings (code 3651) or Winter Skate (code 3671). The argument that the lack of species-specific reporting in the skate fishery somehow promotes illegal thorny skate landings is flawed. Based on the port sampler data, we know that thorny skates are currently extremely uncommon in fishery landings, although illegal landings may have been more common in the past (NEFMC, 2009).

The statement in the petitions that thorny skate distribution overlaps with the distribution of winter skate and its directed fisheries is exaggerated. Thorny skates are primarily distributed in the deeper waters of the Gulf of Maine, while winter skates are distributed on Georges Bank and into southern New England shelf waters. There is actually very little overlap between thorny and winter skates and the fisheries that interact with them.

In 1995, Canada established a regulated skate fishery inside its 200-mile limit following the collapse of major groundfish stocks in Canada in the early 1990s (Kulka and Miri, 2003). Since the mid 1980s, Spain, Portugal, and Russia have prosecuted a directed fishery for skate outside of Canada's 200-mile limit on the Tail of the Grand Banks (Kulka and Miri, 2003).

The IUCN assessment of the Northeast Atlantic states that thorny skates are occasionally landed as bycatch of demersal fisheries, but its distribution lies outside the main beam trawling areas. It states that thorny skate has a relatively small length at first maturity and demographic modeling suggests that it is less susceptible to fishing mortality in this region than other larger bodied skate species.

In the United States, thorny skates are currently categorized as overfished, but overfishing is not occurring. The available information indicates that previous fishing levels are responsible for the current low abundance of the species. Given the species' life history, recovery from these low levels was predicted to take a significant amount of time, and current observations demonstrate that the 2003 FMP's rebuilding schedule is achievable. Therefore, no substantial scientific information has been presented to indicate that current discards or illegal landings in the wing fishery pose a significant threat to the species.

**Predation and Disease**

The petitioners claim that even a normal rate of predation could have a significant impact on the already severely depleted thorny skate population and states that the Secretary should fully consider the risks posed to the thorny skate population from predation in assessing the status of the species. They also state that thorny skates are host to a wide variety of parasites and again state that the Secretary should fully consider the risks posed to the thorny skate population by parasitism in assessing the status of the species. The petitioners state that disease and predation are not currently assessed as significant threats to the species' survival. Thus, there is no information in the petitions nor is there any in our files that suggests that disease and predation are significant factors affecting the continued existence of this species.

**Inadequacy of Existing Regulatory Mechanisms**

The specific regulatory concerns cited in the AWI petition include a general lack of species-specific identification, both on-boat and at landing. The petitioner states that positive species identification at landing is hindered because current regulations allow vessels to possess and/or land skates as wings only (wings removed from the body of the skate and the remaining carcasses discarded). AWI also states that the designation of thorny skates as both prohibited and overfished allows room for inconsistent enforcement of the law. Specifically, they highlight the different penalties for violations of taking or retaining overfished species compared to possession of prohibited species. The petition states that the existing regulatory mechanisms in the FMP are inadequate to promote the recovery of the thorny skate in U.S. waters and may actually be sponsoring the species' continued decline. Finally, the petition also states that Canada lacks substantive protective regulatory

mechanisms for thorny skate and has not afforded a conservation status by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC).

The petitioners state that data on skate discard rates are ''contingent on the fishers' self-reporting.'' This is not accurate; discard rates are estimated based on skate discards sampled by at-sea observers, and extrapolated based on the magnitude of landings. Based on new research, the 2008–2010 discard mortality rate (the percentage of skates that die after they are thrown overboard) of 50 percent for both little and winter skates caught by trawl gear was reduced from 50 percent to 20 and 12 percent, respectively. As a result, the skate discard rate (the percentage of the total annual catch represented by dead discards) was reduced from 52 to 36 percent (NMFS, 2011).

The petitioners state that over 99 percent of all landings are reported as ''unclassified skates,'' and state that because the species-specific reporting requirements are not enforced, the prohibition on possessing thorny, barndoor, and smooth skates is essentially meaningless. They further state that the FMP only requires vessels to report discarded skates by size as either small or large. The petitions state that even if the regulations prohibiting landing and possession of thorny, barndoor, and smooth skates were effectively enforced, they would do nothing to prevent discard mortality, which may account for a large percentage (even the majority) of human-induced mortality in these species.

The potential impact of the lack of species-specific reporting in the skate fishery on the survival of thorny skates is overstated. While the historical lack of species-specific trends in landings and discards has hampered stock assessment efforts, recent data collection efforts have greatly improved our understanding of the species composition of the landings. Over the last several years (2005 to 2010), the prohibitions on thorny, barndoor, and smooth skates have been estimated to be approximately 98 percent effective (NMFS Northeast Region, unpublished data). Thorny skate wings are easily distinguishable from legal winter skate wings with a minimal amount of training, and port samplers and enforcement agents have received this training. Landing of thorny skates may have been more frequent in the past, but it has been dramatically curtailed since the prohibition on possession went into effect. Mislabeling of skate products does not appear to be widespread at U.S. ports, and enforcement agents have been trained to correct mislabeling if they observe it.

While the 2008–2010 3-year average biomass survey index represents the all-time low in the time series for thorny skate, the biomass survey index increased modestly in 2009 and 2010. The petitioners argue that the Skate FMP has proven ''inadequate to promote the recovery of thorny skate in United States waters and may actually be sponsoring the species' continued decline'' but have not presented substantial scientific information to support this claim. The Skate FMP (including the prohibition on possession of thorny skate) was implemented 8 years ago, and Amendment 3, which established the first annual catch limits for skates and defined the rebuilding timeline for thorny skate, was only implemented in July 2010. These actions do not provide evidence of a lack of regulatory control; rather, they indicate that significant efforts have been implemented to protect thorny skates using existing regulatory mechanisms. The information presented by the petitioner and otherwise available to us does not lead a reasonable person to conclude that the low abundance of thorny skate is due to a current lack of regulations in place. Given the low productivity of thorny skates, it is likely to take several more years before the survey biomass index properly reflects the impacts of these fishery management decisions. Therefore, the AWI petition does not present substantial scientific information to lead a reasonable person to conclude that thorny skates are threatened or endangered due to inadequate regulatory mechanisms.

**Other Natural or Manmade Factors Affecting Its Existence**

The third factor cited by AWI as a reason for listing is other natural or manmade factors. Specifically, they claim that global warming poses a long-term threat to Northwest Atlantic thorny skates and their recovery from depletion. The petition claims that ocean temperatures are rising, and this along with an increase in global temperatures causes adverse effects on thorny skate.

The petitioners state that the life history characteristics of large-sized skates make them particularly vulnerable to exploitation. They state that thorny skate are not likely to recover quickly from their current low levels, especially in the face of continued overutilization. One of the petitions states that evidence suggests that a recent decline of thorny skates in the northern part of the Grand Banks correlates with a period of abnormally cold water temperatures and concludes that the thorny skate population may be threatened by changes in average water temperatures caused by climate change. They suggest that the Secretary should fully consider the possible threat of climate change to the thorny skate population in assessing the status of the species.

The other petitioner hypothesizes that global climate change, and rising ocean temperatures in the thorny skate's range, may pose a direct threat to the species' survival. Little specific information is provided to link climate change to specific impacts on thorny skate. One possibility is that global warming could cause a range shift (*e.g.,* northward distribution shift) of the thorny skate population. This could result in lower abundance in the southern fringe of its range (*i.e.,* a contraction or movement out of the Gulf of Maine to colder waters, rather than an actual decline in overall biomass). More research is necessary to investigate if there is a correlation between Gulf of Maine water temperatures and thorny skate biomass, but the available information on thorny skate temperature preferences suggests that this could be a possibility. However, rather than contributing directly to natural mortality of thorny skates, it is more likely that such temperature changes would result in large-scale distribution shifts over time. In the 2020 to 2060 time period, bottom temperatures in the Gulf of Maine are projected to increase by about 1°C across three emission scenarios examined (Hare *et al.,* in press). In the 2060 to 2100 time period, the changes in temperature differ among the emission scenarios. Under the B1 scenario (lower emissions), bottom temperatures are projected to increase by ~1.8 °C. Under the A1B and A2 scenarios (higher emissions), bottom temperatures are projected to increase by approximately 2.4 °C. There is not much difference between the A1B and A2 scenarios because under these scenarios, $CO_2$ emissions do not start to diverge until the end of the 21st century (Nakicenovic *et al.,* 2000). The impact of these projected temperature changes on thorny skate and its habitat is unknown at this time.

There is uncertainty regarding the role of temperature in driving or contributing to the historical and current distribution and abundance of thorny skate and even greater uncertainty regarding potential future impacts of climate change on the species throughout its range. Given the above, the petitions and available information in our files do not lead a

reasonable person to conclude that other natural or manmade factors may cause thorny skates to be threatened or endangered at this time.

**Critical Habitat**

The petitioners request that we designate critical habitat for thorny skates, upon finding that the species is endangered or threatened. They state that research has found that thorny skates prefer sand, gravel, broken shells, and soft mud substrata at depths between 37 and 108 meters and, therefore, state that habitat conforming to these specifications is essential to the conservation of thorny skates. Accordingly, the petitioners request that we designate as critical habitat all areas along the U.S. coast from the Gulf of Maine to South Carolina featuring these characteristics.

**Similarity of Appearance Provision of the ESA**

The petitioners state that if we determine that some of the skate species included in the petitions warrant listing while others do not, we should nonetheless list those species not found to be threatened or endangered, as well as other members of the skate complex, as listed species in accordance with section 4(e) of the ESA. They argue that while it is already difficult to differentiate skates by species, it is even more difficult to differentiate skate wings by species. They raise particular concern over the risk of confusing juvenile winter skates and little skates, which they state would make the enforcement of a prohibition on take of winter skates extremely difficult. The petitioners claim that the problems with species differentiation and enforcement of species-specific take prohibitions demonstrate that enforcement will not be effective unless we treat all members of the skate complex as subject to the same regulations.

*Conclusion*

Scientific information presented by the petitioners and otherwise available to us indicates that it is unlikely that the Northwest Atlantic population of thorny skates is discrete and significant. Contrary to the petitioner's assertions, there is no evidence of reproductive isolation of any subpopulation of thorny skate across the North Atlantic Ocean. Connectivity across broad geographic regions reduces the overall risk of extinction, and buffers the potential impacts of fishing mortality on thorny skates. An argument could be made for discreteness and significance of the U.S. population of thorny skates if it could be demonstrated that this population is delimited by international boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA. Sufficient time is not available within the 90-day initial review phase to conduct a review of international regulations, so for the purposes of this review and to err on the side of the species, we have examined the species range-wide and as a U.S. population of thorny skates (assuming that it meets the DPS policy criteria).

Given this assumption, we have considered the available information on biomass. Range-wide, it indicates a decline, and in the United States, surveys indicate that the population is at a historically low level; although the species may be at a low level and may have declined from previous historical levels, sufficient information was not presented to indicate that it is now threatened or endangered due to that low level of abundance. Millions of thorny skate exist and their distribution ranges across vast areas on both sides of the North Atlantic. We have also examined the five ESA section 4(a)(1) factors and specifically examined whether sufficient scientific information was presented by the petitioners or otherwise readily available in our files that indicates that thorny skates are threatened or endangered due to overutilization for commercial purposes or inadequacy of existing regulatory mechanisms to control harvest (including discards and illegal landings). The purported impacts of illegal fishery landings and high discard mortality in U.S. waters are not supported by the most recent fishery data. In fact, the Skate FMP's prohibition on possession of thorny skates appears to be extremely effective, and discard mortality rates are relatively low. While it is reasonable to predict that climate change will result in some changes to the habitat of thorny skate, sufficient information is not presented or otherwise available to indicate that climate change, or other natural or manmade factors, may be causing the species to be threatened or endangered. We conclude that the available information does not lead a reasonable person to conclude that thorny skates are threatened or endangered due to one or more of these factors at this time. However, to meet stock rebuilding objectives under the Magnuson-Stevens Act, the Council should be encouraged to maintain its efforts to reverse the decline of thorny skates. Additional research on several key aspects of thorny skate population dynamics could further inform management, particularly on the potential impacts of rising ocean temperatures on their distribution. This is currently being investigated by the NEFSC. Additionally, we will retain thorny skate on our Species of Concern list and attempt to devote resources to addressing the data deficiencies. Should these research efforts yield information not considered in this finding, we may initiate a review of the status of this species in the future.

**Petition Finding**

Based on the above information and the criteria specified in 50 CFR 424.14(b)(2), we find that the petitions and information readily available in our files do not present substantial scientific and commercial information indicating that the petitioned actions concerning thorny skate may be warranted at this time. Because we have concluded that the petitioned action to list thorny skates is not warranted, we do not need to explore the need to designate critical habitat or consider the need to list other skate species on the basis of similarity of appearance, as requested by the petitioner.

**References Cited**

A complete list of the references used in this finding is available upon request (see **ADDRESSES**).

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: December 14, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2011–32527 Filed 12–19–11; 8:45 am]

**BILLING CODE 3510–22–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No. 111205721–1719–01]**

**RIN 0648–XA741**

### Endangered and Threatened Wildlife; 90-Day Finding on Petition To List the Barndoor Skate, Winter Skate and Smooth Skate Under the Endangered Species Act

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, NMFS, announce a 90-day finding for a petition to list the

barndoor skate (*Dipturus laevis*), winter skate (*Leucoraja ocellata*) and smooth skate (*Malacoraja senta*) under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific information indicating the petitioned actions may be warranted. Accordingly, we will not initiate a review of the status of these species at this time.

**FOR FURTHER INFORMATION CONTACT:** Kim Damon-Randall, NMFS, Northeast Regional Office (978) 282–8485 or Maggie Miller, NMFS, Office of Protected Resources (301) 427–8403. The petition is available electronically at the NMFS Web site at *http://www.nero.noaa.gov/prot_res/CandidateSpeciesProgram/csr.htm.* A list of references is available upon request.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 22, 2011, we received a petition from WildEarth Guardians and Friends of Animals (the petitioners) requesting that we list thorny skate, barndoor skate, winter skate and smooth skate as threatened or endangered. In the alternative, the petitioners request that we list any and all distinct population segments (DPSs) of these species that may exist, and in particular the petitioners requested that we list the United States population of thorny skate as a threatened or endangered DPS.

The joint USFWS/NMFS petition management handbook (*http://www.nmfs.noaa.gov/pr/pdfs/laws/petition_management.pdf*) states that if we receive two petitions for the same species and a 90-day finding has not yet been made on the earlier petition, then the later petition will be combined with the earlier petition and a combined 90-day finding will be prepared. When we received the petition from WildEarth Guardians and Friends of Animals, we had already received a petition from the Animal Welfare Institute for thorny skate. Therefore, we combined the petitions for thorny skate and issued a single 90-day finding addressing both petitions for that species. Given that, this 90-day finding will address the remaining three skate species included in the petition from WildEarth Guardians and Friends of Animals. The petitioners state that there can be no reasonable dispute that the available information, in particular the International Union for Conservation of Nature's (IUCN) assessment that each of the petitioned species is ''Critically Endangered'' or ''Endangered,'' indicates that listing these skates as either threatened or endangered may be warranted.

*ESA Statutory Provisions and Policy Considerations*

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. ESA implementing regulations define substantial information as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1)). In determining whether substantial information exists for a petition to list a species, we take into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in our files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)), and the finding is to be published promptly in the **Federal Register**. If we find that the petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(A) of the ESA requires the Secretary of Commerce (Secretary) to conduct a status review of the species. Section 4(b)(3)(B) requires the Secretary to make a finding as to whether or not the petitioned action is warranted within 12 months of the receipt of the petition. The Secretary has delegated authority for these actions to the NOAA Assistant Administrator for Fisheries.

To be considered for listing under the ESA, a group of organisms must constitute a ''species,'' which is defined to also include subspecies and, for any vertebrate species, any DPS that interbreeds when mature (16 U.S.C. 1532(16)). On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (collectively, the ''Services'') adopted a policy to clarify their interpretation of the phrase ''distinct population segment of any species of vertebrate fish and wildlife'' (61 FR 4722). The joint DPS policy describes two criteria that must be considered when identifying DPSs: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. As further stated in the joint policy, if a population segment is discrete and significant (i.e., it is a DPS), its evaluation for endangered or threatened status will be based on the ESA's definitions of those terms and a review of the five factors enumerated in section 4(a)(1) of the ESA.

The ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and ''threatened'' if it is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range'' (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Under section 4(a)(1) of the ESA, a species may be determined to be threatened or endangered as a result of any one of the following factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Many petitions, such as this one, identify risk classifications made by other organizations or agencies, such as the IUCN, the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or State statutes may be informative, but the classification alone may not provide the rationale for a positive 90-day finding under the ESA. Thus, when a petition cites such classifications, we will evaluate the source information that the classification is based upon, in light of the standards on extinction risk and impacts or threats discussed above.

## Species Description

Barndoor skate are found in the Northwest Atlantic in the Gulf of St. Lawrence, Gulf of Maine and as far south as North Carolina. They are most abundant in offshore Gulf of Maine (Canadian waters), offshore Georges Bank, and Southern New England waters, with very few documented in inshore waters or in the Mid-Atlantic Region (New England Fisheries Management Council (NEFMC), 2009). Minimum length of barndoor skate caught in the Northeast Fisheries Science Center (NEFSC) surveys is 20 cm total length (TL) (8 in) and the largest individual caught was 136 cm TL (54 in). It has a broad body with pointed fins and snout and a relatively short tail with three rows of spines. Its primary distinguishing feature is a dark line that extends from the snout to the base of the tail. It has been estimated that barndoor skate reach maturity at 6–7 years of age.

Smooth skate occur from the Gulf of St. Lawrence and the Labrador shelf to as far south as South Carolina in the Northwest Atlantic Ocean. They are most abundant inshore and offshore Gulf of Maine and along the 100 fathom edge of Georges Bank, with very few documented in Southern New England or the Mid Atlantic (NEFMC, 2009). They are found in water depths of 45 to 900 m. The median length of smooth skate in the survey catch shows no trend over the full survey time series and is currently at about 40 cm TL (16 in). It has been estimated that they reach sexual maturity as early as 5 years old but possibly as late as 8 to 10 years. The distinctive feature of smooth skate is an irregular row of small thorns which run along its back and along the first half of its tail.

Winter skate occur from the south coast of Newfoundland and the southern Gulf of St. Lawrence to Cape Hatteras. They are most abundant inshore and offshore Georges Bank and Southern New England with lesser amounts in the Gulf of Maine or the Mid-Atlantic (NEFMC, 2009). They are found in water depths up to 90 m. Median length of winter skates increased from the mid 1990s through 2002 and then declined slightly to about 45 to 52 cm TL (18–20 in). The age at maturity is estimated at 7 years. The snout and pectoral fins of the winter skate are blunt and rounded. Other common names for winter skate include big skate, spotted skate and eyed skate.

**Analysis of Petition and Information Readily Available in NMFS Files**

In the following sections, we present information from the petition and readily available in our files to determine whether this information leads a reasonable person to conclude that listing under the ESA may be warranted due to any one or more of the factors listed under section 4(a)(1) of the ESA. A separate discussion is included for each of the three skate species included in the petition.

*Abundance*

The petition presents limited information on abundance of the skate species. It cites the IUCN classifications and places a great deal of weight on these. Additional information on biomass is contained in the discussion of the second ESA factor, overutilization for commercial, recreational, scientific or educational purposes, for each of the three species.

*Barndoor Skate Abundance*

The petition states that the IUCN lists barndoor skates as ''endangered'' throughout their range. The petitioners state that the biomass of barndoor skates declined throughout their range by 96–99 percent from the 1960s to the 1990s, most likely as a result of mortality as bycatch. They state that the population has experienced a slight increase in recent years and that the NEFSC has therefore concluded that it is neither overfished, nor experiencing overfishing. They state that although the potential increase gives conservationists some reason to be optimistic, researchers have suggested that it is difficult to tell whether the data demonstrate actual population resurgence. The petitioners cite a reference from the year 2000 for this information; however, since 2000, additional data has become available from both the NEFSC Spring and Autumn Bottom Trawl surveys that show that the population has continued to increase. The petitioners also state that while the barndoor skate is not overfished and not experiencing overfishing (according to the 2008 NEFSC survey), the 2005 biomass index is still 50 percent of the peak biomass observed during the 1960s when the species was first surveyed. In addition, the petitioners note that the average biomass index of barndoor skate is well below the target biomass index established by the NEFSC.

The 2008 Stock Assessment and Fishery Evaluation (SAFE) Report states that in the NEFSC spring survey (1968–2006), the annual total catch of barndoor skate ranged from 0 fish (several years during the 1970s and 1980s) to 196 fish in 2006. The NEFSC autumn survey (1963–2005) exhibited a similar increasing trend. Recent spring catches equated to 0.6 fish or 1.7 kg per tow in 2006 and recent autumn catches equated to 0.4 fish or 1.0 kg per tow in 2005. The 2008 SAFE Report states that, given this data, barndoor skate appear to be in a rebuilding phase that began in the 1990s. Since 1990, both spring and autumn survey indices have steadily increased, with the spring survey at the highest value in the time series and the autumn survey nearing the peak values found in the 1960s. In 2007, the NEFSC autumn survey showed a decline in biomass which reduced the 3-year moving average; however, it remains above the biomass threshold and thus, the barndoor skate is not considered to be overfished. In fact, the survey biomass index for barndoor skate has been above the overfished biomass threshold since 2004. The 2008–2010 NEFSC autumn average survey biomass index of 1.11 kg/tow is above the biomass threshold reference point (0.81 kg/tow), and thus, the species is not overfished but is not yet rebuilt to biomass at maximum sustainable yield (Bmsy). The 2008–2010 average index is above the 2007–2009 index by ten percent; therefore, as indicated previously, overfishing is not occurring. In addition, recent catches of barndoor skate include individuals as large as those recorded during the peak abundance of the 1960s, and recent survey data show an increase in the number of fish between 40 and 80 cm TL, common lengths during the 1960s (NEFMC, 2009).

**Previous ESA Action for Barndoor Skate**

On January 15, 1999, we published in the **Federal Register** a notification soliciting comments and reliable documentation on species we were considering adding to the Endangered Species Act (ESA) candidate species list (64 FR 2629; January 15, 1999). In that publication, we listed barndoor skates (*Dipturus laevis*) as one of the species under consideration. On March 4, 1999, we received a petition from GreenWorld to list barndoor skates as endangered or threatened under the ESA and to designate Georges Bank and other appropriate areas as critical habitat. GreenWorld requested that they be listed immediately, as an emergency matter, as well as similar looking species of skates to ensure the protection of barndoor skates. On April 2, 1999, we received a second petition from the Center for Marine Conservation (CMC), now the Ocean Conservancy, to list barndoor skates as an endangered species. We considered the second petition a comment on the first petition submitted by GreenWorld. On June 23, 1999, after considering all available information, we published our revised list of candidate species, which included barndoor skates (64 FR 33466; June 23, 1999). In that same month, we published a finding that the petition action to list barndoor skates under the ESA might be warranted (64 FR 33040; June 21, 1999). We then initiated a review of the status of the species to determine if listing barndoor skates under the ESA was warranted. As part of that review, we conducted a stock assessment of the species using the information published in the SAFE report. Instead of preparing a separate stand alone status review document, we referenced the SAFE report as the best available data on the status of the species.

On September 27, 2002, after reviewing the best scientific and commercial information available, we published a determination that listing

barndoor skates as either threatened or endangered under the ESA was not warranted (67 FR 61055; September 27, 2002). Survey data showed an increase in abundance and biomass, expansion of known areas where barndoor skates were encountered, an increase in size range, as well as an increase in small barndoor skates collected. These data are not consistent with a species in danger of extinction. Furthermore, the most significant identifiable threat to the species, overfishing, had been reduced by regulatory measures affecting several northeast fisheries. In addition to the regulatory measures already in place, NMFS was working at that time with the New England Fishery Management Council (NEFMC) to develop the Skate Fishery Management Plan (FMP). Due to remaining uncertainties regarding the status and population structure of barndoor skates, NMFS determined that retaining the species on the agency's list of candidate species (subsequently, changed to species of concern list) was warranted until additional scientific and commercial data became available (67 FR 61055; September 27, 2002).

Due to new information available since 2004, a review was initiated in 2009 to present the best scientific and commercial data available to investigate the status of the species relative to the criteria for remaining a species of concern. The most recent research on life history characteristics and population dynamics of barndoor skates has revealed that the rebuilding estimate is more rapid and suggests the species may be more resilient to exploitation than previously believed (Barndoor Skate Internal Status Review, 2009). In addition, the consistent rise in biomass as well as the large increase in size ranges, coupled with management in other fisheries and the Skate FMP, supports the continued rebuilding of barndoor skate stocks. Given the newly acquired information presented above, it was determined that barndoor skates no longer met the criteria for a species of concern and inclusion on the species of concern list was no longer warranted. Thus, the species was removed from the list in 2009.

*Smooth Skate Abundance*

The petitioners state that the IUCN has designated smooth skate as ''endangered'' throughout their range. The IUCN assessed smooth skate as ''near threatened'' in U.S. waters in 2004. The petitioners state that the NEFSC biomass index for smooth skate has declined continuously from the 1970s to the 1980s, partially as a result of mortality from bycatch. They state that the autumn survey index has stabilized at about 25 percent of the peak observed during the 1970s. The petitioners state that in 2008, the NEFSC determined smooth skates to be overfished but not subject to current overfishing. They state that the three-year moving average of the biomass index declined by over 22 percent between 2004–2006 and 2005–2007. The data presented by the petitioners for the most recent 3-year average biomass are out of date. In addition, the petitioners compare this out-dated information to an ''old'' reference point (0.31 kg/tow) and not the updated biomass target and thresholds which have been adopted by the Data Poor Stocks Working Group (DPSWG) and Amendment 3 to the Skate FMP in 2009.

The 2008 SAFE Report states that the total annual catch of smooth skate in the NEFSC spring surveys ranged from 30 fish in 2000 to 71 fish in 2006. The total annual catch of smooth skates in the NEFSC autumn surveys ranged from 55 fish in 2000 to 44 fish in 2006. Indices of smooth skate abundance and biomass from the NEFSC surveys peaked during the early 1970s for the spring series and the late 1970s for the autumn series. NEFSC survey indices declined during the 1980s before stabilizing during the early 1990s at about 25 percent of the autumn and 50 percent of the spring survey index values of the 1970s. In 2008, smooth skate was determined to be overfished (in accordance with the Northeast Skate Complex Fishery Management Plan, referred to hereafter as the Skate FMP) based on the 2007 autumn survey data, because the 3-year moving average dropped below the threshold. However, overfishing was not occurring (as defined by the Skate FMP) because the consecutive 3-year moving average of the biomass indices did not exceed the maximum threshold of 30 percent which, according to the FMP, defines when overfishing is occurring. Since 2008, new data has become available which has changed the overfished status of the smooth skate species. The 2008–2010 NEFSC autumn average biomass index of 0.16 kg/tow is now above the biomass threshold reference point (0.145 kg/tow) and thus, the species is not overfished but is not yet rebuilt to Bmsy. The 2008–2010 index is above the 2007–2009 index by 22 percent; therefore, overfishing is not occurring. The biomass target for smooth skate (0.27 kg/tow) is an order of magnitude lower than most other skates in the complex.

The smooth skate's low relative abundance in U.S. waters is due to the fact that its center of abundance appears to be in Canadian waters (Kulka *et al.,* 2006). The species is not distributed evenly within its global range (IUCN, 2004). Following declines in the 1970s, the relative abundance of some of these population concentrations has increased significantly in recent years, while others have been stable or slightly declining (Kulka *et al.,* 2006). Minimum estimates of smooth skate abundance in these regions from Canadian trawl surveys range from 194,000–23,000,000 fish for 1995–2006, depending on the selected survey (Kulka *et al.,* 2006).

*Winter Skate Abundance*

The petitioners state that the IUCN has designated winter skates as ''endangered'' throughout their range. A regional ''vulnerable'' listing was recommended for the United States. The petitioners state that the NEFSC declared winter skate overfished in 2007. They state that although the most recent survey indicates that winter skate are not currently subject to overfishing as defined in the FMP, the 3-year moving average of winter skate biomass index has declined steadily over the past decade and declined four percent between 2004–2006 and 2005–2007. The data presented by the petitioners for the most recent 3-year average biomass are 3 years out of date. In addition, the petitioners reference the old biomass index reference point (6.46 kg/tow) and not the updated biomass target and thresholds adopted by the DPSWG and Amendment 3 to the Skate FMP in 2009. The petitioners state that the effects of the directed take for wings and take as bait, combined with bycatch mortality from trawling, have led to a dramatic decline in the winter skate population, and state that 62 percent of the New England population has been lost since the 1980s.

Unlike thorny and smooth skates, the winter skate's center of abundance is in U.S. waters and they range as far south as North Carolina. Winter skate is the target species of the Northeast U.S. skate wing fishery, representing approximately 95 percent of skate wing landings (NEFMC, 2009). The petitioners incorrectly claim that winter skate biomass is ''currently only 38 percent of the peak biomass observed during the 1980's.'' Based on survey data through fall 2010, the biomass of winter skate is actually at its highest level since the mid-1980s and well above its target biomass of 5.60 kg/tow. The petitioners appear to only reference survey biomass data through 2007, when winter skate biomass was significantly lower. NMFS declared winter skate overfished in 2007, but a subsequent stock assessment concluded that the species had not actually

declined below its biomass threshold (DPWG, 2009). Winter skate biomass exceeded its target level of 5.60 kg/tow in 2009, and is currently at 9.64 kg/tow (72 percent above the target). Winter skate is not overfished and overfishing is not occurring as defined in the Skate FMP. This stock appears to have rebuilt despite skate landings being at the highest levels on record (2008–2010 average annual landings = 20,371 mt). The fact that this stock has increased in biomass despite increases in harvest, and continues to support a viable fishery, suggests that this species is not at risk of extinction now or in the future.

In Canadian waters, winter skate is primarily a bycatch species. In 2005, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) released a status assessment on four ''designatable units'' (DU) of winter skate. Based primarily on life history characteristics and the low frequency of occurrences in catches winter skate, COSEWIC designated the southern Gulf of St. Lawrence DU as Endangered, the eastern Scotian Shelf as Threatened, the Georges Bank-Western Scotian Shelf/Bay of Fundy as of ''Special Concern'' and the Northern Gulf-Newfoundland population as ''Data Deficient'' (Swain *et al.,* 2006).

The 2008 SAFE Report examined the distribution of winter skate in Canadian waters using research surveys and commercial fishery data by Simon *et al.* (2003). No trend in abundance was found in the Georges Bank region, and the series average was 1.9 million individuals. Declines were evident in the Southern Gulf of St. Lawrence and on the Scotian Shelf. In recent years, in addition to fishing mortality, natural mortality from seal predation has begun to have an impact on winter skates in Canada (Benoit *et al.,* 2011).

**Analysis of ESA Section 4(a)(1) Factors for Barndoor, Smooth and Winter Skates**

The petition presents information on the five ESA factors for all three species, and the petitioners conclude that all three species are threatened by direct and indirect exploitation. The petitioners state that the life history of these species, which make them especially vulnerable to exploitation, argue even more urgently for the adoption of strong regulatory protections provided by the ESA.

The petition makes similar arguments for all three skate species so they will all be addressed together first, followed by species-specific information and analysis. For all three species, the petitioners claim that the use of groundfish trawling gear degrades benthic habitat structure which affects the availability of the skate's prey as well as the skate's ability to avoid predators. This is a very general claim and no information is presented or otherwise available to us to indicate that the prey of barndoor, smooth and/or winter skate has been affected in such a manner as to pose a significant threat to the species. The petitioners further state that because smooth skates are prey specialists, they may be even more sensitive to habitat alteration than other skates. While this may be true, the petitioners do not present substantial information indicating that habitat degradation has caused or will cause smooth skate to be threatened or endangered now or in the future.

Regarding overutilization for commercial, recreational, scientific or educational purposes, the petitioners claim that landings of all three skate species have grown since the 1980s and state that the directed skate take will likely continue to increase as use of other groundfish becomes more restricted and less profitable. This claim does not take into account that Amendment 3 to the Skate FMP has set acceptable biological catch and annual catch targets. It also does not take into account that in order to land skates, a fisher must use a groundfish day-at-sea, and that there have been effort reductions in the groundfish fleet under the Multispecies FMP. Groundfish permit holders that participate in sectors operate under sector-specific catch entitlements. The implications of reduced fishing activity for groundfish on the catch of skates have not yet been analyzed.

The petitioners raise concerns over the discard mortality rate (the percentage of skates that die after they are thrown overboard) which they state could be as high as 56 percent. Research on the discard mortality rates of winter, little, thorny, and smooth skates in bottom trawl gear is currently being conducted by Drs. John Mandelman (New England Aquarium) and James Sulikowski (University of New England) (NOAA Saltonstall-Kennedy Grant Program). Preliminary data provided to NMFS and the Skate Plan Development Team (PDT) indicate that discard mortality rates are significantly lower than the 50 percent previously assumed by the NEFSC. Based on new research, the 2008 to 2010 discard mortality rate for little and winter skates caught by trawl gear was reduced from 50 percent to 20 and 12 percent, respectively. As a result, the skate discard rate (the percentage of the total annual catch represented by dead discards) was reduced from 52 to 36 percent. (NMFS, 2011).

The petitioners further state that as long as the skate bait and wing fishery continues to target the smaller little and winter skates, it will continue to threaten barndoor and smooth skates as well. This assumes that the fishery operates in areas where barndoor and smooth skate occur; however, Amendment 3 to the Skate FMP shows that the bait fishery operates in an area where mostly little and winter skate occur, and not barndoor and smooth skate.

The petitioners state that even a normal rate of predation could have a significant impact on the already depleted barndoor, smooth and winter skates, and they state that we should fully consider the risks posed to these species' populations from predation in assessing their status. Similarly, the petitioners state that we should fully consider the risks posed to the survival of these three skates by parasitism in assessing the status of the three species. Information presented by the petitioner and otherwise available to us does not indicate that any of these three species of skates are threatened or endangered due to predation or disease.

Regarding inadequacy of existing regulatory mechanisms, the petitioners state that because the species-specific reporting requirements are not being enforced, the prohibition on landing and possessing barndoor and smooth skates is essentially meaningless. The potential impact of the lack of species-specific reporting in the skate fishery on the survival of barndoor and smooth skates is overstated. While the historical lack of species-specific trends in landings and discards has hampered stock assessment efforts, recent data collection efforts have greatly improved our understanding of the species composition of the landings. Over the last several years (2005 to 2010), the prohibitions on thorny, barndoor, and smooth skates have been estimated to be approximately 98 percent effective (NMFS Northeast Region, unpublished data). The petitioners argue that the existing regulatory mechanisms are inadequate to protect smooth skates; however, port sampling of skate wing landings conducted by NMFS indicates that from 2005–2010 prohibited species occurred in only approximately two percent of landings. Of 59,879 skate wings sampled during this period, only three wings were identified as smooth skate (NMFS, unpublished data). The smooth skate's small body size makes it generally non-marketable for the skate wing fishery, and it is not likely to occur in bait skate landings because this

fishery primarily operates in southern New England waters, south of the smooth skate's range. While bycatch and discards in the Gulf of Maine may be the primary source of fishing mortality for this species in U.S. waters, recent analyses show that the overlap between fishing effort and smooth skate distribution is minimal (NEFMC, 2011). However, overlap is likely more prevalent in Canadian waters (Kulka *et al.,* 2006).

Regarding smooth skates, the petitioners raise particular concern that the prohibition on landing smooth skates is limited to the Gulf of Maine Regulated Mesh Area, which only covers the Gulf of Maine. While this is true, it is appropriate because the vast majority of the U.S. smooth skate biomass is within the Gulf of Maine Regulated Mesh Area. Finally, the petitioners raise concern that the FMP only requires vessels to report discarded skate by size category of small or large. The statement is correct for Vessel Trip Reports (VTRs). For the purposes of VTRs, vessels only report the weights of large and small skates discarded. However, VTR data are not used to estimate the magnitude or species composition of skate discards. This is done using at-sea observer data to estimate discard/kept ratios. Species composition of discards is estimated through the NMFS stock assessment process, and combines observer and trawl survey data for accurate discard information.

In Canada, when the skate fishery first occurred in 1994, winter skate constituted the majority of skates caught (over 2,000 mt). In Canada, winter skate landings are under quota control in the Scotian Shelf (the only directed fishery in the Northwest Atlantic). The total allowable catch was reduced from 2000 mt in 1994 to 300 mt in 2001 and 200 mt in 2002 (DFO 2007). This fishery was closed in April 2006 to protect the winter skate population.

Regarding other natural or manmade factors affecting the continued existence of barndoor, smooth, and winter skates, the petitioners note that the life history characteristics of large skates make them especially vulnerable to exploitation. They state that because of their life history characteristics, these skates are not likely to recover quickly from their current low levels and are more susceptible to exploitation. The petitioners do not present substantial information to indicate why or how these factors result in the species possibly warranting listing as either threatened or endangered.

As noted above, we conducted a review of the status of barndoor skate in 2009 and concluded that the most recent research on life history characteristics and population dynamics of barndoor skates illustrated a more rapid rebuilding estimate and suggested that the species may be more resilient to exploitation than previously believed. In addition, the consistent rise in biomass and large increase in size ranges, coupled with the management measures in other fisheries and the Skate FMP, support the continued rebuilding of barndoor skate stocks. The 2008–2010 NEFSC autumn average survey biomass index of 1.11 kg/tow is above the biomass threshold reference point (0.81 kg/tow) and thus, the species is not overfished but is not yet rebuilt to Bmsy. The 2008–2010 index is above the 2007–2009 index by 10 percent; therefore, overfishing is not occurring. Consequently, the information available to us since our 2009 decision to remove barndoor skate from the species of concern list, and that which is presented by the petitioners, does not indicate that the petitioned action for barndoor skates may be warranted.

The petitioners cite one study which they state linked the recent decline in smooth skate abundance with a decrease in water temperature (resulting from climate change), but note that no corresponding recovery has been observed with an ensuing increase in water temperature. They state that this observation suggests that the smooth skate population may be adversely affected by climate change. For smooth skate, the 2008–2010 NEFSC autumn average biomass index of 0.16 kg/tow is above the biomass threshold reference point (0.145 kg/tow) and thus, the species is not overfished but is not yet rebuilt to Bmsy. The 2008–2010 index is above the 2007–2009 index by 22 percent; therefore, overfishing is not occurring. While the species may be impacted by climate change, the fact that it is not currently overfished, overfishing is not occurring, and the biomass is increasing, does not indicate that climate change or other factors are causing the species to be threatened or endangered. We conclude that the available information does not indicate that the petitioned action may be warranted for smooth skates.

For winter skate, the 2008–2010 NEFSC autumn average biomass index of 9.64 kg/tow is above both the biomass threshold reference point (2.80 kg/tow) and the Bmsy proxy (5.60 kg/tow), and thus, the species is not overfished and is above Bmsy. The 2008–2010 average index is above the 2007–2009 index by 18 percent; therefore, overfishing is not occurring. Given that the winter skate biomass indices exceed the biological reference point, this species is considered rebuilt, despite the occurrence of a directed fishery. The fact that the species has rebuilt under existing regulatory mechanisms does not support the petitioners claim that it is threatened or endangered due to direct and indirect exploitation or inadequacy of existing regulatory mechanisms for fishing. We conclude that the available information does not indicate that the petitioned action may be warranted for winter skates.

**Conclusion**

The use of groundfish trawling gear was posed by the petitioners as degrading benthic habitat structure and affecting the availability of the skate's prey as well as the skate's ability to avoid predators; however, current information was not presented, nor was it available in our files, to indicate that this gear is currently having significant impacts on the skates or will in the foreseeable future. Although the petitioners claim that overutilization of skates for commercial, recreational, scientific, or education purposes in the form of direct and indirect exploitation requires that the species be listed under the ESA, available information indicates that overfishing is not currently occurring in any of the skate species. The petitioners cite out of date data, but these data have since been updated and indicate that the skates are not in danger of extinction or likely to become endangered in the foreseeable future. In addition, available information on disease and predation on skates is limited, and the petitioners do not present substantial information indicating that the petitioned actions of listing the skates under the ESA due to disease or predation may be warranted at this time. Regarding inadequacy of existing regulatory mechanisms, the petitioners state that because the species-specific reporting requirements are not being enforced, the prohibition on landing and possessing barndoor and smooth skates is essentially meaningless. However, recent data show the prohibitions on barndoor and smooth skates have been estimated to be approximately 98 percent effective, and prohibited species occurred in only approximately 2 percent of landings from 2005–2010. In addition, current NMFS regulations have been adequate to prevent overfishing for all three skate species in the United States. With regards to other natural or manmade factors affecting the continued existence of barndoor, smooth and winter skates, the petitioners note that the life history characteristics of large skates make them especially vulnerable to exploitation as

does climate change. However, given the rapid rebuilding of the barndoor skate, the rebuilt population of the winter skate, and the lack of available information on climate impacts on smooth skate abundance, available information does not indicate that life history characteristics or climate change pose a significant threat to the skate species. Because we have concluded that the petitioned action to list barndoor, winter and/or smooth skates is not warranted, we do not need to designate critical habitat or consider the need to list other skate species on the basis of similarity of appearance, as requested by the petitioner.

**Petition Finding**

Based on the above information and the criteria specified in 50 CFR 424.14(b)(2), after reviewing the information contained in the petition and information readily available in our files, we conclude that the petition fails to present substantial scientific or commercial information indicating that the petitioned action concerning barndoor, smooth and/or winter skate may be warranted.

**References Cited**

A complete list of the references used in this finding is available upon request (see **ADDRESSES**).

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: December 14, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

[FR Doc. 2011–32530 Filed 12–19–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA878**

### Pacific Fishery Management Council; Public Meetings and Hearings

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

**ACTION:** Notice of availability of reports; public meetings, and hearings.

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council) has begun its annual preseason management process for the 2012 ocean salmon fisheries. This document announces the availability of Pacific Council documents as well as the dates and locations of Pacific Council meetings and public hearings comprising the Pacific Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April 2012 Pacific Council meetings will be published in subsequent **Federal Register** documents prior to the actual meetings.

**DATES:** Written comments on the salmon management alternatives must be received by 11:59 p.m. Pacific Time, March 26, 2012.

**ADDRESSES:** Documents will be available from, and written comments should be sent to, Mr. Dan Wolford, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, telephone: (503) 820–2280 (voice) or (503) 820–2299 (fax). Comments can also be submitted via email at *PFMC.comments@noaa.gov* address, or through the internet at the Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments, and include the I.D. number in the subject line of the message. For specific meeting and hearing locations, see supplementary information.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chuck Tracy, telephone: (503) 820–2280.

**SUPPLEMENTARY INFORMATION:**

**Schedule for Document Completion and Availability**

February 16, 2012: ''Review of 2011 Ocean Salmon Fisheries'' will be mailed to the public and posted on the Council Web site at *http://www.pcouncil.org.*

March 1, 2012: ''Preseason Report I-Stock Abundance Analysis and Environmental Assessment Part 1 for 2012 Ocean Salmon Fishery Regulations'' will be mailed to the public and posted on the Council Web site at *http://www.pcouncil.org.*

March 22, 2012: ''Preseason Report II-Proposed Alternatives and Environmental Assessment Part 2 for 2012 Ocean Salmon Fishery Regulations'' and public hearing schedule will be mailed to the public and posted on the Council Web site at *http://www.pcouncil.org.* The report will include a description of the adopted salmon management alternatives and a summary of their biological and economic impacts.

April 20, 2012: ''Preseason Report III-Analysis of Council-Adopted Ocean Salmon Management Measures for 2011 Ocean Salmon Fisheries'' will be mailed to the public and posted on the Council Web site at *http://www.pcouncil.org.*

May 1, 2012: Federal regulations for 2012 ocean salmon regulations will be published in the **Federal Register** and implemented.

**Meetings and Hearings**

January 17–20, 2012: The Salmon Technical Team (STT) will meet at the Pacific Council office in a public work session to draft ''Review of 2011 Ocean Salmon Fisheries'' and to consider any other estimation or methodology issues pertinent to the 2012 ocean salmon fisheries.

February 21–24, 2012: The STT will meet at the Pacific Council office in a public work session to draft ''Preseason Report I-Stock Abundance Analysis and Environmental Assessment Part 1 for 2012 Ocean Salmon Fishery Regulations'' and to consider any other estimation or methodology issues pertinent to the 2012 ocean salmon fisheries.

March 26–27, 2012: Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Pacific Council. Written comments received at the public hearings, and a summary of oral comments at the hearings will be provided to the Council at its April meeting.

All public hearings begin at 7 p.m. at the following locations:

March 26, 2012: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA 98595, telephone: (360) 268–9101.

March 26, 2012: Red Lion Hotel, Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR 97420, telephone: (541) 267–4141.

March 27, 2012: Red Lion Eureka, Evergreen Room, 1929 Fourth Street, Eureka, CA 95501, telephone: (707) 445–0844.

Although non-emergency issues not contained in the STT meeting agendas may come before the STT for discussion, those issues may not be the subject of formal STT action during these meetings. STT action will be restricted to those issues specifically listed in this document and to any issues arising after publication of this document requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STT's intent to take final action to address the emergency.

**Special Accommodations**

These public meetings and hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 (voice), or (503) 820–2299 (fax) at least 5 days prior to the meeting date.

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

Dated: December 14, 2011.

**Tracey L. Thompson,**

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

[FR Doc. 2011–32420 Filed 12–19–11; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648–XA876

### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice; public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Oversight Committee, in January, 2012, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Tuesday, January 10, 2012 at 10 a.m.

**ADDRESSES:** This meeting will be held at the Hilton Garden Inn, One Thurber Street, Warwick, RI 02886; telephone: (401) 734–9600; fax: (401) 734–9700.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to consider recommending that the Council establish a control date pertaining to management of the monkfish fishery including, but not limited to, accumulation limits, and to begin outlining the range of alternatives to meet the Amendment 6 goals and objectives.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: December 14, 2011.

**Tracey L. Thompson,**

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

[FR Doc. 2011–32419 Filed 12–19–11; 8:45 am]

BILLING CODE 3510–22–P

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10 a.m., Friday, January 27, 2012.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED**

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov*.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, (202) 418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2011–32681 Filed 12–16–11; 4:15 pm]

BILLING CODE 6351–01–P

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

The following notice of scheduled meetings is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

**AGENCY HOLDING THE MEETINGS:** Commodity Futures Trading Commission.

**TIMES AND DATES:** The Commission has scheduled meetings for the following dates:

January 11, 2012 at 9:30 a.m.
January 17, 2012 at 9:30 a.m.
February 9, 2012 at 9:30 a.m.
February 23, 2012 at 9:30 a.m.

The meeting that was previously scheduled for January 5, 2012 has been cancelled.

**PLACE:** Three Lafayette Center, 1155 21st St. NW., Washington, DC, Lobby Level Hearing Room (Room 1300).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission has scheduled these meetings to consider various rulemaking matters, including the issuance of proposed rules and the approval of final rules. The Commission may also consider and vote on dates and times for future meetings. Agendas for each of the scheduled meetings will be made available to the public and posted on the Commission's Web site at *http://www.cftc.gov* at least seven (7) days prior to the meeting. In the event that the times or dates of the meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site.

**CONTACT PERSON FOR MORE INFORMATION:** David A. Stawick, Secretary of the Commission, 202–418–5071.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2011–32688 Filed 12–16–11; 4:15 pm]

BILLING CODE 6351–01–P

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10 a.m., Friday, January 20, 2012.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED**

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change,

along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, (202) 418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2011–32684 Filed 12–16–11; 4:15 pm]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10 a.m., Friday, January 6, 2012.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED**

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, (202) 418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2011–32686 Filed 12–16–11; 4:15 pm]

**BILLING CODE 6351–01–P**

## COMMODITY FUTURES TRADING

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 10 a.m., Friday, January 13, 2012.

**PLACE:** 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED**

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, (202) 418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2011–32685 Filed 12–16–11; 4:15 pm]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### U.S. Air Force Scientific Advisory Board Notice of Meeting

**AGENCY** Department of the Air Force, U.S. Air Force Scientific Advisory Board.

**ACTION** Meeting Notice.

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the United States Air Force Scientific Advisory Board (SAB) meeting will take place 10 to 11 January 2012 at the SAFTAS Conference and Innovation Center, 1550 Crystal Drive Plaza Level, Arlington, VA 22202. The meeting on Tuesday, 10 January 2012, will be from 7:45 a.m.–4:30 p.m., with the sessions between 7:45 a.m. to 9:45 a.m. open to the public. The meeting on Wednesday, 11 January 2012, will be from 8 a.m.–4:15 p.m. with the sessions from 1:30 p.m.–4:15 p.m. open to the public. The awards ceremony from 8 p.m. to 9 p.m. on 11 January 2012 at the Army Navy Country Club in Arlington, VA will be open to the public.

The purpose of this Air Force Scientific Advisory Board quarterly meeting is to introduce the FY12 SAB study topics tasked by the Secretary of the Air Force and receive presentations that address relevant subjects to the SAB mission to include introduction of the new Board members for FY12, status of FY11 studies and the remaining FY12 Board schedule; the latest updates on the ongoing Aircraft Oxygen Generation Study; review of the recently completed SAB Air Force Research Laboratory science and technology reviews; non-traditional intelligence, surveillance, and reconnaisance data collection and exploitation; ensuring cyber situational awareness for commanders; extended use of Air Force Space Command space-based sensors; acquisition challenges amid new era of defense policy and lessons learned from challenged acquisition programs; and balancing today's needs with tomorrow's challenges to prepare for full-spectrum operations.

In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, The Administrative Assistant of the Air Force, in consultation with the Air Force General Counsel, has agreed that the public interest requires some sessions of the United States Air Force Scientific Advisory Board meeting be closed to the public because they will discuss information and matters covered by sections 5 U.S.C. 552b(c) (1) and (4).

Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR § 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

**FOR FURTHER INFORMATION CONTACT:** The United States Air Force Scientific Advisory Board Executive Director and Designated Federal Officer, Lt Col Matthew E. Zuber, (240) 612–5503, United States Air Force Scientific Advisory Board, 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762, *matthew.zuber@pentagon.af.mil.*

**Bao-Anh Trinh,**

*DAF, Air Force Federal Register Liaison Officer.*

[FR Doc. 2011–32493 Filed 12–19–11; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF EDUCATION

### Notice of Submission for OMB Review

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Interested persons are invited to submit comments on or before January 19, 2012.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 15, 2011.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

### Institute of Education Sciences

*Type of Review:* Revision.

*Title of Collection:* High School Longitudinal Study of 2009 (HSLS: 09) High School Transcript Collection and College Update Field Test and Second Follow-up Panel Maintenance.

*OMB Control Number:* 1850–0852.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Annually.

*Affected Public:* Individuals or households.

*Total Estimated Number of Annual Responses:* 45,159.

*Total Estimated Annual Burden Hours:* 24,607.

*Abstract:* The High School Longitudinal Study of 2009 (HSLS: 09) is a nationally representative, longitudinal study of more than 20,000 ninth graders in 944 schools who will be followed through their secondary and postsecondary years. The main study students will be re-surveyed in 2012 when most are high school 11th graders. The study focuses on understanding students' trajectories from the beginning of high school into university or the workforce and beyond. What students decide to pursue when, why, and how are crucial questions for HSLS: 09, especially, but not solely, in regards to science, technology, engineering, and math courses, majors, and careers. This study includes a new student assessment in algebraic skills, reasoning, and problem solving and, like past studies, will survey students, their parents, school administrators, and school counselors. Students will be administered a questionnaire and an assessment instrument. This submission will ask for the clearance for a field test of the high school transcript collection and college update of HSLS: 2009 high school students who were in ninth grade in the base year; second follow-up panel maintenance; and a 60-day waiver for the full scale submission for these activities.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4730. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2011–32510 Filed 12–19–11; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before February 21, 2012.

**ADDRESSES:** Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner;

(3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 15, 2011.

**Kate Mullan,**

*Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

**Federal Student Aid**

*Type of Review:* Revision.

*Title of Collection:* Fiscal Operations Report for 2011–2012 and Application to Participate for 2013–2014 Fiscal Operations Report and Application to Participate and Reallocation Form E40–4P.

*OMB Control Number:* 1845–0030.

*Agency Form Number(s):* E40–4P.

*Frequency of Responses:* Annually.

*Affected Public:* Business or other for-profit; Federal Government; Not-for-profit institutions.

*Total Estimated Number of Annual Responses:* 4,258.

*Total Estimated Annual Burden Hours:* 32,963.

*Abstract:* The data submitted electronically in the Fiscal Operations Report and Application to Participate (FISAP) through FISAP on the web is used by the Department of Education (the Department) to determine the institution's funding need for the award year and monitor program effectiveness and accountability of fund expenditures. The Reallocation form is part of FISAP on the web. The Higher Education Act of 1965, as amended requires that if an institution anticipates not using all of its allocated funds for the Perkins, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs by the end of an award year, it must specify the anticipated remaining unused amount to the Secretary. This data collection is due to expire June 30, 2012. In addition to renewing the expiration date references to dates and award year dates have been updated on the forms and in the instructions for both documents. Two fields were removed from the FISAP due to the termination of the Academic Competitiveness Grant and National Science and Mathematics Access to Retain Talent Grant programs. Additional clarifications were made to the FISAP instructions.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4767. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2011–32513 Filed 12–19–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Biological and Environmental Research Advisory Committee

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of renewal of the Biological and Environmental Research Advisory Committee.

**SUMMARY:** Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41, Code of Federal Regulations, Section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Biological and Environmental Research Advisory Committee will be renewed for a two-year period beginning December 14, 2011.

The Committee provides advice and recommendations to the Department of Energy on matters related to the Biological and Environmental Research programs.

Additionally, the renewal of the Biological and Environmental Research Advisory Committee has been determined to be essential to the conduct of the Department's mission and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Thomassen, Designated Federal Officer, by telephone at (301) 903–9817.

Issued in Washington, DC, on December 14, 2011.

**Carol A. Matthews,**

*Committee Management Officer .*

[FR Doc. 2011–32502 Filed 12–19–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. 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:** Wednesday, January 11, 2012; 6 p.m.

**ADDRESSES:** DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

**FOR FURTHER INFORMATION CONTACT:** Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@oro.doe.gov* or check the Web site at: *www.oakridge.doe.gov/em/ssab.*

**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:* The main meeting presentation will be on the Asset Revitalization and Reuse. The speaker will be Brian Henry, DOE Oak Ridge.

*Public Participation:* The EM SSAB, Oak Ridge, 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 Melyssa P. Noe at least seven days in advance of the meeting at the phone 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 the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days 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.

*Minutes:* Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC, on December 14, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–32505 Filed 12–19–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Northern New Mexico

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. 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:** Wednesday, January 25, 2012, 1 p.m.–7 p.m.

**ADDRESSES:** NNMCAB Offices, 96 Cities of Gold Road, Suite 3, Pojoaque, New Mexico 87506.

**FOR FURTHER INFORMATION CONTACT:** Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *msantistevan@doeal.gov.*

**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**

1 p.m. Call to Order by Co-Deputy Designated Federal Officers (DDFO), Ed Worth and Lee Bishop.

Establishment of a Quorum: Roll Call and Excused Absences, Karen Erickson.

Welcome and Introductions, Ralph Phelps.

Approval of Agenda and November 30, 2011, Meeting Minutes.

1:30 p.m. Public Comment Period.

1:45 p.m. Old Business.

- Written Reports.
- Other Items.

2 p.m. New Business, Ralph Phelps.

2:30 p.m. Items from DDFOs, Ed Worth and Lee Bishop.

- Definition of One Contaminant (as requested).
- Other Items.

3 p.m. Break.

3:15 p.m. Presentation on Environmental Cleanup.

4:30 p.m. Discussion on Draft Recommendation(s) to DOE, Ralph Phelps.

5 p.m. Dinner Break.

6 p.m. Public Comment Period .

6:15 p.m. Consideration and Action on Draft Recommendation(s) to the DOE, Ralph Phelps.

6:30 p.m. Wrap up and Comments from Board Members.

7 p.m. Adjourn, Lee Bishop and Ed Worth.

*Public Participation:* The EM SSAB, Northern New Mexico, 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 Menice Santistevan at least seven days 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 Menice Santistevan at the address or telephone number listed above. Requests must be received five days 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.

*Minutes:* Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org/.*

Issued at Washington, DC on December 14, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–32535 Filed 12–19–11; 8:45 am]

BILLING CODE 6405–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Portsmouth

**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), Portsmouth. 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, January 5, 2012, 6 p.m.

**ADDRESSES:** Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

**FOR FURTHER INFORMATION CONTACT:** Joel Bradburne, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661. Phone (740) 897–3822. email: *Joel.Bradburne@lex.doe.gov.*

**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.
- Approval of December Minutes.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Presentation:
  - Site Characterization, Habitat and Land Use Mapping and Data/Wildlife Management Plan—Summary of Year 1 Field Work and Data Collection, Bob Eichenberg and Rob Wiley, Ohio University.
- Information Portfolio, Karen Price.
- FLUOR B&W Community Commitment Plan Update, Jerry Schneider.
- Administrative Issues:
  - Subcommittee Updates.
- Public Comments.
- Final Comments from the Board.

• Adjourn.

*Public Participation:* The meeting is open to the public. The EM SSAB, Portsmouth, 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 Joel Bradburne at least seven days in advance of the meeting at the phone 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 Joel Bradburne at the address or telephone number listed above. Requests must be received five days 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.

*Minutes:* Minutes will be available by writing or calling Joel Bradburne at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC on December 14, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–32539 Filed 12–19–11; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Case No. CAC–036]**

### Decision and Order Granting a Waiver to LG Electronics U.S.A., Inc. From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Decision and Order.

**SUMMARY:** This notice publishes the U.S. Department of Energy's (DOE) Decision and Order in Case No. CAC–036, which grants LG Electronics U.S.A., Inc. (LG) a waiver from the existing DOE test procedures applicable to commercial package air-source central air conditioners and heat pumps. The waiver is applicable to the LG Multi V III variable refrigerant flow (VRF) multi-split commercial heat pumps specified in LG's July 22, 2011 petition for waiver. As a condition of this waiver, LG must use the alternate test procedure set forth in this notice to test and rate its Multi V III VRF multi-split commercial heat pumps.

**DATES:** This Decision and Order is effective December 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9611. Email: *Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 586–7796. Email: *mailto:Elizabeth.Kohl@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:** DOE issues notice of this Decision and Order in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4). In this Decision and Order, DOE grants LG a waiver from the existing DOE commercial package air conditioner and heat pump test procedures for the basic models of its Multi V III VRF multi-split equipment specified in its July 22, 2011 petition for waiver. DOE also requires the use of AHRI 1230 with Addendum 1 as the alternative test procedure for these basic models.

Today's decision requires LG to make representations concerning the energy efficiency of this equipment consistent with the provisions and restrictions of the alternate test procedure in the Decision and Order below, and the representations must fairly disclose the test results. (42 U.S.C. 6314(d)) The same standard applies to distributors, retailers, and private labelers when making representations of the energy efficiency of this equipment. *Id.*

Issued in Washington, DC, on December 14, 2011.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

### Decision and Order

*In the Matter of:* LG Electronics U.S.A., Inc. (LG) (Case No. CAC–036).

*Background*

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6311–6317), established the Energy Conservation Program for certain industrial equipment, which includes commercial air conditioning equipment, the focus of this decision and order.[1]

Part C specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316). With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), if the industry test procedure for commercial package air-conditioning and heating equipment is amended, EPCA directs the Secretary to amend the corresponding DOE test procedure unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. Table 1 to Title 10 of the Code of Federal Regulations (10 CFR) 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of this equipment. For commercial package air-source equipment with capacities between 65,000 and 760,000 Btu/h, ARI Standard 340/360–2004 is the applicable test procedure.

DOE's regulations for covered products and equipment permit a person to seek a waiver from the test

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect according to the provisions of 10 CFR 431.401(g).

The waiver process also permits parties submitting a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first. It may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On July 22, 2011, LG filed an application for interim waiver and a petition for waiver from the test procedures under 10 CFR 431.96 that apply to commercial package air source air conditioners and heat pumps. LG's petition requests a waiver from the applicable test procedures for its multi-split models designated Multi V III, with capacities ranging from 69,000 Btu/h to 414,000 Btu/h, as specified in the petition. The applicable test procedure for these heat pumps is ARI 340/360–2004. Manufacturers are directed to use these test procedures pursuant to Table 1 of 10 CFR 431.96.

LG seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its Multi V III multi-split heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, LG asserts that the two primary factors that prevent testing of its Multi V III multi-split variable speed equipment are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test.

*See, e.g.*, 72 FR 17528 (April 9, 2007) (Mitsubishi); 76 FR 19069 (April 6, 2011) (Daikin); 76 FR 19078 (April 6, 2011) (Mitsubishi); 76 FR 31951 (June 2, 2011) (Carrier); 76 FR 50204 (August 12, 2011) (Fujitsu General Limited); 76 FR 65707 (Oct. 24, 2011) (LG).

On August 30, 2011, DOE published LG's petition for waiver in the **Federal Register**, seeking public comment pursuant to 10 CFR 431.401(b)(1)(iv), and granted the application for interim waiver. 76 FR 53889. DOE received no comments on LG's petition.

*Assertions and Determinations*

LG's Petition for Waiver

LG seeks a waiver from the DOE test procedures for this product class on the grounds that its Multi V III VRF multi-split commercial heat pumps contain design characteristics that prevent them from being tested using the current DOE test procedures. LG asserts that the two primary factors that prevent testing of its multi-split variable speed equipment are the same factors stated in the waivers that DOE granted to Mitsubishi, Fujitsu General Ltd. (Fujitsu), Samsung Air Conditioning (Samsung), Daikin, Sanyo, and Carrier for similar lines of commercial multi-split air-conditioning systems: (1) Testing laboratories cannot test products with so many indoor units; and (2) there are too many possible combinations of indoor and outdoor unit to test.

The Multi V III systems have operational characteristics similar to the commercial multi-split equipment manufactured by other manufacturers. As indicated above, DOE has already granted waivers for these products. The Multi V III system consists of multiple indoor units connected to an air-source outdoor unit. These multi-splits are used in zoned systems where an outdoor air-source unit can be connected with up to 13–61 separate indoor units, which need not be the same models. According to LG, the various indoor and outdoor models can be connected in a multitude of configurations, with many thousands of possible combinations. Consequently, LG requested that DOE grant a waiver from the applicable test procedures for its Multi V III product designs until a suitable test method can be prescribed.

In responses to two petitions for waiver from Mitsubishi for similar equipment, DOE specified an alternate test procedure to provide a basis upon which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI equipment, as well as for its R22 multi-split equipment. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. *See* 72 FR 17528 and 72 FR 17533. The LG Multi V III VRF systems have operational characteristics similar to the commercial multi-split products manufactured by Mitsubishi, as well as by Samsung, Fujitsu, Daikin, Carrier, and Sanyo. DOE has also granted waivers to these manufacturers. For reasons similar to those published in these prior notices, DOE believes that an alternate test procedure is appropriate in this instance.

After DOE granted a waiver to Mitsubishi's CITY MULTI products, the Air-Conditioning and Refrigeration Institute (ARI) (now AHRI) formed a committee to develop a general testing protocol for VRF systems. The committee developed AHRI 1230, which is referenced in ASHRAE 90.1–2010 as the test procedure for VRF equipment. AHRI 1230 establishes a test procedure for VRF multi-split air conditioners and heat pumps. The test procedure covers matched VRF systems with cooling and heating capacities for outdoor units between 12,000 Btu/h and 300,000 Btu/h. DOE is assessing AHRI 1230 with respect to the requirements EPCA specifies for test procedures, and will make a preliminary determination regarding AHRI 1230 in a future rulemaking.

AHRI 1230 is very similar to the alternate test procedure in the commercial multi-split waivers that DOE previously granted to LG and other manufacturers, but contains minor differences in the definition of tested combination, the testing of ducted versus non-ducted indoor units, and the line lengths. These differences are discussed below.

First, the definition of ''tested combination'' in AHRI 1230 and the alternate test procedure prescribed by DOE in the earlier multi-split waivers are identical in all relevant respects, except that AHRI 1230 with Addendum

1 [2] allows the use of up to 12 indoor units, as opposed to eight in the earlier alternate test procedure.

Second, ANSI/AHRI 1230–2010 requires an additional test. The earlier alternate test procedure provides for efficiency rating of a non-tested combination in one of two ways: (1) At an energy efficiency level determined using a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit. In AHRI 1230, similar to the residential test procedure set forth in 10 CFR part 430, subpart B, appendix M, multi-split manufacturers must also test two or more combinations of indoor units with each outdoor unit. The first system combination is tested using only non-ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all non-ducted indoor units is set equal to the rating of the tested system having all non-ducted indoor units. The second system combination is tested using only ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all ducted indoor units is set equal to the rating of the tested system having all ducted indoor units. The rating given to any untested multi-split system combination having the same outdoor unit and a mix of non-ducted and ducted indoor units is set equal to the average of the ratings for the two required tested combinations.

Third, the alternate test procedure and AHRI 1230 require the use of different line lengths for the cooling refrigerant line when performing efficiency testing. AHRI 1230 requires longer line lengths depending on the type and capacity of the connected indoor units.

As DOE continues to evaluate AHRI 1230, DOE has granted manufacturers' request to use AHRI 1230 as the alternate test procedure for testing and rating their commercial multi-split products subject to a waiver of DOE's test procedures. DOE prescribed AHRI 1230 as the alternate test procedure for those Daikin AC (Americas) Inc. (''Daikin'') commercial multi-split equipment that have cooling capacities less than or equal to 300,000 Btu/h (76 FR 34685, June 14, 2011), for Carrier Corporation's (''Carrier'') commercial multi-split equipment (76 FR 31951, June 2, 2011), and for LG's interim waiver in response to the instant petition.

LG's petition requested a waiver for the LG Multi V III VRF multi-split heat pumps with capacities ranging from 69,000 Btu/h to 414,000 Btu/h. LG requested that DOE permit it to use AHRI 1230 as the alternate test procedure to test and rate its Multi V III VRF equipment that have capacities less than or equal to 300,000 Btu/h. AHRI 1230 covers multi-split equipment with cooling and heating capacities for outdoor units from 12,000 Btu/h to 300,000 Btu/h. For those Multi V III VRF products that have capacities greater than 300,000 Btu/h, LG will continue to use the alternate test procedure specified in the earlier waivers.

As discussed above, AHRI 1230 requires longer line lengths for the cooling refrigerant line during testing, depending on the type and capacity of the connected indoor units. This difference affects the resulting energy efficiency determination. Testing according to AHRI 1230's requirements provides a more conservative estimate of energy consumption because it results in a slightly lower efficiency rating than testing according to the alternate test procedure.

In addition, the definition of ''tested combination'' in AHRI 1230 is more appropriate for these LG products than the definition in the current alternate test procedure. As defined in the current alternate test procedures for LG's products, the ''tested combination'' of a VRF system is defined as one outdoor unit matched with between two and eight indoor units. The indoor units must represent the highest sales model family, and, together, must have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit. Due to the relative size of some of LG's outdoor units and indoor units, permitting the matching of up to only eight indoor units may not be sufficient to comply with the requirement that the indoor units must have a combined capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit. AHRI 1230, as revised in March 2011, permits the use of up to twelve indoor units. For consistency purposes, DOE also amends the definition of ''tested combination'' in the current alternate test procedure to make it identical to the definition in AHRI 1230 for those units with capacities greater than 300,000 Btu/h that are outside the scope of AHRI 1230.

For the reasons discussed above, DOE believes LG's Multi V III VRF multi-split heat pumps cannot be tested using the procedure prescribed in 10 CFR 431.96 (ARI Standard 340/360–2004) and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(2)–(3). After careful consideration, DOE has decided to prescribe ANSI/AHRI 1230–2010 as the alternate test procedure for LG's commercial multi-split products with capacities less than or equal to 300,000 Btu/h, and the modified alternate test procedure described above for those units with capacities greater than 300,000 Btu/h that are outside the scope of AHRI 1230.

*Conclusion*

After careful consideration of all the materials submitted by LG, it is ordered that:

(A) LG is required to test the products listed below with cooling capacities of 300,000 Btu/h and less according to the alternate test procedure ANSI/AHRI 1230–2010.

(B) LG shall be required to test the products listed below with cooling capacities above 300,000 Btu/h according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that LG shall test each model of outdoor unit with two or more combinations of indoor units. The first system combination shall be tested using only non-ducted indoor units that meet the definition of a tested combination as set forth in subparagraph (C). The second system combination shall be tested using only ducted indoor units that meet the definition of a tested combination as set forth in subparagraph (C). LG shall make representations concerning the products covered in this waiver according to the provisions of subparagraph (D):

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[2] The revision to the definition of ''tested combination'' to allow the use of up to 12 indoor units is the only change made by Addendum 1.

**Multi V III Series Air-Source Heat Pumps and Heat Recovery Units:**

| Rated Cooling Capacity | Model name | | | | |
|---|---|---|---|---|---|
| Btu/h | Multi V III Heat Pump 3 phase 208/230 V 60 Hz | Multi V III Heat Recovery 3 phase 208/230 V 60 Hz | Multi V III Heat Pump 3 phase 460 V 60 Hz | Multi V III Heat Recovery 3 phase 460 V 60 Hz | Frame Type |
| 69000 | ARUN072BT3 | ARUB072BT3 | ARUN072DT3 | ARUB072DT3 | Single |
| 92000 | ARUN096BT3 | ARUB096BT3 | ARUN096DT3 | ARUB096DT3 | |
| 114000 | ARUN121BT3 | ARUB121BT3 | ARUN121DT3 | ARUB121DT3 | |
| 138000 | ARUN144BT3 | ARUB144BT3 | ARUN144DT3 | ARUB144DT3 | |
| 160000 | ARUN168BT3 | ARUB168BT3 | ARUN168DT3 | ARUB168DT3 | Dual |
| 184000 | ARUN192BT3 | ARUB192BT3 | ARUN192DT3 | ARUB192DT3 | |
| 206000 | ARUN216BT3 | ARUB216BT3 | ARUN216DT3 | ARUB216DT3 | |
| 228000 | ARUN240BT3 | ARUB240BT3 | ARUN240DT3 | ARUB240DT3 | |
| 250000 | ARUN264BT3 | ARUB264BT3 | ARUN264DT3 | ARUB264DT3 | |
| 274000 | ARUN288BT3 | ARUB288BT3 | ARUN288DT3 | ARUB288DT3 | |
| 296000 | ARUN312BT3 | ARUB312BT3 | ARUN312DT3 | ARUB312DT3 | Triple |
| 320000 | ARUN336BT3 | ARUB336BT3 | ARUN336DT3 | ARUB336DT3 | |
| 342000 | ARUN360BT3 | ARUB360BT3 | ARUN360DT3 | ARUB360DT3 | |
| 366000 | ARUN384BT3 | ARUB384BT3 | ARUN384DT3 | ARUB384DT3 | |
| 390000 | ARUN408BT3 | ARUB408BT3 | ARUN408DT3 | ARUB408DT3 | |
| 414000 | ARUN432BT3 | ARUB432BT3 | ARUN432DT3 | ARUB432DT3 | |

**Compatible Indoor Units for the Above-Listed Models**
**(Shaded Indoor Units Not Previously Listed in DOE Waiver):**

| Rated Cooling Capacity | Indoor Unit | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Wall Mounted | Art Cool Mirror | Vertical / Horizontal Air Handler | 4 way Cassette | | 2 Way Cassette | 1 Way Cassette | Ceiling Concealed Duct -low static | Ceiling Concealed Duct -Built in |
| 5300 | | | | | ARNU053TR*2 | | | | |
| 7500 | ARNU073SEL2 | ARNU073SE*2 | | ARNU073TEC2 | | | ARNU073TJC2 | ARNU073B1G2 | ARNU073B3G2 |
| 9600 | ARNU093SEL2 | ARNU093SE*2 | | ARNU093TEC2 | ARNU093TN*2 | | ARNU093TJC2 | ARNU093B1G2 | ARNU093B3G2 |
| 12300 | ARNU123SEL2 | ARNU123SE*2 | | ARNU123TEC2 | ARNU123TN*2 | | ARNU123TJC2 | ARNU123B1G2 | ARNU123B3G2 |
| 15400 | ARNU153SEL2 | ARNU153SE*2 | | ARNU153TEC2 | ARNU153TN*2 | | | ARNU153B1G2 | ARNU153B3G2 |
| 19100 | ARNU183S5L2 | ARNU183S5*2 | ARNU183NJA2 | ARNU183TEC2 | ARNU183TM*2 | ARNU183TLC2 | | ARNU183B2G2 | ARNU183B4G2 |
| 24200 | ARNU243S5L2 | ARNU243S5*2 | ARNU243NJA2 | ARNU243TPC2 | ARNU243TM*2 | ARNU243TLC2 | | ARNU243B2G2 | ARNU243B4G2 |
| 28000 | | | ARNU303NJA2 | ARNU283TPC2 | | | | | |
| 36200 | | | ARNU363NJA2 | ARNU363TNC2 | | | | | |
| 42000 | | | ARNU423NKA2 | ARNU423TMC2 | | | | | |
| 48100 | | | ARNU483NKA2 | ARNU483TMC2 | | | | | |
| 54000 | | | ARNU543NKA2 | | | | | | |
| 76400 | | | | | | | | | |
| 95500 | | | | | | | | | |

(C) *Tested combination.* The term "tested combination" means a sample basic model comprised of units that are production units, or are representative

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of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features: The basic model of a variable refrigerant flow system (''VRF system'') used as a tested combination shall consist of an outdoor unit (an outdoor unit can include multiple outdoor units that have been manifolded into a single refrigeration system, with a specific model number) that is matched with between 2 and 12 indoor units; for multi-split systems, each of these indoor units shall be designed for individual operation.

(D) *Representations.* In making representations about the energy efficiency of its Multi V III VRF multi-split equipment, for compliance, marketing, or other purposes, LG must fairly disclose the results of testing under the DOE test procedure in a manner consistent with the provisions outlined below:

(i) For multi-split combinations tested in accordance with this alternate test procedure, LG may make representations based on those test results.

(ii) For multi-split combinations that are not tested, LG may make representations based on the testing results for the tested combination and that are consistent with one of the following methods:

(a) Rating of non-tested combinations according to an alternative rating method approved by DOE; or

(b) Rating of non-tested combinations having the same outdoor unit and all non-ducted indoor units shall be set equal to the rating of the tested system having all non-ducted indoor units.

(c) Rating of non-tested combinations having the same outdoor unit and all ducted indoor units shall be set equal to the rating of the tested system having all ducted indoor units. To be considered a ducted unit, the indoor unit must be intended to be connected with ductwork and have a rated external static pressure capability greater than zero (0).

(d) Rating of non-tested combinations having the same outdoor unit and a mix of non-ducted and ducted indoor units shall be set equal to the average of the ratings for the two required tested combinations.

(E) This waiver amendment shall remain in effect from the date this Decision and Order is issued, consistent with the provisions of 10 CFR 431.401(g).

(F) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify the waiver at any time if it determines that the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(G) This waiver applies only to those basic models set out in LG's petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC, on December 14, 2011.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2011–32529 Filed 12–19–11; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP12–23–000]**

### Inergy Pipeline East, LLC; Notice of Application for a Section 284.224 Blanket Certificate

Take notice that on December 5, 2011, Inergy Pipeline East, LLC (IPE), Two Brush Creek Boulevard, Kansas City, Missouri 64112, filed with the Federal Energy Regulatory Commission an application under Section 7 of the Natural Gas Act (NGA) and Section 284.224 of the Commission's Regulations for an order issuing a blanket certificate of public convenience and necessity authorizing IPE to transport natural gas in interstate commerce in accordance with Subparts C, D and G of Part 284 of the Commission's Regulations. IPE further requests Commission approval of its Statement of Operating Conditions governing the firm and interruptible interstate transportation services IPE proposes to provide and of IPE's cost-based rates for such services pursuant to 18 CFR 284.123(b)(2). Questions concerning this Application may be directed to James F. Bowe, Jr., Dewey & LeBoeuf LLP, 1101 New York Avenue, NW., Washington, DC 20005, (202) 346–8000 (phone) (202) 346–8102 (fax), *jbowe@dl.com.*

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on January 4, 2012.

Dated: December 14, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–32512 Filed 12–19–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PR12–10–000]**

### Washington 10 Storage Corporation; Notice of Filing

Take notice that on December 13, 2011, Washington 10 Storage Corporation (Washington 10) filed a Statement of Operating Conditions to revise certain provisions of its Firm Parking and Loaning Service and Interruptible Parking and Loaning Service to add to Washington 10's possible remedies should Shipper have a negative Parking or Loaning Account balance at the end of the term of a relevant Service Agreement as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance

with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, December 27, 2011.

Dated: December 14, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–32511 Filed 12–19–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Rice Solar Energy Project Record of Decision (DOE/EIS–0439)

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Record of Decision.

**SUMMARY:** Western Area Power Administration (Western) received a request from Rice Solar Energy, LLC (RSE) to interconnect its proposed Rice Solar Energy Project (Project) to Western's Parker-Blythe No. 2 Transmission Line. The Project would be located in eastern Riverside County, California, near State Route 62, approximately 40 miles northwest of Blythe, California, and 15 miles west of Vidal Junction, California. On June 10, 2011, the Notice of Availability of the Final Environmental Impact Statement (EIS) and Plan Amendment for Rice Solar Energy Project was published in the *Federal Register* (76 FR 34073). After considering the environmental impacts, Western has decided to allow RSE's request for interconnection to Western's transmission system at its Parker-Blythe No. 2 Transmission Line and to construct, own, and operate a new substation.

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact Ms. Liana Reilly, Environmental Project Manager, Corporate Services Office, Western Area Power Administration, A7400, P.O. Box 281213, Lakewood, CO 80228, telephone (720) 962–7253, fax (720) 962–7263, or email: *reilly@wapa.gov*. For general information on DOE's National Environmental Policy Act of 1969 (NEPA) review process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, GC–20, U.S. Department of Energy, Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

**SUPPLEMENTARY INFORMATION:** Western is a Federal agency under the United States Department of Energy (DOE) that markets and transmits wholesale electrical power through an integrated 17,000-circuit mile, high-voltage transmission system across 15 western states. Western's Open Access Transmission Service Tariff provides open access to its electric transmission system. Western provides transmission services through an interconnection if there is available capacity on the transmission system while protecting the transmission system reliability and considering the applicant's objectives.

The California Energy Commission (CEC), a regulatory agency of the State of California, has the statutory authority to license thermal powerplants of 50 megawatts or more, and is the State lead agency for the Project. CEC prepares environmental documentation equivalent to the California Environmental Quality Act (CEQA).

In compliance with the NEPA, as amended, the Federal Land Policy and Management Act of 1976 as amended, and the CEQA, Western and CEC, as joint lead agencies, with the Bureau of Land Management (BLM) as a cooperating agency, prepared and released a joint Staff Assessment/Draft Environmental Impact Statement (SA/Draft EIS) in October 2010,[1] and subsequently held a public hearing on the document in Palm Desert, California, on January 5, 2011. Following the release of the SA/Draft EIS, Western determined that the next document in the CEC process, the Presiding Member's Proposed Decision (PMPD), would be an inappropriate vehicle for Western to present responses to comments on the SA/Draft EIS. Therefore, Western prepared its own Final EIS, with input from the CEC. Western released the Final EIS in June 2011.[2]

#### Proposed Federal Action

Western's Federal involvement is related to the determination of whether to approve the interconnection request for the Project. Western's Proposed Action is to interconnect the Project to Western's transmission system at the existing Parker-Blythe No. 2 Transmission Line and construct, own, and operate a new substation adjacent to the transmission line.

#### RSE Proposed Project

RSE proposes to construct the Project in eastern Riverside County, California, on a portion of land that is privately owned. The Project would consist of a power block, a central receiver or tower, a solar field consisting of mirrors or heliostats to reflect the sun's energy to the central tower, a thermal energy storage system, technical and non-technical buildings, a storm water system, water supply and treatment system, a wastewater system, evaporation ponds, construction parking and laydown areas, and other supporting facilities. A new 10-mile 161/230 Kilovolt generator tie-line would extend from the southern boundary of the solar facility boundary to a new substation to be constructed adjacent to Western's existing Parker-Blythe No. 2 Transmission Line. Part of the generator tie-line and the entire substation would be on BLM-managed land. The substation would be owned and operated by Western and would be approximately three acres in size.

#### Description of Alternatives

During the environmental analysis, CEC, BLM, and Western developed 28 alternatives to the Project. These included two modifications of the Project at the proposed site, the No

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[1] 75 FR 66078 (October 10, 2010).

[2] The Final EIS can be found on Western's Web site at: *http://ww2.wapa.gov/sites/Western/transmission/interconn/Documents/ricesolar/RiceSolarFEIS.pdf*.

Project/No Action Alternative, 12 alternative site locations, a range of solar and renewable energy technologies, generation technologies using different fuels, and conservation/demand-side management.

Of the 28 alternatives, 24 were dismissed as not meeting State and Federal renewable energy policy goals, not reducing environmental impacts, or infeasible due to various physical or regulatory considerations. CEC compared the impacts of the four remaining alternatives to the impacts of the proposed Project location and configuration. The four remaining alternatives included two that would be located on the proposed site of Rice Army Airfield, consisting of the Reduced Acreage Alternative and the State Route 62/Rice Valley Road Transmission Line Alternative, in addition to the No Project/No Action Alternative, and the North of Desert Center Alternative.

The CEC decided that the North of Desert Center Alternative was a reasonable alternative to evaluate under the CEQA; thus, the potential impacts of that alternative were discussed throughout the SA/Draft EIS and the CEC Decision. The CEC concluded that impacts of this alternative with implementation of mitigation measures would have significant and unavoidable visual impacts. The number of residents adversely affected would be substantial and viewers in the easternmost slopes of Joshua Tree National Park could be affected. This site could also result in a cumulatively significant impact to local roadway traffic levels of service.

The CEC also considered the State Route 62/Rice Valley Road Transmission Line Alternative, which would be a variation of the Project by realigning a portion of the generator tie-line between the power plant site and the interconnection with Western's Parker-Blythe No. 2 Transmission Line. This alternative would eliminate the need for a new access road and, therefore, would reduce impacts to desert habitat. However, this alternative would not substantially reduce or change the nature of impacts associated with the Project, may result in less efficient operations, and would not be feasible.

Western's decision is whether to grant the interconnection to its electrical grid on the Parker-Blythe No. 2 Transmission Line. Western's statutory authorization is limited to marketing and delivering power and transmission. The alternatives that meet Western's Purpose and Need are the Project on the Rice Army Airfield site, the Reduced Acreage Alternative, and the No Action Alternative.

As required by 40 CFR 1505.2(b), Western has identified the No Project/No Action Alternative as its environmentally-preferred alternative. Under this alternative, Western would deny the interconnection request and not modify its transmission system to interconnect the Project. Under this alternative, there would be no modifications to Western's transmission system, and no new environmental impacts. While the No Project/No Action Alternative has no new environmental impacts, it would not meet Western's Purpose and Need nor RSE's objectives relating to renewable energy development. Additional design and configuration modifications were also developed as mitigation measures to the original proposal. Western, BLM, and the CEC identified that the stormwater detention basin was not needed considering the runoff characteristics of the Project site would not be significantly altered for the developed site compared to the existing site conditions. RSE agreed to modify its plans accordingly, which reduced the potential to attract birds to the site and would limit bird injury or mortality. In addition, Western determined that fiber optic communication cable was no longer needed on the Parker-Blythe No. 2 Transmission Line. Any potential impacts to biological and cultural resources related to installing fiber optic on that line were removed, as Western chose to use microwave technology instead.

**Mitigation Measures**

Western, BLM, and the CEC detailed 186 different Conditions of Certification or mitigation measures for the Project. These Conditions of Certification are part of the standard licensing process of the CEC, are applicable to the power plant and linear facilities as specified, and in place for the life of the project, including construction, operation, and site closure/decommissioning.

For protection of biological resources, there are 26 CEC required mitigation measures that would apply to construction and operation of the Project. These include assigning a Designated Biologist who would oversee all biological aspects of the Project and providing biological monitors to identify and protect sensitive plant and animal species during project construction. A Biological Resources Mitigation Implementation and Monitoring Plan will incorporate avoidance and minimization measures described in final versions of the Hazardous Materials Plan; the Revegetation Plan; the Weed Management Plan; the Special-Status Plant Impact Avoidance and Minimization Plan; the Desert Tortoise Translocation Plan; the Raven Monitoring, Management, and Control Plan; the Burrowing Owl Relocation and Mitigation Plan; the Streambed Management Plan; the Evaporation Pond Design, Monitoring, and Management Plan; and the Avian and Bat Protection Plan. The Biological Resources Mitigation Implementation and Monitoring Plan will include accurate and up-to-date maps depicting the location of sensitive biological resources that require temporary or permanent protection during construction and operation. As outlined in the CEC Commission Decision, RSE will also abide by the Biological Opinion (BO) issued by the U.S. Fish and Wildlife Service (USFWS). Western will abide by the BO as it pertains to Western's substation.

Rice Army Airfield is eligible for listing in the National Register of Historic Places, having sufficient integrity to reflect its important historical association with the Desert Training Center, California-Arizona Maneuver Area (DTC/C–AMA). Western, BLM, and the CEC support the designation of a noncontiguous cultural landscape (historic district) that incorporates historical archaeological sites associated with General Patton's World War II DTC/C–AMA, to be known as the Desert Training Center Cultural Landscape. RSE will abide by the cultural conditions in the CEC Commission Decision, which include, but are not limited to, the implementation of a Cultural Resources Monitoring and Mitigation Plan, construction monitoring, and data recovery as well as compliance with the Memorandum of Agreement (MOA) for Section 106 compliance.

An MOA consistent with Section 106 of the National Historic Preservation Act has been prepared and executed between Western, BLM, and the California State Historic Preservation Office. The purpose of the MOA is to document compliance with Section 106 by describing the treatment of historic properties, the Historic Properties Management Plan, results of Native American consultation, the treatment of human remains of Native American origin should they be found, and how RSE, BLM, and Western would respond to discoveries and unanticipated effects during the course of Project construction.

Cultural resources mitigation includes a number of measures that will significantly enhance the public's

opportunities to obtain information about Rice Army Airfield. A historic interpretive roadside stop, including parking and a shaded information kiosk, will be constructed and maintained to inform the public that the Project would be located on the former site of Rice Army Airfield and to advise where they can obtain more information.

In consideration that water is a limited resource, the Project owner would use dry cooling, which avoids significant water use associated with steam condensation, and would limit other Project-related water uses during operations to no more than 150 acre-feet per year, as outlined in the CEC Condition, Soil & Water-5. Furthermore, CEC Condition Soil and Water-6 requires that the Project owner must also prepare and implement a Groundwater Level and Quality Monitoring and Reporting Plan to establish baseline groundwater levels and quality, and to assure the Project's water use is consistent with predicted drawdown and water quality effects in the aquifer.

While direct and cumulative significant visual impacts that would be caused by the introduction of the solar receiver tower and 360-degree luminance from the top of the receiver tower cannot be mitigated to insignificant levels or avoided, the Project would include mitigation measures that minimize other potential visual impacts. Mitigation measures prescribed by the CEC Commission Decision include, but are not limited to, surface treatment on the outermost rows of heliostats and to major structures to minimize visual intrusion and contrast by blending with the existing visual background.

Western performed a System Impact Study to assess potential transmission system impacts associated with the Project's interconnection to Western's Parker-Blythe No. 2 transmission line and downstream effects. The Project owner must prepare a mitigation plan for potential overloads in the Southern California Edison and Imperial Irrigation District systems identified in Western's System Impact Study. The plan would be approved by Western and would involve all stakeholders including Western, California Independent System Operator, Southern California Edison, Imperial Irrigation District, and Metropolitan Water District, and would be subject to agreement by RSE.

Western is adopting those mitigation measures that apply to its action and will issue a Mitigation Action Plan before any construction activity takes place. The plan will address the adopted and standard mitigation measures. When completed, the Mitigation Action Plan will be made available to the public. Taking the Project modifications, commitments, and requirements into account, all practicable means to avoid or minimize environmental harm from the Project and Western's Proposed Action have been adopted.

**Comments on Final EIS**

Western received comments from the U.S. Environmental Protection Agency (EPA) in a letter dated June 30, 2011, and from La Cuna de Aztlan Sacred Sites Protection Circle (La Cuna) and CAlifornians for Renewable Energy (CARE) on August 30, 2011. Based on a review of these comments, Western has determined that the comments do not present any significant new circumstances or information relevant to environmental concerns and bearing on the Project or its impacts, and a Supplemental EIS is not required. The basis for this determination is summarized below.

EPA noted that the Final EIS addressed many of their concerns on the SA/Draft EIS. Additionally, EPA expressed concerns regarding impacts to aquatic and biological resources, ephemeral washes, desert tortoise, and impacts to site hydrology and the availability of adequate compensatory mitigation lands. Responses to these concerns are addressed below. In addition, EPA wanted to reiterate the importance of meaningful tribal consultation and financial assurance. EPA suggested that the Record of Decision (ROD) include the CEC Conditions of Certification from the CEC Commission Decision. As noted previously, CEC has jurisdiction over the private lands while Western does not, thus all CEC Conditions are not listed here. RSE is required to comply with all CEC Conditions. For further information on the CEC conditions, the reader is referred to the CEC Commission Decision.

EPA recommended that heliostats and transmission towers not be placed in drainages and that the number of road crossings over washes be minimized. The Project would be sited within the previously modified drainage shed and will be constructed on the former location of the Rice Army Airfield. With regard to ephemeral washes, EPA wanted to ensure the availability of sufficient compensation lands to replace desert wash functions lost on the project site. As noted in Section 6.2 of the SA/DEIS, damage to ephemeral washes will be mitigated at a ratio of 1:1. This is confirmed in the CEC Commission Decision. Condition Bio-22 notes that the acreage of permanent and long-term impacts will include all ephemeral drainages impacted (by the Project) and that they will be mitigated by compensation at a 1:1 ratio.

EPA also requested confirmation that the detention basin was removed and that soil and water and revegetation measures are in place. Western confirms that this is the case and refers EPA and others to page 26 of the FEIS and section 6.9 of the SA/Draft EIS for in-depth information on the mitigation measures that RSE will abide by with regards to soil and water and revegetation. Additionally, EPA requested that Western condition right-of-way approval to mitigation success. Western's role in the Project is to make a decision regarding the interconnection request. Western does not have jurisdictional authority over the generation facility, and is unable to accommodate this request.

EPA also expressed concern regarding desert tortoise mitigation ratios as well as compensatory mitigation proposals. EPA wanted assurance that suitable mitigation lands are available. The mitigation measure ratios are explained on pages 6.2–92 through 6.2–94 of the SA/Draft EIS, and mitigation lands are addressed on page 6.2–97. As noted above, RSE will comply with the terms of the USFWS BO as required by the CEC, and Western will comply with the terms of the USFWS BO as related to Western's substation.

Tribal consultation was also a concern expressed by EPA as well as La Cuna and CARE. As noted in section 6.3 of the SA/DEIS and reiterated in the Final EIS, Western has been consulting with the Tribes since the beginning of the Project. Although no prehistoric or sacred sites were identified in the area of potential effect of the Project, Western has continued to consult with Tribal representatives and has sent the MOA for the Project to the tribal representatives for their review, comment, and/or signature.

Finally, EPA expressed concern regarding decommissioning and the proposed surety bond. Information regarding the surety bond and CEC's requirements can be found on page 32 of the SA/DEIS.' ''

La Cuna and CARE expressed concern that, ''the EIS fails to take a hard look at cultural resources.'' Cultural resources are addressed in the SA/DEIS on pages 6.3–1 through 6.3–92.

La Cuna and CARE cited that the EIS failed to look at a reasonable range of alternatives. Western would like to direct the reader to pages 4–1 through 4–74 for a description of the alternatives

that were included in the alternatives analysis for the Project. Although, Western is making a decision regarding the interconnection request submitted by Solar Reserve and does not dictate the type of generation, the SA/DEIS examined alternative generation types.

Land use plan inconsistency is also noted by La Cuna and CARE. Western notes the comment and emphasizes that the decision being made in this ROD is only to grant the interconnection request for the Project and does not signify that all the other permitting and land use requirements have been met.

La Cuna and CARE mention that, ''the purpose and need statements are too narrowly constructed.'' Western has noted the comment and refers the reader to pages 2–4 and 2–8 through 2–9 for more information on the agency's authority, Purpose and Need.

Cumulative impacts were another issue of concern for La Cuna and CARE. Western directs the reader to section 5 of the document for the rationale describing which projects were considered for the cumulative impacts analysis as well as for the results of the analysis.

La Cuna and CARE also expressed concern that a programmatic EIS (PEIS) should have been developed prior to this EIS. Although, there is currently a PEIS being developed for solar projects, there is no requirement for the completion of a PEIS prior to the completion of a project specific EIS.

Lack of appropriate mitigation was also noted by La Cuna and CARE. Western directs the reader to the SA/DEIS and the CEC Conditions of Certification to the 186 conditions of certification/mitigation measures that have been created and will be implemented for the Project.

Finally, La Cuna and CARE raise a concern that, ''the RMP violates the Federal Land Policy Management Act [FLPMA].'' Western acknowledges this comment and the concern that La Cuna and CARE have with BLM's FLMPA responsibilities.

**Decision**

Western's decision is to allow RSE's request for interconnection to Western's transmission system at its Parker-Blythe No. 2 Transmission Line and to construct, own and operate a new substation.[3] Western's decision to grant this interconnection request satisfies the agency's statutory mission and RSE's objectives while minimizing harm to the environment.

This decision is based on the information contained in the Rice Solar Energy Project Final EIS. This ROD was prepared pursuant to the requirements of the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR parts 1500–1508) and DOE's Procedures for Implementing NEPA (10 CFR part 1021).

Dated: December 12, 2011.

**Timothy J. Meeks,**

*Administrator.*

[FR Doc. 2011–32507 Filed 12–19–11; 8:45 am]

BILLING CODE 6450–01–P

[3] Western's authority to issue a ROD is pursuant to authority delegated on November 16, 2011, from DOE's Office of the General Counsel.

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OAR–2011–0901; FRL–9608–7]**

## Agency Information Collection Activities; Proposed Collections; Comment Request; Prevention of Significant Deterioration and Nonattainment Area New Source Review (Renewal)

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

**ACTION:** Withdrawal of notice.

**SUMMARY:** The EPA announces the withdrawal of the notice titled, ''Agency Information Collection Activities; Proposed Collections; Comment Request; Prevention of Significant Deterioration and Nonattainment Area New Source Review (Renewal)'' published on December 7, 2011. The December 7, 2011, notice is a duplicate to the notice published on November 25, 2011. The November 25, 2011, notice announced in compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) that the EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on April 30, 2012. Before submitting this ICR to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection through the notice pulished on November 25, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0641; fax number: (919) 541–5509; email address: *long.pam@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action is directed to the public in general. If you have any questions regarding the withdrawal of the December 7, 2011, notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How can I get copies of this document and other related information?*

The EPA has established a public docket for the ICR renewal Docket ID No. EPA–HQ–OAR–2011–0901, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC The EPA/DC 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.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket and access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

**II. Withdrawn Document**

The EPA is withdrawing the notice titled, Agency Information Collection Activities; Proposed Collections; Comment Request; Prevention of Significant Deterioration and Nonattainment Area New Source Review (Renewal)'' published on December 8, 2011 in the **Federal Register** at 76 FR 76713. This notice was a duplicate to the notice published in the **Federal Register** on November 25, 2011 at 76 FR 72700. Comments remain due on or before January 24, 2012.

Dated: December 13, 2011.

**Jennifer Noonan Edmonds,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. 2011–32571 Filed 12–19–11; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

## Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before February 21, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0754.

*Title:* Children's Television Programming Report, FCC Form 398.

*Form Number:* 398.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Businesses or other for-profit.

*Number of Respondents and Responses:* 1,962 respondents; 7,848 responses.

*Estimated Time per Response:* 12 hours.

*Frequency of Response:* Recordkeeping requirement; Quarterly reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

*Total Annual Burden:* 94,176 hours.

*Total Annual Cost:* $4,708,800.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Needs and Uses:* Commercial television broadcast stations and Class A television broadcast stations are both required to file FCC Form 398. FCC Form 398 is a standardized form that:

(a) Provides a consistent format for reporting by all licensees, and

(b) Facilitates efforts by the public and the FCC to monitor compliance with the Children's Television Act.

These commercial television broadcast station licensees and the Class A television broadcast station licensees both use FCC Form 398:

(a) To identify the individual station, and

(b) To identify the children's educational and informational programs, which the station broadcasts on both the regularly scheduled and preempted core programming, to meet the station's obligation under the Children's Television Act of 1990 (CTA).

Each quarter, the licensee is required to place in its public inspection file a ''Children's Television Programming Report'' and to file the FCC Form 398 each quarter with the Commission. The licensee must also complete a ''Preemption Report'' for each preempted core program during the quarter. This ''Preemption Report'' requests information on the date of each preemption, if the program was rescheduled, the date and time the program was aired, and the reason for the preemption.

Federal Communications Commission.

**Bulah P. Wheeler,**

*Deputy Manager, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–32462 Filed 12–19–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before February 21, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0213.

*Title:* Section 73.3525, Agreements for Removing Application Conflicts.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not for profit institutions.

*Number of Respondents and Responses:* 38 respondents; 40 responses.

*Estimated Time per Response:* 0.25–1 hour.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure requirement.

*Total Annual Burden:* 39 hours.

*Total Annual Cost:* $91,953.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 311 of the Communications Act of 1934, as amended.

*Privacy Impact Assessment:* No impact(s).

*Needs and Uses:* 47 CFR 73.3525 states (a) except as provided in § 73.3523 regarding dismissal of applications in comparative renewal proceedings, whenever applicants for a construction permit for a broadcast station enter into an agreement to procure the removal of a conflict between applications pending before the FCC by withdrawal or amendment of an application or by its dismissal pursuant to § 73.3568, all parties thereto shall, within 5 days after entering into the agreement, file with the FCC a joint request for approval of such agreement. The joint request shall be accompanied by a copy of the agreement, including any ancillary agreements, and an affidavit of each party to the agreement setting forth:

(1) The reasons why it is considered that such agreement is in the public interest;

(2) A statement that its application was not filed for the purpose of reaching or carrying out such agreement;

(3) A certification that neither the applicant nor its principals has received any money or other consideration in excess of the legitimate and prudent expenses of the applicant; Provided That this provision shall not apply to bona fide merger agreements;

(4) The exact nature and amount of any consideration paid or promised;

(5) An itemized accounting of the expenses for which it seeks reimbursement; and

(6) The terms of any oral agreement relating to the dismissal or withdrawal of its application.

(b) Whenever two or more conflicting applications for construction permits for broadcast stations pending before the FCC involve a determination of fair, efficient and equitable distribution of service pursuant to section 307(b) of the Communications Act, and an agreement is made to procure the withdrawal (by amendment to specify a different community or by dismissal pursuant to § 73.3568) of the only application or applications seeking the same facilities for one of the communities involved, all parties thereto shall file the joint request and affidavits specified in paragraph (a) of this section.

(1) If upon examination of the proposed agreement the FCC finds that withdrawal of one of the applications would unduly impede achievement of a fair, efficient and equitable distribution of radio service among the several States and communities, then the FCC shall order that further opportunity be afforded for other persons to apply for the facilities specified in the application or applications to be withdrawn before acting upon the pending request for approval of the agreement.

(2) Upon release of such order, any party proposing to withdraw its application shall cause to be published a notice of such proposed withdrawal at least twice a week for 2 consecutive weeks within the 3-week period immediately following release of the FCC's order, in a daily newspaper of general circulation published in the community in which it was proposed to locate the station. However, if there is no such daily newspaper published in the community, the notice shall be published as follows:

(i) If one or more weekly newspapers of general circulation are published in the community in which the station was proposed to be located, notice shall be published in such a weekly newspaper once a week for 3 consecutive weeks within the 4-week period immediately following the release of the FCC's order.

(ii) If no weekly newspaper of general circulation is published in the community in which the station was proposed to be located, notice shall be published at least twice a week for 2 consecutive weeks within the 3-week period immediately following the release of the FCC's order in the daily newspaper having the greatest general circulation in the community in which the station was proposed to be located.

(3) The notice shall state the name of the applicant; the location, frequency and power of the facilities proposed in the application; the location of the station or stations proposed in the applications with which it is in conflict; the fact that the applicant proposes to withdraw the application; and the date upon which the last day of publication shall take place.

(4) Such notice shall additionally include a statement that new applications for a broadcast station on the same frequency, in the same community, with substantially the same engineering characteristics and proposing to serve substantially the same service area as the application sought to be withdrawn, timely filed pursuant to the FCC's rules, or filed, in any event, within 30 days from the last date of publication of the notice (notwithstanding any provisions normally requiring earlier filing of a competing application), will be entitled to comparative consideration with other pending mutually exclusive affidavits.

(5) Within 7 days of the last day of publication of the notice, the applicant proposing to withdraw shall file a statement in triplicate with the FCC giving the dates on which the notice was published, the text of the notice and the name and location of the newspaper in which the notice was published.

Federal Communications Commission.

**Bulah P. Wheeler,**

*Deputy Manager, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–32464 Filed 12–19–11; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid 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 (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 21, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-B.Herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, (202) 418–0214.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–XXXX.

*Title:* Application for Mobility Fund Phase I Support.

*Form Number:* FCC Form 680.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

*Number of Respondents and Responses:* 250 respondents; 250 responses.

*Estimated Time per Response:* 1.5 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 375 hours.

*Annual Cost Burden:* None.

*Privacy Act Impact Assessment:* No impact. Entities submitting an application are acting in an entrepreneurial capacity.

*Nature and Extent of Confidentiality:* There is no need for confidentiality. The information to be collected will be made available for public inspection. Applicants may request materials or information submitted to the Commission be given confidential treatment under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission will use the information collected from winning bidders in the Mobility Fund Phase I auction to evaluate applications for Mobility Fund Phase 1 support. On November 18, 2011, the Federal Communications Commission released, WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161, which adopted rules to govern the Connect America Fund Mobility Fund. In adopting the rules, the Commission provided for one-time support to immediately accelerate deployment of networks for mobile broadband services in unreserved areas. Mobility Fund Phase I support will be awarded through a nationwide reverse auction. Applicants with winning bids will provide this information to obtain the Mobility Fund Phase 1 support.

*OMB Control Number:* 3060–XXXX.

*Title:* Application to Participate in an Auction for Mobility Fund Phase I Support.

*Form Number:* FCC Form 180.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

*Number of Respondents and Responses:* 250 respondents; 250 responses.

*Estimated Time per Response:* 1.5 hours.

*Frequency of Response:* On occasion reporting requirement.

*Obligation To Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 375 hours.

*Annual Cost Burden:* None.

*Privacy Act Impact Assessment:* No impact. Entities submitting an application are acting in an entrepreneurial capacity.

*Nature and Extent of Confidentiality:* There is no need for confidentiality. The information to be collected will be made available for public inspection. Applicants may request materials or information submitted to the Commission be given confidential treatment under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission will use the information collected to determine whether applicants are eligible to participate in the Mobility Fund Phase I auction. On November 18, 2011, the Federal Communications Commission released, WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161, which adopted rules to govern the Connect America Fund Mobility Fund. In adopting the rules, the Commission provided for one-time support to immediately accelerate deployment of networks for mobile broadband services in unserved areas. Mobility Fund Phase I support will be awarded through a nationwide reverse auction. The information collection process for the Mobility Fund Phase 1 auction is similar to that used in spectrum license auctions. This approach provides an appropriate screen to ensure serious participation without being unduly burdensome.

Federal Communications Commission.

**Bulah P. Wheeler,**

*Deputy Manager, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–32466 Filed 12–19–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office

of Management and Budget (OMB) control number.

**DATES:** Written PRA comments should be submitted on or before February 21, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

*OMB Control Number:* 3060–0055.

*Title:* Application for Cable Television Relay Service Station License, FCC Form 327.

*Form Number:* FCC Form 327.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents and Responses:* 400 respondents; 400 responses.

*Estimated Time per Response:* 3.166 hours.

*Frequency of Response:* On occasion reporting requirement; Every 5 years reporting requirement.

*Total Annual Burden:* 1,266 hours.

*Total Annual Costs:* $98,000.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 308 and 309 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* There is no need for confidentiality with this collection of information.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* This filing is the application for a Cable Television Relay Service (CARS) microwave radio license. Franchised cable systems and other eligible services use the 2, 7, 12 and 18 GHz CARS bands for microwave relays pursuant to part 78 of the Commission's Rules. CARS is principally a video transmission service used for intermediate links in a distribution network. CARS stations relay signals for and supply program material to cable television systems and other eligible entities using point-to-point and point-to-multipoint transmissions. These relay stations enable cable systems and other CARS licensees to transmit television broadcast and low power television and related audio signals, AM and FM broadcast stations, and cablecasting from one point (*e.g.,* on one side of a river or mountain) to another point (*e.g.,* the other side of the river or mountain) or many points (''multipoint'') via microwave. The filing is done for an initial license, for modification of an existing license, for transfer or assignment of an existing license, and for renewal of a license after five years from initial issuance or from renewal of a license. Filing is done in accordance with Sections 78.11 to 78.40 of the Commission's Rules. The form consists of multiple schedules and exhibits, depending on the specific action for which it is filed. Initial applications are the most complete, and renewal applications are the most brief. The data collected is used by Commission staff to determine whether grant of a license is in accordance with Commission requirements on eligibility, permissible use, efficient use of spectrum, and prevention of interference to existing stations.

*OMB Control Number:* 3060–0938.

*Title:* Application for a Low Power FM Broadcast Station License, FCC Form 319.

*Form Number:* FCC Form 319.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Not-for-profit institutions, State, local or Tribal Government.

*Number of Respondents and Responses:* 200 respondents and 200 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 200 hours.

*Total Annual Costs:* $27,500.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

*Privacy Impact Assessment(s):* No impacts.

*Needs and Uses:* On January 20, 2000, the Commission adopted a Report and Order (R&O) in MM Docket No. 99–25, In the Matter of Creation of Low Power Radio Service. With the adoption of this R&O, the Commission authorized the licensing of two new classes of FM radio stations, generally referred to as low power FM stations (LPFM): a LP100 class for stations operating at 50–100 watts effective radiated power (ERP) at an antenna height above average terrain (HAAT) of 30 meters; and a LP10 class for stations operating at 1–10 watts ERP and an antenna height of 30 meters HAAT. These stations will be operated on a noncommercial educational basis by entities that do not hold attributable interests in any other broadcast station or other media subject to the Commission's ownership rules. The LPFM service authorized in this Report and Order provides significant opportunities for new radio services. The LPFM service creates a class of radio stations designed to serve very localized communities or underrepresented groups within communities.

In connection with this new service, the Commission developed a new FCC Form 319, Application for a Low Power FM Broadcast Station License. FCC Form 319 is required to apply for a license for a new or modified Low Power FM (LPFM) station.

*OMB Control Number:* 3060–1045.

*Title:* Section 76.1610, Change of Operational Information; FCC Form 324, Operator, Mail Address, and Operational Status Changes Operator, Mail Address, and Operational Information Changes, FCC Form 324.

*Form Number:* FCC Form 324.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business and other for-profit entities; Not-for-profit institutions.

*Number of Respondents and Responses:* 5,000 respondents; 5,000 responses.

*Estimated Time per Response:* 0.5 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 2,500 hours.

*Total Annual Costs:* None.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 154(i), 303, 308, 309 and 621 of the Communications Act of 1934, as amended.

*Privacy Impact Assessment(s):* No impact(s).

*Needs and Uses:* Under 47 CFR Section 76.1610, cable operators must notify the Commission of changes in ownership information or operating status within 30 days of such change. FCC Form 324 is used to update information filed with the Commission concerning the Cable Community Registration. The information is the basic operational information on operator name, mailing address, community served, and system identification. FCC Form 324 will cover a variety of changes related to cable

operators, replacing the requirement of a letter containing approximately the same information. Every Form 324 filing will require information about the system—the additional information required depending largely upon the nature of the change.

Federal Communications Commission.

**Bulah P. Wheeler,**

*Deputy Manager, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–32463 Filed 12–19–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. First Mutual of Richmond, Inc., and Richmond Mutual Bancorp, Inc.,* both in, Richmond, Indiana; to engage *de novo* in lending activities, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 15, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–32517 Filed 12–19–11; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30-Day-12–11DT]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Monitoring Outcomes of the Enhanced Comprehensive HIV Prevention Plan (ECHPP) Project -New- National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The scope of the HIV epidemic in the United States is significant, particularly in large urban areas where HIV/AIDS cases are concentrated. In 2006, approximately 56,000 new HIV infections occurred in the U.S., demonstrating the need to expand targeted HIV prevention efforts. In 2010, twelve U.S. metropolitan statistical areas (MSAs) received funding, through their city and state health departments, to conduct the Enhanced Comprehensive HIV Prevention Planning (ECHPP) project. These twelve MSAs (Atlanta, GA; Baltimore, MD; Chicago, IL; Dallas, TX; District of Columbia; Houston, TX; Los Angeles, CA; Miami, FL; New York City, NY; Philadelphia, PA; San Francisco, CA; and San Juan, PR) had the highest AIDS prevalence rates in the U.S. at the end of 2007, representing 44% of all U.S. AIDS cases. The purpose of ECHPP is to enhance existing HIV prevention services in these high prevalence areas and provide an optimal mix of evidence-based behavioral, biomedical, and structural interventions to have maximum impact on the HIV/AIDS epidemic at the community level. ECHPP goals are consistent with CDC's Division of HIV/AIDS Prevention Strategic Plan for HIV Prevention and with the National HIV/AIDS Strategy: (1) Prevent new HIV infections, (2) increase linkage to, and impact of, prevention and care services for HIV-positive individuals, and (3) reduce HIV-related health disparities.

To evaluate ECHPP's impact on the HIV/AIDS epidemic at the community level, data will be collected through both existing CDC data sources and through new data collection activities. Existing CDC data sources will include HIV surveillance systems (*e.g.,* National HIV Behavioral Surveillance System, Medical Monitoring Project) that routinely collect information about behavioral and clinical outcomes from at-risk target populations in the 12 MSAs. A new data collection activity is proposed through this project to collect information about behavioral and clinical outcomes from injection drug users, high-risk heterosexuals, and HIV-positive individuals who access medical care in six of the 12 ECHPP-funded MSAs. These MSAs are: District of Columbia; Houston, TX; Los Angeles, CA; Miami, FL; New York City, NY; and San Francisco, CA. The purpose of this new data collection activity is to monitor community-level outcomes of ECHPP and supplement HIV surveillance data routinely collected in these areas. Outcome data will be collected in these MSAs at two time points between 2012 and 2014.

Two surveys will be used in this project: (1) A community-based survey to be administered to injection drug users and high-risk heterosexuals, and (2) a clinic-based survey to be administered to HIV-positive individuals seeking care at clinics that provide HIV-related services. Both surveys will collect data on demographics, sexual behavior, alcohol and drug use history, HIV testing experiences, exposure to HIV prevention messages, and participation in HIV prevention activities. The clinic survey will also include questions about HIV treatment, treatment adherence, sources of care, and medical outcomes. For the community survey, for each of the two data collection periods, we intend to recruit and screen 750 injection drug users and 750 high-risk heterosexuals using venue-based, convenience sampling methods. For the clinic survey, we intend to recruit and screen 1400 HIV-positive individuals seeking HIV care at medical clinics. A total of 600 eligible injection drug users (age > 18 yrs), 600 eligible high-risk heterosexuals (age 18 to 60 yrs), and 1200 eligible HIV-positive individuals (age > 18 yrs) will be surveyed. CDC will collaborate with local health department staff and outreach workers

in each MSA to identify venues and clinics appropriate for data collection. Surveys will be administered by trained, local interviewers. There is no cost to respondents other than their time. The total annual burden hours are 1,704.

ESTIMATE OF ANNUALIZED BURDEN TABLE

| Data collection form | Respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Project orientation | Clinic staff | 40 | 1 | 30/60 |
| Clinic Staff Script—Provision of Patient Loads | Clinic staff | 600 | 1 | 5/60 |
| Clinic Staff Script—Approaching Clients | Clinic staff | 1,100 | 1 | 5/60 |
| Clinic Screener | HIV-positive individuals screened | 1,400 | 1 | 5/60 |
| Clinic Survey | Eligible HIV-positive individuals | 1,200 | 1 | 40/60 |
| Community Screener | Injection drug users screened | 750 | 1 | 5/60 |
| Community Survey | Eligible injection drug users | 600 | 1 | 25/60 |
| Community Screener | High-risk heterosexual individuals screened | 750 | 1 | 5/60 |
| Community Survey | Eligible high-risk heterosexual individuals | 600 | 1 | 25/60 |

Dated: December 14, 2011.

**Daniel Holcomb,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011–32495 Filed 12–19–11; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30Day-12–11AN]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

**Proposed Project**

Asthma Education Study: Making Health Care Providers Better Asthma Educators—New-National Center for Environmental Health (NCEH) and Agency for Toxic Substances and Disease Registry (ATSDR)/Centers for Disease Control and Prevention (CDC).

**Background and Brief Description**

The Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) reports that 17.5 million non-institutionalized adults have asthma. In addition, 7.1 million children in this country have the disorder. Asthma accounts for 17 million health care visits and more than 3,400 deaths per year. All of these data are for the United States. Except for a few cases linked to occupational exposures, the causes of asthma remain unknown, and there exists no cure. In the absence of means to eliminate the disorder, treatment to minimize the frequency and intensity of asthmatic attacks is of paramount importance. Several tools are available, including the use of corticosteroids and control of exposure to allergens and irritants, collectively known as ''triggers.'' Thus, treatment of asthma is important and patients must take action at appropriate times. From this, it follows that the education provided by health care providers to asthmatic patients forms a critical link in efforts to control asthma. CDC and the National Institutes of Health recommend the use of written asthma action plans to guide patient self-management of the disorder. Some states have also developed tools. In the case of Minnesota, this is an interactive program on the Internet.

Anecdotal evidence suggests that there is substantial variability in the use of available tools for developing written asthma action plans. Similarly, patient education appears to vary in type and amount. Some causes of this are suspected: Billing codes for asthma education are not universally present and the degree of health literacy among patients varies and is likely not universally sufficient. Nevertheless, in large part, the factors influencing asthma education by health care providers are unknown. To help address this situation, the Air Pollution and Respiratory Health Branch of CDC wishes to conduct a study to identify barriers to, and facilitators of, asthma education among health care providers consistent with National Asthma Education and Prevention Program (NAEPP)/National Heart, Lung, and Blood Institute Expert Panel Report 3: Guidelines for the Diagnosis and Management of Asthma.

Close to 25 million Americans currently suffer with asthma, with 12 million experiencing an asthma ''attack'' in 2009, costing the nation $56 billion and individuals on average over $3,200 annually in direct and indirect costs. Improved self-management education, consistent with the NIH/NAEPP guidelines, for enhancing education of persons with asthma in the areas of correct medication adherence and avoidance of environmental triggers of asthma attacks, is central to reducing the health burden and financial burden on individuals and the nation. This research is an important step in improving the education individuals with asthma (or parents of children with asthma) receive at their initial diagnosis encounter with the medical system. As such it is expected to improve proper medication adherence and avoidance of environmental triggers of an asthma attack and in turn to be of use to the government in reducing both the medical and financial burden of asthma on the nation. In this aspect, this research is directly in line with both the mission of the CDC National Asthma Control Program, its funder, which seeks to achieve reductions in deaths and hospitalizations and increases in self-management education for individuals with asthma and that Program's Government Performance and Results Act Performance Measure: Increase the proportion of those with current asthma who report they have received self–management training for asthma in populations served by CDC funded state asthma control programs. The research project is also in alignment with Healthy People 2020 objectives including reducing asthma deaths (objective RD–1), reducing

hospitalizations for asthma (objective RD–2), reducing hospital emergency department visits for asthma (objective RD–3), reducing activity limitations among persons with asthma (objective RD–4), reducing the number of school or work days missed by persons with asthma because of asthma (objective RD–5), increasing the proportion of persons with asthma who receive formal patient education (objective RD–6), and increasing the proportion of persons with asthma who receive appropriate asthma care according to the NAEPP guidelines (objective RD–7). There are no costs to the respondents other than their time. The total estimated annual burden hours are 40 hours total.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden per response (in hours) |
|---|---|---|---|---|
| Physician and Nurse | Screener | 48 | 1 | 5/60 |
| Physician | Interview | 24 | 1 | 30/60 |
| Nurse | Focus Group | 24 | 1 | 1 |

Dated: December 14, 2011.

**Daniel Holcomb,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011–32497 Filed 12–19–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–1598–NC]**

### Medicare and Medicaid Programs; Announcement of Application From Hospital Requesting Waiver for Organ Procurement Service Area

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice with comment period.

**SUMMARY:** This notice with comment period announces a waiver request from Pioneer Community Hospital to participate in an Organ Procurement Organization (OPO) outside of its designated OPO. The request was made in accordance with section 1138(a)(2) of the Social Security Act (the Act) which provides that a hospital may obtain a waiver from the Secretary under certain conditions. This notice solicits comments from OPOs and the general public for our consideration in determining whether we should grant the requested waiver.

**DATES:** *Comment Date:* To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on February 21, 2012.

**ADDRESSES:** In commenting, please refer to file code CMS–1598–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address *only:* Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1598–NC, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address *only:* Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1598–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments only to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

*Submission of comments on paperwork requirements.* You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Kwana Johnson, (410) 786–3171.

**SUPPLEMENTARY INFORMATION:**

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an

appointment to view public comments, phone 1 (800) 743–3951.

## I. Background

Organ Procurement Organizations (OPOs) are not-for-profit organizations that are responsible for the procurement, preservation, and transport of transplantable organs to transplant centers throughout the country. Qualified OPOs are designated by the Centers for Medicare & Medicaid Services (CMS) to recover or procure organs in CMS-defined exclusive geographic service areas, pursuant to section 371(b)(1) of the Public Health Service Act (42 U.S.C. 273(b)(1)) and our regulations at 42 CFR 486.306. Once an OPO has been designated for an area, hospitals in that area that participate in Medicare and Medicaid are required to work with that OPO in providing organs for transplant, pursuant to section 1138(a)(1)(C) of the Social Security Act (the Act) and our regulations at 42 CFR 482.45.

Section 1138(a)(1)(A)(iii) of the Act provides that a hospital must notify the designated OPO (for the service area in which it is located) of potential organ donors. Under section 1138(a)(1)(C) of the Act, every participating hospital must have an agreement to identify potential donors only with its designated OPO.

However, section 1138(a)(2)(A) of the Act provides that a hospital may obtain a waiver of the above requirements from the Secretary under certain specified conditions. A waiver allows the hospital to have an agreement with an OPO other than the one initially designated by CMS, if the hospital meets certain conditions specified in section 1138(a)(2)(A) of the Act. In addition, the Secretary may review additional criteria described in section 1138(a)(2)(B) of the Act to evaluate the hospital's request for a waiver.

Section 1138(a)(2)(A) of the Act states that in granting a waiver, the Secretary must determine that the waiver—(1) is expected to increase organ donations; and (2) will ensure equitable treatment of patients referred for transplants within the service area served by the designated OPO and within the service area served by the OPO with which the hospital seeks to enter into an agreement under the waiver. In making a waiver determination, section 1138(a)(2)(B) of the Act provides that the Secretary may consider, among other factors: (1) Cost-effectiveness; (2) improvements in quality; (3) whether there has been any change in a hospital's designated OPO due to the changes made in definitions for metropolitan statistical areas; and (4) the length and continuity of a hospital's relationship with an OPO other than the hospital's designated OPO. Under section 1138(a)(2)(D) of the Act, the Secretary is required to publish a notice of any waiver application received from a hospital within 30 days of receiving the application, and to offer interested parties an opportunity to comment in writing during the 60-day period beginning on the publication date in the **Federal Register**.

The criteria that the Secretary uses to evaluate the waiver in these cases are the same as those described above under sections 1138(a)(2)(A) and (B) of the Act and have been incorporated into the regulations at § 486.308(e) and (f).

## II. Waiver Request Procedures

In October 1995, we issued a Program Memorandum (Transmittal No. A–95–11) detailing the waiver process and discussing the information hospitals must provide in requesting a waiver. We indicated that upon receipt of a waiver request, we would publish a **Federal Register** notice to solicit public comments, as required by section 1138(a)(2)(D) of the Act.

According to these requirements, we will review the request and comments received. During the review process, we may consult on an as-needed basis with the Health Resources and Services Administration's Division of Transplantation, the United Network for Organ Sharing, and our regional offices. If necessary, we may request additional clarifying information from the applying hospital or others. We will then make a final determination on the waiver request and notify the hospital and the designated and requested OPOs.

## III. Hospital Waiver Request

As permitted by § 486.308(e), the following hospital has requested a waiver in order to enter into an agreement with a designated OPO other than the OPO designated for the service area in which the hospital is located:

Pioneer Community Hospital (Medicare provider number 25–1302), of Aberdeen, Mississippi, is requesting a waiver to work with:

Mississippi Organ Recovery Agency, 12 River Bend Place, Jackson, MS 39232.

The Hospital's Designated OPO is:

Mid-South Transplant Foundation, Inc., 8001 Centerview Parkway, Suite 302, Memphis, TN 38018.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance, and Program No. 93.778, Medical Assistance Program)

Dated: December 14, 2011.

**Marilyn Tavenner,**

*Acting Administrator, Centers for Medicare & Medicaid Services.*

[FR Doc. 2011–32503 Filed 12–19–11; 8:45 am]

BILLING CODE 4120–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

*Title:* Parents and Children Together (PACT) Evaluation.

*OMB No.:* New Collection.

*Description:* The Office of Planning, Research, and Evaluation (OPRE), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing data collection activity as part of the Parents and Children Together (PACT) Evaluation.

The overall objective of the PACT evaluation is to document and evaluate Responsible Fatherhood (RF) and Healthy Marriage (HM) grants that were authorized under the 2010 Claims Resolution Act. This information will inform decisions related to future investments in this kind of programming as well as the design and operation of such services.

To meet the objective of the study, experimental impact studies with complementary implementation studies will be conducted, along with separate qualitative studies:

• *Impact studies, with complementary implementation studies.* The goal of the impact component is to provide rigorous estimates of the effectiveness of the programs. This component will use an experimental design. Program applicants who are interested in and eligible for the RF or HM program will be randomly assigned to either a program group and be offered participation in the program, or a control group and not be offered participation in the program. Information will be collected twice for the impact component. First, baseline information will be collected from all fathers or couples prior to random assignment. Second, follow-up data will be collected from sample members at about 12 months after enrollment in the program. A wide range of outcomes (*e.g.,* father involvement; parenting and co-parenting; economic self-sufficiency) will be evaluated. The goal of the complementary implementation component is to provide a detailed

description of the programs included in the impact study component—how they are implemented, their participants, the contexts in which they are operated, and their promising practices. The detailed descriptions will assist in interpreting program impacts and identifying program features and conditions necessary for effective program replication or improvement. Data collection for this component will include site visits, Management Information Systems (MIS), and partner organization surveys.

• *Qualitative studies.* The goal of the qualitative component is to provide a deeper understanding of the organizations operating RF and HM programs, as well as the lives of participants—their relationships, the challenges they face, the influences of the community in which they live, and how programs touch their lives. Data collection for this component will include site visits, MIS, participant characteristics survey, partner organization surveys, nonparticipant telephone interviews, in-depth in-person conversations with program participants, and diary studies.

This 60-Day Notice covers (a) instruments for the impact studies' baseline, (b) site Management Information Systems (MIS) for the impact/implementation and qualitative studies, (c) program participant characteristics survey for the qualitative studies, and (d) a request for OMB to waive subsequent 60-day **Federal Register** notices pertaining to the PACT Evaluation.

**Respondents**

For the baseline, information will be collected from all fathers or couples prior to random assignment. Program staff will be responsible for collecting and transferring the information.

For the Management Information Systems (MIS), program staff will be asked to record information on the services received by study participants in the impact/implementation and qualitative studies in the study MIS.

For the program participant characteristics survey in the qualitative studies, information will be collected from participants. Program staff will be responsible for collecting and transferring the information.

**Annual Burden Estimates**

A discussion guide, to assist in selecting sites for the impact/implementation and qualitative studies, is currently under review at OMB. A 60-Day **Federal Register** Notice for this instrument was published on August 12, 2011.

| Instrument | Annual number of respondents | Number of responses per respondent | Average burden per response (minutes) | Total annual burden hours |
|---|---|---|---|---|
| Discussion guide for grantees and partner organization staff | 150 | 1 | 60 | 150 |

The following instruments, part of the baseline data collection and site Management Information Systems (MIS), are proposed for public comment under this 60-Day **Federal Register** Notice.

| Instrument | Annual number of respondents | Number of responses per respondent | Average burden per response (minutes) | Total annual burden hours |
|---|---|---|---|---|
| **Impact/Implementation Component** | | | | |
| Baseline for program applicants | 3,000 | 1 | 35 | 1,750 |
| Baseline for grantee staff | 30 | 100 | 35 | 1,750 |
| Study MIS for grantee staff | 30 | 5,200 | 2 | 5,200 |
| **Qualitative Component** | | | | |
| Study MIS for grantee staff | 15 | 867 | 2 | 434 |
| Program participant characteristics survey | 250 | 1 | 25 | 104 |
| Program participant characteristics survey for grantee staff | 15 | 16.7 | 25 | 104 |
| Total | | | | 9,342 |

Estimated Total Annual Burden Hours (for instruments currently under review and those associated with this 60-Day Notice): 9342.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2011–32489 Filed 12–19–11; 8:45 am]

BILLING CODE 4184–37–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0849]**

### Establishing Timeframes for Implementation of Product Safety Labeling Changes; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is seeking comments on specific issues related to its authority under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to require or order safety labeling changes for approved prescription drug products based on new safety information that becomes available after a drug product is approved. The FD&C Act specifies the timeframes within which a safety labeling change must be submitted when required or ordered by the FDA, and timeframes for FDA to conclude its review and take regulatory action regarding safety labeling changes. FDA's regulations also provide procedures by which labeling changes that do not qualify as changes based on new safety information can be requested by FDA or by the holder of the drug approval. FDA is seeking public input to assist the Agency in establishing specific timeframes for implementing both types of labeling changes.

**DATES:** Submit either electronic or written comments by February 21, 2012.

**ADDRESSES:** Submit electronic comments on this document to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Kristen Miller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, (301) 796–0762, Fax: (301) 847–8440.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On September 27, 2007, the Food and Drug Administration Amendments Act of 2007 (FDAAA) was enacted. Title IX, Subtitle A, section 901 of FDAAA added to the FD&C Act new section 505(o) (21 U.S.C. 355(o)), which authorizes FDA to require labeling changes when the Agency becomes aware of new safety information it believes should be included in the labeling of an approved drug product.[1]

Before the enactment of FDAAA, if FDA believed that a labeling change was necessary to address safety information newly identified after approval of a drug product, the Agency would ask the application holder to make the appropriate labeling changes. In most cases, application holders responded to FDA's requests for labeling changes by negotiating appropriate language with FDA staff to address the concern, and then submitting a supplement or amended supplement to obtain approval of the changes. FDA routinely asked applicants to submit supplemental applications to revise the labeling of approved products, but the Agency lacked the authority to compel changes to product labeling based on new safety information. At times, FDA and application holders discussed the appropriate timeframe by which new labeling would be made available. Typically products that had already moved beyond the manufacturing line were not withdrawn from distribution to change existing labeling under the timeframes.

Under FDAAA, FDA is now authorized to require and, if necessary, order application holders to implement safety labeling changes to reflect new safety information (section 505(o)(4) of the FD&C Act). Although the statute provides specific and relatively short timelines for submission and review of FDAAA-required safety labeling changes following a notification or order from FDA, the statute does not include specific deadlines for how soon the revised labeling must be incorporated into the packaging of the product that is offered for sale, or into other labeling (section 505(o)(4) of the FD&C Act).

In an effort to make revised safety labeling available as soon as possible after the changes required under FDAAA are approved, FDA has recommended that application holders post the revised labeling on their Web sites within 10 days of approval. (See draft guidance for industry entitled ''Safety Labeling Changes—Implementation of Section 505(o)(4) of the Federal Food, Drug, and Cosmetic Act'' (76 FR 20686, April 13, 2011)). In letters approving supplements with safety labeling changes, FDA has also recommended that revised labeling accompany the product within ''a reasonable amount of time'' and has occasionally suggested specific timeframes when this could occur. However, we have not yet announced general timeframes in which we expect new labeling to be disseminated nor have we established the timeframe for when product packaging needs to reflect the revised label.

In addition to safety labeling changes that may be required under FDAAA, FDA may continue to request safety labeling changes under existing regulations and application holders may continue to propose labeling changes on their own initiative (§§ 314.70 and 601.12 (21 CFR 314.70 and 601.12)). Existing regulations in §§ 314.70 and 601.12 describe several mechanisms for effecting proposed labeling changes to approved drug applications including the following: (1) A prior approval supplement (PAS) is used for changes that must receive approval before being implemented; (2) a changes-being-effected supplement (CBE) is used for other kinds of labeling revisions that must be received by the Agency prior to distribution of the drug with the revised labeling; and (3) the annual report for the drug product is used for certain minor changes that need only be described in the next annual report.

Current labeling regulations do not provide specific timeframes for implementing other safety labeling changes—changes not required under FDAAA—that are made by submitting a PAS or CBE, or by reporting the change in the annual report.

## II. Purpose of Request for Comments

Because safety labeling changes may be related to serious risks, this information must be promptly communicated to prescribers and patients. Thus, it is important for FDA to clarify its expectations regarding the timeframes for applicants to implement safety labeling changes to ensure that the labeling is updated in a timely manner. FDA anticipates that in most cases, as in the past, it will not be necessary for products with existing labeling to be withdrawn from distribution and that under certain circumstances it may be appropriate for products with existing labeling to remain in distribution until the current product inventory is exhausted.

FDA is interested in hearing from application holders, manufacturers, distributors, and other stakeholders about their experience with and views on the practical implementation of revised product labeling, including their views as to how factors in the following

[1] For purposes of this notice, drug product means a human drug product including a biological drug product. Labeling includes the carton or other container or packaging labels, the prescribing information, patient package inserts, and Medication Guides.

three categories may affect implementation: (1) Drug manufacturing and packaging, and printing labels and other labeling; (2) supply chain issues; and, (3) other issues. FDA may use the information received to develop draft guidance for industry regarding timeframes for revising product labeling following the approval of safety labeling changes, and may apply these timeframes to particular safety labeling changes.

### III. Questions Posed by FDA

With this notice, FDA is soliciting comments from application holders, manufacturers, distributors, and other stakeholders on the following questions:

*A. Considerations Related to Drug Manufacturing and Packaging, and to Printing Labeling*

1. What are the considerations related to drug manufacturing and packaging, of which FDA should be aware, as they relate to implementation of revised product labeling?

2. What are the considerations related to printing labels and other types of labeling of which FDA should be aware, as they relate to implementation of different types of revised product labeling?

*B. Supply Chain Issues*

3. What are the supply chain factors (including storage, shipping, and distribution factors) of which FDA should be aware that limit or otherwise affect how quickly a labeling change can be implemented?

*C. Other Considerations*

4. What alternative labeling mechanisms (*e.g.,* having labeling available on a product Web site) could be used to disseminate new safety information quickly to patients and health care providers?

5. How should the relative seriousness of the new safety information, or whether the new safety information describes a newly identified risk, or strengthens a risk already identified in current labeling, affect timelines for implementing revised product labeling?

6. What are the implementation considerations when the safety labeling change is to prescriber versus patient labeling (or both)?

7. What would be a reasonable timeframe following approval of revised safety related labeling changes for applicants to implement the revised labeling? Please relate this timeframe to the optimal point in the supply chain (*e.g.,* newly manufactured product, newly shipped product) and the type of labeling change.

8. Are there other considerations or options related to implementing safety labeling changes of which FDA should be aware?

### IV. Comments

Interested persons may submit either electronic or written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, as well as at *http://www.regulations.gov*.

Dated: December 14, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–32438 Filed 12–19–11; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–D–0476]**

### Guidance for Industry and Food and Drug Administration Staff; Enforcement Policy for Premarket Notification Requirements for Certain In Vitro Diagnostic and Radiology Devices; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Enforcement Policy for Premarket Notification Requirements for Certain In Vitro Diagnostic and Radiology Devices.'' This document describes FDA's intent with regard to enforcement of premarket notification (510(k)) requirements for certain in vitro diagnostic and radiology devices under the regulations.

**DATES:** Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance document entitled ''Enforcement Policy for Premarket Notification Requirements for Certain In Vitro Diagnostic and Radiology Devices'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to (301) 847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Scott McFarland, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5543, Silver Spring, MD 20993–0002, (301) 796–6217.

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDA has identified certain Class I and Class II in vitro diagnostic and radiology devices that have established safety and effectiveness profiles and for which it believes 510(k) review is not necessary to assure safety and effectiveness. While FDA intends to exempt these devices from the 510(k) requirement through rulemaking that would reclassify the Class II devices and amend the classification regulations of the Class I devices, FDA no longer believes it is necessary to review premarket notification (510(k)) submissions for these devices before they enter the market. FDA is issuing a guidance concerning a policy of exercising enforcement discretion with regard to the 510(k) requirement for such devices. The guidance lists the devices for which FDA intends to exercise enforcement discretion with regard to premarket notification requirements, subject to the limitations to the exemption criteria found in 21 CFR 862.9, 21 CFR 864.9, 21 CFR 866.9, and 21 CFR 892.9. FDA intends to continue to enforce all other applicable requirements under the FD&C Act, including, but not limited to: Registration and listing (part 807 (21 CFR part 807)); labeling (part 801 (21 CFR part 801) and § 809.10 (21 CFR 809.10)); good manufacturing practice requirements as set forth in the Quality System regulation (part 820 (21 CFR part 820)); and Medical Device Reporting requirements (part 803 (21

CFR part 803)). The draft guidance published in the **Federal Register** on July 12, 2011 (76 FR 40921), and the comment period closed on October 11, 2011. There were 5 comments received.

**II. Significance of Guidance**

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on ''Enforcement Policy for Premarket Notification Requirements for Certain In Vitro Diagnostic and Radiology Devices.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

**III. Electronic Access**

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''Enforcement Policy for Premarket Notification Requirements for Certain In Vitro Diagnostic and Radiology Devices,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to (301) 847–8149 to receive a hard copy. Please use the document number 1752 to identify the guidance you are requesting.

**IV. Paperwork Reduction Act of 1995**

This guidance refers to previously approved collections of information found in FDA regulations and guidance documents. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in part 807, subparts B and C have been approved under OMB control number 0910–0387; the collections of information in part 820 have been approved under OMB control number 0910–0073; the collections of information in part 801 and § 809.10 have been approved under OMB control number 0910–0485; and the collections of information in part 803 have been approved under OMB control number 0910–0437.

**V. Comments**

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 14, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–32437 Filed 12–19–11; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0885]**

### Food and Drug Administration Rare Disease Patient Advocacy Day; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

The Food and Drug Administration's (FDA) Office of Orphan Products Development is announcing the following meeting: FDA Rare Disease Patient Advocacy Day. This meeting is intended to enhance the awareness of the rare disease community as to FDA's roles and responsibilities in the development of products (drugs, biological products, and devices) intended for the diagnosis, prevention, and/or treatment of rare diseases or conditions. The goal of this meeting is to engage and educate the rare disease community on the FDA regulatory processes.

This educational meeting will consist of a live and interactive simultaneous Web cast of presentations provided by FDA experts from various Centers and Offices, as well as from outside experts. The interactive meeting will include two general panel discussion sessions, as well as afternoon breakout sessions for more indepth information on the roles of FDA. In addition, onsite attendees will have an opportunity during lunch to engage with FDA and outside experts in a small group setting.

*Date and Time:* The meeting will be held on March 1, 2012, from 8:30 a.m. to 5 p.m.

*Location:* FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. For participants who cannot attend the live meeting, a live interactive Web cast will be made available. Participants may access this live Web cast by visiting the following site: *http://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/OOPDNewsArchive/ucm277194.htm.*

*Contact:* Soumya Patel, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm.5279, Silver Spring, MD 20993–0002, (301) 796–8660, FAX: (301) 847–8621, email: *FDAadvocacy@fda.hhs.gov.*

*Registration:* Interested participants may register for this meeting at the following Web site: *https://www.team-share.net/FDA_Rare_Disease_Patient_Advocacy_Day_Registration.*

If you need sign language interpretation during this meeting, please contact Megan McNamee at *mmcnamee@icfi.com* by February 15, 2012.

The FDA Rare Disease Patient Advocacy Day is supported by FDA, the National Institutes of Health (NIH), the National Organization for Rare Disorders, and the Genetic Alliance.

FDA encourages all attendees to also plan on attending the NIH Rare Disease Day day-long celebration on February 29, 2011. Please refer to the following Web site for more information regarding the NIH Rare Disease Day event: *http://rarediseases.info.nih.gov/RareDiseaseDay.aspx.* (FDA has verified the Web site addresses throughout this document, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Dated: December 14, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–32436 Filed 12–19–11; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0002]**

### Advisory Committees; Tentative Schedule of Meetings for 2012

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a

tentative schedule of forthcoming meetings of its public advisory committees for 2012. During 1991, at the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. In its final report, one of the IOM's recommendations was for the Agency to publish an annual tentative schedule of its meetings in the **Federal Register**. This publication implements the IOM's recommendation.

**FOR FURTHER INFORMATION CONTACT:** Teresa L. Hays, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5290, Silver Spring, MD 20993, (301) 796–8220.

**SUPPLEMENTARY INFORMATION:** The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report in 1992, one of the IOM's recommendations was for FDA to adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**; FDA has implemented this recommendation. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. Because the schedule is tentative, amendments to this notice will not be published in the **Federal Register**. However, changes to the schedule will be posted on the FDA advisory committees' Internet site located at *http://www.fda.gov/AdvisoryCommittees/default.htm.* FDA will continue to publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, to announce the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for 2012.

TABLE 1

| Committee name | Tentative date(s) of meeting(s) |
|---|---|
| **OFFICE OF THE COMMISSIONER** | |
| Pediatric Advisory Committee | January 30–31, May & December date(s), if needed, to be determined. |
| Risk Communication Advisory Committee | February 13–14, April 30, May 1, August 16–17, November 1–2. |
| Science Board to FDA | January 6, May 2, October 3. |
| **CENTER FOR BIOLOGICS EVALUATION AND RESEARCH** | |
| Allergenic Products Advisory Committee | April 18, October 18. |
| Blood Products Advisory Committee | February 28–29, May 15–16, July 31–August 1, December 4–5. |
| Cellular, Tissue and Gene Therapies Advisory Committee | February 9–10, June 27–28, November 29–30. |
| Transmissible Spongiform Encephalopathies Advisory Committee | Date(s), if needed, to be determined. |
| Vaccines and Related Biological Products Advisory Committee | February 28–29, May 16–17, September 19–20, November 14–15. |
| **CENTER FOR DRUG EVALUATION AND RESEARCH** | |
| Anesthetic and Analgesic Drugs Advisory Committee (formerly the Anesthetic and Life Support Drugs Advisory Committee). | February 9. |
| Anti-Infective Drugs Advisory Committee | Date(s), if needed, to be determined. |
| Antiviral Drugs Advisory Committee | May 16–17. |
| Arthritis Advisory Committee | March 12. |
| Cardiovascular and Renal Drugs Advisory Committee | February 23. |
| Dermatologic and Ophthalmic Drugs Advisory Committee | February 27. |
| Drug Safety and Risk Management Advisory Committee | Date(s), if needed, to be determined. |
| Endocrinologic and Metabolic Drugs Advisory Committee | February 22, March 28–29. |
| Gastrointestinal Drugs Advisory Committee | March 13–14. |
| Medical Imaging Drugs Advisory Committee | Date(s), if needed, to be determined. |
| Nonprescription Drugs Advisory Committee | Date(s), if needed, to be determined. |
| Oncologic Drugs Advisory Committee | February 8–9, March 20–21, June 20–21, July 24–25, September 12–13, November 6–7, December 4–5. |
| *Peripheral and Central Nervous System Drugs Advisory Committee* | Date(s), if needed, to be determined. |
| *Advisory Committee for Pharmaceutical Science and Clinical Pharmacology.* | March 14. |
| Psychopharmacologic Drugs Advisory Committee | Date(s), if needed, to be determined. |
| *Pulmonary-Allergy Drugs Advisory Committee* | February 23–24. |
| *Advisory Committee for Reproductive Health Drugs* | January 20, April 5. |
| **CENTER FOR DEVICES AND RADIOLOGICAL HEALTH** | |
| **Medical Devices Advisory Committee (Comprised of 18 Panels)** | |
| Device Good Manufacturing Practices Advisory Committee | Date(s), if needed, to be determined. |
| Anesthesiology and Respiratory Therapy Devices Panel | June 8, November 16. |
| Circulatory System Devices Panel | Date(s), if needed, to be determined. |
| Clinical Chemistry and Clinical Toxicology Devices Panel | April 20, July 18–19, September 20–21. |
| Dental Products Panel | Date(s), if needed, to be determined. |
| Ear, Nose, and Throat Devices Panel | Date(s), if needed, to be determined. |
| Gastroenterology-Urology Devices Panel | July 13. |
| General and Plastic Surgery Devices Panel | July 17. |
| General Hospital and Personal Use Devices Panel | August 16–17. |
| Hematology and Pathology Devices Panel | June 28. |
| Immunology Devices Panel | Date(s), if needed, to be determined. |

TABLE 1—Continued

| Committee name | Tentative date(s) of meeting(s) |
|---|---|
| Medical Devices Dispute Resolution Panel | Date(s), if needed, to be determined. |
| Microbiology Devices Panel | Date(s), if needed, to be determined. |
| Molecular and Clinical Genetics Panel | June 27. |
| Neurological Devices Panel | Date(s), if needed, to be determined. |
| Obstetrics and Gynecology Devices Panel | July 5–6. |
| Ophthalmic Devices Panel | November 8–9. |
| Orthopedic and Rehabilitation Devices Panel | September 13–14, November 16, December 6–7. |
| Radiological Devices Panel | November 2. |
| National Mammography Quality Assurance Advisory Committee | October 18. |
| Technical Electronic Product Radiation Safety Standards Committee | June 14. |
| **CENTER FOR FOOD SAFETY AND APPLIED NUTRITION** | |
| Food Advisory Committee | December 13–14. |
| **CENTER FOR TOBACCO PRODUCTS** | |
| Tobacco Products Scientific Advisory Committee | January 18–20, March 1–2. |
| **CENTER FOR VETERINARY MEDICINE** | |
| Veterinary Medicine Advisory Committee | Date(s), if needed, to be determined. |
| **NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH (NCTR)** | |
| Science Advisory Board to NCTR | October 23–24. |

Dated: December 14, 2011.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2011–32469 Filed 12–19–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0002]**

### Food and Drug Administration Clinical Trial Requirements, Regulations, Compliance, and Good Clinical Practice; Public Workshop

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of public workshop.

The Food and Drug Administration (FDA), Los Angeles District Office, in cosponsorship with the Society of Clinical Research Associates (SoCRA), is announcing a public workshop. The public workshop on FDA's clinical trial requirements is designed to aid the clinical research professional's understanding of the mission, responsibilities, and authority of the FDA and to facilitate interaction with FDA representatives. The program will focus on the relationships among FDA and clinical trial staff, investigators, and institutional review boards (IRB). Individual FDA representatives will discuss the informed consent process and informed consent documents; regulations relating to drugs, devices, and biologics; as well as inspections of clinical investigators, of IRB, and research sponsors.

*Date and Time:* The public workshop will be held on March 7 and 8, 2012, from 8 a.m. to 5 p.m.

*Location:* The public workshop will be held at the Hyatt Regency Newport Beach, 1107 Jamboree Rd., Newport Beach, CA 92660, 1 (949) 729–1234.

Attendees are responsible for their own accommodations. Please mention SoCRA to receive the hotel room rate of $145.00 plus applicable taxes (available until February 14, 2012, or until the SoCRA room block is filled).

*Contact:* Linda Hartley, Office of Regulatory Affairs, Food and Drug Administration, 19701 Fairchild, Irvine, CA 92612, (949) 608–4413, FAX: (949) 608–4417; or Society of Clinical Research Associates (SoCRA), 530 West Butler Ave., Suite 109, Chalfont, PA 18914, 1 (800) 762–7292 or (215) 822–8644; FAX: (215) 822–8633, email *SoCRAmail@aol.com*, Web site: *www.socra.org.*

*Registration:* The registration fee will cover actual expenses including refreshments, lunch, materials, and speaker expenses. Seats are limited; please submit your registration as soon as possible. Workshop space will be filled in order of receipt of registration. Those accepted into the public workshop will receive confirmation. The cost of the registration is as follows:

COST OF REGISTRATION

| | |
|---|---|
| SoCRA nonmember (includes membership) | 650.00 |
| Federal Government SoCRA member | 450.00 |
| Federal Government SoCRA nonmember | 525.00 |
| FDA Employee | [*] |

* Fee Waived.

If you need special accommodations due to a disability, please contact SoCRA or Linda Hartley (see *Contact*) at least 21 days in advance.

Extended periods of question and answer and discussion have been included in the program schedule. SoCRA designates this education activity for a maximum of 13.3 Continuing Education (CE) Credits for SoCRA CE and continuing nurse education (CNE). SOCRA designates this educational activity for a maximum of 13.3 American Medical Association Physician's Recognition Award *Category 1 Credit(s)*™. Physicians should claim only the credit commensurate with the extent of their participation. SoCRA is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians. SoCRA is an approved provider of CNE by the Pennsylvania State Nurses Association (PSNA), an accredited approver by the American Nurses Credentialing Center's Commission on Accreditation (ANCC).

ANCC/PSNA Provider Reference Number: 205–3–A–09.

*Registration Instructions:* To register, please submit a registration form with your name, affiliation, mailing address, telephone, fax number, and email, along with a check or money order payable to ''SoCRA''. Mail to: SoCRA (see *Contact* for address). To register via the Internet, go to *http://www.socra.org/html/FDA_Conference.htm.* (FDA has verified the Web site addresses throughout this document, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Payment by major credit card is accepted (Visa/MasterCard/AMEX only). For more information on the meeting registration, or for questions on the public workshop, contact SoCRA (see *Contact*).

**SUPPLEMENTARY INFORMATION:** The public workshop helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health. The public workshop will provide those engaged in FDA-regulated (human) clinical trials with information on a number of topics concerning FDA requirements related to informed consent, clinical investigation requirements, IRB inspections, electronic record requirements, and investigator initiated research. Topics for discussion include the following: (1) What FDA Expects in a Pharmaceutical Clinical Trial; (2) Adverse Event Reporting—Science, Regulation, Error, and Safety; (3) Part 11 Compliance—Electronic Signatures; (4) Informed Consent Regulations; (5) IRB Regulations and FDA Inspections; (6) Keeping Informed and Working Together; (7) FDA Conduct of Clinical Investigator Inspections; (8) Meetings With FDA: Why, When, and How; (9) Investigator Initiated Research; (10) Medical Device Aspects of Clinical Research; (11) Working With FDA's Center for Biologics Evaluation and Research; and (12) The Inspection Is Over—What Happens Next? Possible FDA Compliance Actions.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The public workshop helps to achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C. 393), which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The public workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) as outreach activities by Government Agencies to small businesses.

Dated: December 14, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–32435 Filed 12–19–11; 8:45 am]

**BILLING CODE 4160–01–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 RFA Panel: Challenge on the Transition from Acute to Chronic Neuropathic Pain

*Date:* January 9–10, 2012.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* John Bishop, Ph.D., Scientific Review Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Member Conflict: Topics in Infectious Diseases and Microbiology

*Date:* January 12, 2012.

*Time:* 1 p.m. to 3 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:* Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 996–5819, *zhengli@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 13, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–32520 Filed 12–19–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Published Privacy Impact Assessments on the Web

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of Publication of Privacy Impact Assessments (PIA).

**SUMMARY:** The Privacy Office of DHS is making available seven PIAs on various programs and systems in DHS. These assessments were approved and published on the Privacy Office's web site between September 1, 2011 and November 30, 2011.

**DATES:** The PIAs will be available on the DHS Web site until February 21, 2012, after which they may be obtained by contacting the DHS Privacy Office (contact information below).

**FOR FURTHER INFORMATION CONTACT:** Mary Ellen Callahan, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, or email: *pia@hq.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** Between September 1, 2011 and November 30, 2011, the Chief Privacy Officer of the DHS approved and published seven Privacy Impact Assessments (PIAs) on the DHS Privacy Office web site, *www.dhs.gov/privacy,* under the link for ''Privacy Impact Assessments.'' These PIAs cover seven separate DHS programs. Below is a short summary of those programs, indicating the DHS component responsible for the system, and the date on which the PIA was approved. Additional information can be found on the web site or by contacting the Privacy Office.

*System:* DHS/FEMA/PIA–018 Suspicious Activity Reporting (SAR).

*Component:* Federal Emergency Management Agency (FEMA).

*Date of approval:* September 9, 2011.

FEMA, a component of DHS, manages a process for SAR. This process, assigned to FEMA's Office of the Chief Security Officer, is designed to collect, investigate, analyze, and report suspicious activities to the Federal Bureau of Investigation's (FBI) Joint

Terrorism Task Force, Federal Protective Service, and/or other federal, state, or local law enforcement authorities required to investigate and respond to terrorist threats or hazards to homeland security. FEMA is conducted this PIA because this SAR process collects, maintains, and uses PII.

*System:* DHS/NPPD/US–VISIT/PIA–007(a) Biometric Interoperability Between the U.S. Department of Homeland Security and the U.S. Department of Justice.

*Component:* National Protection and Programs Directorate (NPPD) and United States Visitor and Immigrant Status Indicator Technology (US–VISIT).

*Date of approval:* September 16, 2011.

In 2006, the US–VISIT Program of DHS and the Criminal Justice Information Services Division of the FBI, Department of Justice (DOJ), developed an interoperability project to support the sharing of information among DHS, DOJ, and their respective stakeholders. This PIA update was conducted to reflect the expansion of DHS–DOJ interoperability to include new users and uses not covered. In addition, this PIA allows users to access more data in IDENT.

*System:* DHS/ICE/PIA–031 Alien Medical Tracking Systems.

*Component:* Immigration and Customs Enforcement (ICE).

*Date of approval:* September 26, 2011.

ICE provides medical care to and maintains medical records about aliens that ICE detains for violations of U.S. immigration law. The ICE Health Service Corps, a division of ICE's Office of Enforcement and Removal Operations, has several information technology systems that are used to track information from medical records for aliens in ICE custody for various monitoring and reporting purposes. These are the Social Services Database, Hospitalization Database, Significant Detainee Illness Spreadsheet, Mental Health Coordination Database, Epidemiology Database, and Performance Improvement Database. This PIA describes the data maintained in these medical tracking systems, the purposes for which this information is collected and used, and the safeguards ICE has implemented to mitigate privacy and security risks to PII stored in these systems.

*System:* DHS/ICE/PIA–004(a) ICE Pattern Analysis and Information Collection (ICEPIC) Update.

*Component:* ICE.

*Date of approval:* October 26, 2011.

ICE has established a system called the ICEPIC system. ICEPIC is a toolset that assists ICE law enforcement agents and analysts in identifying suspect identities and discovering possible non-obvious relationships among individuals and organizations that are indicative of violations of the customs and immigration laws as well as possible terrorist threats and plots. The PIA for ICEPIC was published in January 2008. This PIA Update was completed to provide transparency related to the Law Enforcement Information Sharing Service that enables law enforcement agencies outside DHS to query certain information available through ICEPIC. Additionally, through LEIS DHS law enforcement personnel are able to query external law enforcement agencies' sensitive but unclassified law enforcement information.

*System:* DHS/ICE/PIA–015(c) Enforcement Integrated Database Update.

*Component:* ICE.

*Date of approval:* November 7, 2011.

The Enforcement Integrated Database (EID) is a DHS shared common database repository for several DHS law enforcement and homeland security applications. EID captures and maintains information related to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations conducted by ICE, U.S. Customs and Border Protection, and U.S. Citizenship and Immigration Services, all components within DHS. The PIA for EID was published in January 2010. In July 2010, a PIA Update for EID was published to address an expansion of the information entered into EID and the scope of external information sharing. This EID PIA Update addresses planned changes to the types of information shared and an added method of sharing.

*System:* DHS/S&T/PIA–006 Protected Repository for the Defense of Infrastructure Against Cyber Threats (PREDICT).

*Component:* Science and Technology.

*Date of approval:* November 8, 2011.

The S&T Directorate's PREDICT system has undergone a PIA 3–Year Review. The PIA requires no changes and continues to accurately relate to its stated mission. PREDICT is a repository of test datasets of Internet traffic data that is made available to approved researchers and managed by an outside contractor serving as the PREDICT Coordination Center. The goal of PREDICT is to create a national research and development resource to bridge the gap between (a) the producers of security-relevant network operations data and (b) technology developers and evaluators who can use this data to accelerate the design, production, and evaluation of next-generation cyber security solutions, including commercial products.

*System:* DHS/ALL/PIA–013(a) PRISM System Update.

*Component:* DHS.

*Date of approval:* November 10, 2011.

DHS Management Directorate, Office of the Chief Procurement Officer is the owner of the PRISM contract writing management system. PRISM provides comprehensive, Federal Acquisition Regulation-based acquisition support for all DHS headquarters entities. The purpose of this PIA update is to reflect changes to the collection of information, and the addition of a classified PRISM system.

Dated: December 12, 2011.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2011–32483 Filed 12–19–11; 8:45 am]

BILLING CODE 9110–9L–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2011–0040; OMB No. 1660–0045]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; Inspection of Insured Structures by Communities

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension, without change, of a currently approved collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning extension of the Inspection of Insured Structures by Communities. The community inspection report requires that FEMA consult with local officials and others in Monroe County, Village of Islamorada, and the City of Marathon following any hurricane that may hit the Florida Keys, concerning compliance of insured buildings with the community's floodplain management ordinance.

**DATES:** Comments must be submitted on or before February 21, 2012.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2011–0040. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Regulatory Affairs Division, Office of Chief Counsel, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *Email.* Submit comments to *FEMA–POLICY@dhs.gov.* Include Docket ID FEMA–2011–0040 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or materials, 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, all information submitted will be available to the public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jennifer Tylander, Program Specialist, Mitigation Division, (202) 646–2607 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA–Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:** Title 44 CFR parts 59 and 61, National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities implements the inspection procedures in Monroe County, the City of Marathon, and the Village of Islamorada, Florida, and any other community that incorporates in Monroe County on or after January 1, 1999. The inspection procedure has two major purposes: (1) To help the communities of Monroe County, the City of Marathon, and the Village of Islamorada, Florida, and any other community in Monroe County that incorporates after January 1, 1999, verify that structures in their communities (those built after the effective date of the Flood Insurance Rate Map (FIRM), referred to as post-FIRM) comply with the community's floodplain management ordinance; and (2) to ensure that property owners pay flood insurance premiums commensurate with their flood risk. The inspection procedure requires owners of insured buildings (policyholders) to obtain an inspection from community floodplain management officials and submit a community inspection report as a condition of renewing the Standard Flood Insurance Policy (SFIP) on buildings.

*Collection of Information*

*Title:* Inspection of Insured Structures by Communities.

*Type of Information Collection:* Extension, without change, of a currently approved collection.

*OMB Number:* 1660–0045.

*Form Titles and Numbers:* No Forms.

*Abstract:* The community inspection report is used for the implementation of the inspection procedures to help communities in Monroe County, the City of Marathon, and the Village of Islamorada, Florida, verify buildings are compliant with their floodplain management ordinance and to help FEMA ensure that policyholders are paying flood insurance premiums that are commensurate with their flood risk.

*Affected Public:* State, Local and Tribal governments.

*Estimated Total Annual Burden Hours:* 1,041 hours.

*Estimated Cost:* The estimated annualized cost burden to respondents or recordkeepers is $168,266.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**John G. Jenkins, Jr.,**

*Acting Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2011–32519 Filed 12–19–11; 8:45 am]

**BILLING CODE 9110–11–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4049–DR; Docket ID FEMA–2011–0001]**

### New Hampshire; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–4049–DR), dated December 5, 2011, and related determinations.

**DATES:** *Effective Date:* December 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated December 5, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Hampshire resulting from a severe storm and snowstorm during the period of October 29–30, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance, including direct Federal assistance, in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program in the designated area for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Hillsborough and Rockingham Counties for Public Assistance. Direct federal assistance is authorized.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–32514 Filed 12–19–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4048–DR; Docket ID FEMA–2011–0001]**

### New Jersey; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4048–DR), dated November 30, 2011, and related determinations.

**DATES:** *Effective Date:* November 30, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated November 30, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from a severe storm on October 29, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William L. Vogel, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Jersey have been designated as adversely affected by this major disaster:

Cape May, Essex, Hunterdon, Morris, Somerset, Sussex, Union, and Warren counties for Public Assistance.

All counties within the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–32508 Filed 12–19–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4042–DR; Docket ID FEMA–2011–0001]**

### Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–4042–DR), dated November 4, 2011, and related determinations.

**DATES:** *Effective Date:* December 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of November 4, 2011.

The City of Fredericksburg for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters);

97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–32518 Filed 12–19–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

### Carpinteria Offshore Field Redevelopment Project—Developmental Drilling Into the Carpinteria Offshore Field Oil and Gas Reserves, California State Waters, From Federal Platform Hogan

**AGENCY:** Bureau of Ocean Energy Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** The Bureau of Ocean Energy Management (BOEM) and the California State Lands Commission (CSLC) intend to jointly review a proposal to develop offshore oil and gas resources, located in California state waters, from an existing oil and gas platform located in Federal waters. This review will lead to a joint assessment of the potential environmental impacts and appropriate mitigation measures. This is the Notice of Preparation/Notice of Intent (NOP/NOI) to jointly prepare an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and hold public scoping meetings for the Carpinteria Offshore Field Redevelopment Project. This notice initiates the public scoping process.

**DATES:** Written comments must be submitted by February 21, 2012.

Scoping meeting dates/times are Thursday, January 19, 2012 at:
1. 1–3 p.m. and
2. 5–7 p.m.

**ADDRESSES:** Comments should be sent to—

*1. Mail or hand carried.* Enclosed in an envelope labeled ''Scoping Comments for the Carpinteria EIR/EIS'' and delivered to Ms. Susan Zaleski, Bureau of Ocean Energy Management, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010–6064.

*2. Email. carpinteriaredevelopment@mrsenv.com.*

See Comments and Scoping Meetings below for meeting addresses.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Zaleski, Bureau of Ocean Energy Management, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, California 93010–6064; phone (805) 389–7558, fax (805) 389–7874, or email at *susan.zaleski@boem.gov.*

**SUPPLEMENTARY INFORMATION:** The BOEM and CSLC are jointly reviewing the proposed Carpenteria Offshore Field Redevelopment Project (the Project) under the National Environmental Policy Act (NEPA) of 1969, as amended, and the California Environmental Quality Act (CEQA), respectively. The BOEM will be the NEPA lead agency. The California State Lands Commission (CSLC) will be the CEQA lead agency. They will prepare a joint environmental impact report (EIR)/environmental impact statement (EIS) to identify and assess potential environmental impacts and mitigation measures associated with a proposal to develop offshore oil and gas resources, located in California state waters, from an existing oil and gas platform located in Federal waters.

Publication of this notice initiates the public scoping process to solicit comments regarding the full spectrum of issues and concerns, including a suitable range of alternatives, the human and marine resources that could be affected, the nature and extent of the potential impacts to those resources, and the appropriate mitigation measures that should be addressed in the EIR/EIS.

Carone Petroleum Corporation (Carone) is proposing to redevelop the state portion of the Carpinteria Offshore Field oil and gas reserves from Platform Hogan, which is located in Federal waters. Signal Hill Services, Inc. is the Federal lessee, and Pacific Operators Offshore, LLC (POOL) is the operator of Platform Hogan. The Carpinteria Offshore Field extends into both Federal and state waters and includes Federal and state leases. As many as 25 new production or injection wells would be drilled into existing state oil and gas leases from Platform Hogan. The exact number of wells to be drilled is unknown until sufficient wells are completed and evaluated to determine the amount and location of the oil and gas resources.

The CSLC reviews the Plan of Development (POD) for state leases, which delineates the long-term plans of Carone and its designated Carpinteria Field operator, POOL. The POD is based on all state lease wells being physically drilled from Platform Hogan through subsurface operations.

The BOEM reviews the Development and Production Plan (DPP) and revised DPP pursuant to the Outer Continental Shelf (OCS) Lands Act, as amended, and the implementing regulations at 30 Code of Federal Regulations (CFR) 550.283 and 550.285, which address the procedures and requirements for submitting revised DPPs. The BOEM decides whether these revised plans should be approved, disapproved, or modified to be consistent with the provisions of the lease, the OCS Lands Act, and the implementing regulations. A Right-of-Use-and-Easement is also needed for this proposed project pursuant to 30 CFR 550.160–166. The revised DPP will also be submitted to the California Coastal Commission (CCC) to ensure its consistency with the California Coastal Management Plan.

No final decision on the proposed project will be made until the end of the EIR/EIS process in order to allow for full consultation with Federal agencies, affected states, affected tribes and the public. Upon completion of this EIR/EIS process, BOEM and CSLC will make separate decisions concerning the proposed project. Consultation with other Federal, state and local agencies, affected tribes, and the public will be carried out to assist in the NEPA/CEQA process. These consultations will be completed before decisions are made on the proposed project.

#### Description of the Area

Drilling will take place from an existing Federal Platform Hogan (Federal Lease OCS–P 0166), which lies in the Santa Barbara Channel, 3.7 miles offshore of the City of Carpinteria, Santa Barbara County, California, in 154 feet of water (Latitude 34°20′16″ N; Longitude 119°32′30″ W) to develop resources in California state waters (State Oil and Gas Leases PRC 4000, PRC 7911 and PRC 3133). Oil and gas production will be transferred by an existing pipeline to the existing La Conchita Processing Facility in Ventura County.

#### Cooperating Agencies

BOEM and CSLC invite other Federal agencies and state, tribal and local governments to consider becoming cooperating agencies in the preparation of the EIR/EIS. Following the guidelines from the Council of Environmental Quality (CEQ), qualified agencies and governments are those with ''jurisdiction by law or special expertise.'' Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process.

Upon request, BOEM and CSLC will provide potential cooperating agencies with an information package that includes a draft Memorandum of Agreement. The draft Memorandum of Agreement includes a schedule with critical action dates and milestones,

mutual responsibilities, designated points of contact, and expectations for handling predecisional information. Agencies should also consider the ''Factors for Determining Cooperating Agency Status'' in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act. These documents are available at *http://ceq.hss.doe.gov/nepa/regs/guidance.html.* BOEM/CSLC, as the lead agencies, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEM/CSLC during the normal public input phases of the NEPA/EIS and CEQA/EIR processes. If further information about cooperating agency status is needed, please contact Ms. Susan Zaleski at (805) 389–7558 or *susan.zaleski@boem.gov.*

**Comments and Scoping Meetings**

Scoping is an open process used for identifying significant environmental issues related to the proposed project. Scoping also provides an opportunity to identify appropriate mitigation measures and alternatives to the proposed project. Applicable agencies will need to use the EIR/EIS when considering related permits or other approvals for the proposed project.

Federal, state and local government agencies and other interested parties are requested to send their written comments on the scope of the EIR/EIS, significant issues that should be addressed and alternatives that should be considered to one of the addresses in the **ADDRESSES** section above.

Before including your address, telephone 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 (including in the EIR/EIS and posted on the Internet). Please note that requests to withhold personal identifying information should be made prominently at the beginning of your submission. While you may ask BOEM to withhold your personal identifying information from public review, BOEM cannot guarantee that it will be able to do so. The BOEM will not consider anonymous comments, and BOEM will make available for inspection, in their entirety, all comments submitted by organizations or businesses or by individuals identifying themselves as representatives of organizations or businesses.

This notice and detailed proposed project information will also be available on the BOEM web page at *http://www.boem.gov/Carpinteria.aspx* and on the CSLC web page at www.slc.ca.gov.

BOEM and CSLC will hold scoping meetings to obtain additional comments and information regarding the scope of the EIR/EIS. Two public scoping meetings will be conducted for the proposed project to receive oral and/or written testimony at the following times and place: Thursday, January 19, 2012, 1–3 p.m. and 5–7 p.m., Carpinteria City Council Chambers, 5775 Carpinteria Avenue, Carpinteria, California 93013–2697, Phone: (805) 684–5405.

A sign language interpreter will be provided upon advance notification of need. Such notification should be made as soon as possible prior to the date of the scoping meetings. If you need reasonable accommodation for a disability, as defined by the Federal Americans with Disabilities Act and the California Fair Employment and Housing Act, to conduct business with BOEM and CSLC staff conducting the scoping meetings, please contact Susan Zaleski at (805) 389–7558 at least 7 days in advance of the scoping meetings to arrange for such accommodation.

**Authority:** 40 CFR 1501.7, 42 U.S.C. 4321 *et seq.* (1988), and § 15802 of the California Environmental Quality Act (CEQA) Guidelines (Cal. Code Regs., tit. 14, § 15000 *et seq.*).

Dated: December 14, 2011.

**Tommy P. Beaudreau,**

*Director, Bureau of Ocean Energy Management .*

[FR Doc. 2011–32484 Filed 12–19–11; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R1–R–2011–N229; 1265–0000–10137–S3]**

### James Campbell National Wildlife Refuge, Honolulu County, HI; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and a finding of no significant impact for the environmental assessment for the James Campbell National Wildlife Refuge (refuge). In this final CCP, we describe how we will manage this refuge for the next 15 years.

**ADDRESSES:** You may view or obtain copies of the final CCP and the finding of no significant impact (FONSI) and environmental assessment (EA) by any of the following methods. You may request a hard copy or CD–ROM.

*Agency Web site:* Download the documents at *www.fws.gov/pacific/planning.*

*Email: FW1PlanningComments@fws.gov.* Include ''James Campbell Refuge CCP'' in the subject line of the message.

*Mail:* David Ellis, Project Leader, O'ahu National Wildlife Refuge Complex, 66–590 Kamehameha Highway, Room 2C, Hale'iwa, HI 96712.

*In-Person Viewing or Pickup:* O'ahu National Wildlife Refuge Complex, 66–590 Kamehameha Highway, Room 2C, Hale'iwa, HI 96712.

**FOR FURTHER INFORMATION CONTACT:** David Ellis, Project Leader, (808) 637–6330.

**SUPPLEMENTARY INFORMATION:**

**Introduction**

With this notice, we announce the completion of the CCP process for the James Campbell National Wildlife Refuge. The Service started this process through a notice of intent in the **Federal Register** on December 1, 2008 (73 FR 72826). We released the draft CCP/EA to the public, announcing and requesting comments in a notice of availability in the **Federal Register** (76 FR 38414; June 30, 2011).

We announce our CCP decision and the availability of a FONSI in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) and National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements. We prepared a thorough analysis of impacts, which we included in an EA that accompanied the draft CCP.

The CCP will guide us in managing and administering the refuge for the next 15 years. Alternative C, as described in the draft CCP, is the basis for the CCP.

**Background**

The Refuge Administration Act, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge

purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify compatible wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

**CCP Alternatives, Including Selected Alternative**

During our CCP planning process we identified several issues. To address these issues, we developed and evaluated the following alternatives in our draft CCP/EA.

*Alternative A, No Action*

Under Alternative A, we would have continued current management with no changes. This includes focusing threatened and endangered species management on protection and successful nesting. Public use programs would remain virtually unchanged. Refuge management units would remain closed to general public entry except for seasonal docent-guided tours and Special Use Permits issued on a case-by-case basis for environmental education, research, and other compatible uses. Newly acquired refuge lands would receive custodial oversight only, no habitat restoration would occur, and no additional visitor services would be provided. Both current commercial aquaculture leases would remain in effect until 2023.

*Alternative B, Partial Restoration and Management of Refuge Expansion Lands*

Under Alternative B, current habitat management programs focusing on wetland management for endangered waterbirds would have continued. On newly acquired refuge lands, only the highest priority wetlands and coastal dunes would be restored and fenced to exclude large predators. A Visitor Services Plan (VSP) would be developed to identify the types of compatible wildlife-oriented activities we would provide to the public as well as the sites and locations for the infrastructure needed to fully support public programs. We would also identify new special regulations in the VSP which may be needed to protect sensitive wildlife resources, the fragile coastline, and the visiting public. During the interim period until the VSP would be prepared, the current public use program would have slight increases in opportunities for wildlife observation and photography. The refuge would participate and partner with other agencies and the community of Kahuku on projects to mitigate flood damage to the local area, if practical and feasible. Both current commercial aquaculture leases would remain in effect until 2023.

*Alternative C, Full Restoration and Management of Refuge Expansion Lands*

In addition to management actions identified in Alternative B, all wetlands, coastal dunes/strand, and scrub/shrub habitats would be restored and managed under Alternative C. Trial use of predator-proof fencing would be initiated on selected dune or wetland sites to protect seabirds or waterbirds. Abandoned aquaculture facilities would be cleaned up, and the habitat would be restored to natural conditions or other approved uses.

**Comments**

We solicited comments on the draft CCP/EA from June 30, 2011, to August 1, 2011 (76 FR 38414; June 30, 2011). We received comment letters, forms, and emails on the draft CCP/EA. To address public comments, responsive changes and clarifications were made to the final CCP where appropriate.

**Selected Alternative**

After considering the comments we received, we have selected Alternative C for implementation. By implementing Alternative C, we will intensively manage endangered waterbird species and their habitat at the Ki'i and Punamanõ Units of the refuge with a focus on protection and successful nesting as part of the statewide effort to implement the Hawaiian Waterbird Recovery Plan. The unique and sensitive coastal sand dunes and coastal strand will be managed to protect and enhance the area for native vegetation, seabirds, other migratory birds, endangered Hawaiian monk seals, and green turtles. A VSP will be developed to identify, evaluate, and select sites for the infrastructure needed to fully implement a safe and compatible program for the public (to include roads, parking areas, trails, overlooks, *etc.*). The VSP will identify any new special regulations needed to protect sensitive wildlife resources, the fragile coastline, and the visiting public. If funded, the design and construction of a Visitor Center/Environmental Education facility and refuge office will serve the public, students, and refuge staff.

The refuge will continue to participate and cooperate in community and interagency efforts to address flood damage reduction for the local area. We will continue to evaluate our infrastructure on the refuge, particularly on newly acquired lands, to determine if further changes can be made to help mitigate flood damages. Both current commercial aquaculture leases will remain in effect until 2023 at which time, by prior agreement, they will expire.

All wetlands, coastal dunes/strand and scrub/shrub habitats will be restored and managed. Fencing will be installed at appropriate locations throughout the refuge to reduce the devastating impacts of exotic predators on native wildlife. Additionally, the trial use of predator-proof fencing will be initiated on selected coastal dunes and/or wetland sites to protect nesting seabirds and waterbirds. Abandoned aquaculture facilities will be cleaned up. As necessary, we will work with the State to protect wildlife and standardize public use regulations on the shoreline adjacent to the refuge coastline.

Dated: November 16, 2011.

**Michael Carrier,**

*Acting Regional Director, Pacific Region, Portland, Oregon.*

[FR Doc. 2011–32390 Filed 12–16–11; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

**[FWS–R1–R–2011–N090; FXRS12650100000S3–123–FF01R06000]**

## Minidoka National Wildlife Refuge, Blaine, Cassia, Minidoka, and Power Counties, ID; Comprehensive Conservation Plan and Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, intend to prepare a comprehensive conservation plan (CCP) for Minidoka National Wildlife Refuge. We will also prepare an environmental assessment (EA) to evaluate the potential effects of various CCP alternatives. We provide this notice in compliance with our CCP policy to advise the public, Federal and State agencies, and Tribes of our intentions, and to obtain public comments,

suggestions, and information on the scope of issues to consider during the planning process.

**DATES:** To ensure consideration, please send your written comments by January 31, 2012. We will announce opportunities for public input in local news media throughout the CCP planning process.

**ADDRESSES:** Send your comments or requests for more information by any of the following methods.

*Email: jeffrey_krueger@fws.gov.* Include ''Minidoka CCP/EA'' in the subject line of the message.

*Fax:* Attn: Jeffrey Krueger, Refuge Manager, (208) 436–1570.

*U.S. Mail:* Jeffrey Krueger, Refuge Manager, Minidoka National Wildlife Refuge, 961 E Minidoka Dam Road, Rupert, ID 83350–9471.

*In-Person Drop-off:* You may drop off comments during regular business hours at 961 E Minidoka Dam Road, Rupert, ID 83350–9471.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Krueger, (208) 436–3589 (phone).

**SUPPLEMENTARY INFORMATION:**

## Introduction

With this notice, we initiate our process for developing a CCP for the Minidoka Refuge. This notice complies with our CCP policy to (1) Advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this Refuge and (2) obtain suggestions and information on the scope of issues to consider in the EA and during development of the CCP.

## Background

### *The CCP Process*

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Refuge Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities that may be available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

Each unit of the National Wildlife Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management of goals and objectives for each refuge within the National Wildlife Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will insure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the National Wildlife Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of the Refuge.

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et seq.); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

### *Minidoka National Wildlife Refuge*

The Refuge was established by President Theodore Roosevelt in 1909 for the purpose of serving as a refuge and breeding grounds for native birds. The Refuge is located 12 miles northeast of Rupert, ID, in the Snake River Plain, at approximately 4,200 feet in elevation. The area was historically comprised of a portion of the Snake River surrounded by an expansive sea of sagebrush, identified as the high desert. In 1904 the Bureau of Reclamation impounded the Snake River and created Lake Walcott to store water for irrigation, and provide hydroelectric power. The Refuge is primarily an overlay refuge superimposed over Bureau of Reclamation lands and waters.

The Refuge boundary extends upstream approximately 25 miles from the Minidoka Dam, along both shores of the Snake River. The Refuge encompasses approximately 20,700 acres; of that, 11,300 acres are the open waters of Lake Walcott and the Snake River, and 9,400 acres are upland sagebrush and grassland habitats. The large expanse of open water within the arid environment attracts numerous avian species, including waterfowl, shorebirds, and wading birds. The Service has documented 243 species of birds on the Refuge, of which 85 species are known to nest within the Refuge's boundaries.

## Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. We have briefly summarized these issues below. During public scoping, we may identify additional issues.

- What is the Refuge's role in conserving Snake River Plain wildlife and habitat?
- What are our options for preventing the introduction and dispersal of invasive plants and animals?
- What is the most appropriate Refuge land management strategy for providing contiguous and quality habitats for focal wildlife resources?
- How can we maintain, manage, and restore the Refuge's sagebrush, wetland, and upland habitats, to support the long-term viability of native wildlife populations, and maximize habitat values for key wildlife species?
- How can the Refuge adaptively manage habitat in response to the effects of climate change?
- How can we protect the Refuge's cultural and historical resources?
- What actions should we take to minimize disturbance to nesting and migrating waterbirds and other wildlife on the Refuge?
- How can we meet increasing demands for recreational opportunities on the Refuge, and conduct quality visitor services programs in a manner that protects wildlife from disturbances?

## Public Meetings

We will involve the public through open houses, informational and technical meetings, and written comments. We will release mailings, news releases, and announcements to provide information about opportunities for public involvement in the planning process.

## Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 28, 2011.

**Richard R. Hannan,**

*Acting Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 2011–32589 Filed 12–19–11; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2011–N243; FF08E00000–FXES11120800000F2–112]**

### Draft Environmental Impact Statement and Proposed Vernal Pool Habitat Conservation Plan for the City of San Diego, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent and announcement of a public meeting; request for comments.

**SUMMARY:** We, the Fish and Wildlife Service (Service), intend to prepare an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) of 1969, as amended, for the proposed Vernal Pool Habitat Conservation Plan (VPHCP) under development by the City of San Diego (City). The draft EIS will evaluate the impacts of several alternatives related to the VPHCP being prepared by the City in support of the City's anticipated application for an Endangered Species Act (ESA) permit for incidental take of seven federally listed vernal pool species, from activities associated with urban development activities. We also announce plans for a public scoping meeting and the opening of a public comment period. We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party.

**DATES:** To ensure consideration, please send your written comments by February 16th, 2012.

For more information, see ''Public Comments'' and ''Reasonable Accommodation'' under the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** To request further information or submit written comments, please use one of the following methods, and note that your information request or comment is in reference to the City of San Diego Vernal Pool HCP:

- *Fax:* Attn: Jim Bartel, Field Supervisor, (760) 431–5902.
- *U.S. Mail:* Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011.
- *In-Person Drop-off:* You may drop off comments during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Karen Goebel, Assistant Field Supervisor, by phone at (760) 431–9440, or by U.S. mail at the above address; or Jeanne Krosch, Senior Planner, City of San Diego, by phone at (619) 236–7225.

**SUPPLEMENTARY INFORMATION:** We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.;* NEPA), and its implementing regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.;* ESA). We intend to prepare a draft environmental impact statement to evaluate the impacts of several alternatives related to the potential issuance of an incidental take permit (ITP) to the City of San Diego, as well as impacts from implementation of the supporting habitat conservation plan. The EIS will be a joint document with an environmental impact report (EIR) prepared by the City under the California Environmental Quality Act (CEQA).

The City proposes to develop a Vernal Pool HCP as part of their application for an ITP under section 10(a)(1)(B) of the ESA. The proposed VPHCP will include measures necessary to minimize and mitigate the impacts, to the maximum extent practicable, of potential proposed taking of federally listed species to be covered by the VPHCP, and the habitats upon which they depend, resulting from residential, commercial, and other development activities within the proposed plan area.

In addition to this notice, the City has publicly released a CEQA notice of preparation for its EIR via State Clearinghouse and local media. Please see *http://www.sandiego.gov/development-services/industry/pdf/infobulletin/ib401.pdf* for more information on the CEQA process.

The proposed VPHCP would establish the structure to integrate development and vernal pool conservation in the City.

The proposed VPHCP would serve as a multiple-species HCP for the City in its application for an ITP under section 10(a)(1)(B) of the ESA. If the application is approved by the Service, the City would obtain authorization for the incidental take of certain threatened and endangered animal species (''covered species''). If the Federal permit is issued, the City could extend the permit authorization to proponents of development projects under the City's jurisdiction.

### Background

Section 9 of the ESA prohibits taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term ''harm'' is defined in the regulations as including significant habitat modification or degradation that results in death or injury to listed wildlife species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in the regulations as to carry out actions that create the likelihood of injury to listed wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed wildlife species, provided that the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened wildlife species are 50 CFR 17.22 and 17.32, respectively. The ESA's take prohibitions do not apply to federally listed plants. However, other provisions of the Act prohibit the removal or destruction of plants on non-federal lands in violation of State law.

Section 10(a)(1)(B) of the ESA contains provisions for issuing incidental take permits to non-Federal entities for the take of endangered and threatened wildlife species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicants will develop a proposed HCP and ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Thus, the purpose of issuing an ITP to the City would be to allow the City, under its local authority, to authorize development while conserving the covered species and their habitats. Implementation of a vernal pool species habitat conservation plan, rather than a species-by-species or project-by-project approach, is intended to maximize the benefits of conservation measures for covered species and eliminate expensive and time-consuming efforts associated with processing individual ITPs for each project within the City's proposed plan area. The Service expects that the City will request ITP coverage for a period of 50 years.

*Project Area*

The proposed VPHCP Planning Area covers approximately 206,124 acres of land in the City's jurisdiction, including City-owned lands in the unincorporated areas of Otay Lakes and Marron Valley, where development potentially may occur. The proposed VPHCP would cover non-Federal lands in the Planning Area. To facilitate timely and environmentally responsible development, the proposed VPHCP may focus on specific areas for development, such as Otay Mesa, Kearny Mesa, Mira Mesa, and Del Mar Mesa.

**Alternatives in the Draft Environmental Impact Statement**

The proposed action presented in the draft EIS will be compared to the no-action alternative. The no-action alternative represents estimated future conditions assuming an ITP is not issued, to which the proposed action's estimated future conditions can be compared. Other alternatives, including their potential impacts, will also be addressed in the draft EIS.

*No-Action Alternative*

Because future development activities are vital for the City, these activities would likely continue regardless of whether the proposed 10(a)(1)(B) ITP is issued. Where a specific project would result in potential impacts to federally protected species within the proposed permit area that could not be avoided and a federal permit or federal funding is involved, i.e., there is a federal nexus for the project, the project proponent would address impacts in accordance with the an individual formal or informal consultation under Section 7 of the Act between the Federal authorizing agency and the Service. If no federal nexus exists for a proposed project that is likely to result in take of a listed vernal pool animal species, the project proponent would likely seek an individual section 10(a)(1)(B) ITP on a project-specific basis. Although future activities by the City or a private applicant would be similar to those covered by the VPHCP, not all activities would necessitate an incidental take permit or consultation with the Service. Thus, under the no-action alternative, the City and various project proponents would likely have to file numerous separate section 10(a)(1)(B) permit applications over the 50-year project period. This activity-by-activity approach would be more time-consuming and less efficient than authorizing activities under an umbrella incidental take permit, and could result in a fragmented mitigation approach.

*Proposed Alternative*

The proposed action is the issuance of an ITP to the City of San Diego covering impacts to seven vernal pool species resulting from development activities authorized by the City within the proposed Planning Area for a period of 50 years. The purpose of the Vernal Pool HCP would be to contribute to the conservation of the covered species while streamlining endangered species permitting for development projects. The Vernal Pool HCP, which must meet the requirements of section 10(a)(2)(A) of the ESA, would be developed and implemented by the City through its local regulatory and land use authorities. This alternative would allow for a comprehensive mitigation approach for unavoidable impacts and reduce permit processing times and efforts for the City and the Service.

Potential impacts to covered species would be addressed through a conservation program that includes avoidance, minimization, mitigation, preservation, and restoration and enhancement of habitat for covered species by multiple components, such as reserve design and assembly processes, protection and management elements, funding assurances, monitoring, and adaptive management within the VPHCP planning area.

The planning goals of the Vernal Pool HCP are anticipated to include the following:

- Provide for long-term conservation and management of Covered Species within the VPHCP area;
- Preserve, restore, and enhance vernal pool ecosystems that support Covered Species within the VPHCP area;
- Build on the City's general plans;
- Further identify the most appropriate locations within the VPHCP area for development projects, taking into account potential impacts to threatened and endangered species and their vernal pool habitat;
- Provide a means to implement covered activities in a manner that complies with the ESA, NEPA, CEQA, and other relevant laws;
- Provide a basis for the issuance of take authorizations allowing the lawful take of covered species incidental to covered activities;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for covered activities within the plan area;
- Provide a framework for a more efficient process by which proposed development projects with the plan area may obtain regulatory authorizations, and which results in greater conservation values than would a project-by-project, species-by-species review; and
- Identify and incorporate climate change adaptation research, management objectives, and policies into the final plan document.

More information on the proposed VPHCP is available on the Internet at *http://www.sandiego.gov/planning/mscp/.*

*Covered Activities*

The covered activities under the VPHCP are expected to include residential, commercial, and industrial development; airports; roads; utilities; trails; and vernal pool restoration and enhancement.

*Covered Species*

We anticipate that the following federally listed endangered wildlife species will be included as covered species in the City of San Diego's proposed VPHCP: the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottonii*). Take of federally listed plant species is not prohibited under the ESA, and authorization under an ESA ITP is not required. Section 9 of ESA does, however, prohibit the removal or malicious destruction of federally listed plants from areas under Federal jurisdiction and the removal or destruction of such plants in knowing violation of State law. In addition, section 7(a)(2) of the ESA prohibits Federal agencies from jeopardizing the continued existence of any listed plant or animal species, or destroying or adversely modifying the critical habitat of such species. The following federally listed plant species are anticipated to be included in the VPHCP in recognition of the conservation benefits to be provided for them under the plan and to be listed on the ITP for purposes of receiving mitigation assurances: The threatened spreading navarretia (*Navarretia*

*fossalis*), the endangered San Diego button celery (*Eryngium aristulatum var. parishii*), the endangered San Diego mesa mint (*Pogogyne abramsii*), the endangered California Orcutt grass (*Orcuttia californica*), and the endangered Otay mesa mint (*Pogogyne nudiscula*).

*Conservation Alternative*

An expanded conservation alternative that would conserve additional vernal pool resources and provide increased opportunities for restoration and enhancement of vernal pool habitat will also be considered in the draft EIS.

**Environmental Review and Next Steps**

The Service will conduct an environmental review to analyze the proposed action, along with other alternatives evaluated and the associated impacts of each. The draft EIS will be the basis for the impact evaluation for each covered species and the range of alternatives to be addressed. The draft EIS is expected to provide biological descriptions of the affected species and habitats, as well as the effects of the alternatives on other resources, such as vegetation, wetlands, wildlife, geology and soils, air quality, water resources, water quality, cultural resources, land use, recreation, water use, local economy, and environmental justice.

Following completion of the environmental review, the Service will publish a notice of availability and a request for comment on the draft EIS and the City's permit application, which will include the proposed HCP. The draft EIS and proposed HCP are expected to be completed and available to the public in late summer 2012.

**Public Comments**

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider these comments in developing a draft EIS and in the development of a HCP and ITP. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the planning area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Identification of any other alternatives to the proposed action that should be analyzed in the draft EIS.
7. Identification of any other environmental issues that should be considered in the draft EIS.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section.

Comments can also be submitted to the City in response to their notice of EIR preparation under CEQA at *DSDEAS@sandiego.gov*, and comments will also be included as an appendix to the draft EIR/EIS.

Comments and materials we receive, as well as supporting documentation we use in preparing the draft EIS, will be available for public inspection by appointment, during normal business hours, at our office (see **FOR FURTHER INFORMATION CONTACT**).

**Public Availability of Comments**

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Authority**

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*) and by NEPA Regulations (40 CFR 1501.7, 40 CFR 1506.6, and 1508.22).

**Paul McKim,**

*Deputy Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service, Sacramento, California.*

[FR Doc. 2011–32494 Filed 12–19–11; 8:45 am]

**BILLING CODE 4510–55–P**

## DEPARTMENT OF THE INTERIOR

## U.S. Geological Survey

## Announcement of National Geospatial Advisory Committee Meeting

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The National Geospatial Advisory Committee (NGAC) will meet on January 12, 2012, from 1 p.m. to 4 p.m. EST. The meeting will be held via Web conference and teleconference.

The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, has been established to advise the Chair of the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

—Recent FGDC Activities.
—Innovative Strategies for Geospatial Programs and Partnerships White Paper.
—Geospatial Workforce Development White Paper.
—Geospatial Platform Activities.

Members of the public who wish to attend the meeting must register in advance. Please register by contacting Arista Maher at the Federal Geographic Data Committee (703) 648–6283, *amaher@fgdc.gov*). Meeting registrations are due by January 6, 2012. Meeting information (Web conference and teleconference instructions) will be provided to registrants prior to the meeting. While the meeting will be open to the public, attendance may be limited due to Web conference and teleconference capacity.

The meeting will include an opportunity for public comment. Attendees wishing to provide public comment should register by January 6. Please register by contacting Arista Maher at the Federal Geographic Data Committee (703) 648–6283, *amaher@fgdc.gov*). Comments may also be submitted to the NGAC in writing.

**DATES:** The meeting will be held on January 12, 2012, from 1 p.m. to 4 p.m. EST.

**FOR FURTHER INFORMATION CONTACT:** John Mahoney, U.S. Geological Survey (206) 220–4621).

**SUPPLEMENTARY INFORMATION:** Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting are available at *www.fgdc.gov/ngac.*

Dated: Dceember 14, 2011.

**Ivan DeLoatch,**

*Executive Director, Federal Geographic Data Committee.*

[FR Doc. 2011–32504 Filed 12–19–11; 8:45 am]

**BILLING CODE 4311–AM–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–703 (Third Review)]**

### Furfuryl Alcohol From China; Scheduling of an Expedited Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on furfuryl alcohol from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* December 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Trainor (202) 205–3354, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On December 5, 2011, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 54493, September 1, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

*Staff report.*—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on January 4, 2012, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before January 9, 2012 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by January 9, 2012. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please consult the Commission's rules, as amended, 76 Fed. Reg. 61937 (Oct. 6, 2011) and the Commission's Handbook on Filing Procedures, 76 FR 62092 (Oct. 6, 2011), available on the Commission's Web site at *http://edis.usitc.gov.*

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: December 14, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–32524 Filed 12–19–11; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by domestic producer Penn A Kem LLC to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

## INTERNATIONAL TRADE COMMISSION

### Summary of Commission Practice Relating to Administrative Protective Orders

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Summary of Commission practice relating to administrative protective orders.

**SUMMARY:** Since February 1991, the U.S. International Trade Commission (''Commission'') has issued an annual report on the status of its practice with respect to violations of its administrative protective orders (''APOs'') in investigations under title VII of the Tariff Act of 1930, in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under title VII and violations of the Commission's rules including the rule on bracketing business proprietary information (''BPI'') (the ''24-hour rule''), 19 CFR 207.3(c). This notice provides a summary of investigations completed during calendar year 2010 of breaches in proceedings under title VII, section 337 of the Tariff Act of 1930, and section 421 of the Trade Act of 1974. There were no rules violation investigations completed in 2010. The Commission intends that this report inform representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding types of actions the Commission has taken.

**FOR FURTHER INFORMATION CONTACT:** Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Web site (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:** Representatives of parties to investigations or other proceedings conducted under title VII of the Tariff Act of 1930, section 337 of the Tariff Act of 1930, the North American Free Trade Agreement (NAFTA) Article 1904.13. and safeguard-related provisions such as section 202 of the Trade Act of 1974, may enter into APOs that permit them, under strict conditions, to obtain access to BPI (title VII) and confidential business information (''CBI'') (safeguard-related provisions and section 337) of other parties. *See, e.g.,* 19 U.S.C. 1677f; 19 CFR 207.7; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34; 19 U.S.C. 2252(i); 19 CFR 206.17; and 19 U.S.C. 1516a(g)(7)(A); 19 CFR 207.100, *et seq.* The discussion below describes APO breach investigations that the Commission completed during calendar year 2010, including a description of actions taken in response to these breaches and rules violations.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. *See* 56 FR 4846 (February 6, 1991); 57 FR 12335 (April 9, 1992); 58 FR 21991 (April 26, 1993); 59 FR 16834 (April 8, 1994); 60 FR 24880 (May 10, 1995); 61 FR 21203 (May 9, 1996); 62 FR 13164 (March 19, 1997); 63 FR 25064 (May 6, 1998); 64 FR 23355 (April 30, 1999); 65 FR 30434 (May 11, 2000); 66 FR 27685 (May 18, 2001); 67 FR 39425 (June 7, 2002); 68 FR 28256 (May 23, 2003); 69 FR 29972 (May 26, 2004); 70 FR 42382 (July 25, 2005); 71 FR 39355 (July 12, 2006); 72 FR 50119 (August 30, 2007); 73 FR 51843 (September 5, 2008); 74 FR 54071 (October 21, 2009); and 75 FR 66127 (October 27, 2010). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in March 2005 a fourth edition of *An Introduction to Administrative Protective Order Practice in Import Injury Investigations* (Pub. No. 3755). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, tel. (202) 205–2000 and on the Commission's Web site at *http://www.usitc.gov.*

## I. In General

The current APO form for antidumping and countervailing duty investigations, which was revised in March 2005, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI disclosed under this APO or otherwise obtained in this investigation and not otherwise available to him or her, to any person other than—

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decision making for an interested party which is a party to the investigation; and (d) have signed the acknowledgment for clerical personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with this APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO or otherwise obtained in this investigation without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials *e.g.,* documents, computer disks, etc. containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of this APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) With a cover sheet identifying the document as containing BPI,

(ii) With all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) If the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) If by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.,* change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of this APO; and

(10) Acknowledge that breach of this APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

The APO further provides that breach of an APO may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of, or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

APOs in investigations other than those under title VII contain similar, though not identical, provisions.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through

APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of CBI and BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI and CBI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's title VII and safeguard rules relating to BPI/CBI is the ''24-hour'' rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI/CBI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes—other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI/CBI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amended document pursuant to section 201.14(b)(2) of the Commission's rules.

## II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation has commenced and that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of the General Counsel (''OGC'') prepares a letter of inquiry to be sent to the possible breacher over the Secretary's signature to ascertain the possible breacher's views on whether a breach has occurred.[1] If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that, although a breach has occurred, sanctions are not warranted, and therefore finds it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction.

Sanctions for APO violations serve two basic interests: (a) Preserving the confidence of submitters of BPI/CBI that the Commission is a reliable protector of BPI/CBI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''[T]he effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI/CBI. The Commission considers whether there have been prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit an economist or consultant to obtain access to BPI/CBI under the APO in a title VII or safeguard investigation if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C); 19 CFR 206.17(a)(3)(B) and (C). Economists and consultants who obtain access to BPI/CBI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases, section 337 investigations, and safeguard investigations are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. *See* 19 U.S.C. 1677f(g), 19 U.S.C. 1333(h).

The two types of breaches most frequently investigated by the Commission involve the APO's prohibition on the dissemination of BPI or CBI to unauthorized persons and the APO's requirement that the materials received under the APO be returned or destroyed and that a certificate be filed indicating which action was taken after the termination of the investigation or any subsequent appeals of the Commission's determination. The dissemination of BPI/CBI usually occurs as the result of failure to delete BPI/CBI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included the failure to bracket properly BPI/CBI in proprietary documents filed with the Commission, the failure to report immediately known violations of an APO, and the failure to adequately supervise non-lawyers in the handling of BPI/CBI.

Occasionally, the Commission conducts APOB investigations that involve members of a law firm or consultants working with a firm who were granted access to APO materials by the firm although they were not APO signatories. In many of these cases, the firm and the person using the BPI mistakenly believed an APO application had been filed for that person. The Commission determined in all of these cases that the person who was a non-signatory, and therefore did not agree to

[1] Procedures for inquiries to determine whether a prohibited act such as a breach has occurred and for imposing sanctions for violation of the provisions of a protective order issued during NAFTA panel or committee proceedings are set out in 19 CFR 207.100–207.120. Those investigations are initially conducted by the Commission's Office of Unfair Import Investigations.

be bound by the APO, could not be found to have breached the APO. Action could be taken against these persons, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all cases in which action was taken, the Commission decided that the non-signatory was a person who appeared regularly before the Commission and was aware of the requirements and limitations related to APO access and should have verified his or her APO status before obtaining access to and using the BPI. The Commission notes that section 201.15 may also be available to issue sanctions to attorneys or agents in different factual circumstances in which they did not technically breach the APO, but when their actions or inactions did not demonstrate diligent care of the APO materials even though they appeared regularly before the Commission and were aware of the importance the Commission placed on the care of APO materials.

Counsel have been cautioned to be certain that each authorized applicant files within 60 days of the completion of an import injury investigation or at the conclusion of judicial or binational review of the Commission's determination a certificate that to his or her knowledge and belief all copies of BPI/CBI have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized. This requirement applies to each attorney, consultant, or expert in a firm who has been granted access to BPI/CBI. One firm-wide certificate is insufficient. This same information is also being added to notifications sent to new APO applicants.

In addition, attorneys who are signatories to the APO representing clients in a section 337 investigation should send a notice to the Commission if they stop participating in the investigation or the subsequent appeal of the Commission's determination. The notice should inform the Commission about the disposition of CBI obtained under the APO that was in their possession or they could be held responsible for any failure of their former firm to return or destroy the CBI in an appropriate manner.

## III. Specific Investigations

### *APO Breach Investigations*

*Case 1:* The Commission determined that two associates and a partner breached the APO when the associates, under the direction of the partner, reviewed deposition transcripts that contained CBI from a section 337 investigation in connection with a parallel proceeding in the federal district court and provided, as directed by the partner, citations to those transcripts to a non-signatory of the APO. The Commission also found that the partner responsible for this first breach also committed a second breach by providing to a non-signatory a partially redacted deposition transcript that had been designated as confidential and should have been treated as confidential in its entirety pending declassification by consent of the parties or pursuant to the Commission's rules. Moreover, the record is not clear that the attorney had removed all of the CBI from the transcript before providing it to the non-signatory.

After giving consideration to the mitigating factor that the partner had not been found liable for an APO breach within the last two years, the Commission decided to sanction the partner and issue a private letter of reprimand rather than a warning because of the presence of aggravating factors. The Commission determined that both breaches were intentional. The partner deliberately released to a non-signatory a deposition transcript that should have been treated as confidential in its entirety unless the content was declassified by following the procedures in the Commission's rules for challenging the classification of documents. In addition, the partner specifically instructed his associates to review transcripts of affidavits from the section 337 investigation and to provide citations from the transcripts to a non-signatory for use in a federal district court case. In addition, the breaches were brought to the attention of the Commission by someone other than the partner's firm.

The Commission issued a warning letter to the two associates after giving due consideration to several mitigating factors and one aggravating factor. The Commission determined their breach to be unintentional because both attorneys had misgivings about reviewing the transcripts for a purpose other than for the section 337 investigation and communicated those misgivings to the partner. They only reviewed the transcripts and provided citations to the transcripts to a non-signatory for use in a federal district court case at the direction of the partner after another associate, who was also a signatory to the APO, researched the question and advised they would not violate the APO by following the partner's directions. In addition, no CBI was divulged to any person not subject to the APO as a result of their breach and this was the only breach the two associates were involved in within the two-year period generally examined by the Commission for the purpose of determining sanctions. The only aggravating factor was that someone other than the associates' firm discovered and reported the breach.

The Commission also decided that two additional associates who were signatories to the APO, including the associate who performed the research, were not responsible for a breach of the APO.

*Case 2:* One lead attorney and a legal secretary under her supervision failed to delete fully all BPI in the public version of a post-hearing brief which was available on the Commission's Electronic Document Information System (EDIS) for five days. Additionally, the attorney failed to provide an Acknowledgement for Clerical Personnel signed by the secretary, thereby allowing the secretary, as an individual not subject to the APO, access to BPI.

The Commission issued a private letter of reprimand to the attorney. In reaching this decision, the Commission considered as mitigating circumstances that the breach was unintentional and the attorney had no prior violations of an APO within the past two years, the period normally considered by the Commission in sanctions determinations. The Commission disagreed with the attorney's argument that the stressful state of her office, in which there were multiple filings scheduled for that same day, should be considered a mitigating circumstance, noting that the attorney is a partner in the law firm and, therefore, had some responsibility for the stressful state of her office. The Commission also considered three aggravating circumstances. First, since there was no signed Acknowledgement for Clerical Personnel, the legal secretary was a non-signatory to the APO who had full access to the document containing the BPI. In addition, the Commission assumed that non-signatories other than the legal secretary had access to and read BPI because the attorney on several occasions failed to answer directly the question whether anyone, other than a signatory to the APO, had access to the APO; the BPI was publicly available on EDIS for five days; and the document containing BPI had been served on an attorney who was on the public service list but not the APO service list. Second, the Commission found that the attorney's failure to comply with the APO by making sure that all clerical personnel who were given access to the BPI signed an Acknowledgement for Clerical Personnel was a separate

aggravating circumstance. Third, the fact that the breach was discovered by Commission staff rather than the attorney's firm was also an aggravating circumstance.

The Commission issued a warning letter to the legal secretary. The Commission found that he did not breach the APO because he had not signed an Acknowledgement for Clerical Personnel but that there was good cause to issue the warning letter, pursuant to Commission rule 201.15(a), (19 CFR 201.15(a)), for his failure to redact the BPI from the law firm's brief. In deciding to issue a warning letter rather than a sanction, the Commission considered mitigating circumstances such as that the breach was unintentional; the secretary had no APO breaches in the last two years; he was under the direction and control of the attorney; and he had been overloaded with work on the day of the breach which had contributed to his failure to remove all the BPI from the public version of the brief.

*Case 3:* Attorneys for a party in a section 337 investigation that had already been terminated filed a complaint in a district court alleging that attorneys from another firm disclosed confidential business information (CBI) to unauthorized persons in breach of the Commission's APO. The complaint named specific attorneys alleged to have disclosed the CBI. Although the filing attorneys subsequently moved to place the complaint under seal, the complaint had been disseminated on the Internet and reported in the legal press before the court could rule on the motion.

The Commission found that the attorneys breached the APO by publicly disclosing the identity of the alleged breachers in their complaint, and it issued private letters of reprimand to them. In reaching this conclusion, the Commission considered certain mitigating circumstances such as the unintentional nature of the breach, the fact that this was the attorneys' first breach of a Commission APO, and the fact that the attorneys took corrective action as soon as they discovered the breach. There is one aggravating circumstance, however, which caused the Commission to issue a private letter of reprimand instead of a warning letter. Although the attorneys took the corrective action to place the complaint under seal, that did not prevent the release of the complaint to the public. The Commission presumed that the complaint was reviewed by at least one unauthorized person.

The Commission also considered whether to sanction under Commission rule 19 CFR 201.15 another attorney who was in-house counsel for the party filing the complaint and, therefore, was not a signatory to the APO. Although the attorney participated in the drafting and filing of the complaint, he was not subject to the APO and he did not practice regularly before the Commission. The Commission noted that once the attorney became aware of the Commission rule treating the names of alleged breachers as CBI and prohibiting release of those names, he promptly attempted to mitigate disclosure of the CBI. The Commission decided to issue a cautionary letter to the attorney advising him that he was not found to have violated the APO but, if he intended to practice before the Commission in the future, he needed to keep abreast of the Commission's rules.

APO Breach Investigation in Which No Breach Was Found

*Case 1:* In the public version of final comments, several attorneys in a law firm were responsible for failing to bracket information identified by the Commission as CBI. The information was from a Commission staff member's telephone notes and included the identity of a source. The notes had been released under the APO. Although the Commission normally considers telephones notes of conversations and the identities of persons contacted by the Commission staff to be CBI, the Commission determined that disclosure of this information in the public version of the final comments did not breach the APO. The attorneys were able to demonstrate that the information and the identity of the source were publicly available at the time the public version of the final comments were filed. The Commission cautioned the attorneys to take care in the future when citing to any information released by the Commission under APO.

By order of the Commission.

Issued: December 14, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–32523 Filed 12–19–11; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with section 122(d)(2)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that on December 9, 2011, a proposed Consent Decree in *United States of America* v. *Akzo Nobel Chemicals, Inc.,* Civil Action No. 1:11–cv–00701–CG–C, was lodged with the United States District Court for the Southern District of Alabama, Southern Division.

In this action, brought pursuant to sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607, the United States seeks injunctive relief to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Stauffer Chemical Company Cold Creek Superfund Site and LeMoyne Plants Superfund Site (the ''Sites''), Operable Unit Three, in Mobile County, Alabama. The United States also seeks to recover unreimbursed costs incurred, and to be incurred, for response activities at the Site. Under the proposed Consent Decree, defendants agree to undertake remedial work at the Site, to reimburse the United States for all of its past response costs ($912,913.27), and to pay future costs, relating to Operable Unit Three at the Sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America v. Akzo Nobel Chemicals, Inc.,* D.J. Ref. 90–11–2–912/2.

The Consent Decree may be examined at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $12.50 (for the Consent Decree only) and $64.00 for the Consent Decree and all exhibits thereto) (25

cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

**Henry Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Nat. Resources Division.*

[FR Doc. 2011–32478 Filed 12–19–11; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Federal Bureau of Investigation

**[Docket No. FBI 150]**

### FBI Criminal Justice Information Services Division; Revised User Fee Schedule

**AGENCY:** Federal Bureau of Investigation (FBI), Justice.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Title 28, Code of Federal Regulations (CFR), 20.31(e)(3), this notice establishes revised rates for the user fee schedule for authorized users requesting fingerprint-based Criminal History Record Information (CHRI) checks for noncriminal justice purposes.

**DATES:** *Effective Date:* This fee is effective March 19, 2012.

**FOR FURTHER INFORMATION CONTACT:** Christopher L. Enourato, Section Chief, Resources Management Section, Criminal Justice Information Services Division, FBI, 1000 Custer Hollow Road, Module E–3, Clarksburg, WV 26306. Telephone number (304) 625–2910.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority in Public Law 101–515 as amended, the FBI has established user fees for authorized agencies requesting noncriminal fingerprint-based CHRI checks at 28 CFR 20.31(e). The FBI will periodically review the process of fingerprint-based CHRI checks to determine the proper fee amounts that should be collected, and the FBI will publish any resulting fee adjustments in the **Federal Register**.

In accordance with 28 CFR 20.31(e)(2), the fee study employed the same methodology as detailed in the Final Rule (F.R.) establishing the process for setting fees (75 FR 18751, April 13, 2010).

The fee study results recommended several adjustments to the current user fees, which have been in effect since October 1, 2007. The FBI independently reviewed the recommendations, compared them to current fee calculations and plans for future service, and determined that the revised fees were both objectively reasonable and in consonance with the underlying legal authorities. Pursuant to the recommendations of the study, the fees for fingerprint-based CHRI checks will be decreased. Note that there will be no change in the fee for name-based CHRI checks for federal agencies specifically authorized by statute, *e.g.*, pursuant to the Security Clearance Information Act, 5 United States Code (U.S.C.) 9101, as explained at 73 FR 34908.

The following tables detail the fee amounts for authorized users requesting fingerprint-based and name-based CHRI checks for noncriminal justice purposes, including the difference, if any, from the fee schedule previously set out at 75 FR 18887. The schedule also sets out the fee amounts for volunteers, as explained at 75 FR 18752, and Centralized Billing Service Providers (CBSPs), as explained at 75 FR 18753.

FINGERPRINT-BASED CHRI CHECKS

| Service | Fee currently in Effect | Fee currently in effect for CBSPs | Change in fee amount | Revised fee | Revised fee for CBSPs |
|---|---|---|---|---|---|
| Electronic Submission | $19.25 | $17.25 | ($2.75) | $16.50 | $14.50 |
| Electronic In/Manual Out Submission | 26.00 | 24.00 | (2.75) | 23.25 | 21.25 |
| Manual Submission | 30.25 | 28.25 | (2.75) | 27.50 | 25.50 |
| Volunteer Submission | 15.25 | 13.25 | (.25) | 15.00 | 13.00 |

NAME–BASED CHRI CHECKS

| Service | Fee currently in effect | Change in fee amount | Revised fee |
|---|---|---|---|
| Electronic Submission | $2.25 | 0 | $2.25 |
| Manual Submission | 6.00 | 0 | 6.00 |

This new fee schedule will become effective March 19, 2012.

Dated: September 30, 2011.

**Robert S. Mueller, III,**

*Director.*

[FR Doc. 2011–32544 Filed 12–19–11; 8:45 am]

**BILLING CODE 4410–02–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Evaluation of the Young Parents Demonstration Project

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) proposal titled, ''Evaluation of the Young Parents Demonstration Project,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

**DATES:** Submit comments on or before January 19, 2012.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, http://www.reginfo.gov/public/do/PRAMain, on the day following publication of this notice or

by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: OIRA_submission@omb.eop.gov.

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at DOL_PRA_PUBLIC@dol.gov.

**SUPPLEMENTARY INFORMATION:** Information collected under this proposed ICR would be used to evaluate the efficacy of the Young Parents Demonstration Project (YPDP), a grant program designed to provide educational and occupational skills training that fosters family economic self-sufficiency to young parents (both mothers and fathers) and expectant parents ages 16–24, including, as applicable, those in high-risk categories such as victims of child abuse, children of incarcerated parents, court-involved youth, youth at risk of court involvement, homeless and runaway youth, Native American youth, migrant youth, youth in or aging out of foster care, and youth with disabilities. YPDP grantees are required to develop a mentoring model, which includes an intensive professional staff mentoring specifically for education, employment, and training and specifically for pregnant and parenting teens and young parents. Grantees are to implement this intervention as an additional level of services above and beyond the existing services they currently provide that are specifically intended to increase an individual's education, job training and employment.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on March 15, 2011 (76 FR 14099).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB ICR Reference Number 201109–1205–002. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* Employment and Training Administration (ETA).

*Title of Collection:* Evaluation of the Young Parents Demonstration Project.

*OMB ICR Reference Number:* 201109–1205–002.

*Affected Public:* Private Sector—Not-for-profit institutions and Individuals or Households.

*Total Estimated Number of Respondents:* 4,722.

*Total Estimated Number of Responses:* 12,442.

*Total Estimated Annual Burden Hours:* 2,527.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: December 14, 2011.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2011–32423 Filed 12–19–11; 8:45 am]

BILLING CODE 4510–FN–P

## NATIONAL SCIENCE FOUNDATION

### National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Science and Engineering Indicators (SEI), pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

**DATE AND TIME:** December 21, 2011, 9:30–10:30 a.m. EST.

**SUBJECT MATTER:** (1) Discussion of the revised Companion piece to Science and Engineering Indicators 2012; (2) Consideration of the Companion piece for recommendation for Board approval subject to final edits; (3) Next steps for the Committee.

**STATUS:** Open.

**LOCATION:** This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office [call (703) 292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference for the public room number and to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

**UPDATES AND POINT OF CONTACT:** Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.* Point of contact for this meeting is: Matthew B. Wilson, National Science Board Office, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

**Ann Bushmiller,**

*Senior Counsel to the National Science Board.*

[FR Doc. 2011–32659 Filed 12–16–11; 4:15 pm]

BILLING CODE 7555–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 18, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Wednesday, January 18, 2012—10:30 a.m. until 11:30 a.m.**

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee. Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mr. Antonio F. Dias (Telephone (301) 415–6805 or Email: *Antonio.Dias@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64127–64128).

Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone (240) 888–9835) to be escorted to the meeting room.

Dated: December 14, 2011.

**Cayetano Santos,**

*Chief, Reactor Safety Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2011–32516 Filed 12–19–11; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Federal Register; Notice

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission, [NRC–2011–0006].

**DATE:** Weeks of December 19, 26, 2011, January 2, 9, 16, 23, 2012.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of December 19, 2011**

There are no meetings scheduled for the week of December 19, 2011.

**Week of December 26, 2011—Tentative**

There are no meetings scheduled for the week of December 26, 2011.

**Week of January 2, 2012—Tentative**

There are no meetings scheduled for the week of January 2, 2012.

**Week of January 9, 2012—Tentative**

*Wednesday, January 11, 2012*

1 p.m. Briefing on Proposed Rule to Revise the Environmental Review for Renewal of Nuclear Power Plant Operating Licenses (Part 51) (Public Meeting) (Contact: Jeremy Susco, (301) 415–2927).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

**Week of January 16, 2012—Tentative**

There are no meetings scheduled for the week of January 16, 2012.

**Week of January 23, 2012—Tentative**

There are no meetings scheduled for the week of January 23, 2012.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 ((301) 415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: December 15, 2011.

**Rochelle C. Bavol,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2011–32623 Filed 12–16–11; 4:15 pm]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Federal Register Notice

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission, [NRC–2011–0006].

**DATE:** Week of December 19, 2011.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**ADDITIONAL ITEMS TO BE CONSIDERED:**

**Week of December 19, 2011**

*Thursday, December 22, 2011*

10:25 a.m. Affirmation Session (Public Meeting) (Tentative);

a. Final Rule: AP1000 Design Certification Amendment (Tentative),

b. *Entergy Nuclear Operations, Inc.* (Indian Point Nuclear Generating Units 2 and 3), Applicant's Petition for Review of LBP–11–17 Granting Summary Disposition of Consolidated Contention NYS–35/36 (July 29, 2011) (Tentative),

c. *U.S. Department of Energy* (High-Level Waste Repository), Docket No. 63–001–HLW, Timbisha Shoshone Tribal Council Petition for Review of September 28, 2011, Board Decision (Tentative).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings,

call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 ((301) 415–1969), or send an email to *darlene.wright@nrc.gov.*

Dated: December 15, 2011.

**Rochelle C. Bavol,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2011–32625 Filed 12–16–11; 4:15 pm]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–84; Order No. 1040]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Mount Union, Iowa post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

**DATES:** Deadline for notices to intervene: January 9, 2012, 4:30 p.m., Eastern Time. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received two petitions for review of the Postal Service's determination to close the Mount Union post office in Mount Union, Iowa. The first petition for review received November 29, 2011, was filed by Ben B. Johnson. The second petition for review received November 29, 2011, was filed by Amanda Mullin. The earliest postmark date is November 17, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–84 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than January 3, 2012.

*Categories of issues apparently raised.* Petitioners contend that (1) the Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

*Availability; Web site posting.* The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

*Filing of documents.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

*Intervention.* Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before January 9, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

*Further procedures.* By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are

due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Robert N. Sidman is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

PROCEDURAL SCHEDULE

| | |
|---|---|
| November 29, 2011 | Filing of Appeal. |
| December 14, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| December 14, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| January 9, 2012 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| January 3, 2012 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| January 23, 2012 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| February 7, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| February 14, 2012 | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| March 16, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–32415 Filed 12–19–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. A2012–85; Order No. 1041]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Milan, Kansas post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

**DATES:** Deadline for notices to intervene: January 9, 2012, 4:30 p.m., Eastern Time. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 29, 2011, the Commission received a petition for review of the Postal Service's determination to close the Milan post office in Milan, Kansas. The petition for review was filed by Michele Norris (Petitioner) and is postmarked November 18, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–85 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than January 3, 2012.

*Categories of issues apparently raised.* The Petitioner contends that the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

*Availability; Web site posting.* The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

*Filing of documents.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

*Intervention.* Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before January 9, 2012. A notice of intervention

shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

*Further procedures.* By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered*:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

PROCEDURAL SCHEDULE

| | |
|---|---|
| November 29, 2011 | Filing of Appeal. |
| December 14, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| December 14, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| January 9, 2012 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| January 3, 2012 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| January 23, 2012 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| February 7, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| February 14, 2012 | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| March 16, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–32416 Filed 12–19–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. MC2008–1 (Phase IIR); Order No. 1043]**

## Review of Nonpostal Services

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is establishing a docket to consider procedures on remand in a case involving licensing of Postal Service intellectual property for use on Mailing and Shipping products for sale by licensees at non-postal retail outlets. This notice provides background information and invites comments. It also addresses intervention by persons who did not participate earlier.

**DATES:** *Comments are due:* January 13, 2012. *Reply comments are due:* January 23, 2012.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *http://www.prc.gov/prc-pages/filing-online/login.aspx.* Persons who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** *Regulatory History,* 72 FR 73909 (December 28, 2007); 74 FR 2636 (January 15, 2009).

### Table of Contents

I. Introduction
II. Consideration of Issues on Remand
III. Procedures on Remand
IV. Ordering Paragraphs

### I. Introduction

On June 7, 2011, the United States Court of Appeals for the District of Columbia Circuit issued an opinion in *LePage's 2000, Inc. and LePage's Products, Inc.* v. *Postal Regulatory Commission,* No. 10–1031.[1] The court granted petitions for review and vacated the Commission's Order No. 392 in Phase II of Docket No. MC2008–1.[2] The court, which issued its remand July 26, 2011, found that the Commission had not adequately justified its findings regarding the licensing of Postal Service intellectual property for use on Mailing and Shipping products for sale by licensees at non-postal retail outlets.[3] It instructed the Commission to explain its departure from its findings in Phase I of this proceeding in three respects: (1) The classification of the licensing of intellectual property for use on Mailing and Shipping products as nonpostal; (2) the public need for licensing the Postal Service's intellectual property for use on Mailing and Shipping products; and (3) the private sector's ability to meet that need. In this order, the Commission establishes procedures to address the issues on remand.

### II. Consideration of Issues on Remand

*A. Classification of Licensing of Mailing and Shipping Products as a Nonpostal Service*

In its brief to the court, LePage's argued that the Commission's failure to consider whether the licensed products it produced for sale at non-Postal Service retail outlets were a ''postal service'' was arbitrary and capricious.[4] The Commission responded that LePage's comparison of its products to postal products, such as ReadyPost, was misplaced because it wrongly focused on the sale of its products rather than the service offered by the Postal Service, *i.e.,* licensing. *See LePage's* v. *PRC, supra,* 642 F.3d 231.

The court found that ''[t]he Commission may well be correct that

[1] *LePage's 2000, Inc. v Postal Regulatory Commission,* 642 F.3d 225 (DC Cir. 2011) (*LePage's* v. *PRC*). Consolidated with Nos. 10–1033, 10–1279, and 10–1294.

[2] Phase II Review of Nonpostal Services Under the Postal Accountability and Enhancement Act, January 14, 2010, Order No. 392.

[3] The court referred to the licensing of third-party mailing and shipping supplies, which includes LePage's licensing agreement, as the Bubblewrap program. *LePage's* v. *PRC* at 226. This order uses the term ''Mailing and Shipping products''.

[4] Brief for Petitioners LePage's 2000, Inc. and LePage's Products, Inc., Nos. 10–1031, 10–1033, 10–1279, 10–1294 (consolidated), January 29, 2011, at 28.

the crucial distinction is the seller's identity. But whatever the merits of this position, we cannot consider it because the Commission did not set it forth below.'' *Id.* The court held that in Phase II, the Commission analysis of the Mailing and Shipping program focused on the products themselves, whereas in Phase I, the focus was on the service being sold by the Postal Service. *Id.* Accordingly, the court remanded the matter to the Commission ''to explain its departure from the Phase I order and adopt a reasoned rationale for classifying the [mailing and shipping] program as a 'nonpostal service.' '' *Id.* at 232.

Interested persons are requested to comment on this issue, including specifically whether licensing of Mailing and Shipping products should be classified as a postal service or nonpostal service.

*B. The Public Need for Licensing of Mailing and Shipping Products*

The court found the Commission's finding that there was no public need for the licensing of Mailing and Shipping products for sale by licensees at nonpostal retail outlets to be flawed. The court held that the Commission had not adequately explained why the benefits ascribed to the Officially Licensed Retail Products (OLRP) [5] in Phase I did not also accrue to the Mailing and Shipping program in Phase II. *Id.* at 232.

In Phase I, the Postal Service sought to continue to license its intellectual property and to offer OLRP products as a nonpostal service.[6] In authorizing that nonpostal service to continue, the Commission found, *inter alia,* that the OLRP program leverages the Postal Service brand, enhances its image, and generates revenues to support its core mission.[7] The court stated: ''We do not understand why these same benefits would not accrue to the [Mailing and Shipping products], which aside from the seller's identity, is substantially similar to the [OLRP] program. At the least, the Commission must explain this differential treatment of seemingly like cases.'' *LePage's* v. *PRC,* 642 F.3d 232.[8]

In addition, the court addresses but does not resolve whether, in analyzing public need under 39 U.S.C. 404(e)(3), the Commission may consider the products manufactured pursuant to the licensing agreement and their potential effect on the market. Before the court, LePage's argued that the Commission cannot ''analyze 'public need' based on the predicted economic effects of a product.'' *Id.* Finding ''some merit'' in LePage's position, the court stated:

> The Act requires the Commission to assess the 'public need' for the service 'offered by' the Postal Service. Yet the service offered by the Postal Service in the [Mailing and Shipping] program is, of course, the licensing of intellectual property. The Commission's focus on the economic effect of the *products* that result from licensing, then, would seem to depart from the Act's plain language.

*Id.* (citation omitted; emphasis in original).[9]

The court concluded its discussion of public need by noting that in Phase II the Commission, without explanation, changed its approach from focusing on the service (licensing) to ''assessing the disadvantages of the [Mailing and Shipping] program based only on the program's *products.''* *Id.* (emphasis in original).

Interested persons are requested to address, under section 403(e)(3), the issue of public need for licensing of Mailing and Shipping products, including specifically what factors should be included in the Commission's assessment of public need.

*C. The Private Sector Ability To Meet the Public Need for Licensing Postal Service Intellectual Property for Mailing and Shipping Products*

In Phase I, the Commission authorized the continuation of promotional licensing by the Postal Service. It found that such licensing serves a ''public need which, given the uniqueness of the activity, cannot be met by the private sector.'' Order No. 154 at 73. The court found the Commission's Phase II conclusion that the private sector could meet the need for the licensing of intellectual property for use on Mailing and Shipping products departed, without explanation, from its Phase I conclusion ''that commercial licensing could not be met by the private sector because no entity other than the Service could license its intellectual property.'' *Id.* The court further observed:

> [T]he Commission must assess the activity the Service offers. In the case of commercial licensing—whether for mailing and shipping supplies or for other products—that activity is licensing. Therefore, for the Commission to review the private sector factor by assessing ability of the private sector to provide similar products would bring the Commission into conflict not only with the Act, but also [with its Phase I conclusion].

*Id.* at 233–34.

Interested persons are requested to address this issue, including specifically whether, in assessing under section 404(e)(3) the private sector's ability to meet the public need, the Commission may take into account the purpose of the product manufactured pursuant to the licensing agreement. Stated differently, in considering the private sector's ability to meet the need for Postal Service licensing of its intellectual property for use on third-party consumer goods, is it appropriate to take into account the purpose of licensed consumer good, *e.g.,* items, such as hats, toys, or key chains, that primarily serve a promotional (or novelty) purpose versus items related to Postal Service areas of expertise, such as postage meter ink cartridges or mail preparation supplies, that primarily serve a commercial purpose?

**III. Procedures on Remand**

The Commission establishes Docket No. MC2008–1 (Phase IIR) to consider issues on remand. Docket Nos. MC2008–1 (Phase II) and MC2008–1 (Phase IIR) are part of the same proceeding. Comments are due January 13, 2012.[10] Reply comments, if any, are due January 23, 2012. Comments may refer to and rely on evidence received and arguments made in Docket No. MC2008–1 (Phase I) and Docket No. MC2008–1 (Phase II).

**IV. Ordering Paragraphs**

*It is ordered:*

1. The Commission establishes Docket No. MC2008–1 (Phase IIR) to consider issues on remand.
2. Robert N. Sidman will continue to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments are due, as set forth in the body of this order, no later than January 13, 2012.
4. Reply comments, if any, are due no later than January 23, 2012.
5. All comments and other documents related to issues on remand shall be

[5] The court referred to the OLRP program as the ''Bears and Scales program''. *Id.* at 228.

[6] OLRP products are sold by the Postal Service at its retail facilities or via its Web site.

[7] Docket No. MC2008–1, Review of Nonpostal Service Under the Postal Accountability and Enhancement Act, December 19, 2008, at 49 (Order No. 154); affirmed *USPS* v. *Postal Regulatory Commission,* 599 F.3d 705 (DC Cir. 2010).

[8] The court also faulted the Commission's reliance on certain testimony to reach different results in Phase I and Phase II. ''The Commission does not explain how it can read the same evidence differently when applied to different aspects of the same program.'' *Id.*

[9] Regarding ''economic impact,'' the court ''perceive[d] no explanation of how this concern migrated, in Phase II, to the Commission's 'public need' inquiry.'' *Id.* at 233.

[10] Interested persons who were not parties to the proceedings in Phase II may seek to intervene by filing a notice of intervention or of limited participation. *See* 39 CFR 3001.20 and 3001.20a.

filed under Docket No. MC2008–1 (Phase IIR).

6. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2011–32428 Filed 12–19–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 76 FR 78054, December 15, 2011.

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street NE., Washington, DC

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Monday, December 19, 2011 at 2 p.m.

**CHANGE IN THE MEETING:** Date Change.

The Closed Meeting scheduled for Monday, December 19, 2011 at 2 p.m., has been changed to Tuesday, December 20, 2011 at 10 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 16, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–32601 Filed 12–16–11; 11:15 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12951 and #12952]**

### New Jersey Disaster Number NJ–00030

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4048–DR), dated 11/30/2011.

*Incident:* Severe Storm.

*Incident Period:* 10/29/2011.

*Effective Date:* 12/12/2011.

*Physical Loan Application Deadline Date:* 01/30/2012.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/30/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Jersey, dated 11/30/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Bergen, Middlesex, Passaic.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–32479 Filed 12–19–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12742 and #12743]**

### Nebraska Disaster Number NE–00043

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–4013–DR), dated 08/12/2011.

*Incident:* Flooding.

*Incident Period:* 05/24/2011 through 08/01/2011.

*Effective Date:* 12/12/2011.

*Physical Loan Application Deadline Date:* 10/11/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/14/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Nebraska, dated 08/12/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Richardson, Nemaha.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–32480 Filed 12–19–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12921 and #12922]**

### Virginia Disaster Number VA–00040

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA—4042—DR), dated 11/10/2011.

*Incident:* Earthquake.

*Incident Period:* 08/23/2011 through 10/25/2011.

*Effective Date:* 12/06/2011.

*Physical Loan Application Deadline Date:* 01/09/2012.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/10/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Virginia, dated 11/10/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Area: Fredericksburg City.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–32481 Filed 12–19–11; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice: 7734]**

## Bureau of Political Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates indicated on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

**DATES:** *Effective Date:* As shown on each of the 41 letters.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert S. Kovac, Managing Director, Directorate of Defense Trade Controls, Bureau of Political Military Affairs, Department of State, (202) 663–2861.

**SUPPLEMENTARY INFORMATION:** Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to the Congress or as soon thereafter as practicable.

**August 8, 2011 (Transmittal Number 11–027)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services abroad in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to support the manufacture of Communication and Navigation Equipment for end-use by the Saudi Arabian Ministry of Defense and Aviation, Royal Saudi Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**July 25, 2011 (Transmittal Number 11–030)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance to include the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, to include technical data, and defense services related to the sale of M4 Carbines to the Ministry of Defense of Malaysia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

*Acting Assistant Secretary, Legislative Affairs.*

**July 18, 2011 (Transmittal Number 11–034)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to support the manufacture in the United Kingdom of the Joint Services General Purpose Masks (M50 and M51).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus

*Acting Assistant Secretary, Legislative Affairs.*

**August 9, 2011 (Transmittal Number 11–042)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement to include the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Italy, Switzerland, and the United Kingdom for the support of mechanical, avionics, environmental and lighting systems for the Joint Cargo Aircraft C–27J and industrial baseline variants for end-use by the Governments of Bulgaria, Greece, Italy, Lithuania, Morocco, Romania, and the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams

*Assistant Secretary, Legislative Affairs.*

**July 18, 2011 (Transmittal Number 11–043)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I

am transmitting, herewith, certification of a proposed export license for the export of defense articles, including technical data, or defense services that are controlled under Category I of the United States Munitions List and sold commercially under contract in the amount of $1,000,000 or more.

The transaction described in the attached certification involves the permanent transfer of defense articles, including technical data, and defense services related to the sale of M60E4/MK43 general purpose machine guns, accessories, training and spare parts to the Colombian National Police.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

*Acting Assistant Secretary, Legislative Affairs.*

**July 25, 2011 (Transmittal Number 11–045)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the Proton launch of the SES–6 Commercial Communication Satellite from the Baikonur Cosmodrome in Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

*Acting Assistant Secretary, Legislative Affairs.*

**July 25, 2011 (Transmittal Number 11–046)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the Proton launch of the Turksat 4A and Turksat 4B Commercial Communication Satellites from the Baikonur Cosmodrome in Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

*Acting Assistant Secretary, Legislative Affairs.*

**July 25, 2011 (Transmittal Number 11–047)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services related to the Rolling Airframe Missile (RAM) Guided Missile Weapon System (GMWS) to the Armed Forces of the United Arab Emirates.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

*Acting Assistant Secretary, Legislative Affairs.*

**July 25, 2011 (Transmittal Number 11–051)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Sweden for the design, development, operation, installation, integration, testing, support, maintenance, overhaul, repair, and sale of the Auxiliary Power and Engine Start System (APESS) for use in the JAS 39 Gripen aircraft and Next Generation Gripen aircraft for end-use by the Swedish Armed Forces and the Governments of Brazil, Czech Republic, Hungary, India, Switzerland, and Thailand.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

*Acting Assistant Secretary, Legislative Affairs.*

**August 11, 2011 (Transmittal Number 11–054)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement to include the export of defense articles, to include technical data, and defense services in the amount of $1,000,000 or more.

The transaction described in the attached certification involves the export of 5.56mm rifles to the Ministry of Interior, General Directorate of Security, Turkish National Police.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**July 18, 2011 (Transmittal Number 11–057)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles including technical data, and defense services to Singapore for the manufacture of accessory products, fabricated/machined components and assemblies for various U.S.-origin aircraft, vessels and military vehicles.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Joseph E. Macmanus,

*Acting Assistant Secretary, Legislative Affairs.*

**August 8, 2011 (Transmittal Number 11–058)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Canada for the design, development and manufacture of the M72A5 Light Anti-Armor Weapon (LAW) system for the Canadian Department of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**August 11, 2011 (Transmittal Number 11–059)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification for the export of defense articles, to include technical data in the amount of $1,000,000 or more.

The transaction described in the attached certification involves the export of 5.56 mm rifles to the Critical National Infrastructure Security Force of the United Arab Emirates.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–067)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services for the manufacture in Mexico of the Common Range Integrated Instrumentation System for end-use by the Government of the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–069)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including

technical data, and defense services to Australia to support the manufacture and sale of ammunition and ammunition components to domestic law enforcement and government agency customers in the approved sales territory.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**August 8, 2011 (Transmittal Number 11–070)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Italy for the design, development and of manufacture F135 engine parts and components, including F135 hot section engine parts and components for the Joint Strike Fighter aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 7, 2011 (Transmittal Number 11–071)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Mexico for the pre-cast and post-cast finishing operations of military aircraft, tank, and naval engine components to include engine hot-section blades for end-use by United States military engine manufacturers.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**August 11, 2011 (Transmittal Number 11–072)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Norway for the design, development and manufacture of the M72 Lightweight Anti-Armor Weapon (LAW) system for several United States allies in Europe and Asia. The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**August 8, 2011 (Transmittal Number 11–073)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement to include the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Singapore for the maintenance, repair, and overhaul of F100 engines for end-use by the Republic of Singapore Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–074)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the export of defense articles, to include technical data, and defense services, for

the manufacture of the AN/APX–113 Combined Interrogator Transponder (CIT) for end-use by the Republic of Korea Air Force (ROKAF) on their F–16 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**August 8, 2011 (Transmittal Number 11–076)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement to include the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to the Republic of Korea for the sale of four C–130J–30 aircraft, related spares, and logistics support services to the Republic of Korea Air Force.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**August 8, 2011 (Transmittal Number 11–078)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, including technical data, and defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, including technical data, and defense services to support the design, manufacturing and delivery phases of the MEXSAT–3 Commercial Communications Satellite Program for Mexico.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**August 11, 2011 (Transmittal Number 11–079)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the Missile Firing Unit (MFU) and Stunner Interceptor Subsystems of the David's Sling Weapon System (DSWS) for end-use by the Government of Israel.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–080)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to India for the development, integration, certification, and testing of the GE F414–INS6 engine with the Light Combat Aircraft for the Government of India.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**August 8, 2011 (Transmittal Number 11–082)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, to include technical data, and defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to South Korea for the manufacture, assembly and maintenance support of the XTG411 Series Transmission.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification

which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–088)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to the United Kingdom for the manufacture, assembly, modification integration, repair and overhaul of Vertical Gyros, Rate Gyros, Attitude Heading Reference Systems, Compass Systems, Azimuth Gyros and Attitude Indicators.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–089)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Italy for the manufacture of a Multimode Receiver (MMR).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–091)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of defense articles, to include technical data, and defense services to South Korea for the manufacture and assembly related to MK 45 Mod 4 Naval Gun Mounts for delivery to and end-use by the Republic of Korea Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**August 9, 2011 (Transmittal Number 11–092)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement, to include the export of major defense equipment abroad and the export of defense articles, including technical data, and defense services abroad in the amount of $25,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to the United Kingdom in support of the sale of Hellfire II missiles.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**October 3, 2011 (Transmittal Number 11–093)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including technical data, and defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, including technical data, and defense services to support the manufacture and assembly of the Rolling Airframe Missile (RAM) Guided Missile Round Pack (GMRP) and Guided Missile Launching System (GMLS) for the Republic of Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–095)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Germany, France, Spain, the United Kingdom, Belgium and Turkey for the design, integration, and testing of the Video Distribution and Processing System for use on the A400M Aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**October 4, 2011 (Transmittal Number 11–097)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to the Netherlands for the manufacture of Improved Extended Forward Avionics Bays for the AH–64D Apache Helicopter for end-use by the United States Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**October 12, 2011 (Transmittal Number 11–099)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement to include the export of defense articles, including technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Belgium, France, Germany, Spain, Turkey, and the United Kingdom for A400M Aircraft Oxygen Systems for use by the Governments of Belgium, France, Germany, Luxembourg, Malaysia, South Africa, Spain, Turkey, and the United Kingdom.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**October 4, 2011 (Transmittal Number 11–101)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement to include the export of defense articles, to include technical data, and defense services in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, to include technical data, and defense services to support the Proton launch of the W5A Commercial Communication Satellite from the Baikonur Cosmodrome in Kazakhstan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–102)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Japan for the export and assembly of the Vertical Launch Anti-Submarine Rocket system for Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–103)**

The Honorable John A. Boehner,
Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed export license for the export of defense articles, including technical data, or defense services that are controlled under Category I of the United States Munitions List and sold

commercially under contract in the amount of $1,000,000 or more.

The transaction described in the attached certification involves the permanent transfer of defense articles, including technical data, and defense services related to the sale of M134D–H 7.62 Gatling general purpose machine guns, accessories training and spare parts to the Secretaria De La Defensa Nacional, Mexico for ultimate use by Mexico's Federal Police.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–104)**

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles, including technical data, or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, including technical data, and defense services to support the design, manufacturing and delivery phases of the Thaicom-6 Commercial Communications Satellite Program for Thailand.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–107)**

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Germany for the manufacture of the GE38 engine Low Pressure Turbine Stage 3 Blade in support of the United States Government CH–53K Heavy Lift Helicopter program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 7, 2011 (Transmittal Number 11–108)**

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Canada for the development, testing, and manufacture of the Improved Drive System (IDS) transmission system and parts thereof, for the AH–64D Apache helicopter Block IIII upgrade for end-use by the U.S. Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–113)**

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Sections 36(c) and 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services abroad in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the transfer of defense articles, technical data, and defense services to Russia for the RD–180 Liquid Propellant Rocket Engine Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

**September 30, 2011 (Transmittal Number 11–116)**

The Honorable John A. Boehner, Speaker of the House of Representatives.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a technical assistance agreement for the export of defense articles, including technical data, and defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the export of defense articles, including technical data, and defense services to Norway and Canada for the service life extension of the P–3 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

David S. Adams,

*Assistant Secretary, Legislative Affairs.*

Dated: November 30, 2011.

**Robert S. Kovac,**

*Managing Director, Directorate of Defense Trade Controls, Department of State.*

[FR Doc. 2011–32534 Filed 12–19–11; 8:45 am]

**BILLING CODE 4710–25–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Approval of Noise Compatibility Program for Kona International Airport at Keahole, Keahole, North Kona, HI

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Hawaii State Department of Transportation, Airports Division (DOT–A) under the provisions of 49 U.S.C. 47501 *et seq.* (formerly the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 Code of Federal Regulations (CFR) Part 150 (hereinafter referred to as ''Part 150''). On January 12, 2010, the FAA determined that the noise exposure maps submitted by the DOT–A under Part 150 were in compliance with applicable requirements. On April 20, 2011 the FAA approved the Kona International Airport at Keahole noise compatibility program. All of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed.

**DATES:** *Effective Date:* The effective date of the FAA's approval of the Noise Compatibility Program for Kona International Airport at Keahole is April 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Gordon Wong, Environmental Protection Specialist, FAA Western-Pacific Region, Honolulu Airports District Office, 300 Ala Moana Boulevard, Room 7–128, Honolulu, Hawaii, telephone number (808) 541–1232. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Kona International Airport at Keahole, effective April 20, 2011. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979, as amended (herein after referred to as the ''Act'') [recodified as 49 U.S.C. 47504], an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Honolulu, Hawaii.

The DOT–A submitted to the FAA on April 27, 2009, the Noise Exposure Maps for evaluation. The FAA determined that the Noise Exposure Maps for Kona International Airport at Keahole were in compliance with applicable requirements on January 12, 2010. Notice of this determination was published in the **Federal Register** on January 25, 2010 (Volume 75/No. 15/pages 3959–3960).

The Kona International Airport at Keahole study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 U.S.C. 47504 (formerly Section 104(b) of the Act). The FAA began its review of the program on October 27, 2010, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The Noise Compatibility Program recommended one Noise Abatement Element, eight Land Use Management Elements and three Program Management Elements. The FAA completed its review and determined

that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program was approved, by the Manager of the Airports Division, Western-Pacific Region, effective April 20, 2011.

Approval was granted for one Noise Abatement Element, eight Land Use Management Elements and three Program Management Elements. The approved measures included: a pilot education program; maintaining an established communication process between DOT–A, Hawaii County, and Hawaii State Land Use Commission for the review of proposed development near the airport; DOT–A to encourage Hawaii County to revise the Environmental Quality Section of Hawaii County General Plan to include additional policies related to airport land use compatibility; establish an Airport Influence Area for Kona International Airport to define the area that land use compatibility policies would apply; DOT–A to encourage Hawaii County to adopt an airport compatibility checklist for discretionary review of projects within its vicinity; maintain compatible zoning designations within the 2013 60 DNL noise contour; require the dedication of noise and avigation easements through the subdivision approval process; adopt fair disclosure regulations to notify property owners of the noise generated by aircraft operations; adopt an airport noise overlay zone; monitor implementation of the part 150 Noise Compatibility Program; updated the Noise Exposure Maps and Noise Compatibility Programs as necessary; and acquire and implement a noise monitoring system.

The FAA determinations are set forth in detail in the Record of Approval signed by the Manager of the Airports Division, Western-Pacific Region, on April 20, 2011. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Kona International Airport at Keahole. The Record of Approval also will be available on-line at: *http://www.faa.gov/airports/environmental/airport_noise/part_150/states/*

Issued in Hawthorne, California on December 12, 2011.

**Mark A. McClardy,**

*Manager, Airports Division, Western-Pacific Region, AWP–600.*

[FR Doc. 2011–32500 Filed 12–19–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Request To Release Airport Property

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

**ACTION:** Notice of Intent To Rule on Request to Release Airport Property at the Liberal Mid-America Regional Airport & Airport Industrial Park Liberal, KS.

**SUMMARY:** The FAA proposes to rule and invites public comment on the release of land at the Liberal Mid-America Regional Airport & Airport Industrial Park, Liberal, Kansas, under the provisions of 49 U.S.C. 47107(h)(2).

**DATES:** Comments must be received on or before January 19, 2012.

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address: Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: Debra S. Giskie, Airport Manager, Liberal Mid-America Regional Airport & Airport Industrial Park, City of Liberal, P.O. Box 2199, Liberal, KS 67901, (620) 626–2207.

**FOR FURTHER INFORMATION CONTACT:** Lynn D. Martin, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, ACE–610C, 901 Locust Room 364, Kansas City, MO 64106, (816) 329–2644, *lynn.martin@faa.gov.*

The request to release property may be reviewed, by appointment, in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the request to release approximately 0.33 acres of airport property at the Liberal Mid-America Regional Airport & Airport Industrial Park (LBL) under the provisions of 49 U.S.C. 47107(h)(2). On June 24, 2011, the Airport Manager at the Liberal Mid-America Regional Airport requested from the FAA that approximately 0.33 acres of property be released for sale to Allan and Charlene Classen for use as a repair/maintenance operation. On October 31, 2011, the FAA determined that the request to release property at the Liberal Mid-America Regional Airport and Airport Industrial Park (LBL) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this Notice.

The following is a brief overview of the request:

Liberal Mid-America Regional Airport and Airport Industrial Park (LBL) is proposing the release of one parcel, of 0.33 acres, more or less. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Liberal Mid-America Regional Airport and Airport Industrial Park (LBL) being changed from aeronautical to nonaeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation facilities at the Liberal Mid-America Regional Airport and Airport Industrial Park.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Liberal Mid-America Regional Airport and Airport Industrial Park.

Issued in Kansas City, MO, on November 30, 2011.

**Jim A. Johnson,**

*Manager, Airports Division.*

[FR Doc. 2011–32499 Filed 12–19–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Second Tier Environmental Impact Statement: Jackson County, MO

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a Second Tier Environmental Impact Statement (EIS) will be prepared for proposed improvements to I–70 from west of the

Paseo Boulevard interchange to east of the Blue Ridge Cutoff interchange in Jackson County, Missouri.

**FOR FURTHER INFORMATION CONTACT:** Ms. Peggy J. Casey, Program Development Team Leader, FHWA Division Office, 3220 West Edgewood, Suite H, Jefferson City, MO 65109, Telephone: (573) 636–7104; or Mr. David Nichols, Chief Engineer, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751–4586.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare a Second Tier EIS to consider impacts of improvements to I–70 from west of the Paseo Boulevard interchange to east of the Blue Ridge Cutoff interchange in Jackson County, Missouri. The project length is approximately 6.8 miles.

In July 2008, FHWA in partnership with MoDOT initiated the I–70 First Tier EIS process for approximately 18 miles of I–70 corridor from the end of the last ramp termini east of the Missouri and Kansas state line to east of the I–470 interchange, including the entire Kansas City, Missouri Central Business District (CBD) Freeway Loop. Its purpose was to determine an improvement strategy for the corridor to address the following needs: Improve safety, reduce congestion, restore and maintain existing infrastructure, improve accessibility, and improve goods movement. Various concepts were combined to develop 15 initial strategies that were screened down to four first tier strategies. These four strategies included the No-Build Strategy, Improve Key Bottlenecks Strategy, Add General Lanes Strategy, and Transportation Improvement Corridor Strategy. After analysis and public review, the First Tier EIS identified a Selected Strategy to improve the I–70 corridor. The Selected Strategy is the Improve Key Bottlenecks Strategy from the downtown loop to east of I–435. From east of I–435 to I–470, the Selected Strategy is either the Improve Key Bottlenecks Strategy or the Add General Lanes Strategy. In March 2010, the Draft First Tier EIS was published. A 49-day comment period, which included two public hearings and an online public hearing, followed publication of the draft. In December 2010, the Final First Tier EIS was published, with a Record of Decision published in April 2011.

The First Tier EIS recommended that the second tier environmental studies for the 18-mile I–70 corridor be divided into five sections of independent utility (SIU). The intent of the second tier environmental studies is to build on and extend the work of the First Tier EIS for improving I–70 as part of the Mid-America Regional Council's long-range transportation plan. Each SIU will be evaluated to the appropriate level of detail (CE, EA, or EIS) within the National Environmental Policy Act process.

FHWA and MoDOT are now preparing a Second Tier EIS that covers the section of I–70 from west of the Paseo Boulevard Interchange to east of the Blue Ridge Cutoff interchange, encompassing two SIUs from the First Tier EIS. The two SIUs are the Urban SIU (Paseo Boulevard to U.S. 40) and I–435 Interchange SIU (U.S. 40 to Blue Ridge Cutoff). The Second Tier EIS will carry forward and refine the needs identified from the First Tier EIS and conduct an alternative analysis based on the Improve Key Bottlenecks Strategy. Through this study, more specific definitions of the improvements and their potential impacts will be developed for consideration by the general public and the various environmental and community resource agencies. Examples of these improvements include modifying access, fixing existing pavement and bridges, improving interchange ramps, adding collector-distributor roads, and providing for bus transit on shoulder. The Second Tier EIS will also evaluate a no-build alternative and alternatives coordinated with ongoing regional transit studies.

As part of the scoping process, interagency coordination meetings will be held with federal and state resource agencies and local agencies. In addition, informational meetings with the public and community representatives will be held to solicit input on the project. A location public hearing will be held to present the findings of the Draft Second Tier EIS. Public notice will be given announcing the time and place of all public meetings and the hearing. The Draft Second Tier EIS will be available for public and agency review and comment prior to the public hearing.

The Second Tier EIS will conform to the environmental review process as established in Section 6002 of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU). The Section 6002 environmental review process requires the following activities: Identification and invitation of cooperating and participating agencies; establishment of a coordination plan; and opportunities for additional agency and public comment on the project's purpose and need, strategies, and methodologies for determining impacts.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the Second Tier EIS should be directed to the FHWA or MoDOT at the addresses provided above. Concerns in the study area include potential impacts to natural resources, cultural resources, and communities.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 14, 2011.

**Peggy J. Casey,**

*Program Development Team Leader, Jefferson City.*

[FR Doc. 2011–32492 Filed 12–19–11; 8:45 am]

**BILLING CODE 4910–22–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Federal Aviation Administration

### Environmental Impact Statement: Cook and DuPage Counties, IL

**AGENCIES:** Federal Highway Administration (FHWA) and Federal Aviation Administration (FAA), DOT.

**ACTION:** Revised Notice of Intent to Prepare an Environmental Impact Statement.

**SUMMARY:** The FHWA and FAA are issuing this notice to advise the public that a Tier Two Environmental Impact Statement will be prepared for the Elgin O'Hare—West Bypass in Cook and DuPage Counties, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600. Jim Keefer, Manager, Chicago Airports District Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Phone: (847) 294–7336. Diane M. O'Keefe, P.E., Deputy Director of Highways, Region One Engineer, Illinois Department of Transportation, 201 West Center Court, Schaumburg, Illinois 60196, Phone: (847) 705–4110. Kristi Lafleur, Executive Director, Illinois State Toll Highway Authority,

2700 Ogden Avenue, Downers Grove, IL 60515, Phone: (630) 241–6800.

**SUPPLEMENTARY INFORMATION:** This notice is a revision of a June 8, 2011, Notice of Intent [76 FR 33401]. The revised notice is being issued to inform the public that the FHWA and FAA, in cooperation with the Illinois Department of Transportation (IDOT) and the Illinois State Toll Highway Authority (ISTHA), will prepare a Tier Two Environmental Impact Statement (EIS) for the proposed Elgin O'Hare—West Bypass. The ISTHA is being added as a joint lead agency because ISTHA will be the primary agency responsible for implementing the project, including the design, operation and maintenance necessary to complete the highway components identified in the EIS. The study area for the EIS is along the Elgin-O'Hare Expressway/Thorndale Avenue between Chicago O'Hare International Airport (O'Hare) and Lake Street/US Route 20, and on a proposed alignment connecting I–90 and I–294 along the west side of O'Hare. The Tier Two EIS will present further detail on the alternatives for the preferred transportation system concept that resulted from the Tier One EIS, an evaluation of the environmental impacts of the alternatives, and actions for mitigating project impacts to environmental resources.

The primary environmental resources that may be affected are: residential, commercial, and industrial properties; streams and floodplains; wetlands; and open space. This project is being developed using the Illinois Department of Transportation's Context Sensitive Solutions policy. Alternatives to be evaluated will include (1) taking no action and (2) complete transportation system alternatives for the Tier One corridor that include consideration of design options, financing options, construction sequencing options, and the inclusion of transit, bicycle and pedestrian facilities.

The Tier One Stakeholder Involvement Plan (SIP), which met the SAFETEA–LU Coordination Plan requirements, will be updated to ensure that a full range of issues related to Tier Two of this project are identified and addressed. The SIP provides meaningful opportunities for all stakeholders to participate in defining transportation issues and solutions for the study area. The web site established for this project (*www.elginohare-westbypass.org*) is one element of the project public involvement program.

Comments or questions concerning this proposed action and the Tier Two EIS are invited from all interested parties and should be directed to the FHWA at the address provided above. The Tier Two Draft EIS will be available for public and agency review after its publication. A public hearing will be held during the public comment period for the draft EIS. Public notice will be given of the time and place of public meetings and hearing. The Tier Two EIS will conclude with the selection of a preferred alternative documented in the Record of Decision.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

**James G. Keefer,**

*Manager, Chicago Airports District Office, Federal Aviation Administration, Des Plaines, Illinois.*

Issued on: December 12, 2011.

**Norman R. Stoner,**

*Division Administrator, Federal Highway Administration, Springfield, Illinois.*

[FR Doc. 2011–32496 Filed 12–19–11; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### National Technical Assistance Center for Senior Transportation: Solicitation for Proposals

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice; request for proposals.

**SUMMARY:** This solicitation seeks proposals from national not-for-profit organizations for a cooperative agreement to maintain and continue to implement the National Technical Assistance Center for Senior Transportation (National Senior Center or Center). The National Senior Center was enabled by statute under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU) in July 2005. The major goal of the National Senior Center is to gather best practices from senior transportation programs throughout the Nation and assist local communities, states and other organizations in successfully meeting the transportation needs of seniors including planning for an integrated transportation program. This cooperative agreement is for a five-year award. The first year of the cooperative agreement is for nine-hundred and ninety-eight thousand dollars ($998,000) from funds appropriated in Fiscal Year 2011. Subsequent funding will be based on annual appropriations and future authorization of the program.

This notice describes how to apply and the criteria the interagency review panel will use to evaluate the proposals received.

This announcement is available on the FTA's Web site and on the United We Ride (UWR) Web page at: *http://www.unitedweride.gov*. FTA will announce the final selection on the UWR Web site and in the **Federal Register**. A synopsis of this announcement will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.Grants.Gov*. Proposals must be submitted to FTA, electronically, through the GRANTS.GOV ''APPLY'' function.

**DATES:** Complete proposals must be submitted electronically by February 21, 2012. The proposals must be submitted electronically through the GRANTS.GOV Web site. Applicants who have not already done so should initiate the process of registering on the GRANTS.GOV site immediately to ensure completion of registration before the deadline for submission.

**ADDRESSES:** Proposals must be submitted electronically to *http://www.Grants.Gov*.

**FOR FURTHER INFORMATION CONTACT:** For general program information, as well as proposal-specific questions, please send an email to *unitedweride@fta.dot.gov* or contact Pamela Brown at (202) 493–2503. A TDD is available at 1-(800) 877–8339 (TDD/FIRS).

**SUPPLEMENTARY INFORMATION:**

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### I. Funding Opportunity Description

*A. Authority*

The enactment of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU); Public Law 109–059, authorized a National Technical Assistance Center on Senior Transportation under 49 U.S.C. 5314 (c) as follows:

1. *Establishment*—The Secretary shall award grants to a national not-for-profit organization for the establishment and

maintenance of a national technical assistance center.

2. *Eligibility*— An organization shall be eligible to receive a grant under paragraph 1 if the organization—

A. Focuses significantly on serving the needs of the elderly;

B. Has demonstrated knowledge and expertise in senior transportation policy and planning issues;

C. Has affiliates in a majority of the states;

D. Has the capacity to convene local groups to consult on operation and development of senior transportation programs; and

E. Has established close working relationships with the Federal Transit Administration and the Administration on Aging (AoA).

3. *Use of Funds*—The national technical assistance center established under this section shall—

A. Gather best practices from throughout the Nation and provide such practices to local communities that are implementing senior transportation programs;

B. Work with teams from local communities to identify how the communities are successfully meeting the transportation needs of senior citizens and any gaps in services in order to create a plan for an integrated senior transportation program;

C. Provide resources on ways to pay for senior transportation services;

D. Create a web site to publicize and circulate information on senior transportation programs;

E. Establish a clearinghouse for print, video, and audio resources on senior mobility; and

F. Administer the demonstration grant program established under paragraph (4).

4. *Grants Authorized*—

A. *In General*—The national technical assistance center established under this section, in consultation with the Federal Transit Administration, shall award senior transportation demonstration grants to—

i. Local transportation organizations;

ii. State agencies;

iii. Units of local government; and

iv. Nonprofit organizations.

B. *Use of Funds*—Grant funds received under this paragraph may be used to—

i. Evaluate the state of transportation services for senior citizens;

ii. Recognize barriers to mobility that senior citizens encounter in their communities;

iii. Establish partnerships and promote coordination among community stakeholders, including public, not-for-profit, and for-profit providers of transportation services for senior citizens;

iv. Identify future transportation needs of senior citizens within local communities; and

v. Establish strategies to meet the unique needs of healthy and frail senior citizens.

C. *Selection of Grantees*—The Secretary shall select grantees under this paragraph based on a fair representation of various geographical locations throughout the United States.

*B. Background*

Older adult mobility and human service transportation is defined as a network of services including but not limited to driving modification and transition; pedestrian access; public transportation; paratransit (curb to curb, door to door, door through door); taxi service; and volunteer services. Mobility also can be achieved through Internet and Social Media connections. Technical assistance is a process that enables a goal-focused, strategy-oriented, accountable organization to transfer knowledge to clients for the purpose of their growth, change, and improvement. Technical assistance is intended to provide extensive information and assistance to facilitate adoption or application of research-based or practice-based products, policies, or knowledge in order to improve the provision of services for target populations. Technical assistance may include information dissemination, training, and enhancing capacity for building more efficient transportation services at the local and state levels. A primary goal of the technical assistance offered by the Center is to facilitate the expansion of transportation services and options for older persons in their local communities. A key strategy to accomplish this expansion of service is coordination of transportation programs and initiatives.

SAFETEA–LU, Public Law 109–059, authorized the National Senior Center under 49 U.S.C. 5314(c). In recognition of the fundamental importance of senior mobility and human service transportation and the continuing need to enhance coordination, Executive Order 13330 (EO) on Human Service Transportation Coordination issued on February 24, 2004, directed multiple Federal departments and agencies to work together to ensure that transportation services are seamless, comprehensive and accessible. Secretaries from the Departments of Transportation, Agriculture, Education, Health and Human Services, Housing and Urban Development, Interior, Labor, and Veterans Affairs, the Commissioner of the Social Security Administration, the Attorney General and the Chairperson of the National Council on Disability comprise the Coordinating Council on Access and Mobility (CCAM).

Specifically, the CCAM is tasked with seeking ways to simplify access to transportation services for persons with disabilities, persons with lower incomes, and older adults. The EO requires that CCAM members work together to provide the most appropriate, cost effective services within existing resources, and reduce duplication to make funds available for more services. To meet the requirements of the EO, the CCAM developed a comprehensive action plan and launched United We Ride (UWR), a national initiative on human service transportation coordination, which includes senior mobility. The National Senior Center is directly linked with UWR and related to technical assistance initiatives in the area of older adult mobility and human service transportation coordination. FTA collaborates with other members of CCAM on the implementation of the EO and therefore, the technical assistance provided under this solicitation will seek to continue to complement and optimize, not duplicate, the technical assistance and related work funded in this area by other CCAM partners.

Under SAFETEA–LU, the Secretary of Transportation was directed to award grants to a national not-for-profit organization for the establishment and maintenance of a national technical assistance center on senior transportation.

In the Fiscal Years since its inception, the National Technical Assistance Center on Senior Transportation has been instrumental in increasing the transportation options for older adults and enhancing their ability to live more independently within their communities throughout the United States. Technical assistance, research toward solutions, strategic communications and building partnerships among stakeholders are additional functions of the Center. The National Senior Center has become the lead organization to develop a comprehensive state-of-the-art technical information system dealing with training and research on the transportation of older persons.

The Center has raised greater awareness, increased educational efforts, built strong coalitions, gained greater collaboration between the aging and the transportation industry, and developed a core set of training materials and products that provide the

base level framework necessary to expand transportation options at the community level for older adults.

The Center has hosted numerous webinars and teleconferences, since 2005, which aid in the improvement of public transportation options of an aging population and include such topics as improvements to vehicles, planning, operations, rider information, and outreach; and more targeted, flexible services; and universal design.

The need for mobility assistance to enable independence, especially public transportation services, increases with age and disability level. Many older adults prefer to age in place, despite mobility challenges. The car has made suburban and rural living practical, and contributed to a decline in public transportation and walking (Transportation Research Board, 2004). Mobility will be a significant challenge for this dispersed older population. Therefore, demand for transportation services is expected to skyrocket and the need for immediate attention to infrastructure and service investments for older adults and individuals with disabilities has increased.

Thus, the results of technical assistance are targeted to enhance availability, accessibility, acceptability, affordability and adaptability for older adults. In order to achieve these goals, technical assistance will need to focus around one-stop access systems, streamlining eligibility, enhancing transportation coordination, better understanding of regulations and policies regarding cost-sharing and funding, and using social media to get information out to local consumers.

*C. Program Purpose*

The purpose of this cooperative agreement is to maintain and continue to implement the National Technical Assistance Center for Senior Transportation (hereafter, the National Senior Center, or the Center). The major goal of the National Senior Center is to gather best practices from throughout the Nation and provide such practices to local communities that are implementing senior transportation programs and to assist local communities, other organizations and states in successfully meeting the transportation needs of seniors and identifying any gaps in services in order to create a plan for an integrated transportation program.

The National Senior Center will follow a number of strategies, especially coordination, empowerment, knowledge management and person-centered technical assistance. The Center will coordinate with other technical assistance initiatives related to senior mobility and human service transportation to ensure a coordinated approach in this area. In addition, all efforts of the Center should ensure consumer input and involvement such that all technical assistance has a person centered, self-determination and independence focus. Center personnel will engage with technical assistance recipients to ensure knowledge is transferred and relationships are developed. This information and referral system is meant to be a key focal point to disseminate models, best practices and develop successful demonstration sites for innovations in older adult transportation services and systems. This project will entail creative, engaging and collaborative public and private partnerships at all levels—local, Tribal, state and Federal.

The following areas will be key areas of focus for the National Senior Center activities:

The Center will conduct an assessment of technical assistance needs in the area of senior mobility and will formulate a plan in coordination with FTA and AoA for conducting technical assistance in future years of funding.

It is expected that technical assistance will include:

- *Peer-to-Peer Learning;*
- *Expertise in Senior Issues;*
- *Communities of Practice;*
- *Grantee Specific Assistance, as required;*
- *Information and Knowledge Transfer;*
- *Training; and,*
- *Demonstration Grants.*

Tasks

In the performance of this cooperative agreement, the grantee shall accomplish the following tasks:

Task 1—Project Management and Administration

The grantee shall meet with the FTA Project Manager within ten (10) working days after issuance of agreement to discuss the project management and administration of the cooperative agreement. The grantee shall submit a Statement of Work to the FTA Project Manager within six (6) weeks of grant award.

Task 2—Technical Assistance and Training

The National Senior Center will formulate a plan in coordination with FTA, AoA and other Federal partners for identifying technical assistance needs and conducting technical assistance and training at the state and local levels. The grantee will work with local sites to develop individual technical assistance plans that outline specific needs, intended outcomes, plans for assistance, and evaluation components, which shall include, but are not limited to:

a. Integrating a range of services including driving transition, pedestrian environments, fixed route transit, paratransit services, taxi programs, door through door or escort options, voucher models, and volunteer transportation programs into overall technical assistance.

b. Assisting local communities with the development of mobility management strategies and concepts that enhance transportation service options and access for older adults.

c. Assisting states and local communities with identification of intelligent transportation systems and other technologies that enhance transportation services for older adults, including increased access to a community One-Call/One-Click Transportation Resource Centers.

d. Implement training on topics related to older adult transportation, including but not limited to, mobility management techniques and incorporating older adult transportation resources into existing One-Call/One-Click Resource Centers. Training should be considered for transportation providers, human service providers, and consumers.

Task 3—Demonstration Grants

The Center shall award senior transportation demonstration grants to local transportation organizations, state agencies, units of local Government and non-profit organizations in areas related to senior transportation which are intended to solve transportation and mobility needs of the older adult community.

Task 4—Communication and Management Information Activities

The grantee shall work collaboratively with FTA, AoA and other Federal partners to coordinate input, direction and advice to ensure the dissemination of information related to older adult transportation. The grantee shall work collaboratively with the FTA Project Manager and the Steering Committee to identify specific topics.

Task 5—Strategic Development in Partnerships, Community Involvement in Senior Transportation, and Senior Mobility and Human Service Transportation Coordination

The grantee shall provide guidance and direction on establishing coalitions, which can be integrally involved in

providing strategic direction for state and community involvement in older adult transportation. This shall include a method to enhance awareness by all stakeholders of funded senior mobility and related human service transportation.

Task 6—Collaboration With FTA and the Federal Coordinating Council on Access and Mobility

The grantee, in coordination with the FTA Project Manager, should provide technical assistance to the CCAM on older adult transportation issues.

## II. Award Information

FTA will fund one cooperative agreement for a five year award. Year one of the cooperative agreement is for nine-hundred and ninety-eight thousand dollars ($998,000). The anticipated notification date is the winter of 2011/12, with an anticipated starting date for the successful applicant of March 2012. Subsequent funding will be based on annual appropriations and future authorizations of program continuation. FTA recipients with existing FTA cooperative agreements or grants are eligible to compete for this competitive cooperative agreement.

The FTA will participate in National Senior Center activities by attending review meetings, commenting on technical reports, maintaining frequent contact with the grantee Project Manager and approving key decisions and activities, and redirecting activities, if needed.

FTA will publish the selected organization in the **Federal Register** and on the UWR Web site.

## III. Eligibility Information

FTA is interested in proposals for this cooperative agreement from national not-for-profit organizations with demonstrated capacity in state and community transportation services for older adults to include, but are not limited to, knowledge and/or understanding of information in the following areas:

- Understanding strategies for building a coordinated and integrated senior mobility and human service transportation program;
- Capacity and experience to build coordination and collaboration between the public and private sector;
- Capacity for developing and managing a technical assistance network;
- Capacity and experience for providing effective off-site technical assistance;
- Understanding the implementation of a range of transportation services including: One-call/one-click transportation resource centers; mobility management, older driver, assisted (door to door; hand to hand; escort) services, and other types of transportation services provision; and,
- Capacity and experience for conducting face-to-face and Web-based training.

## IV. Proposal Submission Information

### *A. Proposal Process*

Project proposals must be submitted electronically through GRANTS.GOV. Complete proposals for the National Technical Assistance Center for Senior Transportation must be submitted electronically through the GRANTS.GOV Web site no later than February 21, 2012.

Applicants are encouraged to begin the process of registration on the GRANTS.GOV site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before a proposal can be submitted. In addition to the mandatory SF–424 Form that applicants must download from GRANTS.GOV, FTA requires applicants to complete the Supplemental FTA Form (Applicant and Proposal Profile, Human Service Transportation Technical Assistance Program). The Supplemental Form provides guidance and a consistent format for applicants to respond to the criteria outlined in this Notice.

Applicants *must* use this format as stipulated in Appendix A and attach it to their submission in GRANTS.GOV to successfully complete the application process. Within 24–48 hours after submitting an electronic proposal, the applicant should receive an email validation message from GRANTS.GOV. The validation will state whether GRANTS.GOV found any issues with the submitted application. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated. Complete instructions on the proposal process can be found at *www.unitedweride.gov.*

*Important:* FTA urges applicants to submit their proposal at least 72 hours prior to the due date to allow time to receive the validation message and to correct any problems that may have caused a rejection notification. Submissions received after February 21, 2012 will not be accepted.

### *B. Proposal Content*

1. Proposal Information included in the Standard Form 424—Application for Federal Assistance

This provides basic sponsor identifying information, including:

a. Applicant's Information;

b. Contact Information for notification of project selection (including contact name, title, address, congressional district, email, fax and phone number);

c. Type of Applicant;

d. Congressional Districts and Funding Information;

This form must be completed in order to be considered for funding.

2. Proposal Content

Every proposal must:

a. Describe concisely, but completely, the project scope to be funded;

b. Address each of the evaluation criteria separately in the format as stipulated in Appendix A, demonstrating how the project responds to each criterion; Please do not exceed the maximum page limit of 90 pages. All pages over the limit will be excluded from consideration.

c. Provide a total budget for the project and provide a basic line-item budget for each task, describing the various key components and estimating their cost; and,

d. Provide an estimated project time-line and major milestones.

## V. Proposal Review, Selection and Notification

### *A. Project Evaluation Criteria*

Applicants must identify how the proposal will enhance and/or increase transportation or mobility benefits to older adults.

Projects will be evaluated by an interagency review team based on the proposals submitted according to: 1. Staff qualifications; 2. Existing capacity/readiness; 3. Collaboration; 4. Ability to administer demonstration grants; and 5. Understanding of key issues and ideas for future development.

Each applicant is encouraged to demonstrate the responsiveness of a project to all of the selection criteria with the most relevant information that the applicant can provide, regardless of whether such information has been specifically requested, or identified, in this notice.

The review panel will assess the extent to which a project addresses the following criteria.

1. Staff Qualifications

Staff qualifications include experience in delivering technical assistance and training, knowledge of senior mobility issues, demonstrated process skills in assessment, strategic planning, facilitation, and other key areas associated with identified tasks, including capacity and experience for conducting face-to-face and Web-based

training for consumers, human service/aging providers, and transportation agencies. Applicant should also address a plan for knowledge retention.

2. Existing Capacity/Readiness

Existing capacity of the organization includes clearinghouse functions, web development and maintenance, a demonstrated ability to provide technical assistance, training, long distance and on-site intervention strategies, and other identified tasks; including technical assistance by telephone and email, moderated and un-moderated list-serves, web-based seminars, topic-based conference calls, the Internet (including the development of web content).

a. Indicate the timeframe for implementation of the project and obligation of funds. If the timeline for either is expected to take more than 18 months, please indicate the expected timeline and the justification for the longer period of implementation.

b. Please indicate the short-term, mid-range and long-term goals for the project.

3. Collaboration

Applicants must plan to collaborate with the National Senior Center Steering Committee, stakeholders in the public and private sector, and intermediary organizations such as hospital discharge planners, private pay insurance, various social service and transportation system networks to establish effective partnerships to implement tasks. Applicants should also consider and develop partnerships with additional groups beyond those listed above. Established partnerships with employment, disability, or aging groups will increase a proposal's chance of selection.

Applicants must also indicate how partners were involved in the proposal development and how they will participate in its implementation, if applicable.

4. Ability To Administer Demonstration Grants

One purpose of the National Senior Center is to award senior transportation demonstration grants in order to improve transportation for senior populations. The applicant must indicate its experience and capacity to carry out this mandated task and indicate how its organization will administer and manage the implementation of the demonstration grants.

5. Understanding of Key Issues and Ideas for Future Development

Understanding the key issues regarding: older drivers, pedestrian access, fixed routes, paratransit services, assisted (door to door; hand to hand; escort) services, volunteers, taxis, one-call/one-click transportation resource centers and other types of transportation services provisions. Applicants should indicate any ideas for future development of a range of transportation services as well as technical assistance, training, demonstration and other strategies needed to solve senior transportation challenges.

*B. Legal Capacity*

Applicants must indicate that there are no legal issues which would impact their eligibility and authority to apply for, or prevent acceptance of FTA funds.

*C. Submission Dates and Time*

All proposals must be submitted electronically via GRANTS.GOV no later than February 21, 2012.

*D. Proposal Selection and Notification Process*

Proposals will first be screened by FTA staff members and then screened and ranked by an interagency review panel. Final decision and allocation of FTA funds will be made by the FTA Administrator. The anticipated starting date for the successful applicant is March 2012.

## VI. Award Administration

*A. Award Notices*

FTA will announce project selection in a **Federal Register** Notice and will post the **Federal Register** Notice on the following Web sites: *www.fta.dot.gov* and *www.unitedweride.gov*. Once an application is selected, FTA will award a cooperative agreement through the FTA Transportation Electronic Award Management System (TEAM). There is no pre-award authority for these projects.

*B. Administrative and National Policy Requirements*

1. Grant Requirements. The successful applicant will apply for a grant through TEAM and adhere to the customary FTA grant requirements of Section 49 U.S.C. 5314(c), Transportation Research Program, including those of C 6100.1D, Technology Development and Deployment, dated 05–01–11, Research, Technical Assistance, and Training Programs: Application Instructions and Program Management Guidelines.

2. Discretionary grants and Research earmarks greater than $500,000 will go through Congressional Notification and Release Process. Technical assistance regarding these requirements is available from each FTA regional office.

3. Standard Assurances. The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and that modifications may affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The Applicant must submit the Certifications and Assurances before receiving a grant if it does not have current Certifications on file.

*C. Reporting*

Post-award reporting requirements include submission of Federal Financial Reports and Milestone Reports in TEAM on a quarterly basis for all projects. Documentation is required for payment. In addition, grants which include innovative technologies may be required to report on the performance of these technologies. Additional reporting may be required specific to the National Senior Center and the recipient may be expected to participate in events or peer networks related to the older adult transportation.

## VII. Agency Contacts

For general program information, as well as proposal-specific questions, please send an email to *unitedweride@fta.dot.gov* or contact Pamela Brown, (202) 493–2503. A TDD is available at 1 (800) 877–8339 (TDD/FIRS).

Issued in Washington, DC, this 15th day of December,, 2011.

**Peter Rogoff,**

*Administrator.*

## Appendix A

**Standard Format**

**Applicant and Proposal Profile**

**Human Service Transportation Technical Assistance Program**

Please respond to the information requests listed below in ninety (90) pages or less—including any attachments to this appendix. Please use Times New Roman, 12 point font,

double-spaced for the following items and please number your pages.

Project Title (One (1) page maximum):

Provide a Basic Line-Item Budget for Each Task (Two (2) page maximum): You may attach the budget as a separate item.

Provide an estimated project time-line and major milestones (Two (2) page maximum).

Describe How You Will Administer the Program (Ten (10) page maximum):

All applicants must respond to the following items in order to be considered for funding:

1. *Staff Qualifications* (Ten (10) page maximum—you may attach up to 5 additional pages of Staff Resumes):

*Staff qualifications* include experience in delivering technical assistance and training, knowledge of senior mobility issues, demonstrated process skills in assessment, strategic planning, facilitation, and other key areas associated with identified tasks, including capacity and experience for conducting face-to-face and web-based training for consumers, human service/aging providers, and transportation agencies.

Applicant should also address a plan for knowledge retention.

2. *Existing Capacity/Readiness To Conduct Technical Assistance & Training* (Fifteen (15) page maximum):

Existing capacity of the organization includes clearinghouse functions, web development and maintenance, demonstrated ability to provide technical assistance, training, long distance and on-site intervention strategies, and other identified tasks; including technical assistance by telephone and email, moderated and un-moderated list-serves, web-based seminars, topic-based conference calls, the Internet (including the development of web content).

a. Indicate the timeframe for obligation of funds and implementation of the project. If the timeline is more than 18 months, please provide the justification for the longer period of implementation.

b. Please indicate the short-term, mid-range and long-term goals for the project.

3. *Collaboration* (Ten (10) page maximum):

Applicants must plan to collaborate with the National Senior Center Steering Committee, stakeholders in the public and private sector, and intermediary organizations such as hospital discharge planners, private pay insurance, various social service and transportation system networks to establish effective partnerships to implement tasks.

Applicants should also consider and develop partnerships with additional groups beyond those listed above. Established partnerships with employment, disability, or aging groups will increase a proposal's chance of selection.

Applicants must also indicate how partners were involved in the proposal development and how they will participate in its implementation, if applicable.

4. *Ability To Administer Demonstration Grants* (Fifteen (15) page maximum):

One purpose of the National Senior Center is to award senior transportation demonstration grants in order to improve transportation for senior populations. The applicant must indicate its experience and capacity to carry out this mandated task and indicate how its organization will administer and manage the implementation of the demonstration grants.

5. *Understanding of Key Issues and Ideas For Future Development* (Fifteen (15) page maximum):

Understanding the key issues regarding: older drivers, pedestrian access, fixed routes, paratransit services, assisted (door to door; hand to hand; escort) services, volunteers, taxis, one-call/one-click transportation resource centers and other types of transportation services provisions. Applicants should indicate any ideas for future development of a range of transportation services.

6. *Legal Capacity.* (One (1) page maximum):

Applicants must indicate that there are no legal issues which would impact their eligibility and authority to apply for, or prevent acceptance of FTA funds.

[FR Doc. 2011–32546 Filed 12–19–11; 8:45 am]

**BILLING CODE P**

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 303 (Sub-No. 38X)]**

### Wisconsin Central Ltd.—Abandonment Exemption—in Fond Du Lac County, WI

Wisconsin Central Ltd. (WCL) [1] filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon approximately 0.60 miles of rail line between mileposts 175.40 and 176.00, in Fond Du Lac, Fond Du Lac County, Wis. The line traverses United States Postal Service Zip Code 54936.

WCL has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (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 the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Aband. 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 January 18, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 29, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 9, 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 WCL's representative: Thomas J. Healey, 17641 S. Ashland Ave., Homewood, IL 60430.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

WCL has filed a combined environmental and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by December 23, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–(800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), WCL shall file a notice of consummation with the Board to signify

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[1] WCL is a wholly owned, indirect subsidiary of Canadian National Railway Company.

[2] 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-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Requests for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by WCL's filing of a notice of consummation by December 19, 2012, 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: December 15, 2011.

By the Board.

**Rachel D. Campbell,**

*Director, Office of Proceedings.*

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2011–32522 Filed 12–19–11; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. FD 35572]**

### Pennsylvania & Southern Railway, LLC—Acquisition, Lease and Operation Exemption—CSX Transportation, Inc.

Pennsylvania & Southern Railway, LLC (PSCC), a Class III carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to: (1) Acquire from CSX Transportation, Inc. (CSXT) and operate the improvements comprising a 2.5-mile line of railroad between milepost BAV 22.4 and milepost BAV 24.9 near Chambersburg, Franklin County, Pa., and lease the underlying real property from CSXT; and (2) lease from CSXT and operate the improvements comprising a 1.95-mile line of railroad between milepost BAV 24.9 and milepost BAV 26.85 near Chambersburg, and lease the underlying real property from CSXT.[1]

On December 6, 2011, PSCC filed a supplement to its verified notice of exemption to clarify certain aspects of the proposed transaction and the Board authority sought pursuant to the verified notice.[2]

With respect to the 2.5-mile segment on which PSCC intends to purchase the improvements and lease the underlying real property from CSXT, PSCC asserts that CSXT does not wish to retain any common carrier obligation and will transfer its full common carrier obligation to PSCC together with the tracks, ties, and other track materials. Because PSCC will lease both the improvements and the underlying real property from CSXT on the 1.95-mile segment, CSXT will retain a residual common carrier authority on that segment.

PSCC certifies that its projected annual revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier and will not exceed $5 million.

The earliest this transaction may be consummated is January 5, 2012, the effective date of the exemption (30 days after the exemption was filed).[3] In its supplemental filing, PSCC states that, after the verified notice was filed, the parties agreed to defer the closing date and commencement of operations by PSCC until February 3, 2012.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than December 29, 2011 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35572, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

By the Board.

Decided: December 14, 2011.

**Rachel D. Campbell,**

*Director, Office of Proceedings.*

**Raina S. White,**

*Clearance Clerk.*

[FR Doc. 2011–32408 Filed 12–19–11; 8:45 am]

**BILLING CODE 4915–01–P**

[1] PSCC states that it is also leasing from CSXT the tracks and underlying real property comprising the Chambersburg Yard, which contains approximately 12,000 feet of track, but further states that the acquisition of this yard track does not require Board authorization.

[2] Also on December 6, 2011, PSCC filed a motion for protective order, which will be addressed in a separate decision. On December 7, 2011, PSCC submitted under seal an unredacted draft of its Land Lease and Purchase of Rail Improvements Agreement (Agreement) with CSXT. *See Anthony Macrie—Continuance in Control Exemption—N.J. Seashore Lines, Inc.,* FD 35296, slip op. at 3–4 (STB served Aug. 31, 2010).

[3] PSCC's verified notice of exemption is deemed to have been filed on December 6, 2011, the date PSCC filed its supplement.

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Part II

## Bureau of Consumer Financial Protection

12 CFR Part 1024

Real Estate Settlement Procedures Act (Regulation X); Interim Final Rule

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1024**

**[Docket No. CFPB–2011–0030]**

**RIN 3170–AA06**

## Real Estate Settlement Procedures Act (Regulation X)

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Interim final rule with request for public comment.

**SUMMARY:** Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws from seven Federal agencies to the Bureau of Consumer Financial Protection (Bureau) as of July 21, 2011. The Bureau is in the process of republishing the regulations implementing those laws with technical and conforming changes to reflect the transfer of authority and certain other changes made by the Dodd-Frank Act. In light of the transfer of the Department of Housing and Urban Development's (HUD's) rulemaking authority for the Real Estate Settlement Procedures Act (RESPA) to the Bureau, the Bureau is publishing for public comment an interim final rule establishing a new Regulation X (Real Estate Settlement Procedures Act). This interim final rule does not impose any new substantive obligations on persons subject to the existing Regulation X, previously published by HUD.

**DATES:** This interim final rule is effective December 30, 2011. Comments must be received on or before February 21, 2012.

**ADDRESSES:** You may submit comments, identified by *Docket No. CFPB–2011–0030* or *RIN 3170–AA06,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1500 Pennsylvania Ave. NW., (Attn: 1801 L Street), Washington, DC 20220.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Joseph Devlin or Jane Gao, Office of Regulations, at (202) 435–7700.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Congress enacted the Real Estate Settlement Procedures Act of 1974 (RESPA) based on findings that significant reforms in the real estate settlement process were needed to ensure that consumers are provided with greater and more timely information on the nature and costs of the residential real estate settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that Congress found to have developed. In addition to providing consumers with appropriate disclosures, the purposes of RESPA include effecting certain changes in the settlement process for residential real estate that will result in (1) the elimination of kickbacks or referral fees that Congress found to increase unnecessarily the costs of certain settlement services; and (2) a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance.[1] RESPA also prohibits unearned fees in connection with federally related mortgage loans. In 1990, Congress amended RESPA by adding a new section 6 covering persons responsible for servicing mortgage loans and amending statutory provisions related to mortgage servicers' administration of borrowers' escrow accounts.[2]

Historically, RESPA has been implemented in Regulation X of the Department of Housing and Urban Development (HUD), 24 CFR part 3500. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[3] amended a number of consumer financial protection laws, including RESPA. In addition to various substantive amendments, the Dodd-Frank Act transferred rulemaking authority for RESPA to the Bureau, effective July 21, 2011. *See* sections 1061 and 1098 of the Dodd-Frank Act. Pursuant to the Dodd-Frank Act and RESPA, as amended, the Bureau is publishing for public comment an interim final rule establishing a new Regulation X (Real Estate Settlement Procedures Act), 12 CFR part 1024, implementing RESPA.

## II. Summary of the Interim Final Rule

### *A. General*

The interim final rule substantially duplicates HUD's Regulation X as the Bureau's new Regulation X, 12 CFR part 1024, making only certain non-substantive, technical, formatting, and stylistic changes. To minimize any potential confusion, other than republishing HUD's rule (24 CFR part 3500) with the Bureau's part number, the Bureau is preserving where possible the section numbering HUD used in 24 CFR part 3500. For example, while this interim final rule generally incorporates HUD's existing regulatory text and appendices (including standardized and model forms), the rule has been edited as necessary to reflect nomenclature and other technical amendments required by the Dodd-Frank Act. Notably, this interim final rule does not impose any new substantive obligations on regulated entities. In future rulemakings, the Bureau expects to amend Regulation X to implement certain other changes to RESPA made by the Dodd-Frank Act, such as preparing and distributing booklets ''jointly addressing compliance with the requirements of the Truth in Lending Act and [RESPA], in order to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services,''[4] integrating certain disclosure requirements of the Truth in Lending Act, 15 U.S.C. 1601 *et seq.,* with certain disclosure requirements of RESPA,[5] adopting regulations pertaining to practices of mortgage servicers, and issuing regulations to carry out the consumer purposes of RESPA.

[1] 12 U.S.C. 2601.

[2] Public Law 101–625, 104 Stat. 4079 (1990), Sections 941–42.

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

[4] Public Law 111–203, Section 1098(3). Accordingly, pending further Bureau action, the Bureau is adopting HUD's existing booklet on settlement costs.

[5] *Id.* at Section 1032(f).

*B. Specific Changes*

References to HUD and its administrative structure, including provisions for imposing penalties for escrow violations, have been replaced with references to the Bureau. Conforming edits have been made to internal cross-references and addresses for filing applications and notices. Conforming edits have also been made to reflect the scope of the Bureau's authority pursuant to RESPA, as amended by the Dodd-Frank Act. Historical references that are no longer applicable, and references to effective dates that have passed, have been removed as appropriate. In addition, the Bureau is correcting a citation error in HUD's existing § 3500.17(*l*)(4). As adopted by HUD, § 3500.17(*l*)(4) contains a cross-reference to § 3500.21(f). The correct citation should be to § 3500.21(e). The Bureau is republishing § 3500.17(*l*)(4) as § 1024.17(*l*)(4) with the citation corrected to read § 1024.21(e). References to any ''HUD Public Guidance Document'' throughout HUD's Regulation X have been replaced with references to a ''Public Guidance Document'' throughout the Bureau's Regulation X. HUD's existing Regulation X CFR text contains several provisions that HUD adopted in 1996 but never made effective.[6] The Bureau is not republishing those provisions with the Bureau's Regulation X. Furthermore, the Bureau is clarifying permissible changes that covered persons may make to the special information booklet without the Bureau's written approval. As adopted by HUD, §§ 3500.6(d)(2) and (3) set forth the permissible changes that covered persons may make in the special information booklet without written approval from the Secretary of HUD. To reflect the transfer of authority from HUD to the Bureau, the Bureau is recodifying § 3500.6(d)(1) as §§ 1024.6(d)(1)(i) and (ii) to clarify permissible changes covered persons may make to the special information booklet without the Bureau's written approval.

As discussed above, the Dodd-Frank Act directed the Bureau to integrate certain disclosures required by TILA with certain disclosures required by RESPA. The Bureau expects the content and format of HUD's existing HUD–1/1A and GFE forms to be significantly revised or replaced by such rulemaking. The HUD–1/1A and GFE forms currently list HUD's Office of Management and Budget (OMB) control number, 2502–0265, in order to satisfy certain information collection requirements of the Paperwork Reduction Act. The Bureau believes that requiring covered persons to modify existing forms solely to replace HUD's OMB control number with the Bureau's OMB control number would impose substantial burden on covered persons with limited or no net benefit to consumers. Accordingly, covered persons may continue to list HUD's OMB control number on the HUD–1/1A and GFE forms until a final rule to the contrary takes effect. Covered persons also have the option of replacing HUD's OMB control number with the Bureau's OMB control number on the HUD–1/1A and GFE forms until a final rule to the contrary takes effect.

Accordingly, the Bureau is adding language in Appendix C to part 1024—Instructions for Completing the Good Faith Estimate (GFE) Form to clarify that covered persons may replace HUD's OMB control number with the Bureau's OMB control number on the form at their option. HUD's existing § 3500.9 lists the permissible changes allowed when the HUD–1/1A settlement changes are reproduced. The Bureau is recodifying § 3500.9 as § 1024.9 and adding language in § 1024.9(c) to clarify that covered persons may replace HUD's OMB control number with the Bureau's OMB Control number on the HUD–1/1A forms without written approval from the Bureau. Furthermore, the Bureau is revising language in § 1024.9(a)(5) to clarify that covered persons are not required to display the expiration date that is associated with the OMB control number displayed on the HUD–1/1A forms.

The Bureau has certain information gathering and investigative authority concerning Federal consumer financial laws, including RESPA,[7] under Subtitles B and E of the Dodd-Frank Act. RESPA also confers additional information gathering and investigative authority on the Bureau. Accordingly, the Bureau is removing paragraphs (i) and (ii) in HUD's existing § 3500.17(*l*)(3) because the repetition of the RESPA-conferred information gathering and investigative authority therein is unnecessary.

The Bureau has the authority to enforce RESPA and Regulation X pursuant to Subtitle E of Title X of the Dodd-Frank Act.[8] RESPA also confers additional enforcement authority on the Bureau. The Bureau is removing the civil money penalties provisions in HUD's existing § 3500.17(m) and (n) because the repetition of this RESPA-conferred authority is unnecessary. Investigations undertaken by the Bureau will be conducted in accordance with 12 CFR part 1080, and administrative adjudications will be conducted in accordance with 12 CFR part 1081. Due to the removal of paragraphs (m) and (n) from § 3500.17, the ''Discretionary payments'' paragraph in HUD's existing § 3500.17(o) is being recodified as § 1024.17(m) in this interim final rule.

Finally, the Bureau is removing paragraphs (b) and (c) from HUD's existing § 3500.19 because they are repetitive in light of other statutory and regulatory provisions. *See* §§ 3500.14–16 (being recodified as §§ 1024.14–16). Accordingly, corresponding cross-references to §§ 3500.19(b) and (c) in HUD's existing Regulation X are also being removed,[9] and § 3500.19(d) is being recodified as § 1024.19(b).

## III. Legal Authority

*A. Rulemaking Authority*

The Bureau is issuing this interim final rule pursuant to its authority under RESPA and the Dodd-Frank Act. Effective July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau all of the HUD Secretary's consumer protection functions relating to RESPA.[10] Accordingly, effective July 21, 2011, the authority of HUD to issue regulations pursuant to RESPA transferred to the Bureau.[11]

RESPA, as amended, authorizes the Bureau to issue regulations to carry out the provisions of RESPA.[12] This authority allows the Bureau to prescribe such rules and regulations, to make such interpretations, and to grant such reasonable exemptions for classes of transactions, as may be necessary to achieve the purposes of RESPA. In its existing regulation, HUD has used this

[6] *See* Notice of Final Rule and Delay of Effectiveness, 61 Fed. Reg. 51782 (October 4, 1996).

[7] *See* Public Law 111–203, Section 1002(12)(M) (defining RESPA as an ''enumerated law.'') An enumerated consumer law is a ''Federal consumer financial law.'' *Id.* at Section 1002(14).

[8] *Id.* at Sections 1051–1057.

[9] *See* § 3500.14(a) (being recodified as § 1024.14(a)) and § 3500.16 (being recodified as § 1024.16).

[10] Public Law 111–203, 1061(b)(7)(A). Effective on the designated transfer date, July 21, 2011, the Bureau was also granted ''all powers and duties'' that were vested in the HUD Secretary relating to RESPA on the date before the designated transfer date. *Id.* at Section 1061(b)(7)(B). Until this and other interim final rules take effect, existing regulations for which rulemaking authority transferred to the Bureau continue to govern persons covered by this rule. *See* 76 FR 43569 (July 21, 2011).

[11] Section 1066 of the Dodd-Frank Act grants the Secretary of the Treasury interim authority to perform certain functions of the Bureau. Pursuant to that authority, Treasury is publishing this interim final rule on behalf of the Bureau.

[12] Public Law 111–203, Section 1098(11); 12 U.S.C. 2603–2605, 2607, 2609, 2617.

RESPA authority to establish extensive rules concerning appropriate and timely disclosures about the nature and costs of the residential real estate settlement process, the elimination of kickbacks or referral fees with respect to certain settlement services, and mortgage servicers' administration of borrowers' escrow accounts, as well as their handling of servicing transfers and written consumer inquiries.[13]

*B. Authority To Issue an Interim Final Rule Without Prior Notice and Comment*

The Administrative Procedure Act (APA)[14] generally requires public notice and an opportunity to comment before promulgation of substantive regulations.[15] The APA provides exceptions to notice-and-comment procedures, however, where an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest or when a rulemaking relates to agency organization, procedure, and practice.[16] The Bureau finds that there is good cause to conclude that providing notice and opportunity for comment would be unnecessary and contrary to the public interest under these circumstances. In addition, substantially all of the changes made by this interim final rule, which were necessitated by the Dodd-Frank Act's transfer of RESPA authority from HUD to the Bureau, relate to agency organization, procedure, and practice and are thus exempt from the APA's notice-and-comment requirements.

The Bureau's good cause findings are based on the following considerations. As an initial matter, HUD's existing regulation was a result of notice-and-comment rulemaking to the extent required. Moreover, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Rather, the interim final rule makes only non-substantive, technical changes to the existing text of the regulation, such as renumbering, changing internal cross-references, replacing appropriate nomenclature to reflect the transfer of authority to the Bureau, and changing the address for filing applications and notices. Given the technical nature of these changes, and the fact that the interim final rule does not impose any additional substantive requirements on covered entities, an opportunity for prior public comment is unnecessary. In addition, recodifying HUD's regulation to reflect the transfer of authority to the Bureau will help facilitate compliance with RESPA and its implementing regulations, and will help reduce uncertainty regarding the applicable regulatory framework. Using notice-and-comment procedures would delay this process and thus be contrary to the public interest.

The APA generally requires that rules be published not less than 30 days before their effective dates. *See* 5 U.S.C. 553(d). As with the notice and comment requirement, however, the APA allows an exception when ''otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). The Bureau finds that there is good cause for providing less than 30 days notice here. A delayed effective date would harm consumers and regulated entities by needlessly perpetuating discrepancies between the amended statutory text and the implementing regulation, thereby hindering compliance and prolonging uncertainty regarding the applicable regulatory framework.[17]

In addition, delaying the effective date of the interim final rule for 30 days would provide no practical benefit to regulated entities in this context and in fact could operate to their detriment. As discussed above, the interim final rule published today does not impose any new, substantive obligations on regulated entities. Instead, the rule makes only non-substantive, technical changes to the existing text of the regulation. Thus, regulated entities that are already in compliance with the existing rules will not need to modify business practices as a result of this rule.

*C. Section 1022(b)(2) of the Dodd-Frank Act*

In developing the interim final rule, the Bureau has conducted an analysis of potential benefits, costs, and impacts.[18] The Bureau believes that the interim final rule will benefit consumers and covered persons by updating and recodifying Regulation X to reflect the transfer of authority to the Bureau and certain other changes mandated by the Dodd-Frank Act. This will help facilitate compliance with RESPA and its implementing regulations and help reduce any uncertainty regarding the applicable regulatory framework. The interim final rule will not impose any new substantive obligations on consumers or covered persons and is not expected to have any impact on consumers' access to consumer financial products and services.

Although not required by the interim final rule, covered entities may incur some costs in updating compliance manuals and related materials to reflect the new numbering and other technical changes reflected in the new Regulation X. The Bureau has worked to reduce any such burden by preserving the existing numbering to the extent possible and believes that such costs will likely be minimal. These changes could be handled in the short term by providing a short, standalone summary alerting users to the changes and in the long term could be combined with other updates at the firm's convenience. The Bureau intends to continue investigating the possible costs to affected entities of updating manuals and related materials to reflect these changes and solicits comments on this and other issues discussed in this section.

The interim final rule will have no unique impact on depository institutions or credit unions with $10 billion or less in assets as described in section 1026(a) of the Dodd-Frank Act. Also, the interim final rule will have no unique impact on rural consumers.

In undertaking the process of recodifying Regulation X, as well as regulations implementing thirteen other existing consumer financial laws,[19] the

[13] *See* HUD's Regulation X, 24 CFR part 3500.

[14] 5 U.S.C. 551 *et seq.*

[15] 5 U.S.C. 553(b), (c).

[16] 5 U.S.C. 553(b)(3)(A), (B).

[17] This interim final rule is one of 14 companion rulemakings that together restate and recodify the implementing regulations under 14 existing consumer financial laws (part III.C, below, lists the 14 laws involved). In the interest of proper coordination of this overall regulatory framework, which includes numerous cross-references among some of the regulations, the Bureau is establishing the same effective date of December 30, 2011 for those rules published on or before that date and making those published thereafter (if any) effective immediately.

[18] Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in Section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) requires that the Bureau ''consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.'' The manner and extent to which these provisions apply to interim final rules and to benefits, costs, and impacts that are compelled by statutory changes rather than discretionary Bureau action is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

[19] The fourteen laws implemented by this and its companion rulemakings are: The Consumer Leasing Act, the Electronic Fund Transfer Act (except with respect to Section 920 of that Act), the Equal Credit Opportunity Act, the Fair Credit Reporting Act (except with respect to Sections 615(e) and 628 of that act), the Fair Debt Collection Practices Act, Subsections (b) through (f) of Section 43 of the Federal Deposit Insurance Act, Sections 502 through 509 of the Gramm-Leach-Bliley Act (except

Bureau consulted the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the National Credit Union Administration, the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Housing and Urban Development, including with respect to consistency with any prudential, market, or systemic objectives that may be administered by such agencies.[20] The Bureau also has consulted with the Office of Management and Budget for technical assistance. The Bureau expects to have further consultations with the appropriate Federal agencies during the comment period.

## IV. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule. The Bureau is also seeking comment in response to a notice published at 76 FR 75825 (Dec. 5, 2011) concerning its efforts to identify priorities for streamlining regulations that it has inherited from other Federal agencies to address provisions that are outdated, unduly burdensome, or unnecessary.

## V. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[21] The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[22] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[23]

The IRFA and FRFA requirements described above apply only where a notice of proposed rulemaking is required,[24] and the panel requirement applies only when a rulemaking requires an IRFA.[25] As discussed above in part III, a notice of proposed rulemaking is not required for this rulemaking.

In addition, as discussed above, this interim final rule has only a minor impact on entities subject to Regulation X. The rule imposes no new, substantive obligations on covered entities. Accordingly, the undersigned certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities.

## VI. Paperwork Reduction Act

The Bureau may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule contains information collection requirements under the Paperwork Reduction Act (PRA), which have been previously approved by OMB, the OMB control number for which is 2502–0265, and the ongoing PRA burden for which is unchanged by this rule. There are no new information collection requirements in this interim final rule. The Bureau's OMB control number for this information collection is: 3170–0016.

## List of Subjects in 12 CFR Part 1024

Consumer protection, Condominiums, Housing, Mortgages, Mortgagees, Mortgage servicing, Reporting and recordkeeping requirements.

## Authority and Issuance

■ For the reasons set forth above, the Bureau of Consumer Financial Protection adds part 1024 to Chapter X in Title 12 of the Code of Federal Regulations to read as follows:

# PART 1024—REAL ESTATE SETTLEMENT PROCEDURES ACT (REGULATION X)

Sec.
1024.1 Designation.
1024.2 Definitions.
1024.3 Questions or suggestions from public and copies of public guidance documents.
1024.4 Reliance upon rule, regulation or interpretation by the Bureau.
1024.5 Coverage of RESPA.
1024.6 Special information booklet at time of loan application.
1024.7 Good faith estimate.
1024.8 Use of HUD–1 or HUD–1A settlement statements.
1024.9 Reproduction of settlement statements.
1024.10 One-day advance inspection of HUD–1 or HUD–1A settlement statement; delivery; recordkeeping.
1024.11 Mailing.
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1024.13 Relation to state laws.
1024.14 Prohibition against kickbacks and unearned fees.
1024.15 Affiliated business arrangements.
1024.16 Title companies.
1024.17 Escrow accounts.
1024.18 Validity of contracts and liens.
1024.19 Enforcement.
1024.20 [Reserved]
1024.21 Mortgage servicing transfers.
1024.22 Severability.
1024.23 ESIGN applicability.
Appendix A to Part 1024—Instructions for Completing HUD–1 and HUD–1A Settlement Statements; Sample HUD–1 and HUD–1A Statements
Appendix B to Part 1024—Illustrations of Requirements of RESPA
Appendix C to Part 1024—Instructions for Completing Good Faith Estimate (GFE) Form
Appendix D to Part 1024—Affiliated Business Arrangement Disclosure Statement Format
Appendix E to Part 1024—Arithmetic Steps
Appendix MS–1 to Part 1024—Servicing Disclosure Statement
Appendix MS–2 to Part 1024—Notice of Assignment, Sale, or Transfer of Servicing Rights

**Authority:** 12 U.S.C. 2603–2605, 2607, 2609, 2617, 5512, 5581.

### § 1024.1 Designation.

This part, known as Regulation X, is issued by the Bureau of Consumer Financial Protection to implement the Real Estate Settlement Procedures Act of 1974, as amended, 12 U.S.C. 2601 *et. seq.*

### § 1024.2 Definitions.

(a) *Statutory terms.* All terms defined in RESPA (12 U.S.C. 2602) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section or elsewhere in this part.

(b) *Other terms.* As used in this part:

*Application* means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the

for Section 505 as it applies to Section 501(b)), the Home Mortgage Disclosure Act, the Real Estate Settlement Procedures Act, the S.A.F.E. Mortgage Licensing Act, the Truth in Lending Act, the Truth in Savings Act, Section 626 of the Omnibus Appropriations Act, 2009, and the Interstate Land Sales Full Disclosure Act.

[20] In light of the technical but voluminous nature of this recodification project, the Bureau focused the consultation process on a representative sample of the recodified regulations, while making information on the other regulations available. The Bureau expects to conduct differently its future consultations regarding substantive rulemakings.

[21] 5 U.S.C. 601 *et seq.*

[22] 5 U.S.C. 603, 604.

[23] 5 U.S.C. 609.

[24] 5 U.S.C. 603(a), 604(a); 5 U.S.C. 553(b)(B).

[25] 5 U.S.C. 609(b).

property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may either be in writing or electronically submitted, including a written record of an oral application.

*Balloon payment* has the same meaning as ''balloon payment'' under Regulation Z (12 CFR part 1026).

*Bureau* means the Bureau of Consumer Financial Protection.

*Business day* means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions.

*Changed circumstances* means:

(1)(i) Acts of God, war, disaster, or other emergency;

(ii) Information particular to the borrower or transaction that was relied on in providing the GFE and that changes or is found to be inaccurate after the GFE has been provided. This may include information about the credit quality of the borrower, the amount of the loan, the estimated value of the property, or any other information that was used in providing the GFE;

(iii) New information particular to the borrower or transaction that was not relied on in providing the GFE; or

(iv) Other circumstances that are particular to the borrower or transaction, including boundary disputes, the need for flood insurance, or environmental problems.

(2) Changed circumstances do not include:

(i) The borrower's name, the borrower's monthly income, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any information contained in any credit report obtained by the loan originator prior to providing the GFE, unless the information changes or is found to be inaccurate after the GFE has been provided; or

(ii) Market price fluctuations by themselves.

*Dealer* means, in the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, ''dealer'' means one who engages in the business of manufactured home retail sales.

*Dealer loan or dealer consumer credit contract* means, generally, any arrangement in which a dealer assists the borrower in obtaining a federally related mortgage loan from the funding lender and then assigns the dealer's legal interests to the funding lender and receives the net proceeds of the loan. The funding lender is the lender for the purposes of the disclosure requirements of this part. If a dealer is a ''creditor'' as defined under the definition of ''federally related mortgage loan'' in this part, the dealer is the lender for purposes of this part.

*Effective date of transfer* is defined in section 6(i)(1) of RESPA (12 U.S.C. 2605(i)(1)). In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, the effective date of transfer is the transfer date agreed upon by the transferee servicer and the transferor servicer.

*Federally related mortgage loan* or *mortgage loan* means as follows:

(1) Any loan (other than temporary financing, such as a construction loan):

(i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property upon which there is either:

(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or

(B) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and

(ii) For which one of the following paragraphs applies. The loan:

(A) Is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;

(B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:

(*1*) By the Secretary of the Department of Housing and Urban Development (HUD) or any other officer or agency of the Federal Government; or

(*2*) Under or in connection with a housing or urban development program administered by the Secretary of HUD or a housing or related program administered by any other officer or agency of the Federal Government;

(C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);

(D) Is made in whole or in part by a ''creditor'', as defined in section 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)), that makes or invests in residential real estate loans aggregating more than $1,000,000 per year. For purposes of this definition, the term ''creditor'' does not include any agency or instrumentality of any State, and the term ''residential real estate loan'' means any loan secured by residential real property, including single-family and multifamily residential property;

(E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition, by a mortgage broker; or

(F) Is the subject of a home equity conversion mortgage, also frequently called a ''reverse mortgage,'' issued by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(3) If the residential real property securing a mortgage loan is not located in a State, the loan is not a federally related mortgage loan.

*Good faith estimate* or *GFE* means an estimate of settlement charges a borrower is likely to incur, as a dollar amount, and related loan information, based upon common practice and experience in the locality of the mortgaged property, as provided on the form prescribed in § 1024.7 and prepared in accordance with the Instructions in Appendix C to this part.

*HUD* means the Department of Housing and Urban Development.

*HUD–1 or HUD–1A settlement statement* (also *HUD–1 or HUD–1A*) means the statement that is prescribed in this part for setting forth settlement charges in connection with either the purchase or the refinancing (or other subordinate lien transaction) of 1- to 4-family residential property.

*Lender* means, generally, the secured creditor or creditors named in the debt obligation and document creating the lien. For loans originated by a mortgage broker that closes a federally related mortgage loan in its own name in a table funding transaction, the lender is the person to whom the obligation is initially assigned at or after settlement. A lender, in connection with dealer loans, is the lender to whom the loan is assigned, unless the dealer meets the definition of creditor as defined under ''federally related mortgage loan'' in this

section. See also § 1024.5(b)(7), secondary market transactions.

*Loan originator* means a lender or mortgage broker.

*Manufactured home* is defined in HUD regulation 24 CFR 3280.2.

*Mortgage broker* means a person (not an employee of a lender) or entity that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person or entity that closes the loan in its own name in a table funded transaction. A loan correspondent approved under HUD regulation 24 CFR 202.8 for Federal Housing Administration programs is a mortgage broker for purposes of this part.

*Mortgaged property* means the real property that is security for the federally related mortgage loan.

*Origination service* means any service involved in the creation of a mortgage loan, including but not limited to the taking of the loan application, loan processing, the underwriting and funding of the loan, and the processing and administrative services required to perform these functions.

*Person* is defined in section 3(5) of RESPA (12 U.S.C. 2602(5)).

*Prepayment penalty* has the same meaning as ''prepayment penalty'' under Regulation Z (12 CFR part 1026).

*Public Guidance Documents* means **Federal Register** documents adopted or published, that the Bureau may amend from time-to-time by publication in the **Federal Register.** These documents are also available from the Bureau at the address indicated in § 1024.3.

*Refinancing* means a transaction in which an existing obligation that was subject to a secured lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender. The following shall not be treated as a refinancing, even when the existing obligation is satisfied and replaced by a new obligation with the same lender (this definition of ''refinancing'' as to transactions with the same lender is similar to Regulation Z, 12 CFR 1026.20(a)):

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate as computed under the Truth in Lending Act with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or change in collateral requirements is agreed to as a result of the consumer's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for continuation of allowable insurance; and

(5) The renewal of optional insurance purchased by the consumer that is added to an existing transaction, if disclosures relating to the initial purchase were provided.

*Regulation Z* means the regulations issued by the Bureau (12 CFR part 1026) to implement the Federal Truth in Lending Act (15 U.S.C. 1601 *et seq.*), and includes the Commentary on Regulation Z.

*Required use* means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.

*RESPA* means the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 *et seq.*).

*Servicer* means the person responsible for the servicing of a mortgage loan (including the person who makes or holds a mortgage loan if such person also services the mortgage loan). The term does not include:

(1) The Federal Deposit Insurance Corporation (FDIC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution; and

(2) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*) is assigned to HUD); the National Credit Union Administration (NCUA); the Farm Service Agency; and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the FDIC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

*Servicing* means receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 U.S.C. 2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

*Settlement* means the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan. This process may also be called ''closing'' or ''escrow'' in different jurisdictions.

*Settlement service* means any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of the following:

(1) Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);

(2) Rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender);

(3) Provision of any services related to the origination, processing or funding of a federally related mortgage loan;

(4) Provision of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;

(5) Rendering of services by an attorney;

(6) Preparation of documents, including notarization, delivery, and recordation;

(7) Rendering of credit reports and appraisals;

(8) Rendering of inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title;

(9) Conducting of settlement by a settlement agent and any related services;

(10) Provision of services involving mortgage insurance;

(11) Provision of services involving hazard, flood, or other casualty insurance or homeowner's warranties;

(12) Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;

(13) Provision of services involving real property taxes or any other assessments or charges on the real property;

(14) Rendering of services by a real estate agent or real estate broker; and

(15) Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

*Special information booklet* means the booklet adopted pursuant to section 5 of RESPA (12 U.S.C. 2604) to help persons understand the nature and costs of settlement services. The Bureau publishes the form of the special information booklet in the **Federal Register** or by other public notice. The Bureau may issue or approve additional booklets or alternative booklets by publication of a Notice in the **Federal Register**.

*State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

*Table funding* means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction (see § 1024.5(b)(7)).

*Third party* means a settlement service provider other than a loan originator.

*Title company* means any institution, or its duly authorized agent, that is qualified to issue title insurance.

*Title service* means any service involved in the provision of title insurance (lender's or owner's policy), including but not limited to: Title examination and evaluation; preparation and issuance of title commitment; clearance of underwriting objections; preparation and issuance of a title insurance policy or policies; and the processing and administrative services required to perform these functions. The term also includes the service of conducting a settlement.

*Tolerance* means the maximum amount by which the charge for a category or categories of settlement costs may exceed the amount of the estimate for such category or categories on a GFE.

**§ 1024.3 Questions or suggestions from public and copies of public guidance documents.**

Any questions or suggestions from the public regarding RESPA, or requests for copies of Public Guidance Documents, should be directed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006. Legal questions concerning the interpretation of this part may be directed to the same address.

**§ 1024.4 Reliance upon rule, regulation or interpretation by the Bureau.**

(a) *Rule, regulation or interpretation.* (1) For purposes of sections 19(a) and (b) of RESPA (12 U.S.C. 2617(a) and (b)), only the following constitute a rule, regulation or interpretation of the Bureau:

(i) All provisions, including appendices, of this part. Any other document referred to in this part is not incorporated in this part unless it is specifically set out in this part;

(ii) Any other document that is published in the **Federal Register** by the Bureau and states that it is an ''interpretation,'' ''interpretive rule,'' ''commentary,'' or a ''statement of policy'' for purposes of section 19(a) of RESPA. Such documents will be prepared by Bureau staff and counsel. Such documents may be revoked or amended by a subsequent document published in the **Federal Register** by the Bureau.

(2) A ''rule, regulation, or interpretation thereof by the Bureau'' for purposes of section 19(b) of RESPA (12 U.S.C. 2617(b)) shall not include the special information booklet prescribed by the Bureau or any other statement or issuance, whether oral or written, by an officer or representative of the Bureau, letter or memorandum by the Director, General Counsel, or other officer or employee of the Bureau, preamble to a regulation or other issuance of the Bureau, Public Guidance Document, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (a)(1) of this section.

(b) *Unofficial interpretations; staff discretion.* In response to requests for interpretation of matters not adequately covered by this part or by an official interpretation issued under paragraph (a)(1)(ii) of this section, unofficial staff interpretations may be provided at the discretion of Bureau staff or counsel. Written requests for such interpretations should be directed to the address indicated in § 1024.3. Such interpretations provide no protection under section 19(b) of RESPA (12 U.S.C. 2617(b)). Ordinarily, staff or counsel will not issue unofficial interpretations on matters adequately covered by this part or by official interpretations or commentaries issued under paragraph (a)(1)(ii) of this section.

(c) All informal counsel's opinions and staff interpretations issued by HUD before November 2, 1992, were withdrawn as of that date. Courts and administrative agencies, however, may use previous opinions to determine the validity of conduct under the previous Regulation X.

**§ 1024.5 Coverage of RESPA.**

(a) *Applicability.* RESPA and this part apply to all federally related mortgage loans, except for the exemptions provided in paragraph (b) of this section.

(b) *Exemptions.* (1) A loan on property of 25 acres or more.

(2) *Business purpose loans.* An extension of credit primarily for a business, commercial, or agricultural purpose, as defined by 12 CFR 1026.3(a)(1) of Regulation Z. Persons may rely on Regulation Z in determining whether the exemption applies.

(3) *Temporary financing.* Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of 1- to 4-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user. If a lender issues a commitment for permanent financing, with or without conditions, the loan is covered by this part. Any construction loan for new or rehabilitated 1- to 4-family residential property, other than a loan to a *bona fide* builder (a person who regularly constructs 1- to 4-family residential structures for sale or lease), is subject to this part if its term is for two years or more. A ''bridge loan'' or ''swing loan'' in which a lender takes a security

interest in otherwise covered 1- to 4-family residential property is not covered by RESPA and this part.

(4) *Vacant land.* Any loan secured by vacant or unimproved property, unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.

(5) *Assumption without lender approval.* Any assumption in which the lender does not have the right expressly to approve a subsequent person as the borrower on an existing federally related mortgage loan. Any assumption in which the lender's permission is both required and obtained is covered by RESPA and this part, whether or not the lender charges a fee for the assumption.

(6) *Loan conversions.* Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.

(7) *Secondary market transactions.* A *bona fide* transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except as set forth in section 6 of RESPA (12 U.S.C. 2605) and § 1024.21. In determining what constitutes a *bona fide* transfer, the Bureau will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see § 1024.2).

**§ 1024.6 Special information booklet at time of loan application.**

(a) *Lender to provide special information booklet.* Subject to the exceptions set forth in this paragraph, the lender shall provide a copy of the special information booklet to a person from whom the lender receives, or for whom the lender prepares, a written application for a federally related mortgage loan. When two or more persons apply together for a loan, the lender is in compliance if the lender provides a copy of the booklet to one of the persons applying.

(1) The lender shall provide the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days (as that term is defined in § 1024.2) after the application is received or prepared. However, if the lender denies the borrower's application for credit before the end of the three-business-day period, then the lender need not provide the booklet to the borrower. If a borrower uses a mortgage broker, the mortgage broker shall distribute the special information booklet and the lender need not do so. The intent of this provision is that the applicant receive the special information booklet at the earliest possible date.

(2) In the case of a federally related mortgage loan involving an open-ended credit plan, as defined in Regulation Z, 12 CFR 1026.2(a)(20), a lender or mortgage broker that provides the borrower with a copy of the brochure entitled ''When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit'', or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

(3) In the categories of transactions set forth at the end of this paragraph, the lender or mortgage broker does not have to provide the booklet to the borrower. Under the authority of section 19(a) of RESPA (12 U.S.C. 2617(a)), the Bureau may issue a revised or separate special information booklet that deals with these transactions, or the Bureau may choose to endorse the forms or booklets of other Federal agencies. In such an event, the requirements for delivery by lenders and the availability of the booklet or alternate materials for these transactions will be set forth in a Notice in the **Federal Register**. This paragraph shall apply to the following transactions:

(i) Refinancing transactions;

(ii) Closed-end loans, as defined in 12 CFR 1026.2(a)(10) of Regulation Z, when the lender takes a subordinate lien;

(iii) Reverse mortgages; and

(iv) Any other federally related mortgage loan whose purpose is not the purchase of a 1- to 4-family residential property.

(b) *Revision.* The Bureau may from time to time revise the special information booklet, publishing a notice in the **Federal Register**.

(c) *Reproduction.* The special information booklet may be reproduced in any form, provided that no change is made other than as provided under paragraph (d) of this section. The special information booklet may not be made a part of a larger document for purposes of distribution under RESPA and this section. Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.

(d) *Permissible changes.* (1)(i) No changes to, deletions from, or additions to the special information booklet currently prescribed by the Bureau shall be made other than the permissible changes specified in paragraphs (d)(1)(ii) through (d)(3) of this section or changes as otherwise approved in writing by the Bureau in accordance with the procedures described in this paragraph. A request to the Bureau for approval of any changes other than the permissible changes specified in paragraphs (d)(1)(ii) through (d)(3) of this section shall be submitted in writing to the address indicated in § 1024.3, stating the reasons why the applicant believes such changes, deletions or additions are necessary.

(ii)(A) In the Complaints section of the booklet, it is a permissible change to substitute ''the Bureau of Consumer Financial Protection'' for ''HUD's Office of RESPA'' and ''the RESPA office.''

(B) In the Avoiding Foreclosure section of the booklet, it is a permissible change to inform homeowners that they may find information on and assistance in avoiding foreclosures at *http://www.consumerfinance.gov*. The deletion of the reference to the HUD Web page, *http://www.hud.gov/foreclosure/*, in the Avoiding Foreclosure section of the booklet is not a permissible change.

(C) In the Appendix to the booklet, it is a permissible change to substitute ''the Bureau of Consumer Financial Protection'' for the reference to the ''Board of Governors of the Federal Reserve System'' in the No Discrimination section of the Appendix to the booklet. In the Contact Information section of the Appendix to the booklet, it is a permissible change to add the following contact information for the Bureau: ''Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006; *www.consumerfinance.gov/learnmore*''. It is also a permissible change to remove the contact information for HUD's Office of RESPA and Interstate Land Sales from the Contact Information section of the Appendix to the booklet.

(2) The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the words ''settlement costs'' are used in the title. Names, addresses and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover. References to HUD on the cover of the booklet may be changed to references to the Bureau.

(3) The special information booklet may be translated into languages other than English.

**§ 1024.7 Good faith estimate.**

(a) *Lender to provide.* (1) Except as otherwise provided in paragraphs (a), (b), or (h) of this section, not later than 3 business days after a lender receives an application, or information sufficient to complete an application, the lender must provide the applicant with a GFE. In the case of dealer loans, the lender must either provide the GFE or ensure that the dealer provides the GFE.

(2) The lender must provide the GFE to the loan applicant by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means.

(3) The lender is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

(i) The lender denies the application; or

(ii) The applicant withdraws the application.

(4) The lender is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The lender may, at its option, charge a fee limited to the cost of a credit report. The lender may not charge additional fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The lender may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the lender is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(b) *Mortgage broker to provide.* (1) Except as otherwise provided in paragraphs (a), (b), or (h) of this section, either the lender or the mortgage broker must provide a GFE not later than 3 business days after a mortgage broker receives either an application or information sufficient to complete an application. The lender is responsible for ascertaining whether the GFE has been provided. If the mortgage broker has provided a GFE, the lender is not required to provide an additional GFE.

(2) The mortgage broker must provide the GFE by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means.

(3) The mortgage broker is not required to provide the applicant with a GFE if, before the end of the 3-business-day period:

(i) The mortgage broker or lender denies the application; or

(ii) The applicant withdraws the application.

(4) The mortgage broker is not permitted to charge, as a condition for providing a GFE, any fee for an appraisal, inspection, or other similar settlement service. The mortgage broker may, at its option, charge a fee limited to the cost of a credit report. The mortgage broker may not charge additional fees until after the applicant has received the GFE and indicated an intention to proceed with the loan covered by that GFE. If the GFE is mailed to the applicant, the applicant is considered to have received the GFE 3 calendar days after it is mailed, not including Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(5) The mortgage broker may at any time collect from the loan applicant any information that it requires in addition to the required application information. However, the mortgage broker is not permitted to require, as a condition for providing a GFE, that an applicant submit supplemental documentation to verify the information provided on the application.

(c) *Availability of GFE terms.* Except as provided in this paragraph, the estimate of the charges and terms for all settlement services must be available for at least 10 business days from when the GFE is provided, but it may remain available longer, if the loan originator extends the period of availability. The estimate for the following charges are excepted from this requirement: the interest rate, charges and terms dependent upon the interest rate, which includes the charge or credit for the interest rate chosen, the adjusted origination charges, and per diem interest.

(d) *Content and form of GFE.* The GFE form is set out in Appendix C to this part. The loan originator must prepare the GFE in accordance with the requirements of this section and the Instructions in Appendix C to this part. The instructions in Appendix C to this part allow for flexibility in the preparation and distribution of the GFE in hard copy and electronic format.

(e) *Tolerances for amounts included on GFE.* (1) Except as provided in paragraph (f) of this section, the actual charges at settlement may not exceed the amounts included on the GFE for:

(i) The origination charge;

(ii) While the borrower's interest rate is locked, the credit or charge for the interest rate chosen;

(iii) While the borrower's interest rate is locked, the adjusted origination charge; and

(iv) Transfer taxes.

(2) Except as provided in paragraph (f) of this section, the sum of the charges at settlement for the following services may not be greater than 10 percent above the sum of the amounts included on the GFE:

(i) Lender-required settlement services, where the lender selects the third party settlement service provider;

(ii) Lender-required services, title services and required title insurance, and owner's title insurance, when the borrower uses a settlement service provider identified by the loan originator; and

(iii) Government recording charges.

(3) The amounts charged for all other settlement services included on the GFE may change at settlement.

(f) *Binding GFE.* The loan originator is bound, within the tolerances provided in paragraph (e) of this section, to the settlement charges and terms listed on the GFE provided to the borrower, unless a revised GFE is provided prior to settlement consistent with this paragraph (f) or the GFE expires in accordance with paragraph (f)(4) of this section. If a loan originator provides a revised GFE consistent with this paragraph, the loan originator must document the reason that a revised GFE was provided. Loan originators must retain documentation of any reason for providing a revised GFE for no less than 3 years after settlement.

(1) *Changed circumstances affecting settlement costs.* If changed circumstances result in increased costs for any settlement services such that the charges at settlement would exceed the tolerances for those charges, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances actually resulted in higher charges.

(2) *Changed circumstances affecting loan.* If changed circumstances result in a change in the borrower's eligibility for the specific loan terms identified in the GFE, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of receiving information sufficient to establish changed circumstances. The

revised GFE may increase charges for services listed on the GFE only to the extent that the changed circumstances affecting the loan actually resulted in higher charges.

(3) *Borrower-requested changes.* If a borrower requests changes to the mortgage loan identified in the GFE that change the settlement charges or the terms of the loan, the loan originator may provide a revised GFE to the borrower. If a revised GFE is to be provided, the loan originator must do so within 3 business days of the borrower's request. The revised GFE may increase charges for services listed on the GFE only to the extent that the borrower-requested changes to the mortgage loan identified on the GFE actually resulted in higher charges.

(4) *Expiration of GFE.* If a borrower does not express an intent to continue with an application within 10 business days after the GFE is provided, or such longer time specified by the loan originator pursuant to paragraph (c) of this section, the loan originator is no longer bound by the GFE.

(5) *Interest rate-dependent charges and terms.* If the interest rate has not been locked, or a locked interest rate has expired, the charge or credit for the interest rate chosen, the adjusted origination charges, per diem interest, and loan terms related to the interest rate may change. When the interest rate is later locked, a revised GFE must be provided showing the revised interest rate-dependent charges and terms. The loan originator must provide the revised GFE within 3 business days of the interest rate being locked or, for an expired interest rate, re-locked. All other charges and terms must remain the same as on the original GFE, except as otherwise provided in paragraph (f) of this section.

(6) *New construction home purchases.* In transactions involving new construction home purchases, where settlement is anticipated to occur more than 60 calendar days from the time a GFE is provided, the loan originator may provide the GFE to the borrower with a clear and conspicuous disclosure stating that at any time up until 60 calendar days prior to closing, the loan originator may issue a revised GFE. If no such separate disclosure is provided, the loan originator cannot issue a revised GFE, except as otherwise provided in paragraph (f) of this section.

(g) *GFE is not a loan commitment.* Nothing in this section shall be interpreted to require a loan originator to make a loan to a particular borrower. The loan originator is not required to provide a GFE if the loan originator does not have available a loan for which the borrower is eligible.

(h) *Open-end lines of credit (home-equity plans) under Truth in Lending Act.* In the case of a federally related mortgage loan involving an open-end line of credit (home-equity plan) covered under the Truth in Lending Act and Regulation Z, a lender or mortgage broker that provides the borrower with the disclosures required by 12 CFR 1026.40 of Regulation Z at the time the borrower applies for such loan shall be deemed to satisfy the requirements of this section.

(i) *Violations of section 5 of RESPA (12 U.S.C. 2604).* A loan originator that violates the requirements of this section shall be deemed to have violated section 5 of RESPA. If any charges at settlement exceed the charges listed on the GFE by more than the permitted tolerances, the loan originator may cure the tolerance violation by reimbursing to the borrower the amount by which the tolerance was exceeded, at settlement or within 30 calendar days after settlement. A borrower will be deemed to have received timely reimbursement if the loan originator delivers or places the payment in the mail within 30 calendar days after settlement.

**§ 1024.8 Use of HUD–1 or HUD–1A settlement statements.**

(a) *Use by settlement agent.* The settlement agent shall use the HUD–1 settlement statement in every settlement involving a federally related mortgage loan in which there is a borrower and a seller. For transactions in which there is a borrower and no seller, such as refinancing loans or subordinate lien loans, the HUD–1 may be utilized by using the borrower's side of the HUD–1 statement. Alternatively, the form HUD–1A may be used for these transactions. The HUD–1 or HUD–1A may be modified as permitted under this part. Either the HUD–1 or the HUD–1A, as appropriate, shall be used for every RESPA-covered transaction, unless its use is specifically exempted. The use of the HUD–1 or HUD–1A is exempted for open-end lines of credit (home-equity plans) covered by the Truth in Lending Act and Regulation Z.

(b) *Charges to be stated.* The settlement agent shall complete the HUD–1 or HUD–1A, in accordance with the instructions set forth in Appendix A to this part. The loan originator must transmit to the settlement agent all information necessary to complete the HUD–1 or HUD–1A.

(1) *In general.* The settlement agent shall state the actual charges paid by the borrower and seller on the HUD–1, or by the borrower on the HUD–1A. The settlement agent must separately itemize each third party charge paid by the borrower and seller. All origination services performed by or on behalf of the loan originator must be included in the loan originator's own charge. Administrative and processing services related to title services must be included in the title underwriter's or title agent's own charge. The amount stated on the HUD–1 or HUD–1A for any itemized service cannot exceed the amount actually received by the settlement service provider for that itemized service, unless the charge is an average charge in accordance with paragraph (b)(2) of this section.

(2) *Use of average charge.* (i) The average charge for a settlement service shall be no more than the average amount paid for a settlement service by one settlement service provider to another settlement service provider on behalf of borrowers and sellers for a particular class of transactions involving federally related mortgage loans. The total amounts paid by borrowers and sellers for a settlement service based on the use of an average charge may not exceed the total amounts paid to the providers of that service for the particular class of transactions.

(ii) The settlement service provider shall define the particular class of transactions for purposes of calculating the average charge as all transactions involving federally related mortgage loans for:

(A) A period of time as determined by the settlement service provider, but not less than 30 calendar days and not more than 6 months;

(B) A geographic area as determined by the settlement service provider; and

(C) A type of loan as determined by the settlement service provider.

(iii) A settlement service provider may use an average charge in the same class of transactions for which the charge was calculated. If the settlement service provider uses the average charge for any transaction in the class, the settlement service provider must use the same average charge in every transaction within that class for which a GFE was provided.

(iv) The use of an average charge is not permitted for any settlement service if the charge for the service is based on the loan amount or property value. For example, an average charge may not be used for transfer taxes, interest charges, reserves or escrow, or any type of insurance, including mortgage insurance, title insurance, or hazard insurance.

(v) The settlement service provider must retain all documentation used to calculate the average charge for a

particular class of transactions for at least 3 years after any settlement for which that average charge was used.

(c) *Violations of section 4 of RESPA (12 U.S.C. 2603).* A violation of any of the requirements of this section will be deemed to be a violation of section 4 of RESPA. An inadvertent or technical error in completing the HUD–1 or HUD–1A shall not be deemed a violation of section 4 of RESPA if a revised HUD–1 or HUD–1A is provided in accordance with the requirements of this section within 30 calendar days after settlement.

**§ 1024.9 Reproduction of settlement statements.**

(a) *Permissible changes—HUD–1.* The following changes and insertions are permitted when the HUD–1 settlement statement is reproduced:

(1) The person reproducing the HUD–1 may insert its business name and logo in section A and may rearrange, but not delete, the other information that appears in section A.

(2) The name, address, and other information regarding the lender and settlement agent may be printed in sections F and H, respectively.

(3) Reproduction of the HUD–1 must conform to the terminology, sequence, and numbering of line items as presented in lines 100–1400. However, blank lines or items listed in lines 100–1400 that are not used locally or in connection with mortgages by the lender may be deleted, except for the following: Lines 100, 120, 200, 220, 300, 301, 302, 303, 400, 420, 500, 520, 600, 601, 602, 603, 700, 800, 900, 1000, 1100, 1200, 1300, and 1400. The form may be shortened correspondingly. The number of a deleted item shall not be used for a substitute or new item, but the number of a blank space on the HUD–1 may be used for a substitute or new item.

(4) Charges not listed on the HUD–1, but that are customary locally or pursuant to the lender's practice, may be inserted in blank spaces. Where existing blank spaces on the HUD–1 are insufficient, additional lines and spaces may be added and numbered in sequence with spaces on the HUD–1.

(5) The following variations in layout and format are within the discretion of persons reproducing the HUD–1 and do not require prior HUD approval: size of pages; tint or color of pages; size and style of type or print; vertical spacing between lines or provision for additional horizontal space on lines (for example, to provide sufficient space for recording time periods used in prorations); printing of the HUD–1 contents on separate pages, on the front and back of a single page, or on one continuous page; use of multicopy tear-out sets; printing on rolls for computer purposes; reorganization of sections B through I, when necessary to accommodate computer printing; and manner of placement of the HUD number, but not the OMB approval number, neither of which may be deleted. The expiration date associated with the OMB number listed on the form may be deleted. Any changes in the HUD number or OMB approval number may be announced by notice in the **Federal Register,** rather than by amendment of this part.

(6) The borrower's information and the seller's information may be provided on separate pages.

(7) Signature lines may be added.

(8) The HUD–1 may be translated into languages other than English.

(9) An additional page may be attached to the HUD–1 for the purpose of including customary recitals and information used locally in real estate settlements; for example, breakdown of payoff figures, a breakdown of the borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred. If space permits, such information may be added at the end of the HUD–1.

(10) As required by HUD/FHA in FHA-insured loans.

(11) As allowed by § 1024.17, relating to an initial escrow account statement.

(b) *Permissible changes—HUD–1A.* The changes and insertions on the HUD–1 permitted under paragraph (a) of this section are also permitted when the HUD–1A settlement statement is reproduced, except the changes described in paragraphs (a)(3) and (6) of this section.

(c) *Written approval.* Any other deviation in the HUD–1 or HUD–1A forms is permissible only upon receipt of written approval of the Bureau; provided, however, that notwithstanding contrary instructions in this section or Appendix A, reproducing the HUD–1 or HUD–1A forms with the Bureau's OMB approval number displayed in place of HUD's OMB approval number does not require the written approval of the Bureau. A request to the Bureau for approval shall be submitted in writing to the address indicated in § 1024.3 and shall state the reasons why the applicant believes such deviation is needed. The prescribed form(s) must be used until approval is received.

**§ 1024.10 One-day advance inspection of HUD–1 or HUD–1A settlement statement; delivery; recordkeeping.**

(a) *Inspection one day prior to settlement upon request by the borrower.* The settlement agent shall permit the borrower to inspect the HUD–1 or HUD–1A settlement statement, completed to set forth those items that are known to the settlement agent at the time of inspection, during the business day immediately preceding settlement. Items related only to the seller's transaction may be omitted from the HUD–1.

(b) *Delivery.* The settlement agent shall provide a completed HUD–1 or HUD–1A to the borrower, the seller (if there is one), the lender (if the lender is not the settlement agent), and/or their agents. When the borrower's and seller's copies of the HUD–1 or HUD–1A differ as permitted by the instructions in Appendix A to this part, both copies shall be provided to the lender (if the lender is not the settlement agent). The settlement agent shall deliver the completed HUD–1 or HUD–1A at or before the settlement, except as provided in paragraphs (c) and (d) of this section.

(c) *Waiver.* The borrower may waive the right to delivery of the completed HUD–1 or HUD–1A no later than at settlement by executing a written waiver at or before settlement. In such case, the completed HUD–1 or HUD–1A shall be mailed or delivered to the borrower, seller, and lender (if the lender is not the settlement agent) as soon as practicable after settlement.

(d) *Exempt transactions.* When the borrower or the borrower's agent does not attend the settlement, or when the settlement agent does not conduct a meeting of the parties for that purpose, the transaction shall be exempt from the requirements of paragraphs (a) and (b) of this section, except that the HUD–1 or HUD–1A shall be mailed or delivered as soon as practicable after settlement.

(e) *Recordkeeping.* The lender shall retain each completed HUD–1 or HUD–1A and related documents for five years after settlement, unless the lender disposes of its interest in the mortgage and does not service the mortgage. In that case, the lender shall provide its copy of the HUD–1 or HUD–1A to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain the HUD–1 or HUD–1A for the remainder of the five-year period. The Bureau shall have the right to inspect or require copies of records covered by this paragraph (e).

**§ 1024.11 Mailing.**

The provisions of this part requiring or permitting mailing of documents shall be deemed to be satisfied by placing the document in the mail (whether or not received by the addressee) addressed to the addresses stated in the loan application or in other information submitted to or obtained by the lender at the time of loan application or submitted or obtained by the lender or settlement agent, except that a revised address shall be used where the lender or settlement agent has been expressly informed in writing of a change in address.

**§ 1024.12 No fee.**

No fee shall be imposed or charge made upon any other person, as a part of settlement costs or otherwise, by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a manufactured home), or by a servicer (as that term is defined under 12 U.S.C. 2605(i)(2)) for or on account of the preparation and distribution of the HUD–1 or HUD–1A settlement statement, escrow account statements required pursuant to section 10 of RESPA (12 U.S.C. 2609), or statements required by the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

**§ 1024.13 Relation to state laws.**

(a) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any state with respect to settlement practices, except to the extent of the inconsistency.

(b) Upon request by any person, the Bureau is authorized to determine if inconsistencies with state law exist; in doing so, the Bureau shall consult with appropriate Federal agencies.

(1) The Bureau may not determine that a state law or regulation is inconsistent with any provision of RESPA or this part, if the Bureau determines that such law or regulation gives greater protection to the consumer.

(2) In determining whether provisions of state law or regulations concerning affiliated business arrangements are inconsistent with RESPA or this part, the Bureau may not construe those provisions that impose more stringent limitations on affiliated business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(c) Any person may request the Bureau to determine whether an inconsistency exists by submitting to the address indicated in § 1024.3, a copy of the state law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Bureau that an inconsistency with state law exists will be made by publication of a notice in the **Federal Register**. ''Law'' as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a state or any political subdivision of a State.

(d) A specific preemption of conflicting state laws regarding notices and disclosures of mortgage servicing transfers is set forth in § 1024.21(h).

**§ 1024.14 Prohibition against kickbacks and unearned fees.**

(a) *Section 8 violation.* Any violation of this section is a violation of section 8 of RESPA (12 U.S.C. 2607).

(b) *No referral fees.* No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in § 1024.14(g)(1). A company may not pay any other company or the employees of any other company for the referral of settlement service business.

(c) *No split of charges except for actual services performed.* No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this part be avoided by creating an arrangement wherein the purchaser of services splits the fee.

(d) *Thing of value.* This term is broadly defined in section 3(2) of RESPA (12 U.S.C. 2602(2)). It includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation. The term ''payment'' is used throughout §§ 1024.14 and 1024.15 as synonymous with the giving or receiving of any ''thing of value'' and does not require transfer of money.

(e) *Agreement or understanding.* An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.

(f) *Referral.* (1) A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (see § 1024.2, ''required use'') a particular provider of a settlement service or business incident thereto.

(g) *Fees, salaries, compensation, or other payments.* (1) Section 8 of RESPA permits:

(i) A payment to an attorney at law for services actually rendered;

(ii) A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;

(iii) A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan;

(iv) A payment to any person of a *bona fide* salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;

(v) A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers.);

(vi) Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto; or

(vii) An employer's payment to its own employees for any referral activities.

(2) The Bureau may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation. The value of a referral (*i.e.,* the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. The fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.

(3) *Multiple services.* When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person. For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, and the conducting of the title search and closing.

(h) *Recordkeeping.* Any documents provided pursuant to this section shall be retained for five (5) years from the date of execution.

(i) *Appendix B of this part.* Illustrations in Appendix B of this part demonstrate some of the requirements of this section.

**§ 1024.15 Affiliated business arrangements.**

(a) *General.* An affiliated business arrangement is defined in section 3(7) of RESPA (12 U.S.C. 2602(7)).

(b) *Violation and exemption.* An affiliated business arrangement is not a violation of section 8 of RESPA (12 U.S.C. 2607) and of § 1024.14 if the conditions set forth in this section are satisfied. Paragraph (b)(1) of this section shall not apply to the extent it is inconsistent with section 8(c)(4)(A) of RESPA (12 U.S.C. 2607(c)(4)(A)).

(1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in Appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD–1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that:

(i) Where a lender makes the referral to a borrower, the condition contained in paragraph (b)(1) of this section may be satisfied at the time that the good faith estimate or a statement under § 1024.7(d) is provided; and

(ii) Whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm is engaged by the client.

(iii) Failure to comply with the disclosure requirements of this section may be overcome if the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with these conditions have been maintained and that any failure to comply with these conditions was unintentional and the result of a *bona fide* error. An error of legal judgment with respect to a person's obligations under RESPA is not a *bona fide* error. Administrative and judicial interpretations of section 130(c) of the Truth in Lending Act shall not be binding interpretations of the preceding sentence or section 8(d)(3) of RESPA (12 U.S.C. 2607(d)(3)).

(2) No person making a referral has required (as defined in § 1024.2, ''required use'') any person to use any particular provider of settlement services or business incident thereto, except if such person is a lender, for requiring a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or except if such person is an attorney or law firm for arranging for issuance of a title insurance policy for a client, directly as agent or through a separate corporate title insurance agency that may be operated as an adjunct to the law practice of the attorney or law firm, as part of representation of that client in a real estate transaction.

(3) The only thing of value that is received from the arrangement other than payments listed in § 1024.14(g) is a return on an ownership interest or franchise relationship.

(i) In an affiliated business arrangement:

(A) *Bona fide* dividends, and capital or equity distributions, related to ownership interest or franchise relationship, between entities in an affiliate relationship, are permissible; and

(B) *Bona fide* business loans, advances, and capital or equity contributions between entities in an affiliate relationship (in any direction), are not prohibited—so long as they are for ordinary business purposes and are not fees for the referral of settlement service business or unearned fees.

(ii) A return on an ownership interest does not include:

(A) Any payment which has as a basis of calculation no apparent business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated or anticipated referrals;

(B) Any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or

(C) A payment based on an ownership, partnership or joint venture share which has been adjusted on the

basis of previous relative referrals by recipients of similar payments.

(iii) Neither the mere labeling of a thing of value, nor the fact that it may be calculated pursuant to a corporate or partnership organizational document or a franchise agreement, will determine whether it is a *bona fide* return on an ownership interest or franchise relationship. Whether a thing of value is such a return will be determined by analyzing facts and circumstances on a case by case basis.

(iv) A return on franchise relationship may be a payment to or from a franchisee but it does not include any payment which is not based on the franchise agreement, nor any payment which varies according to the number or amount of referrals by the franchisor or franchisee or which is based on a franchise agreement which has been adjusted on the basis of a previous number or amount of referrals by the franchiser or franchisees. A franchise agreement may not be constructed to insulate against kickbacks or referral fees.

(c) *Definitions.* As used in this section:

*Associate* is defined in section 3(8) of RESPA (12 U.S.C. 2602(8)).

*Affiliate relationship* means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

*Beneficial ownership* means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person's name.

*Control,* as used in the definitions of ''associate'' and ''affiliate relationship,'' means that a person:

(i) Is a general partner, officer, director, or employer of another person;

(ii) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interests of another person;

(iii) Affirmatively influences in any manner the election of a majority of the directors of another person; or

(iv) Has contributed more than 20 percent of the capital of the other person.

*Direct ownership* means the holding of legal title to an interest in a provider of settlement service except where title is being held for the beneficial owner.

*Franchise* is defined in FTC regulation 16 CFR 436.1(h).

*Franchisor* is defined in FTC regulation 16 CFR 436.1(k).

*Franchisee* is defined in FTC regulation 16 CFR 436.1(i).

*FTC* means the Federal Trade Commission.

*Person who is in a position to refer settlement service business* means any real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent, or other person deriving a significant portion of his or her gross income from providing settlement services.

(d) *Recordkeeping.* Any documents provided pursuant to this section shall be retained for 5 years after the date of execution.

(e) *Appendix B of this part.* Illustrations in Appendix B of this part demonstrate some of the requirements of this section.

### § 1024.16 Title companies.

No seller of property that will be purchased with the assistance of a federally related mortgage loan shall violate section 9 of RESPA (12 U.S.C. 2608). Section 1024.2 defines ''required use'' of a provider of a settlement service.

### § 1024.17 Escrow accounts.

(a) *General.* This section sets out the requirements for an escrow account that a lender establishes in connection with a federally related mortgage loan. It sets limits for escrow accounts using calculations based on monthly payments and disbursements within a calendar year. If an escrow account involves biweekly or any other payment period, the requirements in this section shall be modified accordingly. A Public Guidance Document entitled ''Biweekly Payments—Example'' provides examples of biweekly accounting and a Public Guidance Document entitled ''Annual Escrow Account Disclosure Statement—Example'' provides examples of a 3-year accounting cycle that may be used in accordance with paragraph (c)(9) of this section. A Public Guidance Document entitled ''Consumer Disclosure for Voluntary Escrow Account Payments'' provides a model disclosure format that originators and servicers are encouraged, but not required, to provide to consumers when the originator or servicer anticipates a substantial increase in disbursements from the escrow account after the first year of the loan. The disclosures in that model format may be combined with or included in the Initial Escrow Account Statement required in § 1024.17(g).

(b) *Definitions.* As used in this section:

*Aggregate (or) composite analysis,* hereafter called *aggregate analysis,* means an accounting method a servicer uses in conducting an escrow account analysis by computing the sufficiency of escrow account funds by analyzing the account as a whole. Appendix E to this part sets forth examples of aggregate escrow account analyses.

*Annual escrow account statement* means a statement containing all of the information set forth in § 1024.17(i). As noted in § 1024.17(i), a servicer shall submit an annual escrow account statement to the borrower within 30 calendar days of the end of the escrow account computation year, after conducting an escrow account analysis.

*Cushion or reserve* (hereafter cushion) means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account, as limited by § 1024.17(c).

*Deficiency* is the amount of a negative balance in an escrow account. As noted in § 1024.17(f), if a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency.

*Delivery* means the placing of a document in the United States mail, first-class postage paid, addressed to the last known address of the recipient. Hand delivery also constitutes delivery.

*Disbursement date* means the date on which the servicer actually pays an escrow item from the escrow account.

*Escrow account* means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a ''trust account'', ''reserve account'', ''impound account'', or other term in different localities. An ''escrow account'' includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of this section, the term ''escrow account'' excludes any account that is under the borrower's total control.

*Escrow account analysis* means the accounting that a servicer conducts in the form of a trial running balance for an escrow account to:

(1) Determine the appropriate target balances;

(2) Compute the borrower's monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and

(3) Determine whether shortages, surpluses or deficiencies exist.

*Escrow account computation year* is a 12-month period that a servicer establishes for the escrow account beginning with the borrower's initial payment date. The term includes each 12-month period thereafter, unless a servicer chooses to issue a short year statement under the conditions stated in § 1024.17(i)(4).

*Escrow account item* or *separate item* means any separate expenditure category, such as ''taxes'' or ''insurance'', for which funds are collected in the escrow account for disbursement. An escrow account item with installment payments, such as local property taxes, remains one escrow account item regardless of multiple disbursement dates to the tax authority.

*Initial escrow account statement* means the first disclosure statement that the servicer delivers to the borrower concerning the borrower's escrow account. The initial escrow account statement shall meet the requirements of § 1024.17(g) and be in substantially the format set forth in § 1024.17(h).

*Installment payment* means one of two or more payments payable on an escrow account item during an escrow account computation year. An example of an installment payment is where a jurisdiction bills quarterly for taxes.

*Payment due date* means the date each month when the borrower's monthly payment to an escrow account is due to the servicer. The initial payment date is the borrower's first payment due date to an escrow account.

*Penalty* means a late charge imposed by the payee for paying after the disbursement is due. It does not include any additional charge or fee imposed by the payee associated with choosing installment payments as opposed to annual payments or for choosing one installment plan over another.

*Pre-accrual* is a practice some servicers use to require borrowers to deposit funds, needed for disbursement and maintenance of a cushion, in the escrow account some period before the disbursement date. Pre-accrual is subject to the limitations of § 1024.17(c).

*Shortage* means an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

*Single-item analysis* means an accounting method servicers use in conducting an escrow account analysis by computing the sufficiency of escrow account funds by considering each escrow item separately. Appendix E to this part sets forth examples of single-item analysis.

*Submission* (of an escrow account statement) means the delivery of the statement.

*Surplus* means an amount by which the current escrow account balance exceeds the target balance for the account.

*System of recordkeeping* means the servicer's method of keeping information that reflects the facts relating to that servicer's handling of the borrower's escrow account, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to borrowers.

*Target balance* means the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion, if any.

*Trial running balance* means the accounting process that derives the target balances over the course of an escrow account computation year. Section 1024.17(d) provides a description of the steps involved in performing a trial running balance.

(c) *Limits on payments to escrow accounts.* (1) A lender or servicer (hereafter servicer) shall not require a borrower to deposit into any escrow account, created in connection with a federally related mortgage loan, more than the following amounts:

(i) *Charges at settlement or upon creation of an escrow account.* At the time a servicer creates an escrow account for a borrower, the servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payment(s) were last paid until the initial payment date. The ''amount sufficient to pay'' is computed so that the lowest month end target balance projected for the escrow account computation year is zero (–0–) (see Step 2 in Appendix E to this part). In addition, the servicer may charge the borrower a cushion that shall be no greater than one-sixth (1/6) of the estimated total annual payments from the escrow account.

(ii) *Charges during the life of the escrow account.* Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth (1/12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth (1/6) of the estimated total annual payments from the account. However, if a servicer determines through an escrow account analysis that there is a shortage or deficiency, the servicer may require the borrower to pay additional deposits to make up the shortage or eliminate the deficiency, subject to the limitations set forth in § 1024.17(f).

(2) *Escrow analysis at creation of escrow account.* Before establishing an escrow account, the servicer must conduct an escrow account analysis to determine the amount the borrower must deposit into the escrow account (subject to the limitations of paragraph (c)(1)(i) of this section), and the amount of the borrower's periodic payments into the escrow account (subject to the limitations of paragraph (c)(1)(ii) of this section). In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. Upon completing the initial escrow account analysis, the servicer must prepare and deliver an initial escrow account statement to the borrower, as set forth in paragraph (g) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists and must make any adjustments to the account pursuant to paragraph (f) of this section.

(3) *Subsequent escrow account analyses.* For each escrow account, the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty

as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists, and must make any adjustments to the account pursuant to paragraph (f) of this section. Upon completing an escrow account analysis, the servicer must prepare and submit an annual escrow account statement to the borrower, as set forth in paragraph (i) of this section.

(4) *Aggregate accounting required.* All servicers must use the aggregate accounting method in conducting escrow account analyses.

(5) *Cushion.* The cushion must be no greater than one-sixth (1/6) of the estimated total annual disbursements from the escrow account.

(6) *Restrictions on pre-accrual.* A servicer must not practice pre-accrual.

(7) *Servicer estimates of disbursement amounts.* To conduct an escrow account analysis, the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. If the charge is unknown to the servicer, the servicer may base the estimate on the preceding year's charge, or the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.

(8) *Provisions in mortgage documents.* The servicer must examine the mortgage loan documents to determine the applicable cushion for each escrow account. If the mortgage loan documents provide for lower cushion limits, then the terms of the loan documents apply. Where the terms of any mortgage loan document allow greater payments to an escrow account than allowed by this section, then this section controls the applicable limits. Where the mortgage loan documents do not specifically establish an escrow account, whether a servicer may establish an escrow account for the loan is a matter for determination by other Federal or state law. If the mortgage loan document is silent on the escrow account limits and a servicer establishes an escrow account under other Federal or state law, then the limitations of this section apply unless applicable Federal or state law provides for a lower amount. If the loan documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with this section, unless an applicable Federal or state law sets a lesser amount.

(9) *Assessments for periods longer than one year.* Some escrow account items may be billed for periods longer than one year. For example, servicers may need to collect flood insurance or water purification escrow funds for payment every three years. In such cases, the servicer shall estimate the borrower's payments for a full cycle of disbursements. For a flood insurance premium payable every 3 years, the servicer shall collect the payments reflecting 36 equal monthly amounts. For two out of the three years, however, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle, as compared to an annual one. The annual escrow account statement shall explain this situation (see example in the Public Guidance Document entitled ''Annual Escrow Account Disclosure Statement—Example'', available in accordance with § 1024.3).

(d) *Methods of escrow account analysis.* (1) The following sets forth the steps servicers must use to determine whether their use of aggregate analysis conforms with the limitations in § 1024.17(c)(1). The steps set forth in this section result in maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This section does not require the use of a cushion.

(2) *Aggregate analysis.* (i) In conducting the escrow account analysis using aggregate analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:

(A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements.

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.

(C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by state law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(ii) *Lowest monthly balance.* Under aggregate analysis, the lowest monthly target balance for the account shall be less than or equal to one-sixth of the estimated total annual escrow account disbursements or a lesser amount specified by state law or the mortgage document. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. Appendix E to this part illustrates these steps.

(e) *Transfer of servicing.* (1) If the new servicer changes either the monthly payment amount or the accounting method used by the transferor (old) servicer, then the new servicer shall provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.

(i) Where a new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year.

(ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement.

(2) The new servicer shall treat shortages, surpluses and deficiencies in the transferred escrow account according to the procedures set forth in § 1024.17(f).

(f) *Shortages, surpluses, and deficiencies requirements.* (1) *Escrow account analysis.* For each escrow account, the servicer shall conduct an escrow account analysis to determine whether a surplus, shortage or deficiency exists.

(i) As noted in § 1024.17(c)(2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.

(ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).

(2) *Surpluses.* (i) If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to 50 dollars ($50). If the surplus is less than 50 dollars ($50), the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments.

(ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the mortgage loan documents.

(iii) After an initial or annual escrow analysis has been performed, the servicer and the borrower may enter into a voluntary agreement for the forthcoming escrow accounting year for the borrower to deposit funds into the escrow account for that year greater than the limits established under paragraph (c) of this section. Such an agreement shall cover only one escrow accounting year, but a new voluntary agreement may be entered into after the next escrow analysis is performed. The voluntary agreement may not alter how surpluses are to be treated when the next escrow analysis is performed at the end of the escrow accounting year covered by the voluntary agreement.

(3) *Shortages.* (i) If an escrow account analysis discloses a shortage of less than one month's escrow account payment, then the servicer has three possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it;

(B) The servicer may require the borrower to repay the shortage amount within 30 days; or

(C) The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

(ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it; or

(B) The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

(4) *Deficiency.* If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

(i) If the deficiency is less than one month's escrow account payment, then the servicer:

(A) May allow the deficiency to exist and do nothing to change it;

(B) May require the borrower to repay the deficiency within 30 days; or

(C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.

(ii) If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.

(iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the mortgage loan documents.

(5) *Notice of shortage or deficiency in escrow account.* The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.

(g) *Initial escrow account statement.* (1) Submission at settlement, or within 45 calendar days of settlement. As noted in § 1024.17(c)(2), the servicer shall conduct an escrow account analysis before establishing an escrow account to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of § 1024.17(c)(1)(i). After conducting the escrow account analysis for each escrow account, the servicer shall submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

(i) The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer selects as a cushion. The statement shall include a trial running balance for the account.

(ii) Pursuant to § 1024.17(h)(2), the servicer may incorporate the initial escrow account statement into the HUD–1 or HUD–1A settlement statement. If the servicer does not incorporate the initial escrow account statement into the HUD–1 or HUD–1A settlement statement, then the servicer shall submit the initial escrow account statement to the borrower as a separate document.

(2) *Time of submission of initial escrow account statement for an escrow account established after settlement.* For escrow accounts established after settlement (and which are not a condition of the loan), a servicer shall submit an initial escrow account statement to a borrower within 45 calendar days of the date of establishment of the escrow account.

(h) *Format for initial escrow account statement.* (1) The format and a completed example for an initial escrow account statement are set out in Public Guidance Documents entitled ''Initial Escrow Account Disclosure Statement—Format'' and ''Initial Escrow Account Disclosure Statement—Example'', available in accordance with § 1024.3.

(2) *Incorporation of initial escrow account statement into HUD–1 or HUD–1A settlement statement.* Pursuant to § 1024.9(a)(11), a servicer may add the initial escrow account statement to the HUD–1 or HUD–1A settlement statement. The servicer may include the initial escrow account statement in the basic text or may attach the initial escrow account statement as an additional page to the HUD–1 or HUD–1A settlement statement.

(3) *Identification of payees.* The initial escrow account statement need not identify a specific payee by name if it provides sufficient information to identify the use of the funds. For example, appropriate entries include: county taxes, hazard insurance, condominium dues, *etc.* If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, the statement shall indicate each payment and disbursement date. If there are

several taxing authorities or insurers, the statement shall identify each taxing body or insurer (*e.g.,* ''City Taxes'', ''School Taxes'', ''Hazard Insurance'', or ''Flood Insurance,'' *etc.*).

(i) *Annual escrow account statements.* For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall also submit to the borrower the previous year's projection or initial escrow account statement. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.

(1) *Contents of annual escrow account statement.* The annual escrow account statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. In preparing the statement, the servicer may assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year. The annual escrow account statement must include, at a minimum, the following (the items in paragraphs (i)(1)(i) through (i)(1)(iv) must be clearly itemized):

(i) The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account;

(ii) The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account;

(iii) The total amount paid into the escrow account during the past computation year;

(iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges (as separately identified);

(v) The balance in the escrow account at the end of the period;

(vi) An explanation of how any surplus is being handled by the servicer;

(vii) An explanation of how any shortage or deficiency is to be paid by the borrower; and

(viii) If applicable, the reason(s) why the estimated low monthly balance was not reached, as indicated by noting differences between the most recent account history and last year's projection. Public Guidance Documents entitled ''Annual Escrow Account Disclosure Statement—Format'' and ''Annual Escrow Account Disclosure Statement—Example'' set forth an acceptable format and methodology for conveying this information.

(2) *No annual statements in the case of default, foreclosure, or bankruptcy.* This paragraph (i)(2) contains an exemption from the provisions of § 1024.17(i)(1). If at the time the servicer conducts the escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under § 1024.17(i). This exemption also applies in situations where the servicer has brought an action for foreclosure under the underlying mortgage loan, or where the borrower is in bankruptcy proceedings. If the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.

(3) *Delivery with other material.* The servicer may deliver the annual escrow account statement to the borrower with other statements or materials, including the Substitute 1098, which is provided for Federal income tax purposes.

(4) *Short year statements.* A servicer may issue a short year annual escrow account statement (''short year statement'') to change one escrow account computation year to another. By using a short year statement a servicer may adjust its production schedule or alter the escrow account computation year for the escrow account.

(i) *Effect of short year statement.* The short year statement shall end the ''escrow account computation year'' for the escrow account and establish the beginning date of the new escrow account computation year. The servicer shall deliver the short year statement to the borrower within 60 days from the end of the short year.

(ii) *Short year statement upon servicing transfer.* Upon the transfer of servicing, the transferor (old) servicer shall submit a short year statement to the borrower within 60 days of the effective date of transfer.

(iii) *Short year statement upon loan payoff.* If a borrower pays off a mortgage loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the pay-off funds.

(j) *Formats for annual escrow account statement.* The formats and completed examples for annual escrow account statements using single-item analysis (pre-rule accounts) and aggregate analysis are set out in Public Guidance Documents entitled ''Annual Escrow Account Disclosure Statement—Format'' and ''Annual Escrow Account Disclosure Statement—Example''.

(k) *Timely payments.* (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer must pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.

(2) The servicer must advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.

(3) For the payment of property taxes from the escrow account, if a taxing jurisdiction offers a servicer a choice between annual and installment disbursements, the servicer must also comply with this paragraph (k)(3). If the taxing jurisdiction neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer must make disbursements on an installment basis. If, however, the taxing jurisdiction offers a discount for disbursements on a lump sum annual basis or imposes any additional charge or fee for installment disbursements, the servicer may, at the servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower or avoid the additional charge or fee for installments, as long as such method of disbursement complies with paragraphs (k)(1) and (k)(2) of this section. The Bureau encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.

(4) Notwithstanding paragraph (k)(3) of this section, a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes from that required under paragraph (k)(3) of this section, so long as the agreement meets the requirements of paragraphs (k)(1) and (k)(2) of this section. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date.

(l) *System of recordkeeping.* (1) Each servicer shall keep records, which may involve electronic storage, microfiche

storage, or any method of computerized storage, so long as the information is easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer's records shall include, but not be limited to, the payment of amounts into and from the escrow account and the submission of initial and annual escrow account statements to the borrower.

(2) The servicer responsible for servicing the borrower's escrow account shall maintain the records for that account for a period of at least five years after the servicer last serviced the escrow account.

(3) A servicer shall provide the Bureau with information contained in the servicer's records for a specific escrow account, or for a number or class of escrow accounts, within 30 days of the Bureau's written request for the information. At the Bureau's request, the servicer shall convert any information contained in electronic storage, microfiche or computerized storage to paper copies for review by the Bureau.

(4) Borrowers may seek information contained in the servicer's records by complying with the provisions set forth in 12 U.S.C. 2605(e) and § 1024.21(e).

(5) After receiving a request from the Bureau for information relating to whether a servicer submitted an escrow account statement to the borrower, the servicer shall respond within 30 days. If the servicer is unable to provide the Bureau with such information, the Bureau shall deem that lack of information to be evidence of the servicer's failure to submit the statement to the borrower.

(m) *Discretionary payments.* Any borrower's discretionary payment (such as credit life or disability insurance) made as part of a monthly mortgage payment is to be noted on the initial and annual statements. If a discretionary payment is established or terminated during the escrow account computation year, this change should be noted on the next annual statement. A discretionary payment is not part of the escrow account unless the payment is required by the lender, in accordance with the definition of ''settlement service'' in § 1024.2, or the servicer chooses to place the discretionary payment in the escrow account. If a servicer has not established an escrow account for a federally related mortgage loan and only receives payments for discretionary items, this section is not applicable.

**§ 1024.18 Validity of contracts and liens.**

Section 17 of RESPA (12 U.S.C. 2615) governs the validity of contracts and liens under RESPA.

**§ 1024.19 Enforcement.**

(a) *Enforcement policy.* It is the policy of the Bureau regarding RESPA enforcement matters to cooperate with Federal, state, or local agencies having supervisory powers over lenders or other persons with responsibilities under RESPA. Federal agencies with supervisory powers over lenders may use their powers to require compliance with RESPA. In addition, failure to comply with RESPA may be grounds for administrative action by HUD under HUD regulation 2 CFR part 2424 concerning debarment, suspension, ineligibility of contractors and grantees, or under HUD regulation 24 CFR part 25 concerning the HUD Mortgagee Review Board. Nothing in this paragraph is a limitation on any other form of enforcement that may be legally available.

(b) *Investigations.* The procedures for investigations and investigational proceedings are set forth in part 1080 of this title.

**§ 1024.20 [Reserved]**

**§ 1024.21 Mortgage servicing transfers.**

(a) *Definitions.* As used in this section:

*Master servicer* means the owner of the right to perform servicing, which may actually perform the servicing itself or may do so through a subservicer.

*Mortgage servicing loan* means a federally related mortgage loan, as that term is defined in § 1024.2, subject to the exemptions in § 1024.5, when the mortgage loan is secured by a first lien. The definition does not include subordinate lien loans or open-end lines of credit (home equity plans) covered by the Truth in Lending Act and Regulation Z, including open-end lines of credit secured by a first lien.

*Qualified written request* means a written correspondence from the borrower to the servicer prepared in accordance with paragraph (e)(2) of this section.

*Subservicer* means a servicer who does not own the right to perform servicing, but who does so on behalf of the master servicer.

*Transferee servicer* means a servicer who obtains or who will obtain the right to perform servicing functions pursuant to an agreement or understanding.

*Transferor servicer* means a servicer, including a table funding mortgage broker or dealer on a first lien dealer loan, who transfers or will transfer the right to perform servicing functions pursuant to an agreement or understanding.

(b) *Servicing Disclosure Statement; Requirements.* (1) At the time an application for a mortgage servicing loan is submitted, or within 3 business days after submission of the application, the lender, mortgage broker who anticipates using table funding, or dealer who anticipates a first lien dealer loan shall provide to each person who applies for such a loan a Servicing Disclosure Statement. A format for the Servicing Disclosure Statement appears as Appendix MS–1 to this part. The specific language of the Servicing Disclosure Statement is not required to be used. The information set forth in ''Instructions to Preparer'' on the Servicing Disclosure Statement need not be included with the information given to applicants, and material in square brackets is optional or alternative language. The model format may be annotated with additional information that clarifies or enhances the model language. The lender, table funding mortgage broker, or dealer should use the language that best describes the particular circumstances.

(2) The Servicing Disclosure Statement must indicate whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding. If the lender, table funding mortgage broker, or dealer in a first lien dealer loan will engage in the servicing of the mortgage loan for which the applicant has applied, the disclosure may consist of a statement that the entity will service such loan and does not intend to sell, transfer, or assign the servicing of the loan. If the lender, table funding mortgage broker, or dealer in a first lien dealer loan will not engage in the servicing of the mortgage loan for which the applicant has applied, the disclosure may consist of a statement that such entity intends to assign, sell, or transfer servicing of such mortgage loan before the first payment is due. In all other instances, the disclosure must state that the servicing of the loan may be assigned, sold or transferred while the loan is outstanding.

(c) *Servicing Disclosure Statement; Delivery.* The lender, table funding mortgage broker, or dealer that anticipates a first lien dealer loan shall deliver the Servicing Disclosure Statement within 3 business days from receipt of the application by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, email, or other electronic means. In the event the borrower is denied credit within the 3 business-day period, no servicing disclosure statement is required to be delivered. If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are

shown by co-applicants on the application, a copy must be delivered to each of the co-applicants.

(d) *Notices of Transfer; loan servicing.* (1) *Requirement for notice.* (i) Except as provided in this paragraph (d)(1)(i) or paragraph (d)(1)(ii) of this section, each transferor servicer and transferee servicer of any mortgage servicing loan shall deliver to the borrower a written Notice of Transfer, containing the information described in paragraph (d)(3) of this section, of any assignment, sale, or transfer of the servicing of the loan. The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

(A) Transfers between affiliates;

(B) Transfers resulting from mergers or acquisitions of servicers or subservicers; and

(C) Transfers between master servicers, where the subservicer remains the same.

(ii) The Federal Housing Administration (FHA) is not required under paragraph (d) of this section to submit to the borrower a Notice of Transfer in cases where a mortgage insured under the National Housing Act is assigned to FHA.

(2) *Time of notice.* (i) Except as provided in paragraph (d)(2)(ii) of this section:

(A) The transferor servicer shall deliver the Notice of Transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan;

(B) The transferee servicer shall deliver the Notice of Transfer to the borrower not more than 15 days after the effective date of the transfer; and

(C) The transferor and transferee servicers may combine their notices into one notice, which shall be delivered to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan.

(ii) The Notice of Transfer shall be delivered to the borrower by the transferor servicer or the transferee servicer not more than 30 days after the effective date of the transfer of the servicing of the mortgage servicing loan in any case in which the transfer of servicing is preceded by:

(A) Termination of the contract for servicing the loan for cause;

(B) Commencement of proceedings for bankruptcy of the servicer; or

(C) Commencement of proceedings by the Federal Deposit Insurance Corporation (FDIC) for conservatorship or receivership of the servicer or an entity that owns or controls the servicer.

(iii) Notices of Transfer delivered at settlement by the transferor servicer and transferee servicer, whether as separate notices or as a combined notice, will satisfy the timing requirements of paragraph (d)(2) of this section.

(3) *Notices of Transfer; contents.* The Notices of Transfer required under paragraph (d) of this section shall include the following information:

(i) The effective date of the transfer of servicing;

(ii) The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect-call telephone number for an employee or department of the transferee servicer;

(iii) A toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for answers to servicing transfer inquiries;

(iv) The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;

(v) Information concerning any effect the transfer may have on the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain coverage;

(vi) A statement that the transfer of servicing does not affect any other term or condition of the mortgage documents, other than terms directly related to the servicing of the loan; and

(vii) A statement of the borrower's rights in connection with complaint resolution, including the information set forth in paragraph (e) of this section. Appendix MS–2 of this part illustrates a statement satisfactory to the Bureau.

(4) *Notices of Transfer; sample notice.* Sample language that may be used to comply with the requirements of paragraph (d) of this section is set out in Appendix MS–2 of this part. Minor modifications to the sample language may be made to meet the particular circumstances of the servicer, but the substance of the sample language shall not be omitted or substantially altered.

(5) *Consumer protection during transfer of servicing.* During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage servicing loan, if the transferor servicer (rather than the transferee servicer that should properly receive payment on the loan) receives payment on or before the applicable due date (including any grace period allowed under the loan documents), a late fee may not be imposed on the borrower with respect to that payment and the payment may not be treated as late for any other purposes.

(e) *Duty of loan servicer to respond to borrower inquiries.* (1) *Notice of receipt of inquiry.* Within 20 business days of a servicer of a mortgage servicing loan receiving a qualified written request from the borrower for information relating to the servicing of the loan, the servicer shall provide to the borrower a written response acknowledging receipt of the qualified written request. This requirement shall not apply if the action requested by the borrower is taken within that period and the borrower is notified of that action in accordance with the paragraph (f)(3) of this section. By notice either included in the Notice of Transfer or separately delivered by first-class mail, postage prepaid, a servicer may establish a separate and exclusive office and address for the receipt and handling of qualified written requests.

(2) *Qualified written request; defined.* (i) For purposes of paragraph (e) of this section, a qualified written request means a written correspondence (other than notice on a payment coupon or other payment medium supplied by the servicer) that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and includes a statement of the reasons that the borrower believes the account is in error, if applicable, or that provides sufficient detail to the servicer regarding information relating to the servicing of the loan sought by the borrower.

(ii) A written request does not constitute a qualified written request if it is delivered to a servicer more than 1 year after either the date of transfer of servicing or the date that the mortgage servicing loan amount was paid in full, whichever date is applicable.

(3) *Action with respect to the inquiry.* Not later than 60 business days after receiving a qualified written request from the borrower, and, if applicable, before taking any action with respect to the inquiry, the servicer shall:

(i) Make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of the correction. This written notification shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower; or

(ii) After conducting an investigation, provide the borrower with a written

explanation or clarification that includes:

(A) To the extent applicable, a statement of the servicer's reasons for concluding the account is correct and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower; or

(B) Information requested by the borrower, or an explanation of why the information requested is unavailable or cannot be obtained by the servicer, and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower.

(4) *Protection of credit rating.* (i) During the 60-business day period beginning on the date of the servicer receiving from a borrower a qualified written request relating to a dispute on the borrower's payments, a servicer may not provide adverse information regarding any payment that is the subject of the qualified written request to any consumer reporting agency (as that term is defined in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a).

(ii) In accordance with section 17 of RESPA (12 U.S.C. 2615), the protection of credit rating provision of paragraph (e)(4)(i) of this section does not impede a lender or servicer from pursuing any of its remedies, including initiating foreclosure, allowed by the underlying mortgage loan instruments.

(f) *Damages and costs.* (1) Whoever fails to comply with any provision of this section shall be liable to the borrower for each failure in the following amounts:

(i) *Individuals.* In the case of any action by an individual, an amount equal to the sum of any actual damages sustained by the individual as the result of the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not to exceed $1,000.

(ii) *Class actions.* In the case of a class action, an amount equal to the sum of any actual damages to each borrower in the class that result from the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not greater than $1,000 for each class member. However, the total amount of any additional damages in a class action may not exceed the lesser of $500,000 or 1 percent of the net worth of the servicer.

(iii) *Costs.* In addition, in the case of any successful action under paragraph (f) of this section, the costs of the action and any reasonable attorneys' fees incurred in connection with the action.

(2) *Nonliability.* A transferor or transferee servicer shall not be liable for any failure to comply with the requirements of this section, if within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before commencement of an action under this section and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) *Timely payments by servicer.* If the terms of any mortgage servicing loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the mortgaged property, the servicer shall make payments from the escrow account in a timely manner for the taxes, insurance premiums, and other charges as the payments become due, as governed by the requirements in § 1024.17(k).

(h) *Preemption of state laws.* A lender who makes a mortgage servicing loan or a servicer shall be considered to have complied with the provisions of any state law or regulation requiring notice to a borrower at the time of application for a loan or transfer of servicing of a loan if the lender or servicer complies with the requirements of this section. Any state law requiring notice to the borrower at the time of application or at the time of transfer of servicing of the loan is preempted, and there shall be no additional borrower disclosure requirements. Provisions of state law, such as those requiring additional notices to insurance companies or taxing authorities, are not preempted by section 6 of RESPA or this section, and this additional information may be added to a notice prepared under this section, if the procedure is allowable under state law.

### § 1024.22 Severability.

If any particular provision of this part or the application of any particular provision to any person or circumstance is held invalid, the remainder of this part and the application of such provisions to other persons or circumstances shall not be affected by such holding.

### § 1024.23 ESIGN applicability.

The Electronic Signatures in Global and National Commerce Act (''ESIGN''), 15 U.S.C. 7001–7031, shall apply to this part.

## Appendix A to Part 1024—Instructions for Completing HUD–1 and HUD–1a Settlement Statements; Sample HUD–1 and HUD–1a Statements

The following are instructions for completing the HUD–1 settlement statement, required under section 4 of RESPA and 12 CFR part 1024 (Regulation X) of the Bureau of Consumer Financial Protection (Bureau) regulations. This form is to be used as a statement of actual charges and adjustments paid by the borrower and the seller, to be given to the parties in connection with the settlement. The instructions for completion of the HUD–1 are primarily for the benefit of the settlement agents who prepare the statements and need not be transmitted to the parties as an integral part of the HUD–1. There is no objection to the use of the HUD–1 in transactions in which its use is not legally required. Refer to the definitions section of the regulations (12 CFR 1024.2) for specific definitions of many of the terms that are used in these instructions.

### General Instructions

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to the Bureau's regulations (Regulation X) regarding rules applicable to reproduction of the HUD–1 for the purpose of including customary recitals and information used locally in settlements; for example, a breakdown of payoff figures, a breakdown of the Borrower's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between Borrower and Seller, and the date funds are transferred.

The settlement agent shall complete the HUD–1 to itemize all charges imposed upon the Borrower and the Seller by the loan originator and all sales commissions, whether to be paid at settlement or outside of settlement, and any other charges which either the Borrower or the Seller will pay at settlement. Charges for loan origination and title services should not be itemized except as provided in these instructions. For each separately identified settlement service in connection with the transaction, the name of the person ultimately receiving the payment must be shown together with the total amount paid to such person. Items paid to and retained by a loan originator are disclosed as required in the instructions for lines in the 800-series of the HUD–1 (and for per diem interest, in the 900-series of the HUD–1).

As a general rule, charges that are paid for by the seller must be shown in the seller's column on page 2 of the HUD–1 (unless paid outside closing), and charges that are paid for by the borrower must be shown in the borrower's column (unless paid outside closing). However, in order to promote comparability between the charges on the

GFE and the charges on the HUD–1, if a seller pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD–1. That charge should also be offset by listing a credit in that amount to the borrower on lines 204–209 on page 1 of the HUD–1, and by a charge to the seller in lines 506–509 on page 1 of the HUD–1. If a loan originator (other than for no-cost loans), real estate agent, other settlement service provider, or other person pays for a charge that was included on the GFE, the charge should be listed in the borrower's column on page 2 of the HUD–1, with an offsetting credit reported on page 1 of the HUD–1, identifying the party paying the charge.

Charges paid outside of settlement by the borrower, seller, loan originator, real estate agent, or any other person, must be included on the HUD–1 but marked ''P.O.C.'' for ''Paid Outside of Closing'' (settlement) and must not be included in computing totals. However, indirect payments from a lender to a mortgage broker may not be disclosed as P.O.C., and must be included as a credit on Line 802. P.O.C. items must not be placed in the Borrower or Seller columns, but rather on the appropriate line outside the columns. The settlement agent must indicate whether P.O.C. items are paid for by the Borrower, Seller, or some other party by marking the items paid for by whoever made the payment as ''P.O.C.'' with the party making the payment identified in parentheses, such as ''P.O.C. (borrower)'' or ''P.O.C. (seller)''.

In the case of ''no cost'' loans where ''no cost'' encompasses third party fees as well as the upfront payment to the loan originator, the third party services covered by the ''no cost'' provisions must be itemized and listed in the borrower's column on the HUD–1/1A with the charge for the third party service. These itemized charges must be offset with a negative adjusted origination charge on Line 803 and recorded in the columns.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided for additional insertions in sections J and K. The names of the recipients of the settlement charges in section L and the names of the recipients of adjustments described in section J or K should be included on the blank lines.

Lines and columns in section J which relate to the Borrower's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Seller. Lines and columns in section K which relate to the Seller's transaction may be left blank on the copy of the HUD–1 which will be furnished to the Borrower.

**Line Item Instructions**

Instructions for completing the individual items on the HUD–1 follow.

*Section A.* This section requires no entry of information.

*Section B.* Check appropriate loan type and complete the remaining items as applicable.

*Section C.* This section provides a notice regarding settlement costs and requires no additional entry of information.

*Sections D and E.* Fill in the names and current mailing addresses and zip codes of the Borrower and the Seller. Where there is more than one Borrower or Seller, the name and address of each one is required. Use a supplementary page if needed to list multiple Borrowers or Sellers.

*Section F.* Fill in the name, current mailing address and zip code of the Lender.

*Section G.* The street address of the property being sold should be listed. If there is no street address, a brief legal description or other location of the property should be inserted. In all cases give the zip code of the property.

*Section H.* Fill in name, address, zip code and telephone number of settlement agent, and address and zip code of ''place of settlement.''

*Section I.* Fill in date of settlement.

*Section J. Summary of Borrower's Transaction.* Line 101 is for the contract sales price of the property being sold, excluding the price of any items of tangible personal property if Borrower and Seller have agreed to a separate price for such items.

Line 102 is for the sales price of any items of tangible personal property excluded from Line 101. Personal property could include such items as carpets, drapes, stoves, refrigerators, *etc.* What constitutes personal property varies from state to state. Manufactured homes are not considered personal property for this purpose.

Line 103 is used to record the total charges to Borrower detailed in section L and totaled on Line 1400.

Lines 104 and 105 are for additional amounts owed by the Borrower, such as charges that were not listed on the GFE or items paid by the Seller prior to settlement but reimbursed by the Borrower at settlement. For example, the balance in the Seller's reserve account held in connection with an existing loan, if assigned to the Borrower in a loan assumption case, will be entered here. These lines will also be used when a tenant in the property being sold has not yet paid the rent, which the Borrower will collect, for a period of time prior to the settlement. The lines will also be used to indicate the treatment for any tenant security deposit. The Seller will be credited on Lines 404–405.

Lines 106 through 112 are for items which the Seller had paid in advance, and for which the Borrower must therefore reimburse the Seller. Examples of items for which adjustments will be made may include taxes and assessments paid in advance for an entire year or other period, when settlement occurs prior to the expiration of the year or other period for which they were paid. Additional examples include flood and hazard insurance premiums, if the Borrower is being substituted as an insured under the same policy; mortgage insurance in loan assumption cases; planned unit development or condominium association assessments paid in advance; fuel or other supplies on hand, purchased by the Seller, which the Borrower will use when Borrower takes possession of the property; and ground rent paid in advance.

Line 120 is for the total of Lines 101 through 112.

Line 201 is for any amount paid against the sales price prior to settlement.

Line 202 is for the amount of the new loan made by the Lender when a loan to finance construction of a new structure constructed for sale is used as or converted to a loan to finance purchase. Line 202 should also be used for the amount of the first user loan, when a loan to purchase a manufactured home for resale is converted to a loan to finance purchase by the first user. For other loans covered by 12 CFR part 1024 (Regulation X) which finance construction of a new structure or purchase of a manufactured home, list the sales price of the land on Line 104, the construction cost or purchase price of manufactured home on Line 105 (Line 101 would be left blank in this instance) and amount of the loan on Line 202. The remainder of the form should be completed taking into account adjustments and charges related to the temporary financing and permanent financing and which are known at the date of settlement.

Line 203 is used for cases in which the Borrower is assuming or taking title subject to an existing loan or lien on the property.

Lines 204–209 are used for other items paid by or on behalf of the Borrower. Lines 204–209 should be used to indicate any financing arrangements or other new loan not listed in Line 202. For example, if the Borrower is using a second mortgage or note to finance part of the purchase price, whether from the same lender, another lender or the Seller, insert the principal amount of the loan with a brief explanation on Lines 204–209. Lines 204–209 should also be used where the Borrower receives a credit from the Seller for closing costs, including seller-paid GFE charges. They may also be used in cases in which a Seller (typically a builder) is making an ''allowance'' to the Borrower for items that the Borrower is to purchase separately.

Lines 210 through 219 are for items which have not yet been paid, and which the Borrower is expected to pay, but which are attributable in part to a period of time prior to the settlement. In jurisdictions in which taxes are paid late in the tax year, most cases will show the proration of taxes in these lines. Other examples include utilities used but not paid for by the Seller, rent collected in advance by the Seller from a tenant for a period extending beyond the settlement date, and interest on loan assumptions.

Line 220 is for the total of Lines 201 through 219.

Lines 301 and 302 are summary lines for the Borrower. Enter total in Line 120 on Line 301. Enter total in Line 220 on Line 302.

Line 303 must indicate either the cash required from the Borrower at settlement (the usual case in a purchase transaction), or cash payable to the Borrower at settlement (if, for example, the Borrower's earnest money exceeds the Borrower's cash obligations in the transaction or there is a cash-out refinance). Subtract Line 302 from Line 301 and enter the amount of cash due to or from the Borrower at settlement on Line 303. The appropriate box should be checked. If the Borrower's earnest money is applied toward the charge for a settlement service, the amount so applied should not be included on Line 303 but instead should be shown on the appropriate line for the settlement service, marked ''P.O.C. (Borrower)'', and must not be included in computing totals.

*Section K. Summary of Seller's Transaction.* Instructions for the use of Lines

101 and 102 and 104–112 above, apply also to Lines 401–412. Line 420 is for the total of Lines 401 through 412.

Line 501 is used if the Seller's real estate broker or other party who is not the settlement agent has received and holds a deposit against the sales price (earnest money) which exceeds the fee or commission owed to that party. If that party will render the excess deposit directly to the Seller, rather than through the settlement agent, the amount of excess deposit should be entered on Line 501 and the amount of the total deposit (including commissions) should be entered on Line 201.

Line 502 is used to record the total charges to the Seller detailed in section L and totaled on Line 1400.

Line 503 is used if the Borrower is assuming or taking title subject to existing liens which are to be deducted from sales price.

Lines 504 and 505 are used for the amounts (including any accrued interest) of any first and/or second loans which will be paid as part of the settlement.

Line 506 is used for deposits paid by the Borrower to the Seller or other party who is not the settlement agent. Enter the amount of the deposit in Line 201 on Line 506 unless Line 501 is used or the party who is not the settlement agent transfers all or part of the deposit to the settlement agent, in which case the settlement agent will note in parentheses on Line 507 the amount of the deposit that is being disbursed as proceeds and enter in the column for Line 506 the amount retained by the above-described party for settlement services. If the settlement agent holds the deposit, insert a note in Line 507 which indicates that the deposit is being disbursed as proceeds.

Lines 506 through 509 may be used to list additional liens which must be paid off through the settlement to clear title to the property. Other Seller obligations should be shown on Lines 506–509, including charges that were disclosed on the GFE but that are actually being paid for by the Seller. These Lines may also be used to indicate funds to be held by the settlement agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at settlement because the amounts used by the Seller prior to settlement are not yet known. Subsequent disclosure of the actual amount of these post-settlement items to be paid from settlement funds is optional. Any amounts entered on Lines 204–209 including Seller financing arrangements should also be entered on Lines 506–509.

Instructions for the use of Lines 510 through 519 are the same as those for Lines 210 to 219 above.

Line 520 is for the total of Lines 501 through 519.

Lines 601 and 602 are summary lines for the Seller. Enter the total in Line 420 on Line 601. Enter the total in Line 520 on Line 602.

Line 603 must indicate either the cash required to be paid to the Seller at settlement (the usual case in a purchase transaction), or the cash payable by the Seller at settlement. Subtract Line 602 from Line 601 and enter the amount of cash due to or from the Seller at settlement on Line 603. The appropriate box should be checked.

*Section L. Settlement Charges*

Line 700 is used to enter the sales commission charged by the sales agent or real estate broker.

Lines 701–702 are to be used to state the split of the commission where the settlement agent disburses portions of the commission to two or more sales agents or real estate brokers.

Line 703 is used to enter the amount of sales commission disbursed at settlement. If the sales agent or real estate broker is retaining a part of the deposit against the sales price (earnest money) to apply towards the sales agent's or real estate broker's commission, include in Line 703 only that part of the commission being disbursed at settlement and insert a note on Line 704 indicating the amount the sales agent or real estate broker is retaining as a ''P.O.C.'' item.

Line 704 may be used for additional charges made by the sales agent or real estate broker, or for a sales commission charged to the Borrower, which will be disbursed by the settlement agent.

Line 801 is used to record ''Our origination charge,'' which includes all charges received by the loan originator, except any charge for the specific interest rate chosen (points). This number must not be listed in either the buyer's or seller's column. The amount shown in Line 801 must include any amounts received for origination services, including administrative and processing services, performed by or on behalf of the loan originator.

Line 802 is used to record ''Your credit or charge (points) for the specific interest rate chosen,'' which states the charge or credit adjustment as applied to ''Our origination charge,'' if applicable. This number must not be listed in either column or shown on page one of the HUD–1.

For a mortgage broker originating a loan in its own name, the amount shown on Line 802 will be the difference between the initial loan amount and the total payment to the mortgage broker from the lender. The total payment to the mortgage broker will be the sum of the price paid for the loan by the lender and any other payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments. For a mortgage broker originating a loan in another entity's name, the amount shown on Line 802 will be the sum of all payments to the mortgage broker from the lender, including any payments based on the loan amount or loan terms, and any flat rate payments.

In either case, when the amount paid to the mortgage broker exceeds the initial loan amount, there is a credit to the borrower and it is entered as a negative amount. When the initial loan amount exceeds the amount paid to the mortgage broker, there is a charge to the borrower and it is entered as a positive amount. For a lender, the amount shown on Line 802 may include any credit or charge (points) to the Borrower.

Line 803 is used to record ''Your adjusted origination charges,'' which states the net amount of the loan origination charges, the sum of the amounts shown in Lines 801 and 802. This amount must be listed in the columns as either a positive number (for example, where the origination charge shown in Line 801 exceeds any credit for the interest rate shown in Line 802 or where there is an origination charge in Line 801 and a charge for the interest rate (points) is shown on Line 802) or as a negative number (for example, where the credit for the interest rate shown in Line 802 exceeds the origination charges shown in Line 801).

In the case of ''no cost'' loans, where ''no cost'' refers only to the loan originator's fees, the amounts shown in Lines 801 and 802 should offset, so that the charge shown on Line 803 is zero. Where ''no cost'' includes third party settlement services, the credit shown in Line 802 will more than offset the amount shown in Line 801. The amount shown in Line 803 will be a negative number to offset the settlement charges paid indirectly through the loan originator.

Lines 804–808 may be used to record each of the ''Required services that we select.'' Each settlement service provider must be identified by name and the amount paid recorded either inside the columns or as paid to the provider outside closing (''P.O.C.''), as described in the General Instructions.

Line 804 is used to record the appraisal fee.

Line 805 is used to record the fee for all credit reports.

Line 806 is used to record the fee for any tax service.

Line 807 is used to record any flood certification fee.

Lines 808 and additional sequentially numbered lines, as needed, are used to record other third party services required by the loan originator. These Lines may also be used to record other required disclosures from the loan originator. Any such disclosures must be listed outside the columns.

Lines 901–904. This series is used to record the items which the Lender requires to be paid at the time of settlement, but which are not necessarily paid to the lender (*e.g.,* FHA mortgage insurance premium), other than reserves collected by the Lender and recorded in the 1000-series.

Line 901 is used if interest is collected at settlement for a part of a month or other period between settlement and the date from which interest will be collected with the first regular monthly payment. Enter that amount here and include the per diem charges. If such interest is not collected until the first regular monthly payment, no entry should be made on Line 901.

Line 902 is used for mortgage insurance premiums due and payable at settlement, including any monthly amounts due at settlement and any upfront mortgage insurance premium, but not including any reserves collected by the Lender and recorded in the 1000-series. If a lump sum mortgage insurance premium paid at settlement is included on Line 902, a note should indicate that the premium is for the life of the loan.

Line 903 is used for homeowner's insurance premiums that the Lender requires to be paid at the time of settlement, except

reserves collected by the Lender and recorded in the 1000-series.

Lines 904 and additional sequentially numbered lines are used to list additional items required by the Lender (except for reserves collected by the Lender and recorded in the 1000-series), including premiums for flood or other insurance. These lines are also used to list amounts paid at settlement for insurance not required by the Lender.

Lines 1000–1007. This series is used for amounts collected by the Lender from the Borrower and held in an account for the future payment of the obligations listed as they fall due. Include the time period (number of months) and the monthly assessment. In many jurisdictions this is referred to as an ''escrow'', ''impound'', or ''trust'' account. In addition to the property taxes and insurance listed, some Lenders may require reserves for flood insurance, condominium owners' association assessments, *etc.* The amount in line 1001 must be listed in the columns, and the itemizations in lines 1002 through 1007 must be listed outside the columns.

After itemizing individual deposits in the 1000 series, the servicer shall make an adjustment based on aggregate accounting. This adjustment equals the difference between the deposit required under aggregate accounting and the sum of the itemized deposits. The computation steps for aggregate accounting are set out in 12 CFR 1024.17(d). The adjustment will always be a negative number or zero (-0-), except for amounts due to rounding. The settlement agent shall enter the aggregate adjustment amount outside the columns on a final line of the 1000 series of the HUD–1 or HUD–1A statement. Appendix E to this part sets out an example of aggregate analysis.

Lines 1100–1108. This series covers title charges and charges by attorneys and closing or settlement agents. The title charges include a variety of services performed by title companies or others, and include fees directly related to the transfer of title (title examination, title search, document preparation), fees for title insurance, and fees for conducting the closing. The legal charges include fees for attorneys representing the lender, seller, or borrower, and any attorney preparing title work. The series also includes any settlement, notary, and delivery fees related to the services covered in this series. Disbursements to third parties must be broken out in the appropriate lines or in blank lines in the series, and amounts paid to these third parties must be shown outside of the columns if included in Line 1101. Charges not included in Line 1101 must be listed in the columns.

Line 1101 is used to record the total for the category of ''Title services and lender's title insurance.'' This amount must be listed in the columns.

Line 1102 is used to record the settlement or closing fee.

Line 1103 is used to record the charges for the owner's title insurance and related endorsements. This amount must be listed in the columns.

Line 1104 is used to record the lender's title insurance premium and related endorsements.

Line 1105 is used to record the amount of the lender's title policy limit. This amount is recorded outside of the columns.

Line 1106 is used to record the amount of the owner's title policy limit. This amount is recorded outside of the columns.

Line 1107 is used to record the amount of the total title insurance premium, including endorsements, that is retained by the title agent. This amount is recorded outside of the columns.

Line 1108 used to record the amount of the total title insurance premium, including endorsements, that is retained by the title underwriter. This amount is recorded outside of the columns.

Additional sequentially numbered lines in the 1100-series may be used to itemize title charges paid to other third parties, as identified by name and type of service provided.

Lines 1200–1206. This series covers government recording and transfer charges. Charges paid by the borrower must be listed in the columns as described for lines 1201 and 1203, with itemizations shown outside the columns. Any amounts that are charged to the seller and that were not included on the Good Faith Estimate must be listed in the columns.

Line 1201 is used to record the total ''Government recording charges,'' and the amount must be listed in the columns.

Line 1202 is used to record, outside of the columns, the itemized recording charges.

Line 1203 is used to record the transfer taxes, and the amount must be listed in the columns.

Line 1204 is used to record, outside of the columns, the amounts for local transfer taxes and stamps.

Line 1205 is used to record, outside of the columns, the amounts for state transfer taxes and stamps.

Line 1206 and additional sequentially numbered lines may be used to record specific itemized third party charges for government recording and transfer services, but the amounts must be listed outside the columns.

Line 1301 and additional sequentially numbered lines must be used to record required services that the borrower can shop for, such as fees for survey, pest inspection, or other similar inspections. These lines may also be used to record additional itemized settlement charges that are not included in a specific category, such as fees for structural and environmental inspections; pre-sale inspections of heating, plumbing or electrical equipment; or insurance or warranty coverage. The amounts must be listed in either the borrower's or seller's column.

Line 1400 must state the total settlement charges as calculated by adding the amounts within each column.

**Page 3**

*Comparison of Good Faith Estimate (GFE) and HUD–1/1A Charges*

The HUD–1/1–A is a statement of actual charges and adjustments. The comparison chart on page 3 of the HUD–1 must be prepared using the exact information and amounts for the services that were purchased or provided as part of the transaction, as that information and those amounts are shown on the GFE and in the HUD–1. If a service that was listed on the GFE was not obtained in connection with the transaction, pages 1 and 2 of the HUD–1 should not include any amount for that service, and the estimate on the GFE of the charge for the service should not be included in any amounts shown on the comparison chart on Page 3 of the HUD–1. The comparison chart is comprised of three sections: ''Charges That Cannot Increase'', ''Charges That Cannot Increase More Than 10%'', and ''Charges That Can Change''.

''Charges That Cannot Increase''. The amounts shown in Blocks 1 and 2, in Line A, and in Block 8 on the borrower's GFE must be entered in the appropriate line in the Good Faith Estimate column. The amounts shown on Lines 801, 802, 803 and 1203 of the HUD–1/1A must be entered in the corresponding line in the HUD–1/1A column. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. If there is a credit in Block 2 of the GFE or Line 802 of the HUD–1/1A, the credit should be entered as a negative number.

''Charges That Cannot Increase More Than 10%''. A description of each charge included in Blocks 3 and 7 on the borrower's GFE must be entered on separate lines in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. For each charge included in Blocks 4, 5 and 6 on the borrower's GFE for which the loan originator selected the provider or for which the borrower selected a provider identified by the loan originator, a description must be entered on a separate line in this section, with the amount shown on the borrower's GFE for each charge entered in the corresponding line in the Good Faith Estimate column. The loan originator must identify any third party settlement services for which the borrower selected a provider other than one identified by the loan originator so that the settlement agent can include those charges in the appropriate category. Additional lines may be added if necessary. The amounts shown on the HUD–1/1A for each line must be entered in the HUD–1/1A column next to the corresponding charge from the GFE, along with the appropriate HUD–1/1A line number. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower.

The amounts shown in the Good Faith Estimate and HUD–1/1A columns for this section must be separately totaled and entered in the designated line. If the total for the HUD–1/1A column is greater than the total for the Good Faith Estimate column, then the amount of the increase must be entered both as a dollar amount and as a percentage increase in the appropriate line.

''Charges That Can Change''. The amounts shown in Blocks 9, 10 and 11 on the borrower's GFE must be entered in the appropriate lines in the Good Faith Estimate

column. Any third party settlement services for which the borrower selected a provider other than one identified by the loan originator must also be included in this section. The amounts shown on the HUD–1/1A for each charge in this section must be entered in the corresponding line in the HUD–1/1A column, along with the appropriate HUD–1/1A line number. The HUD–1/1A column must include any amounts shown on page 2 of the HUD–1 in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by or on behalf of the borrower. Additional lines may be added if necessary.

**Loan Terms**

This section must be completed in accordance with the information and instructions provided by the lender. The lender must provide this information in a format that permits the settlement agent to simply enter the necessary information in the appropriate spaces, without the settlement agent having to refer to the loan documents themselves.

**Instructions for Completing HUD–1A**

**Note:** The HUD–1A is an optional form that may be used for refinancing and subordinate-lien federally related mortgage loans, as well as for any other one-party transaction that does not involve the transfer of title to residential real property. The HUD–1 form may also be used for such transactions, by utilizing the borrower's side of the HUD–1 and following the relevant parts of the instructions as set forth above. The use of either the HUD–1 or HUD–1A is not mandatory for open-end lines of credit (home-equity plans), as long as the provisions of Regulation Z are followed.

**Background**

The HUD–1A settlement statement is to be used as a statement of actual charges and adjustments to be given to the borrower at settlement, as defined in this part. The instructions for completion of the HUD–1A are for the benefit of the settlement agent who prepares the statement; the instructions are not a part of the statement and need not be transmitted to the borrower. There is no objection to using the HUD–1A in transactions in which it is not required, and its use in open-end lines of credit transactions (home-equity plans) is encouraged. It may not be used as a substitute for a HUD–1 in any transaction that has a seller.

Refer to the ''definitions'' section (§ 1024.2) of 12 CFR part 1024 (Regulation X) for specific definitions of terms used in these instructions.

**General Instructions**

Information and amounts may be filled in by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Refer to 12 CFR 1024.9 regarding rules for reproduction of the HUD–1A. Additional pages may be attached to the HUD–1A for the inclusion of customary recitals and information used locally for settlements or if there are insufficient lines on the HUD–1A. The settlement agent shall complete the HUD–1A in accordance with the instructions for the HUD–1 to the extent possible, including the instructions for disclosing items paid outside closing and for no cost loans.

Blank lines are provided in section L for any additional settlement charges. Blank lines are also provided in section M for recipients of all or portions of the loan proceeds. The names of the recipients of the settlement charges in section L and the names of the recipients of the loan proceeds in section M should be set forth on the blank lines.

**Line-Item Instructions**

*Page 1*

The identification information at the top of the HUD–1A should be completed as follows: The borrower's name and address is entered in the space provided. If the property securing the loan is different from the borrower's address, the address or other location information on the property should be entered in the space provided. The loan number is the lender's identification number for the loan. The settlement date is the date of settlement in accordance with 12 CFR 1024.2, not the end of any applicable rescission period. The name and address of the lender should be entered in the space provided.

*Section L. Settlement Charges.* This section of the HUD–1A is similar to section L of the HUD–1, with minor changes or omissions, including deletion of lines 700 through 704, relating to real estate broker commissions. The instructions for section L in the HUD–1 should be followed insofar as possible. Inapplicable charges should be ignored, as should any instructions regarding seller items.

Line 1400 in the HUD–1A is for the total settlement charges charged to the borrower. Enter this total on line 1601. This total should include section L amounts from additional pages, if any are attached to this HUD–1A.

*Section M. Disbursement to Others.* This section is used to list payees, other than the borrower, of all or portions of the loan proceeds (including the lender, if the loan is paying off a prior loan made by the same lender), when the payee will be paid directly out of the settlement proceeds. It is not used to list payees of settlement charges, nor to list funds disbursed directly to the borrower, even if the lender knows the borrower's intended use of the funds.

For example, in a refinancing transaction, the loan proceeds are used to pay off an existing loan. The name of the lender for the loan being paid off and the pay-off balance would be entered in section M. In a home improvement transaction when the proceeds are to be paid to the home improvement contractor, the name of the contractor and the amount paid to the contractor would be entered in section M. In a consolidation loan, or when part of the loan proceeds is used to pay off other creditors, the name of each creditor and the amount paid to that creditor would be entered in section M. If the proceeds are to be given directly to the borrower and the borrower will use the proceeds to pay off existing obligations, this would not be reflected in section M.

*Section N. Net Settlement.* Line 1600 normally sets forth the principal amount of the loan as it appears on the related note for this loan. In the event this form is used for an open-ended home equity line whose approved amount is greater than the initial amount advanced at settlement, the amount shown on Line 1600 will be the loan amount advanced at settlement. Line 1601 is used for all settlement charges that both are included in the totals for lines 1400 and 1602, and are not financed as part of the principal amount of the loan. This is the amount normally received by the lender from the borrower at settlement, which would occur when some or all of the settlement charges were paid in cash by the borrower at settlement, instead of being financed as part of the principal amount of the loan. Failure to include any such amount in line 1601 will result in an error in the amount calculated on line 1604. Items paid outside of closing (P.O.C.) should not be included in Line 1601.

Line 1602 is the total amount from line 1400.

Line 1603 is the total amount from line 1520.

Line 1604 is the amount disbursed to the borrower. This is determined by adding together the amounts for lines 1600 and 1601, and then subtracting any amounts listed on lines 1602 and 1603.

*Page 2*

This section of the HUD–1A is similar to page 3 of the HUD–1. The instructions for page 3 of the HUD–1 should be followed insofar as possible. The HUD–1/1A Column should include any amounts shown on page 1 of the HUD–1A in the column as paid for by the borrower, plus any amounts that are shown as P.O.C. by the borrower. Inapplicable charges should be ignored.

**BILLING CODE 4810–AM–P**

OMB Approval No. 2502-0265

# A. Settlement Statement (HUD-1)

| B. Type of Loan | | | |
|---|---|---|---|
| 1. ☐ FHA 2. ☐ RHS 3. ☐ Conv. Unins. 4. ☐ VA 5. ☐ Conv. Ins. | 6. File Number: | 7. Loan Number: | 8. Mortgage Insurance Case Number: |

**C. Note:** This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

| D. Name & Address of Borrower: | E. Name & Address of Seller: | F. Name & Address of Lender: |
|---|---|---|
| G. Property Location: | H. Settlement Agent: | I. Settlement Date: |
| | Place of Settlement: | |

| J. Summary of Borrower's Transaction | | K. Summary of Seller's Transaction | |
|---|---|---|---|
| **100. Gross Amount Due from Borrower** | | **400. Gross Amount Due to Seller** | |
| 101. Contract sales price | | 401. Contract sales price | |
| 102. Personal property | | 402. Personal property | |
| 103. Settlement charges to borrower (line 1400) | | 403. | |
| 104. | | 404. | |
| 105. | | 405. | |
| **Adjustment for items paid by seller in advance** | | **Adjustments for items paid by seller in advance** | |
| 106. City/town taxes to | | 406. City/town taxes to | |
| 107. County taxes to | | 407. County taxes to | |
| 108. Assessments to | | 408. Assessments to | |
| 109. | | 409. | |
| 110. | | 410. | |
| 111. | | 411. | |
| 112. | | 412. | |
| **120. Gross Amount Due from Borrower** | | **420. Gross Amount Due to Seller** | |
| **200. Amounts Paid by or in Behalf of Borrower** | | **500. Reductions in Amount Due to Seller** | |
| 201. Deposit or earnest money | | 501. Excess deposit (see instructions) | |
| 202. Principal amount of new loan(s) | | 502. Settlement charges to seller (line 1400) | |
| 203. Existing loan(s) taken subject to | | 503. Existing loan(s) taken subject to | |
| 204. | | 504. Payoff of first mortgage loan | |
| 205. | | 505. Payoff of second mortgage loan | |
| 206. | | 506. | |
| 207. | | 507. | |
| 208. | | 508. | |
| 209. | | 509. | |
| **Adjustments for items unpaid by seller** | | **Adjustments for items unpaid by seller** | |
| 210. City/town taxes to | | 510. City/town taxes to | |
| 211. County taxes to | | 511. County taxes to | |
| 212. Assessments to | | 512. Assessments to | |
| 213. | | 513. | |
| 214. | | 514. | |
| 215. | | 515. | |
| 216. | | 516. | |
| 217. | | 517. | |
| 218. | | 518. | |
| 219. | | 519. | |
| **220. Total Paid by/for Borrower** | | **520. Total Reduction Amount Due Seller** | |
| **300. Cash at Settlement from/to Borrower** | | **600. Cash at Settlement to/from Seller** | |
| 301. Gross amount due from borrower (line 120) | | 601. Gross amount due to seller (line 420) | |
| 302. Less amounts paid by/for borrower (line 220) | ( ) | 602. Less reductions in amount due seller (line 520) | ( ) |
| **303. Cash** ☐ **From** ☐ **To Borrower** | | **603. Cash** ☐ **To** ☐ **From Seller** | |

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

| L. Settlement Charges | | |
|---|---|---|
| **700. Total Real Estate Broker Fees** | Paid From Borrower's Funds at Settlement | Paid From Seller's Funds at Settlement |
| Division of commission (line 700) as follows: | | |
| 701. $ to | | |
| 702. $ to | | |
| 703. Commission paid at settlement | | |
| 704. | | |
| **800. Items Payable in Connection with Loan** | | |
| 801. Our origination charge $ (from GFE #1) | | |
| 802. Your credit or charge (points) for the specific interest rate chosen $ (from GFE #2) | | |
| 803. Your adjusted origination charges (from GFE A) | | |
| 804. Appraisal fee to (from GFE #3) | | |
| 805. Credit report to (from GFE #3) | | |
| 806. Tax service to (from GFE #3) | | |
| 807. Flood certification (from GFE #3) | | |
| 808. | | |
| **900. Items Required by Lender to Be Paid in Advance** | | |
| 901. Daily interest charges from to @ $ /day (from GFE #10) | | |
| 902. Mortgage insurance premium for months to (from GFE #3) | | |
| 903. Homeowner's insurance for years to (from GFE #11) | | |
| 904. | | |
| **1000. Reserves Deposited with Lender** | | |
| 1001. Initial deposit for your escrow account (from GFE #9) | | |
| 1002. Homeowner's insurance months @ $ per month $ | | |
| 1003. Mortgage insurance months @ $ per month $ | | |
| 1004. Property taxes months @ $ per month $ | | |
| 1005. months @ $ per month $ | | |
| 1006. months @ $ per month $ | | |
| 1007. Aggregate Adjustment -$ | | |
| **1100. Title Charges** | | |
| 1101. Title services and lender's title insurance (from GFE #4) | | |
| 1102. Settlement or closing fee $ | | |
| 1103. Owner's title insurance (from GFE #5) | | |
| 1104. Lender's title insurance $ | | |
| 1105. Lender's title policy limit $ | | |
| 1106. Owner's title policy limit $ | | |
| 1107. Agent's portion of the total title insurance premium $ | | |
| 1108. Underwriter's portion of the total title insurance premium $ | | |
| **1200. Government Recording and Transfer Charges** | | |
| 1201. Government recording charges (from GFE #7) | | |
| 1202. Deed $ Mortgage $ Releases $ | | |
| 1203. Transfer taxes (from GFE #8) | | |
| 1204. City/County tax/stamps Deed $ Mortgage $ | | |
| 1205. State tax/stamps Deed $ Mortgage $ | | |
| 1206. | | |
| **1300. Additional Settlement Charges** | | |
| 1301. Required services that you can shop for (from GFE #6) | | |
| 1302. $ | | |
| 1303. $ | | |
| 1304. | | |
| 1305. | | |
| **1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)** | | |

| Comparison of Good Faith Estimate (GFE) and HUD-1 Charges | | Good Faith Estimate | HUD-1 |
|---|---|---|---|
| **Charges That Cannot Increase** | **HUD-1 Line Number** | | |
| Our origination charge | # 801 | | |
| Your credit or charge (points) for the specific interest rate chosen | # 802 | | |
| Your adjusted origination charges | # 803 | | |
| Transfer taxes | #1203 | | |

| Charges That in Total Cannot Increase More Than 10% | | Good Faith Estimate | HUD-1 |
|---|---|---|---|
| Government recording charges | # 1201 | | |
| | # | | |
| | # | | |
| | # | | |
| | # | | |
| | # | | |
| | # | | |
| | # | | |
| | Total | | |
| | Increase between GFE and HUD-1 Charges | $ or % | |

| Charges That Can Change | | Good Faith Estimate | HUD-1 |
|---|---|---|---|
| Initial deposit for your escrow account | #1001 | | |
| Daily interest charges | # 901 $ /day | | |
| Homeowner's insurance | # 903 | | |
| | # | | |
| | # | | |
| | # | | |

**Loan Terms**

| | |
|---|---|
| Your initial loan amount is | $ |
| Your loan term is | years |
| Your initial interest rate is | % |
| Your initial monthly amount owed for principal, interest, and and any mortgage insurance is | $ includes<br>☐ Principal<br>☐ Interest<br>☐ Mortgage Insurance |
| Can your interest rate rise? | ☐ No. ☐ Yes, it can rise to a maximum of %. The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than %. |
| Even if you make payments on time, can your loan balance rise? | ☐ No. ☐ Yes, it can rise to a maximum of $. |
| Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise? | ☐ No. ☐ Yes, the first increase can be on and the monthly amount owed can rise to $.<br>The maximum it can ever rise to is $. |
| Does your loan have a prepayment penalty? | ☐ No. ☐ Yes, your maximum prepayment penalty is $. |
| Does your loan have a balloon payment? | ☐ No. ☐ Yes, you have a balloon payment of $ due in years on . |
| Total monthly amount owed including escrow account payments | ☐ You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself.<br>☐ You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $. This includes principal, interest, any mortgage insurance and any items checked below:<br>☐ Property taxes ☐ Homeowner's insurance<br>☐ Flood insurance ☐<br>☐ ☐ |

**Note:** If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

OMB Approval No. 2502-0265

# Settlement Statement (HUD-1A)

## Optional Form for Transactions without Sellers

| | |
|---|---|
| Name and Address of Borrower: | Name and Address of Lender: |
| Property Location: (if different from above) | Settlement Agent: |
| | Place of Settlement: |
| Loan Number: | Settlement Date: |

| L. Settlement Charges | | |
|---|---|---|
| **800. Items Payable in Connection with Loan** | | |
| 801. Our origination charge | (from GFE #1) $ | |
| 802. Your credit or charge (points) for the specific interest rate chosen | (from GFE #2) $ | |
| 803. Your adjusted origination charges | (from GFE A) | |
| 804. Appraisal fee to | (from GFE #3) | |
| 805. Credit report to | (from GFE #3) | |
| 806. Tax service to | (from GFE #3) | |
| 807. Flood certification | (from GFE #3) | |
| 808. | | |
| **900. Items Required by Lender to Be Paid in Advance** | | |
| 901. Daily interest charges from to @ $ /day | (from GFE #10) | |
| 902. Mortgage insurance premium for months to | (from GFE #3) | |
| 903. Homeowner's insurance for years to | (from GFE #11) | |
| 904. | | |
| **1000. Reserves Deposited with Lender** | | |
| 1001. Initial deposit for your escrow account | (from GFE #9) | |
| 1002. Homeowner's insurance months @ $ per month | $ | |
| 1003. Mortgage insurance months @ $ per month | $ | |
| 1004. Property taxes months @ $ per month | $ | |
| 1005. months @ $ per month | $ | |
| 1006. months @ $ per month | $ | |
| 1007. Aggregate Adjustment | –$ | |
| **1100. Title Charges** | | |
| 1101. Title services and lender's title insurance | (from GFE #4) | |
| 1102. Settlement or closing fee | $ | |
| 1103. Owner's title insurance | (from GFE #5) | |
| 1104. Lender's title insurance | $ | |
| 1105. Lender's title policy limit $ | | |
| 1106. Owner's title policy limit $ | | |
| 1107. Agent's portion of the total title insurance premium | $ | |
| 1108. Underwriter's portion of the total title insurance premium | $ | |
| **1200. Government Recording and Transfer Charges** | | |
| 1201. Government recording charges | (from GFE #7) | |
| 1202. Deed $ Mortgage $ Releases $ | | |
| 1203. Transfer taxes | (from GFE #8) | |
| 1204. City/County tax/stamps Deed $ Mortgage $ | | |
| 1205. State tax/stamps Deed $ Mortgage $ | | |
| 1206. | | |
| **1300. Additional Settlement Charges** | | |
| 1301. Required services that you can shop for | (from GFE #6) | |
| 1302. | $ | |
| 1303. | $ | |
| 1304. | | |
| 1305. | | |
| **1400. Total Settlement Charges (enter on line 1602, Section N)** | | |

| M. Disbursements to Others | |
|---|---|
| 1501. | |
| 1502. | |
| 1503. | |
| 1504. | |
| 1505. | |
| 1506. | |
| 1507. | |
| 1508. | |
| 1509 | |
| 1510. | |
| 1511. | |
| 1512. | |
| 1513. | |
| 1514. | |
| 1515. | |
| **1520. Total Disbursed** (enter on line 1603) | |

| N. Net Settlement | |
|---|---|
| 1600. Loan Amount | $ |
| 1601. **Plus** Cash/Check from Borrower | $ |
| 1602. **Minus** Total Settlement Charges (line 1400) | $ |
| 1603. **Minus** Total Disbursements to Others (line 1520) | $ |
| 1604. **Equals** Total Disbursements to Borrower (after expiration of any applicable rescission period required by law) | $ |

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.

| Comparison of Good Faith Estimate (GFE) and HUD-1 Charges | | Good Faith Estimate | HUD-1 |
|---|---|---|---|
| **Charges That Cannot Increase** | **HUD-1 Line Number** | | |
| Our origination charge | # 801 | | |
| Your credit or charge (points) for the specific interest rate chosen | # 802 | | |
| Your adjusted origination charges | # 803 | | |
| Transfer taxes | #1203 | | |

| Charges That In Total Cannot Increase More Than 10% | | Good Faith Estimate | HUD-1 |
|---|---|---|---|
| Government recording charges | # 1201 | | |
| | # | | |
| | # | | |
| | # | | |
| | # | | |
| | # | | |
| | # | | |
| | # | | |
| | Total | | |
| | Increase between GFE and HUD-1 Charges | $ or % | |

| Charges That Can Change | | Good Faith Estimate | HUD-1 |
|---|---|---|---|
| Initial deposit for your escrow account | #1001 | | |
| Daily interest charges | # 901 $ /day | | |
| Homeowner's insurance | # 903 | | |
| | # | | |
| | # | | |
| | # | | |

**Loan Terms**

| | |
|---|---|
| Your initial loan amount is | $ |
| Your loan term is | years |
| Your initial interest rate is | % |
| Your initial monthly amount owed for principal, interest, and and any mortgage insurance is | $ includes<br>☐ Principal<br>☐ Interest<br>☐ Mortgage Insurance |
| Can your interest rate rise? | ☐ No. ☐ Yes, it can rise to a maximum of %. The first change will be on and can change again every after . Every change date, your interest rate can increase or decrease by %. Over the life of the loan, your interest rate is guaranteed to never be lower than % or higher than %. |
| Even if you make payments on time, can your loan balance rise? | ☐ No. ☐ Yes, it can rise to a maximum of $. |
| Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise? | ☐ No. ☐ Yes, the first increase can be on and the monthly amount owed can rise to $.<br>The maximum it can ever rise to is $. |
| Does your loan have a prepayment penalty? | ☐ No. ☐ Yes, your maximum prepayment penalty is $. |
| Does your loan have a balloon payment? | ☐ No. ☐ Yes, you have a balloon payment of $ due in years on . |
| Total monthly amount owed including escrow account payments | ☐ You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself.<br>☐ You have an additional monthly escrow payment of $ that results in a total initial monthly amount owed of $. This includes principal, interest, any mortgage insurance and any items checked below:<br>☐ Property taxes ☐ Homeowner's insurance<br>☐ Flood insurance ☐<br>☐ ☐ |

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

## Appendix B to Part 1024—Illustrations of Requirements of RESPA

The following illustrations provide additional guidance on the meaning and coverage of the provisions of RESPA. Other provisions of Federal or state law may also be applicable to the practices and payments discussed in the following illustrations.

1. *Facts:* A, a provider of settlement services, provides settlement services at abnormally low rates or at no charge at all to B, a builder, in connection with a subdivision being developed by B. B agrees to refer purchasers of the completed homes in the subdivision to A for the purchase of settlement services in connection with the sale of individual lots by B.

*Comments:* The rendering of services by A to B at little or no charge constitutes a thing of value given by A to B in return for the referral of settlement services business, and both A and B are in violation of section 8 of RESPA.

2. *Facts:* B, a lender, encourages persons who receive federally related mortgage loans from it to employ A, an attorney, to perform title searches and related settlement services in connection with their transaction. B and A have an understanding that in return for the referral of this business A provides legal services to B or B's officers or employees at abnormally low rates or for no charge.

*Comments:* Both A and B are in violation of section 8 of RESPA. Similarly, if an attorney gives a portion of his or her fees to another attorney, a lender, a real estate broker or any other provider of settlement services, who had referred prospective clients to the attorney, section 8 would be violated by both persons.

3. *Facts:* A, a real estate broker, obtains all necessary licenses under state law to act as a title insurance agent. A refers individuals who are purchasing homes in transactions in which A participates as a broker to B, an unaffiliated title company, for the purchase of title insurance services. A performs minimal, if any, title services in connection with the issuance of the title insurance policy (such as placing an application with the title company). B pays A a commission (or A retains a portion of the title insurance premium) for the transactions or alternatively B receives a portion of the premium paid directly from the purchaser.

*Comments:* The payment of a commission or portion of the title insurance premium by B to A, or receipt of a portion of the payment for title insurance under circumstances where no substantial services are being performed by A, is a violation of section 8 of RESPA. It makes no difference whether the payment comes from B or the purchaser. The amount of the payment must bear a reasonable relationship to the services rendered. Here A really is being compensated for a referral of business to B.

4. *Facts:* A is an attorney who, as a part of his legal representation of clients in residential real estate transactions, orders and reviews title insurance policies for his clients. A enters into a contract with B, a title company, to be an agent of B under a program set up by B. Under the agreement, A agrees to prepare and forward title insurance applications to B, to re-examine the preliminary title commitment for accuracy and if he chooses to attempt to clear exceptions to the title policy before closing. A agrees to assume liability for waiving certain exceptions to title, but never exercises this authority. B performs the necessary title search and examination work, determines insurability of title, prepares documents containing substantive information in title commitments, handles closings for A's clients and issues title policies. A receives a fee from his client for legal services and an additional fee for his title agent ''services'' from the client's title insurance premium to B.

*Comments:* A and B are violating section 8 of RESPA. Here, A's clients are being double billed because the work A performs as a ''title agent'' is that which he already performs for his client in his capacity as an attorney. For A to receive a separate payment as a title agent, A must perform necessary core title work and may not contract out the work. To receive additional compensation as a title agent for this transaction, A must provide his client with core title agent services for which he assumes liability, and which includes at a minimum, the evaluation of the title search to determine insurability of the title, and the issuance of a title commitment where customary, the clearance of underwriting objections, and the actual issuance of the policy or policies on behalf of the title company. A may not be compensated for the mere re-examination of work performed by B. Here, A is not performing these services and may not be compensated as a title agent under section 8(c)(1)(B). Referral fees or splits of fees may not be disguised as title agent commissions when the core title agent work is not performed. Further, because B created the program and gave A the opportunity to collect fees (a thing of value) in exchange for the referral of settlement service business, it has violated section 8 of RESPA.

5. *Facts:* A, a ''mortgage originator,'' receives loan applications, funds the loans with its own money or with a wholesale line of credit for which A is liable, and closes the loans in A's own name. Subsequently, B, a mortgage lender, purchases the loans and compensates A for the value of the loans, as well as for any mortgage servicing rights.

*Comments:* Compensation for the sale of a mortgage loan and servicing rights constitutes a secondary market transaction, rather than a referral fee, and is beyond the scope of section 8 of RESPA. For purposes of section 8, in determining whether a *bona fide* transfer of the loan obligation has taken place, the Bureau examines the real source of funding, and the real interest of the named settlement lender.

6. *Facts.* A, a credit reporting company, places a facsimile transmission machine (FAX) in the office of B, a mortgage lender, so that B can easily transmit requests for credit reports and A can respond. A supplies the FAX machine at no cost or at a reduced rental rate based on the number of credit reports ordered.

*Comments:* Either situation violates section 8 of RESPA. The FAX machine is a thing of value that A provides in exchange for the referral of business from B. Copying machines, computer terminals, printers, or other like items which have general use to the recipient and which are given in exchange for referrals of business also violate RESPA.

7. *Facts:* A, a real estate broker, refers title business to B, a company that is a licensed title agent for C, a title insurance company. A owns more than 1% of B. B performs the title search and examination, makes determinations of insurability, issues the commitment, clears underwriting objections, and issues a policy of title insurance on behalf of C, for which C pays B a commission. B pays annual dividends to its owners, including A, based on the relative amount of business each of its owners refers to B.

*Comments:* The facts involve an affiliated business arrangement. The payment of a commission by C to B is not a violation of section 8 of RESPA if the amount of the commission constitutes reasonable compensation for the services performed by B for C. The payment of a dividend or the giving of any other thing of value by B to A that is based on the amount of business referred to B by A does not meet the affiliated business agreement exemption provisions and such actions violate section 8. Similarly, if the amount of stock held by A in B (or, if B were a partnership, the distribution of partnership profits by B to A) varies based on the amount of business referred or expected to be referred, or if B retained any funds for subsequent distribution to A where such funds were generally in proportion to the amount of business A referred to B relative to the amount referred by other owners, such arrangements would violate section 8. The exemption for controlled business arrangements would not be available because the payments here would not be considered returns on ownership interests. Further, the required disclosure of the affiliated business arrangement and estimated charges have not been provided.

8. *Facts:* Same as illustration 7, but B pays annual dividends in proportion to the amount of stock held by its owners, including A, and the distribution of annual dividends is not based on the amount of business referred or expected to be referred.

*Comments:* If A and B meet the requirements of the affiliated business arrangement exemption there is not a violation of RESPA. Since the payment is a return on ownership interests, A and B will be exempt from section 8 if (1) A also did not require anyone to use the services of B, and (2) A disclosed its ownership interest in B on a separate disclosure form and provided an estimate of B's charges to each person referred by A to B (see Appendix D of this part), and (3) B makes no payment (nor is there any other thing of value exchanged) to A other than dividends.

9. *Facts:* A, a franchisor for franchised real estate brokers, owns B, a provider of settlement services. C, a franchisee of A, refers business to B.

*Comments:* This is an affiliated business arrangement. A, B and C will all be exempt from section 8 if C discloses its franchise relationship with the owner of B on a

separate disclosure form and provides an estimate of B's charges to each person referred to B (see Appendix D of this part) and C does not require anyone to use B's services and A gives no thing a value to C under the franchise agreement (such as an adjusted level of franchise payment based on the referrals), and B makes no payments to A other than dividends representing a return on ownership interest (rather than, *e.g.,* an adjusted level of payment being based on the referrals). Nor may B pay C anything of value for the referral.

10. *Facts:* A is a real estate broker who refers business to its affiliate title company B. A makes all required written disclosures to the homebuyer of the arrangement and estimated charges and the homebuyer is not required to use B. B refers or contracts out business to C who does all the title work and splits the fee with B. B passes its fee to A in the form of dividends, a return on ownership interest.

*Comments:* The relationship between A and B is an affiliated business arrangement. However, the affiliated business arrangement exemption does not provide exemption between an affiliated entity, B, and a third party, C. Here, B is a mere ''shell'' and provides no substantive services for its portion of the fee. The arrangement between B and C would be in violation of section 8(a) and (b). Even if B had an affiliate relationship with C, the required exemption criteria have not been met and the relationship would be subject to section 8.

11. *Facts:* A, a mortgage lender is affiliated with B, a title company, and C, an escrow company and offers consumers a package of mortgage title and escrow services at a discount from the prices at which such services would be sold if purchased separately. Neither A, B, nor C requires consumers to purchase the services of their sister companies and each company sells such services separately and as part of the package. A also pays its employees (*e.g.,* loan officers, secretaries, *etc.*) a bonus for each loan, title insurance or closing that A's employees generate for A, B, or C respectively. A pays such employee bonuses out of its own funds and receives no payments or reimbursements for such bonuses from B or C. At or before the time that customers are told by A or its employees about the services offered by B and C and/or the package of services that is available, the customers are provided with an affiliated business disclosure form.

*Comments:* A's selling of a package of settlement services at a discount to a settlement service purchaser does not violate section 8 of RESPA. A's employees are making appropriate affiliated business disclosures and since the services are available separately and as part of a package, there is not ''required use'' of the additional services. A's payments of bonuses to its employees for the referral of business to A or A's affiliates, B and C, are exempt from section 8 under § 1024.14(g)(1). However, if B or C reimbursed A for any bonuses that A paid to its employees for referring business to B or C, such reimbursements would violate section 8. Similarly, if B or C paid bonuses to A's employees directly for generating business for them, such payments would violate section 8.

12. *Facts.* A is a mortgage broker who provides origination services to submit a loan to a Lender for approval. The mortgage broker charges the borrower a uniform fee for the total origination services, as well as a direct up-front charge for reimbursement of credit reporting, appraisal services or similar charges.

*Comment.* The mortgage broker's fee must be itemized in the Good Faith Estimate and on the HUD–1 Settlement Statement. Other charges which are paid for by the borrower and paid in advance are listed as P.O.C. on the HUD–1 Settlement Statement, and reflect the actual provider charge for such services. Also, any other fee or payment received by the mortgage broker from either the lender or the borrower arising from the initial funding transaction, including a servicing release premium or yield spread premium, is to be noted on the Good Faith Estimate and listed in the 800 series of the HUD–1 Settlement Statement.

13. *Facts.* A is a dealer in home improvements who has established funding arrangements with several lenders. Customers for home improvements receive a proposed contract from A. The proposal requires that customers both execute forms authorizing a credit check and employment verification, and frequently, execute a dealer consumer credit contract secured by a lien on the customer's (borrower's) 1- to 4-family residential property. Simultaneously with the completion and certification of the home improvement work, the note is assigned by the dealer to a funding lender.

*Comments.* The loan that is assigned to the funding lender is a loan covered by RESPA, when a lien is placed on the borrower's 1- to 4-family residential structure. The dealer loan or consumer credit contract originated by a dealer is also a RESPA-covered transaction, except when the dealer is not a ''creditor'' under the definition of ''federally related mortgage loan'' in § 1024.2. The lender to whom the loan will be assigned is responsible for assuring that the lender or the dealer delivers to the borrower a Good Faith Estimate of closing costs consistent with Regulation X, and that the HUD–1 or HUD–1A Settlement Statement is used in conjunction with the settlement of the loan to be assigned. A dealer who, under § 1024.2, is covered by RESPA as a creditor is responsible for the Good Faith Estimate of Closing Costs and the use of the appropriate settlement statement in connection with the loan.

## Appendix C to Part 1024—Instructions for Completing Good Faith Estimate (GFE) Form

The following are instructions for completing the GFE required under section 5 of RESPA and 12 CFR 1024.7 of the Bureau regulations. The standardized form set forth in this Appendix is the required GFE form and must be provided exactly as specified; provided, however, preparers may replace HUD's OMB approval number listed on the form with the Bureau's OMB approval number when they reproduce the GFE form. The instructions for completion of the GFE are primarily for the benefit of the loan originator who prepares the form and need not be transmitted to the borrower(s) as an integral part of the GFE. The required standardized GFE form must be prepared completely and accurately. A separate GFE must be provided for each loan where a transaction will involve more than one mortgage loan.

### General Instructions

The loan originator preparing the GFE may fill in information and amounts on the form by typewriter, hand printing, computer printing, or any other method producing clear and legible results. Under these instructions, the ''form'' refers to the required standardized GFE form. Although the standardized GFE is a prescribed form, Blocks 3, 6, and 11 on page 2 may be adapted for use in particular loan situations, so that additional lines may be inserted there, and unused lines may be deleted.

All fees for categories of charges shall be disclosed in U.S. dollar and cent amounts.

### Specific Instructions

*Page 1*

*Top of the Form*—The loan originator must enter its name, business address, telephone number, and email address, if any, on the top of the form, along with the applicant's name, the address or location of the property for which financing is sought, and the date of the GFE.

''*Purpose.*''—This section describes the general purpose of the GFE as well as additional information available to the applicant.

''*Shopping for your loan.*''—This section requires no loan originator action.

''*Important dates.*''—This section briefly states important deadlines after which the loan terms that are the subject of the GFE may not be available to the applicant. In Line 1, the loan originator must state the date and, if necessary, time until which the interest rate for the GFE will be available. In Line 2, the loan originator must state the date until which the estimate of all other settlement charges for the GFE will be available. This date must be at least 10 business days from the date of the GFE. In Line 3, the loan originator must state how many calendar days within which the applicant must go to settlement once the interest rate is locked. In Line 4, the loan originator must state how many calendar days prior to settlement the interest rate would have to be locked, if applicable.

''*Summary of your loan*''—In this section, for all loans the loan originator must fill in, where indicated:

(i) The initial loan amount;

(ii) The loan term; and

(iii) The initial interest rate.

The loan originator must fill in the initial monthly amount owed for principal, interest, and any mortgage insurance. The amount shown must be the greater of: (1) The required monthly payment for principal and interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment; or (2) the accrued interest for the first regularly scheduled payment, plus any monthly mortgage insurance payment.

The loan originator must indicate whether the interest rate can rise, and, if it can, must insert the maximum rate to which it can rise over the life of the loan. The loan originator must also indicate the period of time after which the interest rate can first change.

The loan originator must indicate whether the loan balance can rise even if the borrower makes payments on time, for example in the case of a loan with negative amortization. If it can, the loan originator must insert the maximum amount to which the loan balance can rise over the life of the loan. For Federal, state, local, or tribal housing programs that provide payment assistance, any repayment of such program assistance should be excluded from consideration in completing this item. If the loan balance will increase only because escrow items are being paid through the loan balance, the loan originator is not required to check the box indicating that the loan balance can rise.

The loan originator must indicate whether the monthly amount owed for principal, interest, and any mortgage insurance can rise even if the borrower makes payments on time. If the monthly amount owed can rise even if the borrower makes payments on time, the loan originator must indicate the period of time after which the monthly amount owed can first change, the maximum amount to which the monthly amount owed can rise at the time of the first change, and the maximum amount to which the monthly amount owed can rise over the life of the loan. The amount used for the monthly amount owed must be the greater of: (1) The required monthly payment for principal and interest for that month, plus any monthly mortgage insurance payment; or (2) the accrued interest for that month, plus any monthly mortgage insurance payment.

The loan originator must indicate whether the loan includes a prepayment penalty, and, if so, the maximum amount that it could be.

The loan originator must indicate whether the loan requires a balloon payment and, if so, the amount of the payment and in how many years it will be due.

''*Escrow account information.*''—The loan originator must indicate whether the loan includes an escrow account for property taxes and other financial obligations. The amount shown in the ''Summary of your loan'' section for ''Your initial monthly amount owed for principal, interest, and any mortgage insurance'' must be entered in the space for the monthly amount owed in this section.

''*Summary of your settlement charges.*''—On this line, the loan originator must state the Adjusted Origination Charges from subtotal A of page 2, the Charges for All Other Settlement Services from subtotal B of page 2, and the Total Estimated Settlement Charges from the bottom of page 2.

*Page 2*

''*Understanding your estimated settlement charges.*''—This section details 11 settlement cost categories and amounts associated with the mortgage loan. For purposes of determining whether a tolerance has been met, the amount on the GFE should be compared with the total of any amounts shown on the HUD–1 in the borrower's column and any amounts paid outside closing by or on behalf of the borrower.

*''Your Adjusted Origination Charges''*

Block 1, ''*Our origination charge.*''—The loan originator must state here all charges that all loan originators involved in this transaction will receive, except for any charge for the specific interest rate chosen (points). A loan originator may not separately charge any additional fees for getting this loan, including for application, processing, or underwriting. The amount stated in Block 1 is subject to zero tolerance, *i.e.,* the amount may not increase at settlement.

Block 2, ''*Your credit or charge (points) for the specific interest rate chosen.*''—For transactions involving mortgage brokers, the mortgage broker must indicate through check boxes whether there is a credit to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of the credit, or whether there is an additional charge (points) to the borrower for the interest rate chosen on the loan, the interest rate, and the amount of that charge. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For transactions without a mortgage broker, the lender may choose not to separately disclose in this block any credit or charge for the interest rate chosen on the loan; however, if this block does not include any positive or negative figure, the lender must check the first box to indicate that ''The credit or charge for the interest rate you have chosen'' is included in ''Our origination charge'' above (see Block 1 instructions above), must insert the interest rate, and must also insert ''0'' in Block 2. Only one of the boxes may be checked; a credit and charge cannot occur together in the same transaction.

For a mortgage broker, the credit or charge for the specific interest rate chosen is the net payment to the mortgage broker from the lender (*i.e.,* the sum of all payments to the mortgage broker from the lender, including payments based on the loan amount, a flat rate, or any other computation, and in a table funded transaction, the loan amount less the price paid for the loan by the lender). When the net payment to the mortgage broker from the lender is positive, there is a credit to the borrower and it is entered as a negative amount in Block 2 of the GFE. When the net payment to the mortgage broker from the lender is negative, there is a charge to the borrower and it is entered as a positive amount in Block 2 of the GFE. If there is no net payment (*i.e.,* the credit or charge for the specific interest rate chosen is zero), the mortgage broker must insert ''0'' in Block 2 and may check either the box indicating there is a credit of ''0'' or the box indicating there is a charge of ''0''.

The amount stated in Block 2 is subject to zero tolerance while the interest rate is locked, *i.e.,* any credit for the interest rate chosen cannot decrease in absolute value terms and any charge for the interest rate chosen cannot increase. (**Note:** An increase in the credit is allowed since this increase is a reduction in cost to the borrower. A decrease in the credit is not allowed since it is an increase in cost to the borrower.)

Line A, ''*Your Adjusted Origination Charges.*''—The loan originator must add the numbers in Blocks 1 and 2 and enter this subtotal at highlighted Line A. The subtotal at Line A will be a negative number if there is a credit in Block 2 that exceeds the charge in Block 1. The amount stated in Line A is subject to zero tolerance while the interest rate is locked.

In the case of ''no cost'' loans, where ''no cost'' refers only to the loan originator's fees, Line A must show a zero charge as the adjusted origination charge. In the case of ''no cost'' loans where ''no cost'' encompasses third party fees as well as the upfront payment to the loan originator, all of the third party fees listed in Block 3 through Block 11 to be paid for by the loan originator (or borrower, if any) must be itemized and listed on the GFE. The credit for the interest rate chosen must be large enough that the total for Line A will result in a negative number to cover the third party fees.

*''Your Charges for All Other Settlement Services''*

There is a 10 percent tolerance applied to the sum of the prices of each service listed in Block 3, Block 4, Block 5, Block 6, and Block 7, where the loan originator requires the use of a particular provider or the borrower uses a provider selected or identified by the loan originator. Any services in Block 4, Block 5, or Block 6 for which the borrower selects a provider other than one identified by the loan originator are not subject to any tolerance and, at settlement, would not be included in the sum of the charges on which the 10 percent tolerance is based. Where a loan originator permits a borrower to shop for third party settlement services, the loan originator must provide the borrower with a written list of settlement services providers at the time of the GFE, on a separate sheet of paper.

Block 3, ''*Required services that we select.*''—In this block, the loan originator must identify each third party settlement service required and selected by the loan originator (excluding title services), along with the estimated price to be paid to the provider of each service. Examples of such third party settlement services might include provision of credit reports, appraisals, flood checks, tax services, and any upfront mortgage insurance premium. The loan originator must identify the specific required services and provide an estimate of the price of each service. Loan originators are also required to add the individual charges disclosed in this block and place that total in the column of this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 4, ''*Title services and lender's title insurance.*''—In this block, the loan originator must state the estimated total charge for third party settlement service providers for all closing services, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator. The loan originator must also include any lender's title insurance premiums, when required, regardless of whether the provider is selected or paid for by the borrower, seller, or loan originator. All fees for title searches,

examinations, and endorsements, for example, would be included in this total. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 5, ''*Owner's title insurance.*''—In this block, for all purchase transactions the loan originator must provide an estimate of the charge for the owner's title insurance and related endorsements, regardless of whether the providers are selected or paid for by the borrower, seller, or loan originator. For non-purchase transactions, the loan originator may enter ''NA'' or ''Not Applicable'' in this Block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 6, ''*Required services that you can shop for.*''—In this block, the loan originator must identify each third party settlement service required by the loan originator where the borrower is permitted to shop for and select the settlement service provider (excluding title services), along with the estimated charge to be paid to the provider of each service. The loan originator must identify the specific required services (*e.g.,* survey, pest inspection) and provide an estimate of the charge of each service. The loan originator must also add the individual charges disclosed in this block and place the total in the column of this block. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 7, ''*Government recording charge.*''—In this block, the loan originator must estimate the state and local government fees for recording the loan and title documents that can be expected to be charged at settlement. The charge shown in this block is subject to an overall 10 percent tolerance as described above.

Block 8, ''*Transfer taxes.*''—In this block, the loan originator must estimate the sum of all state and local government fees on mortgages and home sales that can be expected to be charged at settlement, based upon the proposed loan amount or sales price and on the property address. A zero tolerance applies to the sum of these estimated fees.

Block 9, ''*Initial deposit for your escrow account.*''—In this block, the loan originator must estimate the amount that it will require the borrower to place into a reserve or escrow account at settlement to be applied to recurring charges for property taxes, homeowner's and other similar insurance, mortgage insurance, and other periodic charges. The loan originator must indicate through check boxes if the reserve or escrow account will cover future payments for all tax, all hazard insurance, and other obligations that the loan originator requires to be paid as they fall due. If the reserve or escrow account includes some, but not all, property taxes or hazard insurance, or if it includes mortgage insurance, the loan originator should check ''other'' and then list the items included.

Block 10, ''*Daily interest charges.*''—In this block, the loan originator must estimate the total amount that will be due at settlement for the daily interest on the loan from the date of settlement until the first day of the first period covered by scheduled mortgage payments. The loan originator must also indicate how this total amount is calculated by providing the amount of the interest charges per day and the number of days used in the calculation, based on a stated projected closing date.

Block 11, ''*Homeowner's insurance.*''—The loan originator must estimate in this block the total amount of the premiums for any hazard insurance policy and other similar insurance, such as fire or flood insurance that must be purchased at or before settlement to meet the loan originator's requirements. The loan originator must also separately indicate the nature of each type of insurance required along with the charges. To the extent a loan originator requires that such insurance be part of an escrow account, the amount of the initial escrow deposit must be included in Block 9.

Line B, ''*Your Charges for All Other Settlement Services.*''—The loan originator must add the numbers in Blocks 3 through 11 and enter this subtotal in the column at highlighted Line B.

Line A+B, ''*Total Estimated Settlement Charges.*''—The loan originator must add the subtotals in the right-hand column at highlighted Lines A and B and enter this total in the column at highlighted Line A+B.

*Page 3*

*''Instructions''*

''*Understanding which charges can change at settlement.*''—This section informs the applicant about which categories of settlement charges can increase at closing, and by how much, and which categories of settlement charges cannot increase at closing. This section requires no loan originator action.

''*Using the tradeoff table.*''—This section is designed to make borrowers aware of the relationship between their total estimated settlement charges on one hand, and the interest rate and resulting monthly payment on the other hand. The loan originator must complete the left hand column using the loan amount, interest rate, monthly payment figure, and the total estimated settlement charges from page 1 of the GFE. The loan originator, at its option, may provide the borrower with the same information for two alternative loans, one with a higher interest rate, if available, and one with a lower interest rate, if available, from the loan originator. The loan originator should list in the tradeoff table only alternative loans for which it would presently issue a GFE based on the same information the loan originator considered in issuing this GFE. The alternative loans must use the same loan amount and be otherwise identical to the loan in the GFE. The alternative loans must have, for example, the identical number of payment periods; the same margin, index, and adjustment schedule if the loans are adjustable rate mortgages; and the same requirements for prepayment penalty and balloon payments. If the loan originator fills in the tradeoff table, the loan originator must show the borrower the loan amount, alternative interest rate, alternative monthly payment, the change in the monthly payment from the loan in this GFE to the alternative loan, the change in the total settlement charges from the loan in this GFE to the alternative loan, and the total settlement charges for the alternative loan. If these options are available, an applicant may request a new GFE, and a new GFE must be provided by the loan originator.

''*Using the shopping chart.*''—This chart is a shopping tool to be provided by the loan originator for the borrower to complete, in order to compare GFEs.

''*If your loan is sold in the future.*''—This section requires no loan originator action.

BILLING CODE 4810–AM–P

OMB Approval No. 2502-0265

# Good Faith Estimate (GFE)

| | |
|---|---|
| Name of Originator | Borrower |
| Originator Address | Property Address |
| Originator Phone Number | |
| Originator Email | Date of GFE |

## Purpose

This GFE gives you an estimate of your settlement charges and loan terms if you are approved for this loan. For more information, see HUD's *Special Information Booklet* on settlement charges, your *Truth-in-Lending Disclosures*, and other consumer information at www.hud.gov/respa. If you decide you would like to proceed with this loan, contact us.

## Shopping for your loan

Only you can shop for the best loan for you. Compare this GFE with other loan offers, so you can find the best loan. Use the shopping chart on page 3 to compare all the offers you receive.

## Important dates

1. The interest rate for this GFE is available through _____. After this time, the interest rate, some of your loan Origination Charges, and the monthly payment shown below can change until you lock your interest rate.
2. This estimate for all other settlement charges is available through _____.
3. After you lock your interest rate, you must go to settlement within ☐ days (your rate lock period) to receive the locked interest rate.
4. You must lock the interest rate at least ☐ days before settlement.

## Summary of your loan

| | | |
|---|---|---|
| Your initial loan amount is | $ | |
| Your loan term is | years | |
| Your initial interest rate is | % | |
| Your initial monthly amount owed for principal, interest, and any mortgage insurance is | $ per month | |
| Can your interest rate rise? | ☐ No | ☐ Yes, it can rise to a maximum of %. The first change will be in . |
| Even if you make payments on time, can your loan balance rise? | ☐ No | ☐ Yes, it can rise to a maximum of $ |
| Even if you make payments on time, can your monthly amount owed for principal, interest, and any mortgage insurance rise? | ☐ No | ☐ Yes, the first increase can be in and the monthly amount owed can rise to $ . The maximum it can ever rise to is $ . |
| Does your loan have a prepayment penalty? | ☐ No | ☐ Yes, your maximum prepayment penalty is $ . |
| Does your loan have a balloon payment? | ☐ No | ☐ Yes, you have a balloon payment of $ due in years. |

## Escrow account information

Some lenders require an escrow account to hold funds for paying property taxes or other property-related charges in addition to your monthly amount owed of $ _____.

Do we require you to have an escrow account for your loan?

☐ No, you do not have an escrow account. You must pay these charges directly when due.

☐ Yes, you have an escrow account. It may or may not cover all of these charges. Ask us.

## Summary of your settlement charges

| | | |
|---|---|---|
| A | Your Adjusted Origination Charges *(See page 2)* | $ |
| B | Your Charges for All Other Settlement Services *(See page 2)* | $ |
| A + B | Total Estimated Settlement Charges | $ |

## Understanding your estimated settlement charges

| Your Adjusted Origination Charges | |
|---|---|
| 1. **Our origination charge**<br>This charge is for getting this loan for you. | |
| 2. **Your credit or charge (points) for the specific interest rate chosen**<br>☐ The credit or charge for the interest rate of [ ] % is included in "Our origination charge." (See item 1 above.)<br>☐ You receive a credit of $ [ ] for this interest rate of [ ] %. This credit **reduces** your settlement charges.<br>☐ You pay a charge of $ [ ] for this interest rate of [ ] %. This charge (points) **increases** your total settlement charges.<br>The tradeoff table on page 3 shows that you can change your total settlement charges by choosing a different interest rate for this loan. | |
| **A** Your Adjusted Origination Charges | $ |

*Some of these charges can change at settlement. See the top of page 3 for more information.*

| Your Charges for All Other Settlement Services | |
|---|---|
| 3. **Required services that we select**<br>These charges are for services we require to complete your settlement. We will choose the providers of these services.<br>*Service* / *Charge* | |
| 4. **Title services and lender's title insurance**<br>This charge includes the services of a title or settlement agent, for example, and title insurance to protect the lender, if required. | |
| 5. **Owner's title insurance**<br>You may purchase an owner's title insurance policy to protect your interest in the property. | |
| 6. **Required services that you can shop for**<br>These charges are for other services that are required to complete your settlement. We can identify providers of these services or you can shop for them yourself. Our estimates for providing these services are below.<br>*Service* / *Charge* | |
| 7. **Government recording charges**<br>These charges are for state and local fees to record your loan and title documents. | |
| 8. **Transfer taxes**<br>These charges are for state and local fees on mortgages and home sales. | |
| 9. **Initial deposit for your escrow account**<br>This charge is held in an escrow account to pay future recurring charges on your property and includes ☐ all property taxes, ☐ all insurance, and ☐ other [ ]. | |
| 10. **Daily interest charges**<br>This charge is for the daily interest on your loan from the day of your settlement until the first day of the next month or the first day of your normal mortgage payment cycle. This amount is $[ ] per day for [ ] days (if your settlement is [ ] ). | |
| 11. **Homeowner's insurance**<br>This charge is for the insurance you must buy for the property to protect from a loss, such as fire.<br>*Policy* / *Charge* | |
| **B** Your Charges for All Other Settlement Services | $ |
| **A** + **B** Total Estimated Settlement Charges | $ |

# Instructions

## Understanding which charges can change at settlement

This GFE estimates your settlement charges. At your settlement, you will receive a HUD-1, a form that lists your actual costs. Compare the charges on the HUD-1 with the charges on this GFE. Charges can change if you select your own provider and do not use the companies we identify. (See below for details.)

| These charges **cannot increase** at settlement: | The total of these charges **can increase up to 10%** at settlement: | These charges **can change** at settlement: |
|---|---|---|
| ▪ Our origination charge<br>▪ Your credit or charge (points) for the specific interest rate chosen *(after you lock in your interest rate)*<br>▪ Your adjusted origination charges *(after you lock in your interest rate)*<br>▪ Transfer taxes | ▪ Required services that we select<br>▪ Title services and lender's title insurance *(if we select them or you use companies we identify)*<br>▪ Owner's title insurance *(if you use companies we identify)*<br>▪ Required services that you can shop for *(if you use companies we identify)*<br>▪ Government recording charges | ▪ Required services that you can shop for *(if you do not use companies we identify)*<br>▪ Title services and lender's title insurance *(if you do not use companies we identify)*<br>▪ Owner's title insurance *(if you do not use companies we identify)*<br>▪ Initial deposit for your escrow account<br>▪ Daily interest charges<br>▪ Homeowner's insurance |

## Using the tradeoff table

In this GFE, we offered you this loan with a particular interest rate and estimated settlement charges. However:

- If you want to choose this same loan with **lower settlement charges,** then you will have a **higher interest rate.**
- If you want to choose this same loan with a **lower interest rate,** then you will have **higher settlement charges.**

If you would like to choose an available option, you must ask us for a new GFE.

*Loan originators have the option to complete this table. Please ask for additional information if the table is not completed.*

| | **The loan in this GFE** | **The same loan with lower settlement charges** | **The same loan with a lower interest rate** |
|---|---|---|---|
| Your initial loan amount | $ | $ | $ |
| Your initial interest rate[1] | % | % | % |
| Your initial monthly amount owed | $ | $ | $ |
| Change in the monthly amount owed from this GFE | No change | You will pay $ **more** every month | You will pay $ **less** every month |
| Change in the amount you will pay at settlement with this interest rate | No change | Your settlement charges will be **reduced** by $ | Your settlement charges will **increase** by $ |
| How much your total estimated settlement charges will be | $ | $ | $ |

[1] *For an adjustable rate loan, the comparisons above are for the initial interest rate before adjustments are made.*

## Using the shopping chart

Use this chart to compare GFEs from different loan originators. Fill in the information by using a different column for each GFE you receive. By comparing loan offers, you can shop for the best loan.

| | **This loan** | **Loan 2** | **Loan 3** | **Loan 4** |
|---|---|---|---|---|
| Loan originator name | | | | |
| Initial loan amount | | | | |
| Loan term | | | | |
| Initial interest rate | | | | |
| Initial monthly amount owed | | | | |
| Rate lock period | | | | |
| Can interest rate rise? | | | | |
| Can loan balance rise? | | | | |
| Can monthly amount owed rise? | | | | |
| Prepayment penalty? | | | | |
| Balloon payment? | | | | |
| **Total Estimated Settlement Charges** | | | | |

## If your loan is sold in the future

Some lenders may sell your loan after settlement. Any fees lenders receive in the future cannot change the loan you receive or the charges you paid at settlement.

## Appendix D to Part 1024

*Affiliated Business Arrangement Disclosure Statement Format Notice*

To: _____

From: _____

(Entity Making Statement)

Property: _____

Date: _____

This is to give you notice that [*referring party*] has a business relationship with [*settlement services provider(s)*]. [Describe the nature of the relationship between the referring party and the provider(s), including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [*referring party*] a financial or other benefit.

[A.] Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for [settlement of your loan on] [or] [purchase, sale, or refinance of] the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

[*provider and settlement service*] _____

_____

_____

[*charge or range of charges*] _____

_____

_____

[B.] Set forth below is the estimated charge or range of charges for the settlement services of an attorney, credit reporting agency, or real estate appraiser that we, as your lender, will require you to use, as a condition of your loan on this property, to represent our interests in the transaction.

[*provider and settlement service*] _____

_____

_____

[*charge or range of charges*] _____

_____

_____

ACKNOWLEDGMENT

I/we have read this disclosure form, and understand that *referring party* is referring me/us to purchase the above-described settlement service(s) and may receive a financial or other benefit as the result of this referral.

_____

Signature

[INSTRUCTIONS TO PREPARER:] [Use paragraph A for referrals other than those by a lender to an attorney, a credit reporting agency, or a real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. Use paragraph B for those referrals to an attorney, credit reporting agency, or real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. When applicable, use both paragraphs. Specific timing rules for delivery of the affiliated business disclosure statement are set forth in 12 CFR 1024.15(b)(1) of Regulation X). These INSTRUCTIONS TO PREPARER should not appear on the statement.]

## Appendix E to Part 1024—Arithmetic Steps

### I. Example Illustrating Aggregate Analysis

*Assumptions*

Disbursements:

$360 for school taxes disbursed on September 20
$1,200 for county property taxes:
$500 disbursed on July 25
$700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

STEP 1—INITIAL TRIAL BALANCE

| | Aggregate | | |
|---|---|---|---|
| | pmt | disb | bal |
| Jun | 0 | 0 | 0 |
| Jul | 130 | 500 | −370 |
| Aug | 130 | 0 | −240 |
| Sep | 130 | 360 | −470 |
| Oct | 130 | 0 | −340 |
| Nov | 130 | 0 | −210 |
| Dec | 130 | 700 | −780 |
| Jan | 130 | 0 | −650 |
| Feb | 130 | 0 | −520 |
| Mar | 130 | 0 | −390 |
| Apr | 130 | 0 | −260 |
| May | 130 | 0 | −130 |
| Jun | 130 | 0 | 0 |

STEP 2—ADJUSTED TRIAL BALANCE

[Increase monthly balances to eliminate negative balances]

| | Aggregate | | |
|---|---|---|---|
| | pmt | disb | bal |
| Jun | 0 | 0 | 780 |
| Jul | 130 | 500 | 410 |
| Aug | 130 | 0 | 540 |
| Sep | 130 | 360 | 310 |
| Oct | 130 | 0 | 440 |
| Nov | 130 | 0 | 570 |
| Dec | 130 | 700 | 0 |
| Jan | 130 | 0 | 130 |
| Feb | 130 | 0 | 260 |
| Mar | 130 | 0 | 390 |
| Apr | 130 | 0 | 520 |
| May | 130 | 0 | 650 |
| Jun | 130 | 0 | 780 |

STEP 3—TRIAL BALANCE WITH CUSHION

| | Aggregate | | |
|---|---|---|---|
| | pmt | disb | bal |
| Jun | 0 | 0 | 1040 |
| Jul | 130 | 500 | 670 |
| Aug | 130 | 0 | 800 |
| Sep | 130 | 360 | 570 |
| Oct | 130 | 0 | 700 |
| Nov | 130 | 0 | 830 |
| Dec | 130 | 700 | 260 |
| Jan | 130 | 0 | 390 |
| Feb | 130 | 0 | 520 |
| Mar | 130 | 0 | 650 |
| Apr | 130 | 0 | 780 |
| May | 130 | 0 | 910 |
| Jun | 130 | 0 | 1040 |

### II. Example Illustrating Single-Item Analysis

*Assumptions*

Disbursements:

$360 for school taxes disbursed on September 20
$1,200 for county property taxes:
$500 disbursed on July 25
$700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

STEP 1—INITIAL TRIAL BALANCE

| | Single-item | | | | | |
|---|---|---|---|---|---|---|
| | Taxes | | | School taxes | | |
| | pmt | disb | bal | pmt | disb | bal |
| June | 0 | 0 | 0 | 0 | 0 | 0 |
| July | 100 | 500 | −400 | 30 | 0 | 30 |
| August | 100 | 0 | −300 | 30 | 0 | 60 |
| September | 100 | 0 | −200 | 30 | 360 | −270 |
| October | 100 | 0 | −100 | 30 | 0 | −240 |
| November | 100 | 0 | 0 | 30 | 0 | −210 |

STEP 1—INITIAL TRIAL BALANCE—Continued

| | Single-item | | | | | |
|---|---|---|---|---|---|---|
| | Taxes | | | School taxes | | |
| | pmt | disb | bal | pmt | disb | bal |
| December | 100 | 700 | −600 | 30 | 0 | −180 |
| January | 100 | 0 | −500 | 30 | 0 | −150 |
| February | 100 | 0 | −400 | 30 | 0 | −120 |
| March | 100 | 0 | −300 | 30 | 0 | −90 |
| April | 100 | 0 | −200 | 30 | 0 | −60 |
| May | 100 | 0 | −100 | 30 | 0 | −30 |
| June | 100 | 0 | 0 | 30 | 0 | 0 |

STEP 2—ADJUSTED TRIAL BALANCE

[Increase monthly balances to eliminate negative balances]

| | Single-item | | | | | |
|---|---|---|---|---|---|---|
| | Taxes | | | School taxes | | |
| | pmt | disb | bal | pmt | disb | bal |
| Jun | 0 | 0 | 600 | 0 | 0 | 270 |
| Jul | 100 | 500 | 200 | 30 | 0 | 300 |
| Aug | 100 | 0 | 300 | 30 | 0 | 330 |
| Sep | 100 | 0 | 400 | 30 | 360 | 0 |
| Oct | 100 | 0 | 500 | 30 | 0 | 30 |
| Nov | 100 | 0 | 600 | 30 | 0 | 60 |
| Dec | 100 | 700 | 0 | 30 | 0 | 90 |
| Jan | 100 | 0 | 100 | 30 | 0 | 120 |
| Feb | 100 | 0 | 200 | 30 | 0 | 150 |
| Mar | 100 | 0 | 300 | 30 | 0 | 180 |
| Apr | 100 | 0 | 400 | 30 | 0 | 210 |
| May | 100 | 0 | 500 | 30 | 0 | 240 |
| Jun | 100 | 0 | 600 | 30 | 0 | 270 |

STEP 3—TRIAL BALANCE WITH CUSHION

| | Single-item | | | | | |
|---|---|---|---|---|---|---|
| | Taxes | | | School taxes | | |
| | pmt | disb | bal | pmt | disb | bal |
| Jun | 0 | 0 | 800 | 0 | 0 | 330 |
| Jul | 100 | 500 | 400 | 30 | 0 | 360 |
| Aug | 100 | 0 | 500 | 30 | 0 | 390 |
| Sep | 100 | 0 | 600 | 30 | 360 | 60 |
| Oct | 100 | 0 | 700 | 30 | 0 | 90 |
| Nov | 100 | 0 | 800 | 30 | 0 | 120 |
| Dec | 100 | 700 | 200 | 30 | 0 | 150 |
| Jan | 100 | 0 | 300 | 30 | 0 | 180 |
| Feb | 100 | 0 | 400 | 30 | 0 | 210 |
| Mar | 100 | 0 | 500 | 30 | 0 | 240 |
| Apr | 100 | 0 | 600 | 30 | 0 | 270 |
| May | 100 | 0 | 700 | 30 | 0 | 300 |
| Jun | 100 | 0 | 800 | 30 | 0 | 330 |

## Appendix MS–1 to Part 1024

[Sample language; use business stationery or similar heading]

[Date]

SERVICING DISCLOSURE STATEMENT NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 *et seq.*). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. ''Servicing'' refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

*Servicing Transfer Information*

[We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.]

[or]

[We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.]

[or]

[The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.]

[INSTRUCTIONS TO PREPARER: Insert the date and select the appropriate language under ''Servicing Transfer Information.'' The model format may be annotated with further information that clarifies or enhances the model language.]

## Appendix MS–2 to Part 1024

[Sample language; use business stationery or similar heading]

**NOTICE OF ASSIGNMENT, SALE, OR TRANSFER OF SERVICING RIGHTS**

You are hereby notified that the servicing of your mortgage loan, that is, the right to collect payments from you, is being assigned, sold or transferred from _____ to _____ effective _____.

The assignment, sale or transfer of the servicing of the mortgage loan does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan.

Except in limited circumstances, the law requires that your present servicer send you this notice at least 15 days before the effective date of transfer, or at closing. Your new servicer must also send you this notice no later than 15 days after this effective date or at closing. [In this case, all necessary information is combined in this one notice].

Your present servicer is _____. If you have any question relating to the transfer of servicing from your present servicer call _____ [enter the name of an individual or department here] between __ a.m. and __ p.m. on the following days _____.

This is a [toll-free] or [collect call] number.

Your new servicer will be _____.

The business address for your new servicer is:

_____

_____.

The [toll-free] [collect call] telephone number of your new servicer is _____. If you have any question relating to the transfer of servicing to your new servicer call _____ [enter the name of an individual or department here] at _____ [toll free or collect call telephone number] between __ a.m. and __ p.m. on the following days _____.

The date that your present servicer will stop accepting payments form you is _____. The date that your new servicer will start accepting payments from you is _____. Send all payments due on or after that date to your new servicer.

[Use the paragraph if appropriate; otherwise omit.] The transfer of servicing rights may affect the term of or the continued availability of mortgage life or disability insurance or any other type of optional insurance in the following manner:

_____

_____

_____

_____

_____

_____

and you should take the following action to maintain coverage:

_____

_____

_____.

You should also be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a ''qualified written request'' to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgment within 20 Business Days of receipt of your request. A ''qualified written request'' is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number, and your reasons for the request. [If you want to send a ''qualified written request'' regarding the servicing of your loan, it must be sent to this address:

_____]

Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account, and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that section. You should seek legal advice if you believe your rights have been violated.

[INSTRUCTIONS TO PREPARER: Delivery means placing the notice in the mail, first class postage prepaid, prior to 15 days before the effective date of transfer (transferor) or prior to 15 days after the effective date of transfer (transferee). However, this notice may be sent not more than 30 days after the effective date of the transfer of servicing rights if certain emergency business situations occur. See 12 CFR § 1024.21(d)(1)(ii). ''Lender'' may be substituted for ''present servicer'' where appropriate. These instructions should not appear on the format.]

_____

PRESENT SERVICER
[Signature not required]

_____

Date

[and][or]

_____

FUTURE SERVICER
[Signature not required]

_____

Date

Dated: October 24, 2011.

**Alastair M. Fitzpayne,**

*Deputy Chief of Staff and Executive Secretary, Department of the Treasury.*

[FR Doc. 2011–31722 Filed 12–19–11; 8:45 am]

BILLING CODE 4810–AM–P

# FEDERAL REGISTER

Vol. 76 Tuesday,

No. 244 December 20, 2011


Part III

## The President

Proclamation 8767—Wright Brothers Day, 2011

Memorandum of December 15, 2011—Determinations Under Section 1106(a) of the Omnibus Trade and Competitiveness Act of 1988—Russian Federation

Federal Register
Vol. 76, No. 244
Tuesday, December 20, 2011

# Presidential Documents

**Title 3—**

## The President

**Proclamation 8767 of December 15, 2011**

## Wright Brothers Day, 2011

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

**A Proclamation**

On a blustery December morning in 1903, two brothers from Dayton, Ohio, successfully piloted the world's first powered flying machine and ascended from the steady currents of North Carolina's Outer Banks into the heights of our collective memory. During the 12 seconds their aircraft remained aloft in Kitty Hawk's gusty headwinds, Wilbur and Orville Wright sparked a transportation revolution and fulfilled a dream shared across cultures since time immemorial. Today, we commemorate their extraordinary feat and celebrate the spirit of American innovation that propels our Nation toward bold new horizons.

Fashioned from wood and cloth and powered by a four-cylinder engine they designed themselves, the Wright brothers' *Flyer I* was the culmination of years of painstaking research and unyielding perseverance. They financed countless experiments with earnings from their bicycle shop, gathering data on wing shape using a home-built wind tunnel and developing the basic controls for pitch, roll, and yaw that, to this day, guide our jetliners to every corner of the world and our spacecraft to the farthest reaches of the Solar System. The technical obstacles they overcame were tremendous, and Orville and Wilbur Wright's pioneering vision stands as a testament to the will and determination that fuels innovators, inventors, scientists, and entrepreneurs across our country—from home workbenches to national laboratories.

As we pursue progress and prosperity in the 21st century, we remember the key to our success has always been our unparalleled ability to think up new ideas, create new industries, and lead the way in discovery and innovation—just as it was for the Wright brothers over a century ago. To reaffirm our role as the engine that drives science and technology around the world, we must empower our Nation's youth with a competitive education and the tools to make tomorrow's breakthrough discoveries.

On December 17, 1903, Wilbur and Orville Wright helped inspire a century of progress and groundbreaking ideas when they guided a small wooden aircraft above the sands of Kitty Hawk and onto the ocean breeze. Even after this monumental achievement, the brothers continued to push the boundaries of flight and possibility, rapidly advancing the field of aeronautics and our burgeoning aviation industry. They inspired other early aviators, including Calbraith Perry Rodgers, who flew a Wright airplane to complete the first transcontinental flight 100 years ago, and Harriet Quimby, who became our Nation's first female licensed pilot and a groundbreaking aviator. So, too, must we press onward, exploring new frontiers of science, technology, and imagination in pursuit of a brighter future for generations to come. The Wright brothers stand among America's most celebrated innovators, and today, we recognize all those who look toward the heavens and envision what might be.

The Congress, by a joint resolution approved December 17, 1963, as amended (77 Stat. 402; 36 U.S.C. 143), has designated December 17 of each year as ''Wright Brothers Day'' and has authorized and requested the President

to issue annually a proclamation inviting the people of the United States to observe that day with appropriate ceremonies and activities.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim December 17, 2011, as Wright Brothers Day.

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

[FR Doc. 2011–32761
Filed 12–19–11; 11:15 am]
Billing code 3295–F2–P

# Presidential Documents

**Memorandum of December 15, 2011**

## Determinations Under Section 1106(a) of the Omnibus Trade and Competitiveness Act of 1988—Russian Federation

**Memorandum for the United States Trade Representative**

Pursuant to section 1106(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2905(a)), I determine that state trading enterprises account for a significant share of the exports of the Russian Federation (Russia) and goods that compete with imports into Russia. I further determine that such state trading enterprises unduly burden and restrict, or adversely affect, the foreign trade of the United States or of the U.S. economy, or are likely to result in such a burden, restriction, or effect.

Russia is seeking to become a member of the World Trade Organization (WTO). The terms and conditions for Russia's accession to the WTO include Russia's commitments that it will ensure that state-owned and state-controlled enterprises, when engaged in commercial activity, will make purchases, which are not intended for governmental use, and sales in international trade in a manner consistent with applicable provisions of the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). In addition, Russia's state trading enterprises will make purchases and sales based solely on commercial considerations, *e.g.*, price, quality, marketability, and availability, and that U.S. business firms will have an adequate opportunity to compete for sales to and purchases from these enterprises on non-discriminatory terms and conditions. The obligations that Russia will assume under the WTO Agreement, including Russia's protocol of accession, meet the requirements of section 1106(b)(2)(A) (19 U.S.C. 2905(b)(2)(A)), and thus my determinations under section 1106(a) do not require invocation of the non-application provisions of the WTO Agreement.

You are authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
*Washington, December 15, 2011*

[FR Doc. 2011–32762
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**H.R. 2192/P.L. 112–64**

National Guard and Reservist Debt Relief Extension Act of 2011 (Dec. 13, 2011; 125 Stat. 766)

**S. 1541/P.L. 112–65**

To revise the Federal charter for the Blue Star Mothers of America, Inc. to reflect a change in eligibility requirements for membership. (Dec. 13, 2011; 125 Stat. 767)

**S. 1639/P.L. 112–66**

To amend title 36, United States Code, to authorize the American Legion under its Federal charter to provide guidance and leadership to the individual departments and posts of the American Legion, and for other purposes. (Dec. 13, 2011; 125 Stat. 768)

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