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WHEN: Tuesday, May 15, 2012
9 a.m.-12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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Federal Register

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BUREAU OF CONSUMER FINANCIAL PROTECTION

5 CFR Chapter LXXXIV

[Docket No. CFPB–2012–0016]

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Bureau of Consumer Financial Protection

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB or Bureau), with the concurrence of the Office of Government Ethics (OGE), is issuing this interim final rule for employees of the Bureau. This rule supplements the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards) issued by OGE and is necessary because it addresses ethical issues unique to the Bureau. The rule establishes restrictions on outside employment and business activities; prohibitions on the ownership of certain financial interests; restrictions on seeking, obtaining or renegotiating credit and indebtedness; prohibitions on recommendations concerning debt and equity interests; disqualification requirements based on credit or indebtedness; prohibitions on purchasing certain assets; and restrictions on participating in particular matters involving outside entities.

DATES: This interim final rule is effective June 26, 2012. Written comments are invited and must be received on or before June 26, 2012.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2012–0016*, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: 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 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect 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:

Amber Vail at (202) 435–7305 or Amy Mertz Brown at (202) 435–7256 at the Office of General Counsel, Consumer Financial Protection Bureau.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the OGE Standards. *See* 57 FR 35006–35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779–4780, 60 FR 6390–6391, and 60 FR 66857–66858. The OGE Standards, codified at 5 CFR part 2635, effective February 3, 1993, established uniform standards of ethical conduct that apply to all executive branch personnel.

Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence of OGE, to adopt agency-specific supplemental regulations that are necessary to properly implement its ethics program. The Bureau, with OGE's concurrence, has determined that the following supplemental regulations are necessary for successful implementation of its

ethics program in light of the Bureau's unique programs and operations.

II. Analysis of the Regulations

Section 9401.101 General

Section 9401.101 explains that the regulations contained in part 9401 (CFPB Ethics Regulations) apply to employees of the Bureau and supplement the OGE Standards. The section also includes cross-references to other ethics restrictions applicable to employees—including the regulations concerning executive branch financial disclosure, financial interests, post-Government restrictions, outside earned income and employment and affiliation limitations, and employee responsibilities and conduct—as well as implementing Bureau guidance and procedures issued in accordance with the OGE Standards.

Section 9401.102 Definitions

Section 9401.102 defines terms and phrases used throughout these supplemental regulations. Many of the definitions reference terms defined in the OGE Standards or in the Consumer Financial Protection Act of 2010 (CFPA) (12 U.S.C. 5301 *et seq.*).

The terms “credit” and “Director” are statutory terms taken from the CFPA. *See* 12 U.S.C. 5481(7), 5481(10).

This regulation broadly defines the term “debt or equity interest” to include without limitation, “secured and unsecured bonds, debentures, notes, securitized assets, commercial papers, and preferred and common stock.” It extends to any right to acquire or dispose of any such debt or equity interest and to beneficial or legal interests derived from a trust. However, the term does not include deposit accounts (e.g., savings accounts, checking accounts, certificates of deposit, money market accounts), credit union shares, future interests created by someone other than the employee or the employee's spouse or dependent child, or a right as a beneficiary of an estate that has not been settled.

The term “dependent child” has the same meaning as in OGE's financial disclosure regulations at 5 CFR 2634.105(d).

The term “Designated Agency Ethics Official” (DAEO) means the individual appointed by the Director to coordinate and manage the ethics program. It also includes the Alternate DAEO and a

designee of the DAEO or Alternate DAEO, unless a particular provision in these supplemental regulations states otherwise.

The term "domestic partner" includes an individual with whom an employee has a close, committed, personal, and financially interdependent relationship in which both parties have agreed to be responsible for each other's common welfare and share financial obligations, and who for at least six months have shared the same regular and permanent residence and intend to do so indefinitely, or would have a common residence but for an assignment abroad or other employment-related, financial or similar obstacle. The definition of "domestic partner" in these supplemental regulations is the same as the one used to determine whether an individual is eligible to receive benefits under the Bureau's Domestic Partner Health Insurance Subsidy Program.

The term "employee" includes all Bureau employees, including special Government employees.

The phrase "entity supervised by the Bureau" means a person that is subject to the Bureau's supervision authority pursuant to 12 U.S.C. 5514(a)(1) or 5515(a) and in regulations promulgated thereunder, as identified on a list to be maintained and regularly updated by the Bureau.

The terms "indebted" and "indebtedness" refer to a legal obligation under which an individual or borrower received money or assets on credit, and now owes payment.

The term "indebted to an entity" means an obligation to make payments to that entity as a result of an indebtedness, whether originally made with that entity or with another entity. This includes without limitation a servicer on a mortgage to whom payments are made.

The term "participate" means to participate personally and substantially and has the meaning set forth in the OGE Standards at 5 CFR 2635.402(b)(4).

The terms "particular matter," "particular matter involving specific parties," "person," and "special Government employee" have the same meanings as in the OGE Standards and in OGE's regulations on post-employment conflict of interest at 5 CFR 2635.402(b)(3), 2641.201(h), 2635.102(k) and 2635.102(l), respectively.

The term "spouse" means an employee's husband or wife by lawful marriage, but does not include a legally separated spouse when the employee and spouse live apart, there is an intention to end the marriage or separate permanently, and the employee has no

control over the legally separated spouse's debt or equity interests.

Section 9401.103 Prior Approval for Outside Employment

This section requires employees to obtain written approval prior to engaging in certain outside employment and activities. This prior approval requirement will be an integral part of the Bureau's ethics program. The prior approval requirement is necessary to ensure that an employee's participation in certain outside employment or activities does not adversely affect Bureau operations or place the employee at risk of violating applicable Federal conduct statutes and regulations. In addition, prior approval is necessary to avoid the appearance that an outside employment or activity was obtained through a misuse of the employee's official position and to address a number of other ethics concerns.

Because the Bureau engages in enforcement, supervisory and regulatory functions across the consumer financial services sector, requiring prior approval is necessary to ensure that a reasonable person will not question the integrity of Bureau programs and operations. The Bureau would be hindered in fulfilling its mission if members of the public did not have confidence in employees' ability to act impartially while performing their official duties.

Paragraph (a) requires that an employee obtain prior written approval from the employee's supervisor and the concurrence of the DAEO before engaging in outside employment, except to the extent the Bureau has issued an instruction or internal directive exempting an activity or class of activities from this requirement. Under paragraph (d), an employee must submit a new request for approval when the scope of the approved activity changes or when the employee's position changes.

Paragraph (b) broadly defines "employment" to include any form of non-Federal employment or business relationship involving the provision of personal services other than in the discharge of official duties, regardless of whether the services are compensated. It includes outside teaching, speaking, or writing.

A note following paragraph (b) pertains to the special approval requirement in both 18 U.S.C. 203(d) and 205(e) for certain representational activities otherwise covered by the conflict of interest restrictions on compensation and activities of employees in claims against and other matters affecting the Government. The

note explains that in addition to the regulatory approval required in this section, an employee who wishes to act as agent or attorney for or otherwise represent his or her parents, spouse, child, or a person for whom or for an estate for which he or she is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters must obtain the approval of the Government official responsible for the employee's appointment to the federal service.

Paragraph (c) sets out the standard to be applied by the employee's supervisor and the DAEO in acting on requests for prior approval of outside employment. Approval will be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute, the OGE Standards, or these supplemental regulations.

Under paragraph (e), the DAEO may issue instructions or internal directives governing the submission of requests for approval of outside employment that may exempt categories of employment from the prior approval requirement of this section based on a determination that employment within those categories generally would be approved and is not likely to involve prohibited conduct or create an appearance of lack of impartiality.

Section 9401.104 Additional Rules Concerning Outside Employment for Covered Employees

This section supplements § 2635.802 of the OGE Standards by prohibiting covered employees from engaging in compensated outside employment for any entity supervised by the Bureau or for an officer, director, or employee of such entity. This regulation addresses situations unique to covered employees, including those who are involved in the supervision of entities offering or providing a consumer financial product or service, and prohibits activity that may interfere with the objective and impartial performance of an employee's official duties. This regulation is based in part on 18 U.S.C. 1909, which prohibits national bank examiners from performing any service for compensation for any bank or banking or loan association, or any officer, director, or employee thereof.

For purposes of this section, the term "covered employee" means all employees serving in an examiner or attorney position, specified persons within the Office of Research and the Office of Enforcement, all Public Financial Disclosure Report filers, and other employees specified in a Bureau order or directive who the DAEO

determines should be covered by the rule.

Section 9401.105 Additional Rules Concerning Outside Employment for Bureau Attorneys

Employees serving in an attorney position are subject to restrictions in addition to the prior approval of outside employment requirement in § 9401.103 and the prohibited outside employment restriction in § 9401.104. This section prohibits all such individuals from practicing law outside of their official duties where they may in fact or in appearance take a legal position in conflict with the interests of the Bureau. Bureau attorneys are prohibited from interpreting a statute, regulation, or rule administered by the Bureau as part of the outside practice of law. The regulation in this section is consistent with the rules of professional conduct governing the attorney-client relationship. It is a necessary supplement to the OGE Standards because it specifically addresses the unique and sensitive relationship between an attorney and a client, which for Bureau attorneys is the Bureau.

Paragraph (b) contains an exemption allowing an employee to represent himself or herself unless the employee participated personally and substantially in the matter as part of his or her official duties or the matter is the subject of the employee's official responsibility.

Section 9401.106 Prohibited Financial Interests

Paragraph (a) prohibits an employee or the employee's spouse or minor child from owning or controlling a debt or equity interest in an entity supervised by the Bureau. As set forth in Section 9401.102, the term "supervised by the Bureau" refers to the Bureau's authority under the CFPA to supervise and examine certain financial institutions and other providers of consumer financial products and services. Under 5 CFR 2635.403(a), an agency may, by supplemental regulation, prohibit or restrict the holding of a financial interest by its employees and the spouses and minor children of those employees based on the agency's determination that the acquisition or holding of such financial interest would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered.

The Bureau has determined that in light of the Bureau's sensitive supervisory functions, the restriction is necessary to: (1) Maintain public confidence in the impartiality and

objectivity with which the Bureau executes its supervisory functions; (2) eliminate any concern that sensitive information provided to the Bureau might be misused for private gain; and (3) avoid the widespread disqualification of employees from official matters that might impair the Bureau's ability to fulfill its mission.

The prohibition in paragraph (a) also applies to the spouse and minor children of an employee. Under 5 CFR 2635.403(a), a restriction on the holdings of financial interests by spouses or minor children of agency employees must be based on the agency's determination that there is a direct and appropriate nexus between the restriction as applied to spouses and minor children and the efficiency of the service. The Bureau has determined that such a nexus exists and is adopting this provision to avoid the need to disqualify employees from official matters to prevent violations of criminal law (18 U.S.C. 208), to maintain public confidence in the objectivity and impartiality of the Bureau's administration of its programs, and to avoid the potential appearance that an employee's spouse could trade on information obtained through the employee's official position.

The scope of this prohibition extends only to those entities supervised by the Bureau that are identified on a list maintained by the Bureau for the purposes of easing administration of this provision and minimizing inadvertent violations. The Bureau's regulatory and enforcement authority under the CFPA may extend beyond those entities supervised by the Bureau that are identified on the list. However, the regulation limits the prohibition on ownership of debt and equity interests to only those entities identified on the list, in order to establish a bright-line test and enable employees to easily identify prohibited interests.

Paragraph (b) sets forth several exceptions intended to ease the restrictions on the financial interests of employees and their spouses and minor children to permit interests of a character unlikely to raise questions regarding the objective and impartial performance of employees' official duties or the possible misuse of their positions. The exceptions permit employees and their spouses and minor children to own or control interests in entities supervised by the Bureau through investments in a publicly traded or available mutual fund (as long as the fund does not have a stated policy of concentrating in the financial services industry or the banking industry), a widely held and diversified pension

plan, or a fund administered by a Federal government agency.

Paragraph (c) requires employees to immediately disqualify themselves if they own or control a prohibited interest and consult with the DAEO concerning a potential waiver under paragraph (d).

Paragraph (d) authorizes the DAEO, in consultation with senior management in the Division in which the employee works, to waive under certain limited circumstances on a case-by-case basis the prohibition in paragraph (a). In general, a request for a waiver will be considered if mitigating circumstances exist due to how the employee or the employee's spouse or minor child acquired ownership or control, the employee makes a prompt and complete written disclosure of the debt or equity interest to the DAEO, and the employee's disqualification from matters involving the entity in which the prohibited interest is held would not unduly interfere with the full performance of the employee's duties. If owning or controlling the debt or equity interest would raise financial conflict of interest concerns under 18 U.S.C. 208(a), the DAEO will consult with OGE prior to authorizing the employee to own or control the debt or equity interest. The DAEO also will consult with OGE prior to authorizing an employee to work on a particular matter that would raise financial conflict of interest concerns under 18 U.S.C. 208(a).

Paragraph (e) attributes to an employee a debt or equity interest held by entities described in this subsection (e.g., trusts, partnerships, closely held corporations). An employee who has knowledge of an attributed interest that would violate subparagraph (a) of this section is required to report the interest in writing to the DAEO. The DAEO may require the employee to terminate the relationship with the third party entity, disqualify himself or herself from participating in a matter, or take other appropriate action as determined by the DAEO to avoid a violation of the conflict of interest statutes, the OGE Standards or these supplemental regulations, or an appearance of misuse of position or loss of impartiality.

Section 9401.107 Prohibition on Acceptance of Credit on Preferential Terms From an Entity Supervised by the Bureau

Section 9401.107 prohibits employees or the employee's spouse or minor child from accepting credit from or entering into a financial relationship with an entity supervised by the Bureau if the relationship is based on terms more favorable than those offered in

comparable circumstances to the public. This provision is intended to reinforce the general principle that employees may not use their public office for private gain and the requirement that employees have a responsibility to avoid receiving preferential treatment in their personal dealings with entities supervised by the Bureau.

Section 9401.108 Restrictions on Seeking, Obtaining, or Renegotiating Credit From an Entity That Is or Represents a Party to a Matter to Which an Employee Is Assigned or May Be Assigned

Section 9401.108 prohibits an employee from seeking, obtaining, or renegotiating credit from an entity, while the employee is assigned to participate in a particular matter involving specific parties in which the entity is or represents a party to the matter. The prohibition also extends to those matters to which the employee is not currently assigned, but the employee is aware of the pendency of the matter and believes it is likely that he or she will participate in the matter. This prohibition also applies for two years after the employee's participation in the matter has ended.

This prohibition applies equally to the employee's spouse or minor children, unless the credit or indebtedness is supported exclusively by the income or independent means of the spouse or minor child and is obtained on terms and conditions no more favorable than those offered to the public, and the employee does not participate in the negotiations for the credit or indebtedness or serve as a co-maker, endorser, or guarantor of the loan.

The prohibition on seeking, obtaining, or renegotiating credit is necessary for several reasons. Under 5 CFR 2635.403(a), the Bureau may prohibit or restrict the acquisition or holding of a financial interest or class of financial interests by employees, and the spouses and minor children of those employees, when the Bureau has determined that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which the Bureau programs are administered. "Financial interest" may include an indebtedness relationship, under 5 CFR 2635.403(c). This prohibition is necessary to prevent the loss of public confidence in the integrity of Bureau programs and to prevent the appearance of loss of impartiality. These concerns might arise if an employee appears to be using his or her official position or contacts with an entity resulting from

the employee's work on a matter to obtain loans or extensions of credit on favorable terms, or to be benefitting from his or her official position through possible forbearance by the lender in collecting on the indebtedness. This section also will strengthen public confidence in the Bureau's integrity by limiting the ability of employees to engage in financial transactions with entities that are or represent a party to a particular matter involving specific parties to which the employee is assigned.

Under paragraph (c), an employee must immediately disqualify himself or herself from participating in a particular matter involving specific parties after the employee becomes aware that certain identified persons are seeking, obtaining, or renegotiating credit or indebtedness with an entity that is or represents a party to the matter, while the matter is pending before the Bureau. The Bureau does not intend to impose an affirmative duty on the part of the employee to investigate or inquire whether the persons identified in this section are seeking, obtaining, or renegotiating credit.

Because this section supplements § 2635.502 of the OGE Standards, the list of persons identified in paragraph (c) of this section are defined broadly and include the employee's spouse, domestic partner, and dependent child, and other related entities. This section is designed to ensure that employees and persons associated with employees in a non-governmental capacity do not benefit or appear to benefit from the employees' official positions and that employees do not lose or appear to lose their impartiality.

Paragraph (d) provides exemptions to the prohibition in paragraphs (a) and (b) and the disqualification requirement in paragraph (c), for two forms of credit: borrowing through the use of a credit or charge card and borrowing through overdraft protection, on terms and conditions available to the public. The need for regulation is diminished because these forms of credit are typically fairly standardized and low credit amounts are customary. The Bureau has determined permitting employees to have adequate access to sources of credit to meet their individual financial needs outweighs the incremental benefit that may be gained by extending the rule to cover these forms of credit.

The DAEO may grant a waiver under paragraph (e) based on a determination that the participation in matters otherwise prohibited by this section is not prohibited by law and would not create an appearance of loss of

impartiality or use of public office for private gain.

Section 9401.109 Disqualification of Employees From Particular Matters Involving Creditors

Section 9401.109(a) prohibits an employee from participating in a particular matter involving specific parties if the employee is aware that the employee, the employee's spouse, domestic partner, or dependent child, or a specified related entity has credit with or is indebted to an entity that is or represents a party to the matter.

This section supplements § 2635.502 of the OGE Standards. The disqualification requirement is designed to ensure that employees and persons and entities related to employees do not benefit or appear to benefit from employees' official positions and the employees do not lose or appear to lose their impartiality when taking official action.

Paragraph (b) exempts certain forms of credit and indebtedness from the disqualification requirement in paragraph (a) as long as the person with the credit or indebtedness is not in an adversarial position with the entity that extended the credit or to which the indebtedness is owed, and the credit or indebtedness was offered on terms and conditions no more favorable than those offered to the general public. The exemptions include revolving consumer credit and charge cards; overdraft protection on checking and similar accounts; amortizing indebtedness on consumer goods (e.g., automobiles); educational loans (e.g., student loans; loans taken out by a parent or guardian to pay for a child's education costs); and loans on residential homes (e.g., mortgages, home equity lines of credit).

Paragraph (c) allows an employee to participate in a matter from which they would be disqualified under paragraph (a), if the credit or indebtedness is the sole responsibility of a person listed in paragraphs (a)(2) through (a)(8), and other conditions are met. The exception is intended to address situations where the credit or indebtedness is unlikely to raise ethics concerns regarding the motivation of the lender or the impartiality of an employee's performance of official duties because the connection between the employee and that credit or indebtedness is attenuated.

Despite the general disqualification requirement in paragraph (a) of this section, the DAEO may authorize an employee to participate in the matter using the authorization process set forth in 5 CFR 2635.502(d) of the OGE Standards.

Section 9401.110 Prohibited Recommendations

This section prohibits employees from making any recommendation or suggestion regarding the acquisition, sale, or other divestiture of a debt or equity interest of an entity supervised by the Bureau or of an entity that is or represents a party to a particular matter involving specific parties to which the employee is assigned. This rule is intended in part to eliminate any misunderstanding or harm that could result from such a recommendation. For example, an investor should not be misled into believing that an equity interest in a particular entity supervised by the Bureau is a good investment because the investor believes that the employee from whom the investor receives a recommendation may have access to inside information concerning that entity. This provision also supplements 5 CFR 2635.704 with a provision designed specifically to prohibit employees from using or creating the appearance of using information unavailable to the general public to further a private interest.

Section 9401.111 Restrictions on Participating in Matters Involving Covered Entities

This section disqualifies an employee from participating in a particular matter involving specific parties if a covered entity is or represents a party to the matter. For purposes of this disqualification requirement, the term "covered entity" includes a person for whom the employee is aware that his or her spouse, domestic partner, fiancé, child, parent, sibling, or member of the employee's household is serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee. Disqualification of the employee eliminates the potential for an appearance of preferential treatment in those instances where the employee's connection to a covered entity would likely raise questions regarding the appropriateness of actions taken by the employee or the Bureau. This section is not intended to impose an affirmative duty on the part of the employee to investigate or inquire as to whether these individuals have these relationships with covered entities.

The DAEO may authorize an employee to participate in the matter using the authorization process set forth in 5 CFR 2635.502(d) of the OGE Standards.

Section 9401.112 Prohibited Purchase of Assets

This section prohibits employees, or their spouse and minor children, from purchasing real or personal property from an entity supervised by the Bureau unless it is sold at public auction or by other means that assures that the selling price of the property is the asset's fair market value. For example, fixed price retail transactions from an entity supervised by the Bureau would be excluded from this prohibition. This section is proposed to maintain public confidence in the impartiality and objectivity with which the Bureau executes its supervisory functions and as a supplement to the general prohibition in 5 CFR 2635.702 against the use of public office for private gain.

Section 9401.113 Waivers

This section authorizes the DAEO to grant a written waiver of any provision of this part based upon a determination that the waiver will not result in conduct inconsistent with the OGE Standards or otherwise prohibited by law. Under this section, the DAEO may grant a written waiver but require the employee to take further action. This provision is intended, in appropriate cases, to lessen the burden that these supplemental regulations may impose on employees while ensuring that employees do not engage in actions or hold financial interests that may interfere with the objective and impartial performance of their official duties.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Under 5 U.S.C. 553(a)(2), rules relating to agency management or personnel are exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, under 5 U.S.C. 553(b)(3)(A), notice and comment rulemaking requirements do not apply to rules concerning matters of agency organization, procedure, or practice. Given that the rule concerns matters of agency management or personnel, and organization, procedure, or practice, the notice and comment requirements of the APA do not apply here. Furthermore, under 5 U.S.C. 553(b)(3)(B), the Bureau finds that good cause exists to waive the proposed rulemaking requirements under the APA because the notice and comment procedures would be contrary to the public interest. The Bureau began exercising certain of its supervision, enforcement, and regulatory authorities on July 21, 2011. Given the Bureau's newly acquired authorities, it is

necessary to promptly establish supplemental ethics rules that will: (1) Maintain public confidence in the impartiality and objectivity with which the Bureau executes its regulatory and supervisory functions; (2) eliminate concerns that sensitive information provided to the Bureau might be misused for private gain; and (3) ensure that employees are not disqualified from participating in official matters that might result in the Bureau's inability to fulfill its mission. The absence of such rules may adversely affect the public's confidence and may call into question the impartiality with which Bureau programs are carried out. For these reasons, the Bureau finds good cause to issue this regulation as an Interim Final Rule effective 60 days after publication.

The Bureau is issuing this interim final rule for comment and welcomes comments from the public on all aspects of the rule. The Bureau will consider comments as appropriate. Comments may be submitted in accordance with the instructions in the **ADDRESSES** section of these supplemental regulations.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 5 CFR Part 9401

Conflict of interests, Government employees.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau, in concurrence with OGE, is amending title 5 of the Code of Federal Regulations by adding a new chapter LXXXIV, consisting of part 9401, to read as follows:

TITLE 5—ADMINISTRATIVE PERSONNEL

CHAPTER LXXXIV—BUREAU OF CONSUMER FINANCIAL PROTECTION

PART 9401—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE BUREAU OF CONSUMER FINANCIAL PROTECTION

Sec.

- 9401.101 General.
- 9401.102 Definitions.
- 9401.103 Prior approval for outside employment.
- 9401.104 Additional rules concerning outside employment for covered employees.
- 9401.105 Additional rules concerning outside employment for Bureau attorneys.
- 9401.106 Prohibited financial interests.

- 9401.107 Prohibition on acceptance of credit on preferential terms from an entity supervised by the Bureau.
- 9401.108 Restrictions on seeking, obtaining, or renegotiating credit from an entity that is or represents a party to a matter to which an employee is assigned or may be assigned.
- 9401.109 Disqualification of employees from particular matters involving creditors.
- 9401.110 Prohibited recommendations.
- 9401.111 Restriction on participating in matters involving covered entities.
- 9401.112 Prohibited purchase of assets.
- 9401.113 Waivers.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159; 3 CFR, 1898 Comp., p.215, as modified by E.O. 12731, 55 FR 42547; 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403, 2635.502 and 2635.803.

§ 9401.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635 (OGE Standards) and prescribe the standards of ethical conduct applicable to employees of the Bureau of Consumer Financial Protection (Bureau).

(b) *Other regulations, guidance and procedures.* Employees are required to comply with the OGE Standards and the CFPB Ethics Regulations, as well as with guidance and procedures issued by the Bureau pursuant to 5 CFR 2635.105(c). Employees also are subject to all other government-wide regulations concerning executive branch ethics including without limitation, financial disclosure regulations contained in 5 CFR part 2634, regulations concerning financial interests contained in 5 CFR part 2640, post-employment conflict of interest restrictions contained in 5 CFR part 2641, outside earned income limitations and employment and affiliation restrictions applicable to certain noncareer employees contained in 5 CFR part 2636, and the regulations concerning executive branch employee responsibilities and conduct contained in 5 CFR part 735.

§ 9401.102 Definitions.

For purposes of this part:

CFPB Ethics Regulations means the supplemental ethics standards set forth in this part.

Control means the possession, direct or indirect, of the power or authority to manage, direct, or oversee.

Credit has the meaning set forth in 12 U.S.C. 5481(7) and as further defined in regulations promulgated by the Bureau to implement that statute. A person may

have credit without any outstanding balance owed.

Debt or equity interest includes without limitation, secured and unsecured bonds, debentures, notes, securitized assets, commercial papers, and preferred and common stock. The term encompasses both current and contingent ownership interests; a beneficial or legal interest derived from a trust; a right to acquire or dispose of any long or short position in debt or equity interests; interests convertible into debt or equity interests; and options, rights, warrants, puts, calls, straddles, derivatives, and other similar interests. It does not include deposits; credit union shares; a future interest created by someone other than the employee or the employee's spouse or dependent child; or a right as a beneficiary of an estate that has not been settled.

Dependent child has the meaning set forth in 5 CFR 2634.105(d). It includes an employee's son, daughter, stepson, or stepdaughter if:

(1) Unmarried, under the age of 21, and living in the employee's household; or

(2) Claimed as a "dependent" on the employee's income tax return.

Designated Agency Ethics Official (DAEO) means the official within the Bureau that the Director has appointed to coordinate and manage the ethics program at the Bureau, under 5 CFR 2638.202(b). For purposes of this part, the term "DAEO" also includes the Alternate DAEO appointed under 5 CFR 2638.202(b), and a designee of the DAEO or Alternate DAEO unless a particular provision says an authority is reserved to the DAEO.

Director means the Director of the Bureau.

Domestic partner means a person with whom a Bureau employee:

(1) Has a close and committed personal relationship and both parties are at least 18 years of age, are each other's sole domestic partner, and intend to remain in the relationship indefinitely, and neither is married to, in a civil union with, or partnered with any other spouse or domestic partner;

(2) Is not related by blood in a manner that would bar marriage under the laws of the jurisdiction in which the employee resides;

(3) Is in a financially interdependent relationship in which both agree to be responsible for each other's common welfare and share in financial obligations; and

(4) Has shared for at least six months the same regular and permanent residence in a committed relationship and both parties intend to do so

indefinitely, or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle.

Employee means an employee of the Bureau, including a special Government employee.

Entity supervised by the Bureau means a person that is subject to the Bureau's supervision authority pursuant to 12 U.S.C. 5514(a)(1) or 5515(a) and in regulations promulgated thereunder, as identified on a list to be maintained by CFPB.

Indebted or indebtedness means a legal obligation under which an individual or borrower received money or assets on credit, and currently owes payment.

Indebted to an entity means an obligation to make payments to an entity as a result of an indebtedness, whether originally made with that entity or with another entity. This includes without limitation, a servicer on a mortgage to whom payments are made.

OGE Standards mean the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

Participate means personal and substantial participation and has the meaning set forth in 5 CFR 2635.402(b)(4). An employee participates when, for example, he or she makes a decision, gives approval or disapproval, renders advice, provides a recommendation, conducts an investigation or examination, or takes an official action in a particular matter, and such involvement is of significance to the matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

Particular matter has the meaning set forth in 5 CFR 2635.402(b)(3). The term includes a matter that involves deliberation, decision, or action and is focused upon the interests of specific persons or a discrete and identifiable class of persons. It may include governmental action such as legislation, regulations, or policy-making that is narrowly focused on the interest of a discrete and identifiable class of persons.

Particular matter involving specific parties has the meaning set forth in 5 CFR 2641.201(h). Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties. The term includes without limitation, a contract, audit, enforcement action, examination, investigation, litigation proceeding, or request for a ruling.

Person has the same meaning set forth in 5 CFR 2635.102(k). It includes without limitation, an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution.

Special Government employee has the meaning set forth in 5 CFR 2635.102(l).

Spouse means an employee's husband or wife by lawful marriage, but does not include an employee's spouse if:

(1) The employee and the employee's spouse are legally separated;

(2) The employee and the employee's spouse live apart;

(3) There is an intention to end the marriage or separate permanently; and

(4) The employee has no control over the legally separated spouse's debt or equity interests.

§ 9401.103 Prior approval for outside employment.

(a) *General requirement.* Before engaging in outside employment, an employee must obtain written approval from the employee's supervisor and the concurrence of the DAEO, except to the extent that the Bureau has issued an instruction or internal directive pursuant to paragraph (e) of this section exempting an activity or class of activities from this requirement.

(b) *Definition of employment.* For purposes of this section, "employment" means any form of non-Federal employment, business relationship, or activity involving the provision of personal services by the employee, regardless of whether the services are compensated. It includes without limitation, personal services as an officer, director, employee, agent, advisor, attorney, consultant, contractor, general partner, trustee, teacher, speaker, or writer.

Note to § 9401.103(b): Both 18 U.S.C. 203(d) and 205(e) require special approval for certain representational activities in claims against and other matters affecting the interests of the Government. Thus, an employee who wishes to act as agent or attorney for or otherwise represent his or her parents, spouse, child, or a person for whom or for an estate for which he or she is serving as guardian, executor, administrator, trustee, or other personal fiduciary in such matters as described in those statutes shall obtain the approval of the Government official responsible for the employee's appointment in addition to the regulatory approval required in this section.

(c) *Standard for approval.* Approval will be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute, the OGE Standards, or the CFPB Ethics Regulations in this part.

(d) *Renewed request for approval.*

Upon a significant change in either the nature, scope, or duties of the employee's outside employment or in the employee's official Bureau position, the employee shall submit a new request for approval.

(e) *DAEO responsibilities.* The DAEO may issue instructions or internal directives governing the submission of requests for approval of outside employment and designating appropriate officials to act on such requests. The instructions or internal directives may exempt categories of employment from the prior approval requirement of this section based on a determination that employment within those categories generally would be approved and is not likely to involve prohibited conduct or create an appearance of lack of impartiality.

§ 9401.104 Additional rules concerning outside employment for covered employees.

(a) *Prohibited outside employment.* A covered employee shall not engage in compensated outside employment for an entity supervised by the Bureau or for an officer, director, or employee of such entity.

(b) *Definition of employment.* For purposes of this section, "employment" has the same meaning as set forth in § 9401.103(b) of this part.

(c) *Definition of covered employee.* For purposes of this section, "covered employee" means:

(1) An employee serving in an examiner position;

(2) An employee serving in an attorney position;

(3) An employee in the Office of Research, serving as a section chief at CFPB pay band 71 or above or as a senior economist in the Compliance Analysis Section;

(4) An employee serving in an investigator, paralegal, or financial analyst position in the Office of Enforcement;

(5) An employee required to file a Public Financial Disclosure Report (OGE Form 278) under 5 CFR part 2634; or

(6) Any other Bureau employee specified in a Bureau order or directive whose duties and responsibilities, as determined by the DAEO, require application of the prohibition on outside employment contained in this section to ensure public confidence that the Bureau's programs are conducted impartially and objectively.

§ 9401.105 Additional rules concerning outside employment for Bureau attorneys.

(a) *Prohibited outside practice of law.* In addition to the prior approval

requirements under § 9401.103 and the outside employment restrictions under § 9401.104 of this part, an employee serving in an attorney position shall not engage in the practice of law outside his or her official Bureau duties that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of CFPB; or

(2) Interpret any statute, regulation, or rule administered or issued by the Bureau.

(b) *Exemption for self representation.* Nothing in this section prevents a Bureau attorney from acting as an agent or attorney for or otherwise representing himself or herself in the outside practice of law, except:

(1) In those matters in which the employee has participated personally and substantially as a Government employee; or

(2) In those matters which are the subject of the employee's official responsibility.

§ 9401.106 Prohibited financial interests.

(a) *Prohibited interests.* Except as permitted by this section, an employee or an employee's spouse or minor child shall not own or control a debt or equity interest in an entity supervised by the Bureau.

(b) *Exceptions.* Interests prohibited in paragraph (a) of this section do not include the ownership or control of a debt or equity interest in:

(1) *Mutual funds.* A publicly traded or publicly available mutual fund or other collective investment fund if:

(i) The fund does not have a stated policy of concentration in the financial services industry or the banking industry; and

(ii) Neither the employee nor the employee's spouse exercises or has the ability to exercise control over or selection of the financial interests held by the fund.

(2) *Pension plans.* A widely held, diversified pension or other retirement fund that is administered by an independent trustee or custodian. Such a fund is diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector (other than the United States).

(3) *Federal retirement and thrift savings plans.* Funds administered by the Thrift Plan for Employees of the Federal Reserve System, the Retirement Plan for Employees of the Federal Reserve System, the Thrift Savings Plan, or a Federal government agency.

(c) *Disqualification.* If an employee or an employee's spouse or minor child

owns or controls a debt or equity interest that is prohibited under paragraph (a) of this section, the employee shall immediately disqualify himself or herself from participating in all particular matters involving an entity with which the employee or the employee's spouse or minor child has a debt or equity interest, unless and until the employee is granted a waiver pursuant to paragraph (d) of this section and the waiver includes an authorization allowing the employee to participate in such matters.

(d) *Waivers.* Upon request by the employee, the DAEO has the authority to grant an individual waiver under this paragraph, which authority may be delegated only to the Alternate DAEO. The DAEO, in consultation with senior management in the Division in which the employee works, may issue a written waiver permitting the employee or the employee's spouse or minor child to own or control a particular debt or equity interest that otherwise would be prohibited by this section, if:

(1) Mitigating circumstances exist due to the way the employee or the employee's spouse or minor child acquired ownership or control of the debt or equity interest. Mitigating circumstances may include, but are not limited to:

(i) The employee or the employee's spouse or minor child acquired the debt or equity interest through inheritance, gift, merger, acquisition, or other change in corporate structure, or otherwise without specific intent on the part of the employee or the employee's spouse or minor child; or

(ii) The employee's spouse received the debt or equity interest as part of a compensation package in connection with employment or prior to marriage to the employee;

(2) The employee makes a prompt and complete written disclosure of the debt or equity interest to the DAEO; and

(3) The disqualification of the employee from participating in particular matters involving an entity with which the employee or the employee's spouse or minor child has a debt or equity interest, as specified in the written waiver, would not unduly interfere with the full performance of the employee's duties.

(e) *Covered third party entities.* Immediately after becoming aware that a covered third party entity owns or controls a debt or equity interest that an employee would be prohibited from owning or controlling under paragraph (a) of this section, the employee shall report the interest in writing to the DAEO. The DAEO may require the employee to terminate the relationship

with the covered third party entity, disqualify himself or herself from certain particular matters, or take other action as necessary to avoid a statutory violation, or a violation of the OGE Standards or the CFPB Ethics Regulations, including an appearance of misuse of position or loss of impartiality. For purposes of this paragraph (e), "covered third party entity" includes:

(1) A partnership in which the employee or the employee's spouse or minor child is a general partner;

(2) A partnership or closely held corporation in which the employee or the employee's spouse or minor child individually or jointly holds more than a 10 percent equity interest;

(3) A trust in which the employee or the employee's spouse or minor child has a legal or beneficial interest;

(4) An investment club or similar informal investment arrangement between the employee or the employee's spouse or minor child, and others;

(5) A qualified profit sharing, retirement, or similar plan in which the employee or the employee's spouse or minor child has an interest; or

(6) An entity in which the employee or the employee's spouse or minor child individually or jointly holds more than a 25 percent equity interest.

§ 9401.107 Prohibition on acceptance of credit on preferential terms from an entity supervised by the Bureau.

An employee, and the employee's spouse or minor child, may not accept credit from or enter into any other financial relationship with an entity supervised by the Bureau, if the credit or financial relationship contains terms that are more favorable than those offered to the public in comparable circumstances.

§ 9401.108 Restrictions on seeking, obtaining, or renegotiating credit from an entity that is or represents a party to a matter to which an employee is assigned or may be assigned.

(a) *Prohibition on employee seeking, obtaining, or renegotiating credit or indebtedness.* (1) While an employee is assigned to participate in a particular matter involving specific parties, the employee shall not seek, obtain, or renegotiate credit or indebtedness with an entity that is or represents a party to the matter. This prohibition also applies to a particular matter involving specific parties pending at the Bureau in which the employee is not currently participating but of which the employee is aware and believes it is likely that he or she will participate.

(2) The prohibition in paragraph (a)(1) of this section continues for two years

after the employee's participation in the particular matter has ended.

(b) *Prohibition on employee's spouse or minor child seeking, obtaining, or renegotiating credit or indebtedness.*

The prohibition in paragraph (a) of this section shall apply to the spouse or minor child of an employee unless:

(1) The credit or indebtedness is supported only by the income or independent means of the spouse or minor child;

(2) The credit or indebtedness is obtained on terms and conditions no more favorable than those offered to the general public; and

(3) The employee does not participate in the negotiation for the credit or indebtedness or serve as co-maker, endorser, or guarantor of the credit or indebtedness.

(c) *Disqualification requirement for credit sought by person related to an employee.* An employee shall disqualify himself or herself from participating in a particular matter involving specific parties as soon as he or she learns that any of the following persons are seeking, obtaining, or renegotiating credit or indebtedness with an entity that is or represents a party to the matter:

(1) The employee's spouse, domestic partner, or dependent child;

(2) A partnership in which the employee or the employee's spouse, domestic partner, or dependent child is a general partner;

(3) A partnership or closely held corporation in which the employee or the employee's spouse, domestic partner, or dependent child individually or jointly owns or controls more than a 10 percent equity interest;

(4) A trust in which the employee or the employee's spouse, domestic partner, or dependent child has a legal or beneficial interest;

(5) An investment club or similar informal investment arrangement between the employee or the employee's spouse, domestic partner, or dependent child, and others;

(6) A qualified profit sharing, retirement, or similar plan in which the employee or the employee's spouse, domestic partner, or dependent child has an interest; or

(7) An entity in which the employee or the employee's spouse, domestic partner, or dependent child individually or jointly holds more than a 25 percent equity interest.

(d) *Exemptions.* The following forms of credit are exempted from the prohibition in paragraphs (a) and (b) of this section and the disqualification requirement in paragraph (c) of this section:

(1) Revolving consumer credit or charge cards issued by insured depository institutions or insured credit unions on terms and conditions no more favorable than those offered to the general public; and

(2) Overdraft protection on checking accounts and similar accounts at insured depository institutions or insured credit unions on terms and conditions no more favorable than those offered to the general public.

(e) *Waivers.* The DAEO, after consultation with senior management in the Division in which the employee works, may grant a written waiver from the prohibition in paragraphs (a) or (b) of this section or the disqualification requirement in paragraph (c) of this section, based on a determination that participation in matters otherwise prohibited by this section would not be prohibited by law (18 U.S.C. 208) or create an appearance of loss of impartiality or use of public office for private gain, and would not otherwise be inconsistent with the OGE Standards or the CFPB Ethics Regulations.

§ 9401.109 Disqualification of employees from particular matters involving creditors.

(a) *Disqualification required.* Absent an authorization pursuant to paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties if the employee is aware that any of the following have credit with or are indebted to an entity that is or represents a party to the matter:

- (1) The employee;
- (2) The employee's spouse, domestic partner, or dependent child;
- (3) A partnership in which the employee or the employee's spouse, domestic partner, or dependent child is a general partner;
- (4) A partnership or closely held corporation in which the employee or the employee's spouse, domestic partner, or dependent child individually or jointly owns or controls more than 10 percent of its equity;
- (5) A trust in which the employee or the employee's spouse, domestic partner, or dependent child has a legal or beneficial interest;
- (6) An investment club or similar informal investment arrangement between the employee or the employee's spouse, domestic partner, or dependent child, and others;
- (7) A qualified profit sharing, retirement, or similar plan in which the employee or the employee's spouse, domestic partner, or dependent child has an interest; or
- (8) An entity in which the employee or the employee's spouse, domestic

partner, or dependent child individually or jointly holds more than a 25 percent equity interest.

(b) *Forms of credit and indebtedness exempted.* The following forms of credit and indebtedness are exempted from the disqualification requirement in paragraph (a) of this section, as long as the person listed in paragraphs (a)(1) through (a)(8) of this section is not in an adversarial position (e.g., delinquent in payments; disputing the terms or conditions of the account; subject to debt collection measures like wage garnishment; involved in any disagreement that may cast doubt on the employee's ability to remain impartial) with the entity that extended the credit or to which the indebtedness is owed, and the credit or indebtedness was offered on terms and conditions no more favorable than those offered to the general public:

(1) Revolving consumer credit or charge cards issued by insured depository institutions or insured credit unions;

(2) Overdraft protection on checking accounts and similar accounts at insured depository institutions or insured credit unions;

(3) Amortizing indebtedness on consumer goods (e.g., automobiles);

(4) Educational loans (e.g., student loans; loans taken out by a parent or guardian to pay for a child's education costs); and

(5) Loans on residential homes (e.g., home mortgages; home equity lines of credit).

(c) *Credit or indebtedness of employee's spouse, domestic partner, dependent child, or other specified persons.* An employee's disqualification under paragraph (a) of this section is not required if:

(1) The credit or indebtedness is solely the responsibility of the person listed in paragraphs (a)(2) through (a)(8) of this section; and

(2) The credit or the liability for repayment of the indebtedness is not dependent on, attributable to, or derived from the employee's income, assets, or activities.

(d) *Authorization to participate.* The DAEO may authorize an employee to participate in a matter that would require disqualification under paragraph (a) of this section, using the authorization process set forth in 5 CFR 2635.502(d) of the OGE Standards. The DAEO will consult with senior management in the Division in which the employee works before issuing such an authorization.

§ 9401.110 Prohibited recommendations.

An employee shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale or other divestiture of a debt or equity interest of an entity supervised by the Bureau, or an entity that is or represents a party to a particular matter involving specific parties to which the employee is assigned.

§ 9401.111 Restriction on participating in matters involving covered entities.

(a) An employee shall not participate in a particular matter involving specific parties if a covered entity is or represents a party to the matter, unless the employee receives authorization from the DAEO. For purposes of this paragraph, a "covered entity" is a person for whom the employee is aware the employee's spouse, domestic partner, fiancé, child, parent, sibling, or member of the employee's household is serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee.

(b) The DAEO may authorize the employee to participate in the matter using the authorization process set forth in 5 CFR 2635.502(d) of the OGE Standards. The DAEO will consult with senior management in the Division in which the employee works before issuing such an authorization.

§ 9401.112 Prohibited purchase of assets.

An employee, or an employee's spouse or minor child, shall not purchase, directly or indirectly, any real or personal property from an entity supervised by the Bureau, unless it is sold at public auction or by other means which assures that the selling price reflects the asset's fair market value.

§ 9401.113 Waivers.

The DAEO may grant a written waiver from any provision of this part where the DAEO finds good cause to do so; provided, however, that the DAEO will not do so unless the DAEO finds that the waiver is not inconsistent with the OGE Standards or otherwise prohibited by law and that, under the particular circumstances, application of the provision being waived is not necessary in order to avoid a violation of an ethics rule. Each waiver must be in writing and supported by a statement of facts and findings and may impose appropriate conditions, such as requiring the employee to execute a written disqualification statement.

Dated: April 16, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

Don Fox,

Principal Deputy Director, Office of Government Ethics.

[FR Doc. 2012-10122 Filed 4-26-12; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 210

[FNS-2011-0025]

RIN 0584-AE15

Certification of Compliance With Meal Requirements for the National School Lunch Program Under the Healthy, Hunger-Free Kids Act of 2010

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim rule amends National School Lunch Program regulations to conform to requirements contained in the Healthy, Hunger-Free Kids Act of 2010 regarding performance-based cash assistance for school food authorities certified compliant with meal pattern and nutrition standards. This rule requires State agencies to certify participating school food authorities (SFAs) that are in compliance with meal pattern and nutrition standard requirements as eligible to receive performance-based cash assistance for each reimbursable lunch served (an additional six cents per lunch available beginning October 1, 2012 and adjusted annually thereafter). This rule also requires State agencies to disburse performance-based cash assistance to certified SFAs, and withhold the performance-based cash assistance if the SFA is determined to be out of compliance with meal pattern or nutrition standards during a subsequent administrative review. The intended effect of this rule is to provide additional funding for SFAs to implement new meal pattern requirements, thus increasing the healthfulness of meals served to school children.

DATES: *Effective date:* This interim rule is effective July 1, 2012.

Comment dates: Comments on rule provisions: Mailed comments on the provisions in this rule must be postmarked on or before July 26, 2012; emailed or faxed comments must be submitted by 11:59 p.m. on July 26,

2012; and hand-delivered comments must be received by 5 p.m. July 26, 2012 to be assured of consideration.

Comments on Paperwork Reduction Act requirements: Comments on the information collection requirements associated with this rule must be received by June 26, 2012.

ADDRESSES: The Food and Nutrition Service (FNS) invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302-1594.
- *Hand Delivery or Courier:* Deliver comments to 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302-1594, during normal business hours of 8:30 a.m.-5 p.m. All submissions received in response to this interim rule will be included in the record and will be available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting comments will be subject to public disclosure. FNS will also make the comments publicly available by posting a copy of all comments on <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Julie Brewer, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302, or by telephone at (703) 305-2590.

SUPPLEMENTARY INFORMATION:

I. Background

The National School Lunch Program (NSLP) provides cash assistance to States to assist schools in providing nutritious lunches for school children. In order to receive reimbursement, schools must serve lunches that meet program requirements, including statutory and regulatory nutrition standards.

Prior to the enactment of the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111-296), on December 13, 2010, the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1751 et al.) authorized only general and special cash assistance for lunches served in the NSLP. Section 4 of the NSLA authorizes the Secretary to provide two levels of general cash assistance for all lunches served, including lunches to children

whose family income is above 185 percent of the Federal poverty guidelines. The lower cash assistance level applies to lunches served by SFAs in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by SFAs in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement the general cash assistance payments, section 11 of the NSLA (42 U.S.C. 1759a) authorizes the Secretary to provide special cash assistance payments to schools providing free and reduced price meals. Children from families with income at or below 130 percent of the Federal poverty level are eligible for free meals, while those from families with incomes between 130 and 185 percent are eligible for reduced price meals. As a result, lunches served to those students are reimbursable at a higher, special assistance rate.

In accordance with section 11 of the NSLA, both the general and special cash assistance reimbursement rates are adjusted annually on July 1 of each year. Annual adjustments reflect changes in the cost of operating the NSLP, as indicated by the change in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. Each year, the Department of Agriculture (the Department) publishes a Notice specifying the annual adjustments.

The Healthy, Hunger-Free Kids Act of 2010

The Healthy, Hunger-Free Kids Act of 2010 (the HHFKA) made significant changes to the NSLA. Section 201 of the HHFKA amended section 4(b) of the NSLA, 42 U.S.C. 1753(b), by requiring the Secretary to update the meal patterns and nutrition standards for the NSLP and School Breakfast Program (SBP) and to issue regulations requiring all SFAs to comply with the updated meal patterns and nutrition standards.

On January 13, 2011, the Department published a proposed rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs* (76 FR 2494), which proposed to update the meal patterns and nutrition requirements for the NSLP and SBP, as required by the NSLA. The Department received over 132,000 comments from the public on the proposed rule. Subsequently, on January 26, 2012, the

Department issued a final rule, also entitled *Nutrition Standards in the National School Lunch and School Breakfast Programs*, (77 FR 4088) (hereafter referred to in this preamble as “the updated meal pattern rule”). The implementation date of the final rule is July 1, 2012.

Section 201 of the HHFKA also amended the NSLA to provide for additional assistance payments in the form of performance-based reimbursement of 6 cents per lunch served beginning on October 1, 2012. Performance-based cash reimbursement is in addition to the general and special cash assistance described above and is to be provided for each lunch served in SFAs certified by the State agency to be in compliance with the updated meal patterns and nutrition standards (hereafter referred to in this preamble as “updated meal patterns”).

In recognition of the significance of changes necessitated by the new statutory requirements, section 201 of the HHFKA also amended section 4(b) of the NSLA to provide \$50 million for each of two years to assist in the implementation of the updated meal patterns. During each of those two years, \$47 million of the \$50 million will be made available to State agencies for training, technical assistance, certification, and oversight activities. The remaining \$3 million will be used to support Federal implementation of the new requirements. This is in addition to the annual allocation of State administrative expense funds made available to State agencies in accordance with section 7 of the Child Nutrition Act of 1966, 42 U.S.C. 1776, and 7 CFR Part 235.

Performance-Based Reimbursement

As noted above, Section 201 authorized the provision of performance-based cash assistance (performance-based reimbursement) for each lunch served in SFAs certified to be in compliance with the updated meal patterns. Specifically, section 201 added subparagraphs (D) and (E) to section 4(b)(3) of the NSLA which read as follows:

- **ELIGIBLE SCHOOL FOOD AUTHORITY.**—To be eligible to receive an additional reimbursement described in this paragraph, a school food authority shall be certified by the State to be in compliance with the interim or final regulations described in subparagraph (A)(ii).

- **FAILURE TO COMPLY.**—Beginning on the later of the date described in subparagraph (A)(ii)(II), the date of enactment of this paragraph, or October 1, 2012, school food authorities

found to be out of compliance with the meal patterns or nutrition standards established by the implementing regulations shall not receive the additional reimbursement for each lunch served described in this paragraph.

Congress clearly intended that each SFA recognized as complying with updated meal patterns should be certified and should receive performance-based reimbursement for each eligible meal served. However, the method for assessing such compliance and determining such eligibility for performance-based reimbursement was not clearly enunciated in the above-cited provisions. Further, in subparagraph (E), it is not clear whether the reference to “meal patterns or nutrition standards established by the implementing regulations” refers to both the SBP and the NSLP or just the NSLP, especially considering that the provision reinforces the concept that the performance reimbursement is only applied to lunches served. As a result, it was necessary for the Secretary to develop an interpretation of this provision in order to determine how to implement it in this interim rule. Key to that determination was establishing the extent to which failure to comply with the updated meal patterns in SBP would jeopardize a SFA’s ability to continue to receive the performance-based reimbursement. First, the Department considered the overall purposes of the HHFKA, as Congress articulated them in the legislative history:

In summary, it is evident that tremendous needs exist to reduce childhood hunger and food insecurity, as well as to improve the diets and overall health of American children more generally. The purpose of this bill is to address those needs in order that fewer low-income children have to go without food, and to ensure that more children from all income levels adopt the kind of healthful eating habits and lifestyles that will enable them to live longer, more productive lives. (Senate Report 111–178, page 5.)

It was apparent that in considering the HHFKA, Congress noted that participation in the SBP was substantially lower than participation in the NSLP and that the need for both of these programs is growing as a large segment of America’s school aged children face food insecurity.¹ Congress also explicitly discussed the need to raise nutrition standards for both SBP and NSLP, noting in pertinent part that “considerable work remains to be done to improve children’s diets and to bring Federally-subsidized meals in line with

USDA nutritional guidelines.”² The HHFKA performance-based reimbursement provisions were intended to facilitate the raising of nutritional standards in these programs.

After consideration of expressed Congressional intent and given the dual focus of the HHFKA on raising nutritional standards and improving program access in order to address food insecurity, the Department adopted a balanced approach in implementing the performance-based reimbursement provisions in this interim rule. The Department is of the view that the burden on SFAs should not be too onerous in scope nor too rapid in implementation insofar as either result could lead SFAs to decide not to make the changes necessary to receive the performance-based reimbursement or to cease SBP participation and focus solely on raising the nutritional standards for lunches served in the NSLP. On the other hand, the Department is committed to implementing the provisions in a way that is robust enough to ensure that SFAs receiving the performance-based reimbursement have implemented improved nutritional standards. The approach taken in this interim rule, then, is to strike the appropriate implementation balance to achieve both the goal of expanding

² The legislative history of the HHFKA contains the following:

In addition to their importance in addressing food insecurity, Federal child nutrition programs play a critical role in providing nutritious, balanced meals to children and promoting healthy lifestyles. Major strides have been made in recent years to improve the quality of meals served to children through child nutrition programs. According to the third USDA School Nutrition Dietary Assessment (SNDA III), in school year 2004–2005, over 95 percent of NSLP lunches offered and served by most schools met USDA goals for cholesterol over a typical week and were lower in saturated fat than meals served in school year 1998–1999, when the last SNDA was conducted. Larger proportions of elementary schools met the standards for total fat and saturated fat, and a larger proportion of secondary schools met the standard for saturated fat.

Despite this significant progress, however, considerable work remains to be done to improve children’s diets and to bring Federally-subsidized meals in line with USDA nutritional guidelines. According to USDA, roughly 99 percent of lunches included amounts of sodium above the recommended levels. And, only 26 percent and 34 percent of schools served lunches that met USDA guidelines for total fat and saturated fat, respectively. Additionally, available research has consistently shown that the diets of U.S. children do not meet current national dietary recommendations for nutrition and health. Overall, children today have diets that are low in fruits, vegetables, whole grains, and dairy foods, and high in sodium, fat and added sugars. The 2005 Dietary Guidelines recommend that Americans consume half of their grains as whole grains, but according to the U.S. Department of Health and Human Services report, *Healthy People 2010*, only 7 percent of children ages two to 19 years currently meet this recommendation. (Senate Report 111–178, page 4.)

¹ Senate Report 111–178, page 2.

participation and of raising nutritional standards of the school meals served to America's children.

Thus, in formulating regulations to implement the performance-based reimbursement, the Department sought to further the overall goals of the HHFKA as expressed by Congress and the ultimate purposes of the performance-based reimbursement. Specifically, the Department views section 4(b)(3)(D) and (E) as establishing two separate requirements. Subparagraph (D) requires that at the time an SFA is certified by the State agency to receive the 6 cents per lunch performance-based reimbursement, the State agency must determine that the SFA is in compliance with the updated meal patterns and nutrition requirements in effect at the time of certification for the NSLP (and for the SBP if the SFA participates in that program). That is, for an SFA to be eligible for the performance-based reimbursement, it must meet the improved nutritional standards then in effect for the lunches and breakfasts it serves under these programs. The Department believes that this approach to the certification requirement of subparagraph (D) meets the overall goals of the HHFKA, comports with the expectations of Congress, and incentivizes SFAs to raise the nutritional standards for all meals served.

In subparagraph (E), the HHFKA provides that an SFA which falls out of compliance with the meal patterns or nutritional requirements is precluded from receiving the 6 cents per lunch performance-based reimbursement. In considering the implementation of this provision, the Department focused on the statutory intent of the phrase "school food authorities found to be out of compliance with the meal patterns or nutrition standard." As discussed above, in examining this phrase, the Department determined that it is unclear whether "meal patterns or nutrition standards" encompasses the patterns and standards in both the SBP and the NSLP or refers solely to those of the NSLP. The determination is especially important given that the 6 cents performance-based reimbursement may only be provided to an SFA for the service of eligible lunches. There is no legislative history that provides additional insight or explanation as to the intent of Congress regarding the interpretation of this key phrase in the provision. Thus, after analysis and in consideration of the other changes to the NSLP and SBP accomplished in accordance with section 201 of the HHFKA, the Department shaped its

interpretation of this phrase in light of the overall intent of the HHFKA and in keeping with federal experience in administering these programs.

State agencies currently conduct regular administrative reviews of participating SFAs for both the NSLP and the SBP. In instances in which a State agency finds that the SFA has violated one of more critical areas of review, program regulations require that the SFA implement corrective action. The State agency may withhold program payments during the corrective action period, but will also provide technical and other assistance to the SFA and confirm corrective action through one or more follow up reviews. Pursuant to program regulations and consistent with the general policy of the Department, only in the rare instance in which an SFA fails to complete corrective action in a critical area of review does a State agency disallow meal reimbursements. The regulatory framework reflects the reality that a reduction in program payments of any amount is most likely to have an adverse impact on those who these programs are designed to help, the children receiving these school meals.

Accordingly, in interpreting subparagraph (E) for the purposes of developing the implementing regulations in the interim rule, the Department has taken the following factors into account:

(1) As explained above, it is clear that the 6 cents performance-based reimbursement and the compliance requirements of subparagraph (E) have a dual intent—to expand SFA participation in the NSLP and SBP and to encourage SFAs to raise nutritional standards for both the NSLP and SBP. In implementing the statute, the Department must balance the need effectively to encourage compliance with the increased nutritional standards for both programs without imposing unnecessary burdens likely to discourage SFAs from raising their breakfast and lunch nutrition standards or from participating in SBP. Neither of these outcomes would be compatible with the purposes of the HHFKA.

(2) The implementation of the meal patterns and nutrition standards developed pursuant to the HHFKA will be phased in over a period of several years with SBP implementation likely to be more dynamic over the course of the next several years.

Taking into account all of these factors and balancing the overall goals of the HHFKA-mandated performance-based reimbursement, the Department concluded that for the purposes of the interim rule, Congress' use of the phrase "the meal patterns or nutrition

standards" in subparagraph (E) of the HHFKA means the meal patterns or nutrition standards of the NSLP but not the SBP. As a result, this interim rule provides that if the SFA is certified to receive the performance-based reimbursement and, during a State agency's administrative review, is found to be in violation of a review area of the updated meal patterns for the SBP established in program regulations, the SFA is not in jeopardy of losing the performance-based reimbursement for eligible lunches served under the NSLP. Conversely, if the SFA is found to be out of compliance with the updated meal patterns for the NSLP, the SFA is at risk of losing the performance-based reimbursement. In addition, if the State agency finds a SFA out of compliance with the updated meal patterns for either SBP or the NSLP, the State agency is required to follow the standard operating procedures for administrative reviews. This means that a SFA could be subject to fiscal sanctions if the State agency determines that the SFA has not completed timely the corrective action as required by the regulations.

The Department has determined that this approach strikes the right balance regarding the implementation of the requirements the HHFKA added to NSLP in sections 4(b)(3)(D) and (E) and reflects the intent of Congress as clarified in pertinent legislative history regarding the goals of the HHFKA. Consistent with the HHFKA provisions, the interim rule clearly requires SFAs that participate in the SBP and the NSLP to meet the higher nutritional standards in effect for both programs at the time the SFAs are certified. Existing regulations continue to require State agencies to establish corrective action plans and work with SFAs to timely complete corrective actions for any violations identified during administrative reviews relating to either program. On balance, the implementation of performance-based reimbursement and the higher nutrition standards will allow the performance-based reimbursement and compliance tools to serve as an effective incentive for SFAs to increase participation in these programs while raising nutritional standards.

II. Overview

This interim rule amends 7 CFR part 210, the regulations governing the NSLP, to add the procedures for performance-based certifications, required documentation and timeframes, validation reviews, compliance and administrative reviews, reporting and recordkeeping, and technical assistance.

Performance-Based Certification Requirements

In accordance with the HHFKA, State agencies must provide performance-based reimbursements for each lunch served in eligible SFAs, i.e., SFAs certified by the State agency to be in compliance with the updated meal patterns for the NSLP (as well as for the SBP, if the SFA participates in the SBP). Section 210.7(d) has been revised to set forth the procedures for performance-based certifications for both State agencies and SFAs.

(1) State Agency Certification Responsibilities

Section 210.7(d)(1) of this interim rule requires State agencies to establish procedures to certify SFAs for performance-based cash reimbursement in accordance with guidance established by the Food and Nutrition Service (FNS). State agencies must provide guidance to facilitate the certification process, including making SFAs aware of certification protocol and documentation required to demonstrate compliance with updated meal patterns set forth in § 210.10 and for those SFAs participating in the SBP, 7 CFR 220.8 or 220.23. Compliance with both NSLP and SBP updated meal patterns is necessary to be certified for performance-based cash reimbursements for lunch. However, because some aspects of the updated meal patterns are phased in over several years, SFAs must demonstrate compliance with requirements in effect at the time of certification.

In school years subsequent to the school year of certification, through School Year 2014–2015, State agencies must require SFAs to submit an annual attestation of compliance with meal pattern requirements as new requirements are phased in. The phase in timeline for meal pattern requirements is established in the updated meal pattern rule. FNS will provide SFAs with a prototype attestation which includes a statement attesting compliance with each of the phased in meal pattern requirements. The attestation must be provided to the State agency as an addendum to the written agreement required in § 210.9(b). Additionally, this interim rule requires in new § 210.18(g) that compliance with new requirements in subsequent years will be confirmed during State administrative reviews.

This interim regulation also requires that State agencies' procedures must also include a protocol for timely review of certification documents and disbursement of funds to eligible SFAs.

Once a SFA is certified, a State agency must promptly disburse performance-based reimbursement to the SFA beginning with the start of certification. State agencies must begin making performance-based reimbursement payments for lunches served in certified SFAs in the calendar month for which the SFA is certified. However, because performance-based cash reimbursement is not available until October 1, 2012, State agency procedures must ensure that no performance-based reimbursement is provided for meals served by SFAs prior to October 1, 2012.

Finally, during School Year 2012–2013, State agencies must conduct on-site validation reviews for a sample of certified SFAs to ensure that submitted certification documentation accurately reflects the meal service.

These requirements are discussed in more detail below.

(2) SFA Responsibilities

Section 210.7(d)(2) of this interim rule establishes requirements for SFAs seeking to obtain performance-based reimbursement. SFAs must submit certification materials to the State agency in accordance with State agency certification procedures, including documentation to support receipt of performance-based reimbursement. SFAs must attest that the documentation provided is representative of the ongoing meal service within the SFA. Required documentation is described below. SFAs certified to earn performance-based reimbursement must maintain documentation of compliance, including production and menu records, and other records, and SFAs must make appropriate records available to State agencies upon request.

Required Documentation and Timeframes

SFAs may demonstrate compliance with the updated meal patterns to the State agency in a variety of ways, briefly described below. FNS developed the following options for certification using, to the maximum extent possible, existing processes and information available to the State agency and SFAs. This flexible approach is intended to facilitate the timely completion of certification activities with a reasonable burden on State agencies and SFAs. Additionally, the approach ensures that an SFA's compliance with the updated meal patterns is assessed accurately.

Option 1: Menus and nutrient analysis. Approximately two-thirds of SFAs currently plan menus using nutrient analysis software. Although SFAs will no longer be required to

conduct a nutrient analysis once updated nutrition standards are in effect, those using software to plan menus may use the software's nutrient analysis function to document compliance with updated meal patterns. SFAs that select this option must submit to the State agency one week of each type of menu offered in the schools under its jurisdiction, nutrient analyses of the submitted menus, and a detailed menu worksheet which shows food items and quantities (as specified by FNS) which will be used to assess compliance with updated meal patterns.

Option 2: Menus and a simplified nutrient assessment. In lieu of showing compliance with updated meal patterns via a full menu nutrient analysis, SFAs may perform a simplified nutrient assessment related to foods offered on school menus to demonstrate to the State agency compliance with updated meal patterns. SFAs that exercise this certification option must submit to the State agency, a simplified nutrient assessment (as specified by FNS), one week of each type of menu offered, and a detailed menu worksheet with food items and quantities (as specified by FNS).

Option 3: State agency review findings. An SFA may also demonstrate compliance with updated meal patterns during the course of a regular State agency-conducted administrative review, if the State offers this option. A detailed menu worksheet with food items and quantities (as specified by FNS) is required as part of the materials used to demonstrate compliance. When conducting an administrative review, a State agency may certify an SFA to receive performance-based reimbursement if the State agency can confirm compliance with all meal pattern and nutrition standards. The State agency may document certification in lieu of asking the SFA to submit documentation.

SFAs may choose whether to submit menus with a nutrient analysis (option 1), or with the simplified nutrient assessment (option 2). The option to certify SFA compliance during the course of an administrative review is left to the State agency. State agencies that wish to use this approach for some or all of their SFAs should notify these SFAs promptly.

To ensure that certification documentation accurately reflect current SFA practices, menus submitted for certification after October 1, 2012 must be submitted for certification at or around the time of planned usage. To facilitate disbursement of performance-based reimbursement as soon as it becomes available (October 1, 2012),

State agencies should begin preparing for certification activities upon publication of this interim rule, so that the certification process for SFAs may begin as soon as possible following the beginning of SY 2012–2013. SFA-submitted certification materials submitted prior to October 1, 2012 should include menus that will be served October 1, 2012 or later. If a SFA submits certification materials to the State agency and is found to be out of compliance, the State agency may not authorize the performance-based reimbursement, must provide technical assistance in non-compliant areas, and encourage the SFA to take corrective action and reapply for certification. The SFA may reapply for certification as soon as corrective action is taken. If, in reviewing performance-based certification materials, the State agency finds a significant noncompliance violation (e.g., a missing meal component), the State agency must require the SFA to undergo an administrative review early in the review cycle.

In years subsequent to the year certified, through School Year 2014–2015, SFA's will be required to submit an annual attestation of compliance with meal pattern requirements as new requirements are phased in. The phase in timeline for meal pattern requirements is established in the updated meal pattern rule. The attestation must be provided to the State agency as an addendum to the written agreement required in § 210.9(b).

State Agency Timeframes

Because of the short implementation timeline prior to performance-based reimbursement becoming available, FNS seeks to ensure that certification activities are conducted in a timely manner. This interim rule requires in the new § 210.7(d)(1) that State agencies must review certification materials and make a certification determination within 60 days of receipt from the SFA or as otherwise authorized by FNS.

Upon certification, the State agency must reimburse the certified SFA with the additional performance-based reimbursement for each lunch served beginning in the start of the month in which the certified menus are served. For example, if menus for the first week of October are certified in December, the State agency must retroactively reimburse the additional performance-based reimbursement for all lunches served on or after October 1.

Documentation must reflect current meal service, i.e., meal service in the calendar month the certification materials are submitted or, in the month

preceding the calendar month of submission. For the time period prior to the availability of funds (July 1, 2012–September 30, 2012), SFAs may submit documentation of compliance reflecting planned meal service beginning October 1, 2012. However, in no case can reimbursement be made for meals served prior to October 1, 2012.

Provision of the performance-based reimbursement is added by this interim rule at § 210.7(d).

State Agency Validation Reviews

For School Year 2012–2013, State agencies also must conduct on-site validation reviews for a sample of certified SFAs to validate the information submitted for certification. This interim rule requires in § 210.7(d)(1)(vi)(A) State agencies to conduct on-site validation reviews for a random sample of 25 percent of certified SFAs, except that the sample must include all large certified SFAs, as defined in 210.18(b)(6). Because certifications will be ongoing throughout School Year 2012–2013, State agencies should select SFAs for validation reviews throughout the year to ensure that all certified SFAs are included in the sample universe. During on-site validation reviews, State agencies must observe a meal service for each type of certified menu, review the production records for observed meals to ensure they are consistent with the menus on which the certification determination was based, and review the documentation submitted for certification to ensure that ongoing meal service operations are consistent with certification documentation. These requirements are added by this rule at § 210.7(d)(vi).

The Department is mindful of State agency concerns about increased administrative burden related to implementing new meal pattern requirements, training and technical assistance, increased review frequency, and performance-based reimbursement certifications and validation reviews. In response to these concerns, for School Year 2012–2013, § 210.18(a) of this rule permit State agencies to conduct performance-based reimbursement certifications and validation reviews in lieu of administrative reviews, unless an SFA is determined by the State agency to be at-risk for improper payments. This flexibility for the 2012–2013 School Year is discussed later in this preamble.

FNS anticipates that SFAs in compliance with updated standards will seek certification by the State agency in a timely manner in order to receive performance-based reimbursement at

the earliest possible date. An SFA that either does not voluntarily submit certification documentation or that submits materials that do not support certification will not receive the performance-based reimbursement. Further, § 210.18(d)(3) and (e)(4) require State agencies to conduct an administrative review of a non-compliant school food authority earlier in the review cycle. For these SFAs, compliance with the updated meal patterns will be evaluated at the next administrative review, at which time the State agency will assess compliance with the updated meal patterns and determine eligibility for the performance-based reimbursement. This provision is established by this rule in § 210.18(e)(4). State agencies are strongly encouraged to include those SFAs not certified in School Year 2012–2013 in the first year of the administrative review cycle (which is School Year 2013–2014).

Ongoing Compliance and Subsequent Administrative Reviews

The updated meal pattern rule increases the scope of State agency administrative reviews of SFAs by eliminating School Meals Initiative (SMI) reviews and revising the Performance Standard 2 portion of the administrative review (commonly referred to as, Coordinated Review Effort) to reflect new meal pattern requirements. The final rule also increases review frequency to once every three years beginning School Year 2013–2014, requires that breakfasts be reviewed during administrative reviews, and establishes requirements for fiscal action related to specific meal pattern violations.

Administrative reviews will continue to assess both general and critical areas. The critical areas contain two performance standards: Performance Standard 1 assesses certification, counting, and claiming procedures to ensure that all free, reduced, and paid lunches are served to eligible children and that lunches are counted correctly to yield accurate claims; and Performance Standard 2 assesses whether lunches meet the updated meal patterns set forth in § 210.10 and breakfast meets § 220.8 or § 220.23, as applicable. The rule also establishes requirements for when State agencies must take fiscal action for specific meal pattern violations.

After the initial certification to receive performance-based reimbursement, State agencies will assess continued compliance with the lunch and breakfast patterns at subsequent administrative reviews, as described

above. If the SFA is certified to receive the performance-based reimbursement and, on an administrative review, is found to be non-compliant with the updated meal patterns for lunch established in § 210.10, the State agency must follow the standard operating procedures set forth in §§ 210.18 and 210.19. As a result of this interim rule, these procedures include cessation of the performance-based reimbursement for noncompliance with lunch requirements until the SFA demonstrates to the satisfaction of the SA that corrective action has taken place. Absent immediate corrective action, the State agency must turn off the 6 cents per lunch reimbursement with the beginning of the month following the administrative review and, at State discretion, may turn off the 6 cent per lunch reimbursement for the month under review. As always, the State agency may recover any funds improperly paid back through the beginning of the certification period. Non-compliance with the breakfast requirements would be handled in the usual review procedure and would not be a basis for cessation of the performance-based reimbursement. As required by the updated meal pattern rule, breakfast requirements are now part of the administrative review process which means that violations of the breakfast requirements will now result in fiscal action until such time as corrective action occurs. This requirement is established by this interim rule in § 210.18(m)(3) and § 210.19(c)(2)(iv).

School Year 2012–2013 Monitoring Adjustments

The Department recognizes updating the school meal patterns and implementing the new performance-based reimbursement certification process will require a significant effort on the part of the State agencies, and local SFAs. To help ensure State agencies provide SFAs with the training and technical assistance needed to implement the updated meal patterns and performance-based funding requirements, the Department has reduced the administrative review requirements for School Year 2012–2013, as indicated above.

The previously mentioned final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs*, eliminated the School Meal Initiative reviews (formerly required under § 210.19), effective with the beginning of School Year 2012–2013.

This interim rule revises § 210.18(a) to permit State agencies to conduct administrative Coordinated Review

Effort reviews scheduled for School Year 2012–2013 in either School Year 2012–2013 or 2013–2014, with one exception: State agencies must conduct a scheduled School Year 2012–2013 review in that year of any school food authority at risk for improper payments, as determined by the State agency. State agencies are advised that any reviews moved to School Year 2013–2014 count toward, and are not in addition to, the required number of reviews for the first three-year administrative review cycle.

State agencies must continue to conduct additional administrative reviews (AARs) of selected local educational agencies that have a demonstrated level of, or are at high risk for, administrative error. On November 4, 2010, State agencies were provided guidance on the implementation of AARs in school year 2010–2011 (*Additional Administrative Reviews and State Retention*, SP_07—2011 (Revised)). Because AARs target local educational agencies that have a demonstrated level of, or are at high risk for, administrative error, the Department has determined AARs are an essential review activity and this interim rule does not modify their use.

These changes are expected to provide State agencies with the flexibility needed to conduct necessary training, technical assistance, and certification activities while exercising proper stewardship of federal funds.

Reporting and Recordkeeping

To facilitate disbursement of performance-based reimbursement to State agencies and, ultimately, SFAs, this interim rule establishes performance-based reimbursement reporting requirements for State agencies and SFAs.

In addition to incorporating meal counts earning the performance-based reimbursement on the Report of School Program Operations (FNS–10), State agencies must submit a quarterly report, as specified by FNS, detailing the disbursement of performance-based reimbursement, including the total number of SFAs in the State, the names and locations of certified SFAs, and, for each school food authority, the total number of lunches earning the performance-based reimbursement for each month. In addition, this rule requires SFAs to submit to the State agency documentation to demonstrate compliance and support the receipt of performance-based reimbursement and an annual attestation of compliance with the meal pattern as new requirements become effective. The new reporting requirements for SFAs and State agencies, respectively, are

contained in § 210.5(d)(2)(ii) and § 210.15(b)(2).

Technical Assistance

FNS will work with State agencies to facilitate transition to the new meal requirements and assist SFAs in becoming eligible to receive performance-based reimbursement. FNS and the National Food Service Management Institute are developing technical assistance resources and training to help school foodservice staff improve menus, order appropriate foods to meet the new meal requirements, and control costs while maintaining quality. Resources and training materials being developed include identifying and purchasing whole grain-rich foods, lowering sodium in menus, and understanding and meeting the new meal pattern requirements. Training will be available through a variety of methods including webinars and online learning modules.

In addition, Section 201 of the HHFKA amended Section 9(b)(3)(F) of the NSLA, by providing \$50 million for each of two years to help FNS and State agencies implement new requirements implemented by this interim rule, including training, technical assistance, and conducting performance-based certifications. As provided for in HHFKA, we expect that all but \$3 million of each year's funds (which will be used to support Federal implementation) will be made available to State agencies for those purposes. These funds, combined with subsequent increases in State Administrative Expense funding, aim to provide resources that State agencies may use to assist local program operators to improve the quality of school meals provided to children and come into compliance with the new meal patterns.

FNS is also developing guidance, resources, and necessary forms to assist with the timely execution of performance-based certifications, and will make these materials available on a centralized Web site. These materials will be available at: http://www.fns.usda.gov/cnd/Governance/Legislation/CNR_resources.htm.

III. Procedural Matters

Issuance of an Interim Rule and Date of Effectiveness

The Department, under the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(B), finds for good cause that use of prior notice and comment procedures for issuing this interim rule is impracticable. Section 201 of the Healthy, Hunger-Free Kids Act of 2010, Public Law 111–296, enacted on

December 13, 2010, requires provision of the performance-based reimbursement to SFAs determined to be eligible beginning on October 1, 2012. Because the provision of performance-based reimbursement is dependent on the publication and implementation of the final meal pattern requirements, the Department concludes that there is insufficient time to issue both a proposed rule and final rule prior to the statutory implementation deadline. As a result, this interim rule is necessary to comply with the requirements of Section 201 of Public Law 111–296 and ensure that those provisions are implemented and effected by State agencies and SFAs by October 1, 2012.

The Department invites public comment on this interim rule, and will consider amendments to the interim rule based on comments submitted during the 90-day comment period. The Department will address comments and affirm or amend the interim rule in a final rule.

Executive Order 12866 and Executive Order 13563

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

This interim rule has been designated an “economically significant regulatory action,” under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget. As required for all rules that have been designated significant by the Office of Management and Budget, a Regulatory Impact Analysis (RIA) was developed for this

interim rule. The following is a summary of the RIA. The complete RIA is published in this docket (FNS–2011–0025) on www.regulations.gov.

Need for Action

Section 201 of the Healthy Hunger-Free Kids Act of 2010 (HHFKA) provides for a 6 cent per lunch performance-based reimbursement to SFAs that comply with NSLP and SBP meal standards that take effect on July 1, 2012. This rule provides the regulatory framework for establishing initial school food authority (SFA) compliance with the new meal standards and for monitoring ongoing compliance.

Benefits

This rule establishes procedures that will result in a transfer from the Federal government to SFAs of as much as \$1.4 billion through FY 2016 to implement improved NSLP and SBP meal patterns that are more fully aligned with the *Dietary Guidelines for Americans*. The 2010 Dietary Guidelines Advisory Committee emphasizes the importance of a diet consistent with DGA recommendations as a contributing factor to overall health and a reduced risk of chronic disease. The new meal patterns are intended not only to improve the quality of meals consumed at school, but to encourage healthy eating habits generally. Those goals of the meal patterns rule are furthered by the funding made available by this interim rule.

Costs

In addition to the estimated \$1.4 billion 5-year transfer from the Federal government to SFAs in NSLP meal reimbursements, SFAs will incur some minor costs to prepare materials to document and certify their compliance with the new meals patterns. State agencies will incur costs to review that documentation, make certification decisions, conduct on-site SFA verification reviews, and provide technical assistance to the SFAs.

Through FY 2016, these administrative functions are expected to cost \$3.7 million. Finally, the interim rule provides for an additional \$100 million over fiscal years 2012 and 2013 to fund technical assistance, oversight, monitoring, and certification activity by the States.

Accounting Statement

The following accounting statement gives the estimated discounted, annualized costs and transfers of the rule. The figures are computed from nominal 5-year estimates developed in the full RIA. The accounting statement contains figures computed with 7 percent and 3 percent discount rates under two scenarios. The first scenario estimates the cost of full and immediate SFA compliance with the new meal patterns. Under that upper bound scenario, summarized in the preceding paragraphs, the nominal 5-year increase in NSLP reimbursements totals \$1.4 billion, and State and SFA administrative expenses equal \$3.7 million. The second scenario models full SFA compliance within 3 years. Under that alternate scenario, the nominal 5-year increase in NSLP reimbursements totals \$1.2 billion, and State and SFA administrative expenses are \$3.8 million.

The figures in the accounting statement rows labeled “costs” include State and SFA administrative expenses as well as the \$3 million retained by USDA in each of the fiscal years 2012 and 2013 out of the \$100 million provided by HHFKA for State technical assistance, certification, and monitoring activity.

The figures in the rows labeled “transfers” include Federal NSLP reimbursements to SFAs plus the \$47 million in Federal assistance (\$50 million less \$3 million retained for Federal expenses) in each of the fiscal years 2012 and 2013 for State technical assistance, certification, and monitoring activity.

	Primary estimate	Alternate estimate	Year dollar	Discount rate	Period covered
Benefits:					
<i>Qualitative:</i> This rule encourages SFA compliance with the NSLP and SBP meal standards that take effect on July 1, 2012 by providing an additional 6 cent reimbursement for lunches served that meet the new requirements. The additional funds will help offset about 30 percent of the costs incurred by SFAs to serve meals that comply with the new requirements.					
Costs:					
Annualized Monetized (\$millions/year)	\$2.2	\$2.2	2012	7%	FY2012–2016.
	2.0	2.0	2012	3%	

	Primary estimate	Alternate estimate	Year dollar	Discount rate	Period covered
Costs shown here are a combination of State, SFA, and Federal costs. State and SFA costs are the administrative costs associated with submitting and processing SFA documentation to support SFA claims of compliance with the meal standards rule. Federal costs are equal to the \$3 million retained by the USDA in each of the years FY 2012 and FY 2013 from the \$100 million made available by HHFKA for State agency technical assistance, certification, and monitoring activity.					
Transfers:					
Annualized Monetized (\$millions/year)	288 292	260 264	2012 2012	7% 3%	FY2012–2016.

There are two transfers included in these figures. The first is the \$47 million transfer from the Federal government to State agencies each of the years FY 2012 and FY 2013 to support State agency technical assistance, certification, and monitoring activity. The second is the transfer from the Federal government to SFAs for increased NSLP meal reimbursements.

Regulatory Flexibility Act

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

While there may be some SFA burden associated with initial certification for the performance-based reimbursement in this rule, the burdens will not be significant and will be outweighed by the benefits of increased Federal reimbursement for school lunches.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of \$100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The National School Lunch Program and School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under No. 10.555. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. In developing this regulation, FNS gathered input from State and local program operators, and other stakeholders, via listening sessions held at the School Nutrition Association Legislative Action Conference in March 2011, and at the School Nutrition Association Annual National Conference in July 2011.

Executive Order 13132

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

Prior Consultation With State Officials

Prior to drafting this interim rule, FNS staff received informal input from various stakeholders while participating in various State, regional, national, and professional conferences. The School Nutrition Association, the Center for Science in the Public Interest, and the American Dietetic Association shared their views about performance-based reimbursement. Numerous stakeholders, including State and local program operators, also provided input at public meetings held by the School Nutrition Association.

Nature of Concerns and the Need To Issue This Rule

State Agencies and SFAs want to provide the best possible school meals through the NSLP and SBP but are concerned about the costs and administrative burden associated with increased program oversight. While FNS is aware of these concerns, the National School Lunch Act, 42 U.S.C. 1753(b)(a)(4) requires that State agencies certify whether SFAs are in compliance with meal pattern and nutrition standards, and disburse performance-based reimbursement to eligible SFAs.

Extent to Which We Meet Those Concerns

FNS has considered the impact of this interim rule on State and local program operators and has attempted to develop a rule that would implement the performance-based reimbursement in the most effective and least burdensome manner. FNS recognizes that implementing the new performance-based reimbursement certification process will require a significant effort on the part of State and local program operators. To ensure State agencies conduct performance-based funding requirements and provide SFAs with the training and technical assistance needed to implement the improved school meal patterns, FNS has reduced the administrative review requirements for School Year 2012–2013. Per the requirements of the HHFKA, FNS will provide \$47 million to States for each of two years to assist with meal pattern implementation, training, technical assistance, and performance-based certification activities. FNS is also exploring additional approaches to alleviate program operators’ administrative burden, including support for implementation and certification activities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice

Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have a retroactive effect unless specified in the **DATES** section of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with Departmental Regulations 4300-4, "Civil Rights Impact Analysis", and 1512-1, "Regulatory Decision Making Requirements." After a careful review of the rule's intent and provisions, FNS has determined that this rule is not intended to limit or reduce in any way the ability of protected classes of individuals to receive benefits on the basis of their race, color, national origin, sex, age or disability nor is it intended to have a differential impact on minority owned or operated business establishments, and woman- owned or operated business establishments that participate in the Child Nutrition Programs.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320), requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. This is a new collection. The new provisions in this rule, which increase burden hours, affect the information collection requirements that will be merged into the National School Lunch Program, OMB Control Number 0584-0006, expiration date 5/31/2012. The current collection burden inventory for the National School Lunch Program is 12,654,440. These changes are

contingent upon OMB approval under the Paperwork Reduction Act of 1995. When the information collection requirements have been approved, FNS will publish a separate action in the **Federal Register** announcing OMB's approval.

Comments on the information collection in this interim rule must be received by June 26, 2012.

Send comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for FNS, Washington, DC 20503. Please also send a copy of your comments to Lynn Rodgers-Kuperman, Program Analysis and Monitoring Branch, Child Nutrition Division, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection requirements, please contact Lynn Rodgers-Kuperman at the address indicated above.

Comments are invited on: (1) Whether the interim collection of information is necessary for the proper performance of the Agency's functions, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the interim information collection burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

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

Title: Certification of Compliance with Meal Requirements for the National School Lunch Program Under the Healthy, Hunger-Free Kids Act of 2010.

OMB Number: 0584-NEW.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract: This rule amends National School Lunch Program regulations to conform to requirements contained in the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111-296) regarding performance-based reimbursement for SFAs certified compliant with meal patterns and nutrition standards. This rule requires State agencies to certify whether participating SFAs are in compliance with meal requirements and, therefore, eligible to receive performance-based reimbursement for each reimbursable lunch served (an additional six cents per lunch available beginning October 1, 2012, adjusted annually thereafter). This rule also requires States to disburse performance-based cash assistance to certified SFAs, and withhold the performance-based reimbursement if an SFA is found to be out of compliance with meal pattern or nutrition standards during a subsequent administrative review. The intended effect of this rule is to incentivize SFAs to implement new meal pattern requirements to increase the healthfulness of meals served to school children.

Those respondents participating in the School Breakfast Program also participate in the National School Lunch Program, thus the burden associated with the School Breakfast Program will be carried in the National School Lunch Program. The average burden per response and the annual burden hours are explained below and summarized in the charts which follow.

Respondents for this Interim Rule: State administering agencies (56) and School Food Authorities (20,858).

Estimated Number of Respondents for this Interim Rule: 20,914.

Estimated Number of Responses per Respondent for This Interim Rule: 4.9960.

Estimated Total Annual Responses: 104,488.

Estimated Time per Respondent: 1.4988.

Estimated Total Annual Reporting and Recordkeeping Burden on Respondents for this Interim Rule: 156,608.

ESTIMATED ANNUAL BURDEN FOR 0584-NEW, 6 CENTS RULE, 7 CFR PART 210

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
Reporting						
SAs review submitted certification materials and notify SFAs of the certification determination.	210.7(d)(1)(iv)	56	372	20,832	2	41,664

ESTIMATED ANNUAL BURDEN FOR 0584–NEW, 6 CENTS RULE, 7 CFR PART 210—Continued

	Section	Estimated number of respondents	Frequency of response	Average annual responses	Average burden per response	Annual burden hours
SAs submit a quarterly report to FNS detailing the disbursement of performance-based reimbursement to SFAs.	210.5(d)(2)(ii)	56	4	224	1.0	224
Total SA Reporting .....	.....	56	376	21,056	1.9894	41,888
SFAs must submit certification materials to State agency to support receipt of performance based reimbursement.	210.7(d)(2)	20,858	1	20,858	4.5	93,861
SFAs must submit an annual attestation of compliance with meal pattern requirements as new requirements are phased in.	210.7(d)(2)	20,858	1	20,858	0.25	5,215
Total SFA Reporting .....	.....	20,858	1	20,858	4.75	99,076
Total Reporting for 6 cents Interim rule.	.....	20,914	2.0041	41,914	3.3631603	140,964
Total Existing Reporting Burden for Part 210.	.....	.....	.....	.....	.....	2,912,745
Total Reporting Burden for Part 210 with 6 cents interim rule.	.....	.....	.....	.....	.....	3,053,709

Recordkeeping

SFAs maintain documentation to support performance-based reimbursement.	210.7(d)(2)	20,858	2	41,716	0.25	10,429
SFAs maintain documentation related to the attestation of compliance submitted to the SA as an attachment to the written agreement required in 210.9(b).	210.7(d)(2)	20,858	1	20,858	0.25	5,215
Total Recordkeeping for 6 cents interim rule.	.....	20,858	3.0	62,574	0.25	15,644
Total Existing Recordkeeping Burden for 0584–0006, Part 210.	.....	.....	.....	.....	.....	8,893,821
Total Recordkeeping Burden for 0584–0006, Part 210 with 6 cents interim rule.	.....	.....	.....	.....	.....	8,909,465

SUMMARY OF BURDEN (OMB #0584–NEW)

TOTAL NO. RESPONDENTS ..	20,914
AVERAGE NO. RESPONSES PER RESPONDENT	4.99608
TOTAL ANNUAL RESPONSES	104,488
AVERAGE HOURS PER RESPONSE	1.49880
TOTAL BURDEN HOURS FOR PART 210 WITH INTERIM RULE	11,963,174
CURRENT OMB INVENTORY FOR PART 210	11,806,566

SUMMARY OF BURDEN (OMB #0584–NEW)—Continued

DIFFERENCE (NEW BURDEN REQUESTED WITH INTERIM RULE)	156,608
<i>E-Government Act Compliance</i>	
The Food and Nutrition Service is committed to complying with the E-Government Act, 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.	

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes, or distribution of power and responsibilities between the Federal government and Indian tribes. In spring 2011, FNS offered opportunities for consultation with Tribal officials or their designees to discuss the impact of the Healthy Hunger Free Kids Act of 2010 on Tribes or Indian Tribal governments. The consultation sessions were coordinated by FNS and held on the following dates and locations:

- 1. HHFKA Webinar & Conference Call—April 12, 2011.
- 2. Mountain Plains—HHFKA Consultation, Rapid City, SD—March 23, 2011.
- 3. HHFKA Webinar & Conference Call—June, 22, 2011.
- 4. Tribal Self-Governance Annual Conference in Palm Springs, CA—May 2, 2011.
- 5. National Congress of American Indians Mid-Year Conference, Milwaukee, WI—June 14, 2011.

There were no comments about this regulation received during any of the aforementioned Tribal Consultation sessions.

Reports from these consultations are part of the USDA annual reporting on Tribal consultation and collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for consultation concerning this rule. Currently, FNS provides regularly scheduled quarterly consultation sessions through the end of FY2012 as a venue for collaborative conversations with Tribal officials or their designees.

List of Subjects in 7 CFR Part 210

Grant programs—education; Grant programs—health; Infants and children; Nutrition; Penalties; Reporting and recordkeeping requirements; School breakfast and lunch programs; Surplus agricultural commodities.

Accordingly, 7 CFR part 210 is amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

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

Authority: 42 U.S.C. 1751–1760, 1779.

■ 2. Amend § 210.4 by revising paragraph (b)(1) to read as follows:

§ 210.4 Cash and donated food assistance to States.

* * * * *

(b) * * *

(1) Cash assistance will be made available to each State agency

administering the National School Lunch Program as follows:

(i) *General*: Cash assistance payments are composed of a general cash assistance payment and a performance-based cash assistance payment, authorized under section 4 of the Act, and a special cash assistance payment, authorized under section 11 of the Act. General cash assistance is provided to each State agency for all lunches served to children in accordance with the provisions of the National School Lunch Program. Performance-based cash assistance is provided to each State agency for lunches served in accordance with § 210.7(d). Special cash assistance is provided to each State agency for lunches served under the National School Lunch Program to children determined eligible for free or reduced price lunches in accordance with part 245 of this chapter.

(ii) *Cash assistance for lunches*. The total general cash assistance paid to each State for any fiscal year shall not exceed the lesser of amounts reported to FNS as reimbursed to school food authorities in accordance with § 210.5(d)(3) or the total calculated by multiplying the number of lunches reported in accordance with § 210.5(d)(1) for each month of service during the fiscal year, by the applicable national average payment rate prescribed by FNS. The total performance-based cash assistance paid to each State for any fiscal year shall not exceed the lesser of amounts reported to FNS as reimbursed to school food authorities in accordance with § 210.5(d)(3) or the total calculated by multiplying the number of lunches reported in accordance with § 210.5(d)(1) for each month of service during the fiscal year, by 6 cents for school year 2012–2013, adjusted annually thereafter as specified in paragraph (b)(1)(iii) of this section. The total special assistance paid to each State for any fiscal year shall not exceed the lesser of amounts reported to FNS as reimbursed to school food authorities in accordance with § 210.5(d)(3) or the total calculated by multiplying the number of free and reduced price lunches reported in accordance with § 210.5(d)(1) for each month of service during the fiscal year by the applicable national average payment rate prescribed by FNS.

(iii) *Annual adjustments*. In accordance with section 11 of the Act, FNS will prescribe annual adjustments to the per meal national average payment rate (general cash assistance), the performance-based cash assistance rate (performance-based cash assistance), and the special assistance

national average payment rates (special cash assistance) which are effective on July 1 of each year. These adjustments, which reflect changes in the food away from home series of the Consumer Price Index for all Urban Consumers, are annually announced by Notice in July of each year in the **Federal Register**.

(iv) *Maximum per meal rates*. FNS will also establish maximum per meal rates of reimbursement within which a State may vary reimbursement rates to school food authorities. These maximum rates of reimbursement are established at the same time and announced in the same Notice as the national average payment rates.

* * * * *

■ 3. Amend § 210.5 by revising paragraph (d)(2) to read as follows:

§ 210.5 Payment process to States.

* * * * *

(d) * * *

(2) *Quarterly report*. Each State agency administering the National School Lunch Program shall submit quarterly reports to FNS as follows:

(i) Each State agency shall submit to FNS a quarterly Financial Status Report (FNS–777) on the use of Program funds. Such reports shall be postmarked and/or submitted no later than 30 days after the end of each fiscal year quarter.

(ii) Each State agency shall also submit a quarterly report, as specified by FNS, detailing the disbursement of performance-based cash assistance described in § 210.4(b)(1). Such report shall be submitted no later than 30 days after the end of each fiscal year quarter. The report shall include the total number of school food authorities in the State, the names and locations of certified school food authorities, and for each school food authority, the total number of lunches earning the performance-based cash assistance for each month.

* * * * *

■ 4. Amend § 210.7 by redesignating paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 210.7 Reimbursement for school food authorities.

* * * * *

(d) *Performance-based cash assistance*. The State agency must provide performance-based cash assistance as authorized under § 210.4(b)(1) for lunches served in school food authorities certified by the State agency to be in compliance with meal pattern and nutrition requirements set forth in § 210.10 and, if the school food authority participates in the School

Breakfast Program (7 CFR part 220), § 220.8 or § 220.23, as applicable.

(1) *State agency requirements.* State agencies must establish procedures to certify school food authorities for performance-based cash assistance in accordance with guidance established by FNS. Such procedures must ensure State agencies:

(i) Make certification procedures readily available to school food authorities and provide guidance necessary to facilitate the certification process.

(ii) Require school food authorities to submit documentation to demonstrate compliance with meal pattern requirements set forth in § 210.10 and § 220.8 or § 220.23, as applicable. Such documentation must reflect meal service at or about the time of certification.

(iii) Certification procedures must ensure that no performance-based cash assistance is provided to school food authorities for meals served prior to October 1, 2012.

(iv) Within 60 calendar days of a certification submission or as otherwise authorized by FNS, review submitted materials and notify school food authorities of the certification determination, the date that performance-based cash assistance is effective, and consequences for non-compliance;

(v) Disburse performance-based cash assistance for all lunches served beginning with the start of certification provided that documentation reflects meal service in the calendar month the certification materials are submitted or, in the month preceding the calendar month of submission; and

(vi) For school year 2012–2013, State agencies must conduct on-site validation reviews for a sample of certified school food authorities. State agencies must:

(A) Ensure that all certified school food authorities are subject to review and randomly select at least 25 percent of certified school food authorities for an on-site validation review; except that, all large school food authorities, as defined in § 210.18(b)(6) must be included in the sample selected; and

(B) Conduct validation reviews that include, at a minimum, observation of a meal service for each type of certified menu, review of production records for observed meals to ensure they are consistent with the menus on which certification was based, and a review of documentation submitted for certification to ensure that ongoing meal operations are consistent with certification documentation.

(vii) In years subsequent to the year certified, through School Year 2014–

2015, State agencies must require school food authorities to submit an annual attestation of compliance with meal pattern requirements as new requirements are phased in. The attestation must be provided to the State agency as an addendum to the written agreement required in § 210.9(b).

(2) *School food authority requirements.* School food authorities seeking to obtain performance-based cash assistance must submit certification documentation to the State agency in accordance with State agency certification procedures, including documentation to support receipt of performance-based cash assistance. School food authorities must attest that the documentation provided is representative of the ongoing meal service within the school food authority. Required documentation includes a nutrient analysis and a detailed menu work sheet with food items and quantities or, a simplified nutrient assessment as well as a detailed menu worksheet with food items and quantities, and/or other materials specified in guidance issued by FNS. In years subsequent to the year of certification, through School Year 2014–2015, school food authorities must submit an annual attestation of compliance with meal pattern requirements as new requirements are phased in. The attestation must be provided to the State agency as an addendum to the written agreement required in § 210.9(b). School food authorities certified to earn performance-based cash assistance must maintain documentation of compliance, including production and menu records, and other records, as specified by FNS. School food authorities must make appropriate records available to State agencies upon request.

* * * * *

■ 5. Amend § 210.15 by revising paragraph (b)(2) to read as follows:

§ 210.15 Reporting and recordkeeping.

* * * * *

(b) * * *

(2) Production and menu records as required under § 210.10 and documentation to support performance-based cash assistance, as required under § 210.7(d)(2).

* * * * *

■ 6. Amend § 210.18 by:

- a. Revising paragraph (a);
- b. Revising paragraph (d)(3);
- c. Adding paragraph (e)(4);
- d. Adding paragraph (g)(2)(v);
- e. Revising paragraph (m)(2) introductory text; and
- f. Adding paragraph (m)(2)(iv).

The revisions and additions read as follows:

§ 210.18 Administrative reviews.

(a) *Implementation dates.* Each State agency must follow the requirements of this section to conduct administrative reviews of school food authorities serving meals under parts 210 and 220 of this chapter. For school food authorities selected for administrative review in school year 2012–2013, State agencies may conduct the administrative reviews in school year 2012–13 or 2013–14; except that, State agencies must conduct reviews of those school food authorities identified as at-risk school food authorities in school year 2012–2013.

* * * * *

(d) * * *

(3) *Exceptions.* (i) In any school year in which FNS or OIG conducts a review or investigation of a school food authority in accordance with § 210.19(a)(5) of this part, the State agency shall, unless otherwise authorized by FNS, delay conduct of a scheduled administrative review until the following school year. The State agency shall document any exception authorized under this paragraph.

(ii) Any school food authority that was not reviewed in the review cycle for school year 2007–2008 through school year 2012–2013, shall be reviewed in the first year of the 3-year review cycle set forth in paragraph (c) of this section (school year 2013–2014).

(e) * * *

(4) *Noncompliance with meal pattern requirements.* If the State agency determines there is significant noncompliance with the meal pattern and nutrition requirements as set forth in § 210.10 and § 220.8 and § 220.23, as applicable, the State agency must select the school food authority for administrative review earlier in the review cycle.

* * * * *

(g) * * *

(2) * * *

(v) If the school food authority is receiving performance-based cash assistance under § 210.7(d), assess the school food authority's meal service and documentation of lunches served and determine whether performance-based cash assistance should continue to be provided.

* * * * *

(m) * * *

(2) *Performance Standard 2 violations.* Except as noted under paragraph (m)(2)(iv) of this section, a State agency is required to take fiscal

action for violations of Performance Standard 2 as follows:

* * * * *

(iv) *Performance-based cash assistance.* In addition to fiscal action described in paragraphs (m)(2)(i) through (iii) of this section, school food authorities may not earn performance-based cash assistance authorized under § 210.4(b)(1) unless immediate corrective action occurs. School food authorities will not be eligible for the 6 cents per lunch reimbursement, as adjusted, with the beginning of the month following the administrative review and, at State discretion, for the month of review. Performance-based cash assistance may resume beginning in the first full month the school food authority demonstrates to the satisfaction of the State agency that corrective action has taken place.

* * * * *

■ 7. Amend § 210.19 by revising the second sentence of paragraph (c)(1) as follows:

§ 210.19 [Amended]

* * * * *

(c) * * *

(1) * * * Fiscal action also includes disallowance of funds for failure to take corrective action to meet the meal requirements in parts 210 and 220 of this chapter, including the disallowance of performance-based cash assistance described in § 210.4(b)(1). * * *

* * * * *

Dated: April 20, 2012.

Kevin Concannon,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 2012-10229 Filed 4-26-12; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

7 CFR Part 3434

RIN 0524-AA39

Hispanic-Serving Agricultural Colleges and Universities (HSACU) Certification Process

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes the process and procedures to certify a qualifying college or university as a Hispanic-Serving Agricultural Colleges and Universities (HSACU) institution. NIFA will publish 7 CFR part 3434 in

the Code of Federal Regulations to chronicle the eligibility criteria colleges and universities must satisfy in order to be certified as HSACU institutions by the Secretary of Agriculture. The Food, Conservation, and Energy Act of 2008 (FCEA) amended section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 to add a definition for a new group of cooperating educational institutions known as Hispanic-Serving Agricultural Colleges and Universities. Section 1404 defines HSACUs as colleges and universities that qualify as Hispanic-serving Institutions (HSIs) and offer associate, bachelors, or other accredited degree programs in agriculture-related fields. HSACUs do not include 1862 land-grant institutions, as defined in the Agricultural Research, Extension, and Education Reform Act of 1998.

A separate part, 7 CFR part 3437, will be published in the future to provide specific administrative provisions for the HSACU Endowment Program (*e.g.*, applicability of regulations, purpose, definitions, eligibility, use of funds, administrative duties, and other sections, as appropriate).

DATES: This final rule is effective April 27, 2012.

FOR FURTHER INFORMATION CONTACT:

Matthew Lockhart, Senior Policy Specialist; National Institute of Food and Agriculture; U.S. Department of Agriculture; STOP 2299; 1400 Independence Avenue SW., Washington, DC 20250-2299; Voice: (202) 559-5088; Email: mlockhart@nifa.usda.gov.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Section 7101 of the Food, Conservation, and Energy Act of 2008 (FCEA) (Pub. L. 110-246) amended section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, 7 U.S.C. 3103, to add a definition for a new group of cooperating educational institutions known as Hispanic-serving agricultural colleges and universities (HSACUs). Section 1404 defines HSACUs as colleges or universities that qualify as “Hispanic-serving institutions,” as that term is defined in Section 1101a of title 20, and that offer associate, bachelors, or other accredited degree programs in agriculture-related fields. An exception is made to the HSACU definition so that it does not include 1862 institutions as defined in Section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601).

Section 7129 of the FCEA authorizes the following five new programs for HSACUs: (1) HSACU Endowment Fund (formula-based); (2) HSACU Equity Grants Program (formula-based); (3) HSACU Institutional Capacity-Building Grants Program (competitive); (4) HSACU Extension Grants Program (competitive); and (5) HSACU Fundamental and Applied Research Grants Program (competitive). Funding for these programs is subject to the availability of appropriations.

In addition, the FCEA amends section 406(b) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7626, to expand the eligibility for NIFA Integrated Research, Education, and Extension Competitive Grants Programs to include HSACUs.

NIFA’s mission is to work with university partners to advance research, extension, and higher education in the food, agricultural, and related environmental and human sciences to benefit people, communities, and the nation.

The rules for funds distributed to the HSACUs from the HSACU Endowment Fund shall be contained within 7 CFR part 3437.

Solicitation of Stakeholder Input and Publication of the Proposed Rule

Because HSACUs were not specifically named in the authorizing statute, NIFA was required to establish the eligibility criteria to designate HSACUs based on the definition provided in the legislation, which stated that HSACUs are defined as HSIs that offer “agriculture-related programs.” On September 24, 2008, NIFA published a **Federal Register** notice [73 FR 54988-54989] to announce a public meeting to be held on October 12, 2008, at the Hyatt Regency in Denver, Colorado, to discuss the definition of HSACUs and the new HSACU programs. The notice also allowed stakeholders to submit written comments on the implementation of HSACU programs and the HSACU certification process by October 27, 2008.

Twenty individuals, from 17 institutions and 2 organizations, provided oral comments during this public meeting. NIFA also received 17 written comments from individuals, academic institutions, and organizations. A transcript of the public meeting and a scanned copy of all written comments are available for review on the NIFA Web site at the following web page: www.nifa.usda.gov/business/reporting/stakeholder/hsacu.html.

NIFA considered all comments received in the construction of the

eligibility criteria and the development of the proposed rule, which was published at 76 FR 34187–34192 on June 13, 2011 with a 60-day comment period. The publication of the proposed rule for the HSACU certification process marked the first time a list of agriculture-related fields and eligible institutions were made available to the public. The proposed rule also established explicit eligibility criteria for academic institutions to meet if they wish to pursue HSACU certification.

Response to Comments on Notice of Proposed Rulemaking and Revisions Included in Final Rule

Comments on the proposed rule were required to be received by August 12, 2011, to be considered in the formulation of the final regulations. NIFA received 14 sets of comments from individuals, academic institutions, and the Hispanic Association of Colleges and Universities (HACU). NIFA considered all comments received and made revisions in the final rule based on several recommendations. The comments received provided valuable insight on how NIFA could administer the HSACU certification process in a more equitable and consistent manner across schools of different sectors (2-year and 4-year schools) and regions.

Number of HSACU Institutions

There is a strong preference among stakeholders to limit the number of eligible institutions, by way of a rigorous certification process, during the initial phase of the implementation process to maximize the impact of limited funding available. Several commentors expressed support for the rigorous certification process and provided suggestions to further enhance the process. One of these commentors remarked that careful implementation would ensure that benefits go to those that need them the most. Another commentor recognized the certification process, as outlined in the proposed rule, as thoughtful and fair. A third commentor requested that NIFA pay special attention to the number of institutions receiving HSACU certification given limited resources as constraining the number of HSACUs would optimize funding opportunities for HSACUs. A fourth commentor encouraged NIFA to remain diligent in maintaining high standards for certification and remain rigorous in its definitions. A fifth commentor remarked that given scarce and limited funds, the focus of support should be directed toward institutions that can maximize public funds to the most efficient and highest productive levels possible.

NIFA fully supports a rigorous certification process by instilling high standards in the eligibility criteria. However, there is no basis to limit the number of HSACUs if institutions meet the eligibility requirements as defined in the statute and this regulation.

Eligibility Criteria

In response to stakeholders' call for a rigorous certification process, NIFA explored different possibilities to hold institutions accountable through quantifiable outcomes involving Hispanic students and agriculture-related fields if they were to receive HSACU certification. In March 2010, the American Enterprise Institute released a report, "Rising to the Challenge," which noted that HSI designation was a direct result of enrollment data (input) rather than retention or graduation data (outcome). In the proposed rule, NIFA included a measure based on degrees awarded to the eligibility criteria to hold institutions accountable for the retention and graduation of Hispanic students in agriculture-related fields. NIFA determined that a stipulation based on degrees awarded would provide institutions with an incentive to take on a proactive role to focus on graduating Hispanic students in agriculture-related fields, thus strengthening the rigorosity of the HSACU certification process. Hence, NIFA concluded that granting HSACU certification to HSIs with agriculture-related programs where at least one Hispanic student obtained a degree in an agriculture-related field would provide the best interpretation of the intent behind the legislation that established the new HSACU category.

Two commentors recommended that NIFA avoid basing eligibility on a single year of data as this would create unmanageable funding volatility from year to year, which may hurt or impair growth and development of Hispanic-serving programs in institutions that are unable to consistently stay on the HSACU list. Another commentor mentioned that the only certain result of the proposed single year criterion is that it will reduce the pool of eligible institutions. Yet another commentor pointed out that a small program may fail to graduate any Hispanic student in a given year while a number of Hispanic students are enrolled and expected to graduate in the following years.

After the publication of the proposed rule, an additional year of data from the National Center for Education Statistics became available to NIFA. An analysis on the additional year of data confirmed the volatility caused by a single year criterion. For the purpose of this

analysis, Year 1 represents the data we had prior to the publication of the proposed rule (Fall 2009 enrollment and 2008–09 completions data) and Year 2 represents the data we received after the publication of the proposed rule (Fall 2010 enrollment and 2009–10 completions data). Of the 57 HSIs that awarded a degree in an agriculture-related field to a Hispanic student in Year 1, 19 (33%) did not meet the eligibility criteria in Year 2. Of the 70 HSIs that met the eligibility criteria in Year 2, 32 (46%) did not meet the eligibility criteria in Year 1. In other words, only 38 schools would have received HSACU certification in both years while 51 schools would have received HSACU certification in only one of the two years. Based on this information, NIFA recognized that a single year criterion created an unintended bias that harms smaller programs while schools with larger student populations may be able to effortlessly graduate a single Hispanic student in any given year.

When NIFA combined two years of completions data and used a percentage-based standard, the bias concerns between larger and smaller schools were significantly reduced, if not eliminated altogether. Given that HSIs are defined in Federal law as institutions of higher education with at least 25% Hispanic Full-Time Equivalent (FTE) student enrollment, it stands to reason that a percentage-based yardstick for graduating Hispanic students in agriculture-related programs should be proportional to the institution's Hispanic enrollment, meaning that institutions should receive HSACU designation if Hispanic students receive at least 25% of the degrees awarded in agriculture-related programs. However, NIFA recognizes that a large number of HSIs became a HSI within the last few years and this trend is expected to continue over the next several years as the Hispanic demographic continues to grow. As of this writing, there are more than 200 institutions with Hispanic FTEs that fall in the 15% to 24% range of their student enrollment. These institutions are identified as "emerging HSIs" and are generally expected to become HSIs within the next few years. For a newly-designated HSI, its first graduating class (as a HSI) would be composed of students who entered the institution at a time the institution was not classified as a HSI, thus the 25% graduation benchmark would exclude many newly-designated HSIs at a time when they are building up a pipeline of Hispanic students in their agriculture-related programs. In recognition of the

“emerging HSIs” category, NIFA will establish the graduation benchmark at 15%.

NIFA has amended Part 3434.4(b)(4) to reflect that institutions will not receive HSACU certification if their Hispanic students receive less than 15% of degrees awarded from agriculture-related programs from the two most recent academic years. The list of HSACUs for Fiscal Year (FY) 2012 will be based on (1) completions data from 2008–09 and 2009–10, and (2) enrollment data from Fall 2010. NIFA identified 71 institutions that will meet the eligibility criteria and receive HSACU certification for FY 2012 (October 1, 2011 to September 30, 2012).

Agriculture-Related Fields

NIFA incorporated a suggestion from the listening session to utilize the Classification of Instructional Programs (CIP) coding system developed by the U.S. Department of Education’s National Center for Education Statistics as an instrument to identify agriculture-related programs. The CIP coding system provides a taxonomic scheme that supports accurate tracking and reporting of fields of study and program completions activity. The CIP is organized on three levels: the 2-digit series represent the most general groupings of related programs, the 4-digit series are intermediate groupings of programs, and the 6-digit codes represent specific instructional programs. More information about CIP codes is available at <http://nces.ed.gov/ipeds/cipcode>.

Two commentors expressed satisfaction in seeing that CIP codes were used to identify agriculture-related programs. Four commentors suggested that NIFA consider adding various CIP codes to the list of agriculture-related fields such as Horticulture, Biology, Nutrition Sciences, Sustainability

Studies, and Veterinary/Animal Health Technology.

NIFA wishes to point out that Horticulture is already in the list of agriculture-related fields (01.06 group). NIFA agrees that Nutrition Sciences (30.1901), Sustainability Studies (30.3301), and Veterinary/Animal Health Technology/Technician and Veterinary Assistant (51.0808) should be added to the list as these specific instructional programs are agriculture-related. However, including a broad subject such as Biology that includes several instructional programs that are not related to agriculture would go against stakeholders’ wishes for a rigorous certification process, so NIFA will not include Biology in the list of agriculture-related programs.

NIFA has added Nutrition Sciences (30.1901), Sustainability Studies (30.3301), and Veterinary/Animal Health Technology/Technician and Veterinary Assistant (51.0808) to the list in Appendix A of this part.

Duration of Certification

Three commentors felt that certifying schools one year at a time would create undue burden on the institutions. Two of these commentors further recommended that HSACU recertification occur every five years. Prior to the publication of the proposed rule, NIFA explored the feasibility of granting certifications for a period of five years as this would provide a sense of continuity and sustainability of program delivery. However, HSACUs must meet the eligibility requirements in the year they receive funds as a HSACU, thus if the institution did not meet the eligibility criteria at some point during the five-year certification period, the certification would be revoked immediately. Given this perspective, NIFA decided to go with a one-year certification period and NIFA further believes that an annual

certification process will incentivize schools to remain focused on their eligibility status on an ongoing basis.

Bias Against a Group of Institutions

Three commentors expressed concern on varying levels regarding potential bias against a group of institutions either by sector (2-year or 4-year schools) or by region/state. NIFA performed a thorough analysis on the data provided by the National Center for Education Statistics (U.S. Department of Education) and confirmed the fairness and soundness of the certification process. The composition of 71 HSACUs (listed in Appendix B) is comparable to the HSI population (293 schools) by sector, region, and state as evidenced by the data provided in the Composition of HSACUs section.

Composition of HSACUs

Based on the eligibility criteria provided in this regulations along with the most recent reports made available to us from the U.S. Department of Education’s National Center for Education Statistics (Completions data from the 2008–09 and 2009–10 academic years and Enrollment data from the Fall 2010 term), 71 college and universities meet the HSI and agriculture-related field criteria (see Appendix B for a complete list of the 71 schools). Of the 71 schools up for certification, 32 are 2-year institutions (45%) and 39 are 4-year institutions (55%). Thirty-three schools are in the Western region (47%), 32 schools are in the Southern region (45%), 3 schools are in the North Central region (4%), and 3 schools are in the Northeastern region (4%). The following tables offer a detailed look at the breakdown by sector, region, and state for both HSACUs and HSIs, including the difference in percentage points between HSACUs and HSIs within each category.

Sector	# HSACUs	% of HSACUs	# HSIs	% of HSIs	Difference
2-year institutions	32	45	150	51	6%
4-year institutions	39	55	143	49	6%
Total	71	100	293	100	.....

Region	# HSACUs	% of HSACUs	# HSIs	% of HSIs	Difference
North Central	3	4	18	6	2%
Northeastern	3	4	23	8	4%
Southern	32	45	122	42	3%
Western	33	47	130	44	3%
Total	71	100	293	100	.....

State	# HSACUs	% of HSACUs	# HSIs	% of HSIs	Difference
Arizona	3	4	8	3	1%

State	# HSACUs	% of HSACUs	# HSIs	% of HSIs	Difference
California	22	31	89	30	1%
Colorado			5	2	2%
Connecticut			1	<1	<1%
Florida	3	4	16	5	1%
Georgia			1	<1	<1%
Illinois	2	3	13	4	1%
Indiana			1	<1	<1%
Kansas	1	1	4	1	None
Maryland			1	<1	<1%
Massachusetts			2	1	1%
New Jersey			5	2	2%
New Mexico	7	10	24	8	2%
New York	3	4	14	5	1%
Oregon			1	<1	<1%
Puerto Rico	14	20	56	19	1%
Texas	15	21	49	17	4%
Washington	1	1	3	1	None
Total	71	100	293	100	.....

With this composition, HSACUs are clearly in line with HSIs in terms of representation across states, regions, and institution types.

Additional Comments and Other Revisions to Proposed Rule

HSACU certification will be based on “degrees awarded” and “completions data” rather than “graduates” and “graduation data” respectively. This revision was made to be consistent with the terminology used by the U.S. Department of Education’s National Center for Education Statistics.

Two comments essentially served as an appeal by the commentors for their respective academic institutions which were excluded from the list of HSACU institutions in the proposed rule. A response to each appeal will be handled independently from the regulatory process.

Section 3434.8(a) has been revised to accurately reflect that an institution not listed in Appendix B, rather than Section 3434.6, of this Part may submit an appeal.

Methodology for HSACU Certification

The annual certification process begins when NIFA obtains the latest report from the U.S. Department of Education’s National Center for Education Statistics that lists all HSIs and the degrees conferred by these institutions during the most recently completed academic year. NIFA will use this report to identify HSIs that conferred a degree in an instructional program that appears in Appendix A of this Part and to confirm that over the last two years at least 15% of the degrees in agriculture-related fields were awarded to Hispanic students. The resulting institutions are eligible to be certified as a HSACU (Appendix B).

NIFA will announce the list of schools with HSACU certification through a notice in the **Federal Register** and post the list on the NIFA Web site in July of each year. HSACU certifications will remain valid for a period of one year, and this process will be repeated on an annual basis thereafter. NIFA expects to make these annual announcements during the month of July to allow time for appeals to take their course and be addressed by the start of the following fiscal year.

NIFA will permit HSIs that are not granted HSACU certification to submit an appeal within 30 days of NIFA’s announcement of HSACU institutions. The appellant must submit a request for review to the NIFA official specified in the notification with details on the nature of the disagreement and include supporting documents. The appeal procedure will consist of two levels to allow an institution to request further review on its case should the initial NIFA review result in a rejection of the appeal.

Timeline for Implementing Regulations

In addition to this final regulation, which addresses the certification process, NIFA will publish regulations for the HSACU Endowment Fund in 2012. NIFA also plans to create informational web pages to provide detailed information and procedures for all HSACU programs.

Administrative Requirements for the Final Rulemaking

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget. This final regulation will not create a serious inconsistency or

otherwise interfere with an action taken or planned by another agency; nor will it materially alter the budgetary impact of entitlements, grants, user fees, or loan programs; nor will it have an annual effect on the economy of \$100 million or more; nor will it adversely affect the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way. Furthermore, it does not raise a novel legal or policy issue arising out of legal mandates, the President’s priorities, or principles set forth in the Executive Order.

Regulatory Flexibility Act of 1980

This final rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. The Department concluded that the rule will not have a significant economic impact on a substantial number of small entities. The rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Catalog of Federal Domestic Assistance

This final regulation applies to the Federal assistance program administered by NIFA under the Catalog for Federal Domestic Assistance (CFDA) No. 10.310, Agriculture and Food Research Initiative (AFRI). New CFDA’s

will be established for each HSACU program as funds are appropriated.

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this final rule in accordance with the requirements of Executive Order No. 13132, 64 FR 43255 (August 10, 1999) and the Unfunded Mandates Act of 1995, 2 U.S.C. 1501 et seq., and has found no potential or 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 there is no Federal mandate contained herein that could result in increased expenditures by State, local, or tribal governments or by the private sector, the Department has not prepared a budgetary impact statement.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Department has reviewed this final rule in accordance with Executive Order 13175, 65 FR 67249 (November 9, 2000), and has determined that it does not have "tribal implications." The final rule does not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes."

Clarity of This Regulation

Executive Order 12866 and the President's Memorandum of June 1, 1998 require each agency to write all rules in plain language. The Department invites comments on how to make this final rule easier to understand.

List of Subjects in 7 CFR Part 3434

Administrative practice and procedure, Agricultural research, education, extension, Hispanic-serving Institutions, Federal assistance.

For the reasons set forth in the preamble, NIFA adds 7 CFR part 3434 to read as set forth below:

PART 3434—HISPANIC-SERVING AGRICULTURAL COLLEGES AND UNIVERSITIES CERTIFICATION PROCESS

Sec.	
3434.1	Applicability of regulations.
3434.2	Purpose.
3434.3	Definitions.
3434.4	Eligibility.
3434.5	Agriculture-related fields.
3434.6	Certification.
3434.7	Duration of certification.

3434.8	Appeals.
3434.9	Recertification.
3434.10	Reporting requirements.
Appendix A	to Part 3434—List of Agriculture-Related Fields
Appendix B	to Part 3434—List of HSACU Institutions, 2011–2012

Authority: 7 U.S.C. 3103.

§ 3434.1 Applicability of regulations.

This part establishes the process to certify and designate a group of eligible educational institutions as Hispanic-Serving Agricultural Colleges and Universities, as authorized by Section 7101 of the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 3103; Public Law 110–246.

§ 3434.2 Purpose.

The Secretary will follow the processes and criteria established in this regulation to certify and designate qualifying colleges and universities as HSACUs. Institutions designated as HSACUs will be eligible for five new programs authorized by Congress in section 7129 of the FCEA as well as for other ongoing NIFA programs for which HSACUs are now eligible (*e.g.*, integrated programs authorized by section 406 of the Agricultural Research, Extension, and Education Reform Act of 1998). The five new programs include the HSACU Endowment Fund (formula-based), HSACU Institutional Capacity Building Grants Program (competitive), HSACU Extension Grants Program (competitive), HSACU Applied and Fundamental Research Grants Program (competitive), and HSACU Equity Grants Program (formula-based). The administrative provisions, including reporting requirements, for the HSACU Endowment Fund will be established in a separate part (7 CFR part 3437). The administrative provisions and reporting requirements for the other four new HSACU programs will be established as subparts in 7 CFR part 3430.

§ 3434.3 Definitions.

As used in this part:
Agency or NIFA means the National Institute of Food and Agriculture.
Agriculture-related fields means a group of instructional programs that are determined to be agriculture-related fields of study for HSACU eligibility purposes by a panel of National Program Leaders at the National Institute of Food and Agriculture.

Department means the United States Department of Agriculture.

Hispanic-serving Institution means an institution of higher education that:

- (1) Is an eligible institution, as that term is defined at 20 U.S.C. 1101a; and
- (2) Has an enrollment of undergraduate full-time equivalent

students that is at least 25 percent Hispanic students, as reported to the U.S. Department of Education's Integrated Postsecondary Education Data System during the fall semester of the previous academic year.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department to whom the authority involved has been delegated.

§ 3434.4 Eligibility.

(a) *General.* To be eligible to receive designation as a HSACU, colleges and universities must:

- (1) Qualify as Hispanic-serving Institutions; and
- (2) Offer associate, bachelors, or other accredited degree programs in agriculture-related fields pursuant to § 3434.5.

(b) *Non-eligibility.* The following colleges and universities are ineligible for HSACU certification:

- (1) 1862 land-grant institutions, as defined in section 2 of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7601);
- (2) Institutions that appear in the Lists of Parties Excluded from Federal financial and nonfinancial assistance and benefits programs (Excluded Parties List System);
- (3) Institutions that are not accredited by a nationally recognized accredited agency or association; and
- (4) Institutions with Hispanic students receiving less than 15% of the degrees awarded in agriculture-related programs over the two most recent completed academic years.

§ 3434.5 Agriculture-related fields.

(a) The Secretary shall use the Classification of Instructional Programs (CIP) coding system developed by the U.S. Department of Education's National Center for Education Statistics as the source of information for all existing instructional programs. This source is located at <http://nces.ed.gov/ipeds/cipcode>.

(b) A complete list of instructional programs deemed to be agriculture-related fields by the Secretary is provided in Appendix A to this part. This list will include the full six-digit CIP code and program title (or major) for each agriculture-related instructional program.

(c) The list of agriculture-related fields will be updated every five years starting in 2015. However, the Secretary reserves the right to make changes at any time, if deemed appropriate and necessary.

(d) Any changes made in the CIP coding system by the U.S. Department

of Education may result in a review or reevaluation of the list of agriculture-related fields by the Secretary.

§ 3434.6 Certification.

(a) Except as provided in paragraph (c) of this section, institutions that meet the eligibility criteria set forth in § 3434.4 and offer agriculture-related programs in accordance to the criteria set forth in § 3434.5 (see list in Appendix A to this part) shall be granted HSACU certification by the Secretary.

(b) A complete list of institutions with HSACU certification shall be provided in Appendix B to this part and posted on the NIFA Web site at <http://www.nifa.usda.gov>.

(c) Institutions with Hispanic students receiving less than 15% of degrees awarded in agriculture-related programs during the two most recent completed academic years shall not be granted HSACU certification by the Secretary.

(d) The list of HSACU institutions will be updated annually. However, the Secretary reserves the right to make changes at any time, when deemed appropriate and necessary.

§ 3434.7 Duration of certification.

(a) Except as provided in paragraphs (b) and (c) of this section, HSACU certification granted to an institution by the Secretary under this part shall remain valid for a period of one year.

(b) Failure to maintain eligibility status at any time during the HSACU certification period shall result in an immediate revocation of HSACU certification.

(c) Failure to remain in compliance with reporting requirements or adherence to any administrative or national policy requirements listed in award terms and conditions for any of the HSACU programs may result in a suspension or an immediate revocation of HSACU certification.

§ 3434.8 Appeals.

(a) An institution not listed as a HSACU in Appendix B to this part may submit an appeal to address denial of a certification made pursuant to this part. Such appeals must be in writing and received by the HSACU Appeals Officer, Policy and Oversight Division, National Institute of Food and Agriculture, U.S. Department of Agriculture, 800 9th Street SW., Washington, DC 20024 within 30 days following an announcement of institutions designated for certification. The Appeals Officer will consider the record of the decision in question, any further written submissions by the institution, and other available information and

shall provide the appellant a written decision as promptly as circumstances permit. Such appeals constitute an administrative review of the decision appealed from and are not conducted as an adjudicative proceeding.

(b) Appeals involving an agriculture-related field of study must include the CIP code and program title of the field of study (or major).

(c) Appeals from non-HSI schools will not be considered.

(d) The NIFA Assistant Director of the Institute of Youth, Family, and Community shall serve as the Appeals Officer.

(e) In considering such appeals or administrative reviews, the Appeals Officer shall take into account alleged errors in professional judgment or alleged prejudicial procedural errors by NIFA officials. The Appeals Officer's decision may:

(1) Reverse the appealed decision;

(2) Affirm the appealed decision;

(3) Where appropriate, withhold a decision until additional materials are provided. The Appeals Officer may base his/her decision in whole or part on matters or factors not discussed in the decision appealed from.

(f) If the NIFA decision on the appeal is adverse to the appellant or if an appellant's request for review is rejected, the appellant then has the option of submitting a request to the NIFA Deputy Director for Food and Community Resources for further review.

(g) The request for further review must be submitted to Policy and Oversight Division, National Institute of Food and Agriculture, U.S. Department of Agriculture, 800 9th Street SW., Washington, DC 20024 within 30 days following the Appeals Officer's decision.

(h) No institution shall be considered to have exhausted its administrative remedies with respect to the certification or decision described in this part until the NIFA Deputy Director for Food and Community Resources has issued a final administrative decision pursuant to this section. The decision of the NIFA Deputy Director for Food and Community Resources is considered final.

(i) Appellants shall be notified in writing of any decision made by NIFA in regards to the appeal.

§ 3434.9 Recertification.

(a) The recertification process for a HSACU remains the same as the process outlined in § 3434.6.

(b) There is no limit to the number of times an institution may be recertified as a HSACU.

(c) In the event an institution is not granted recertification due to noncompliance with reporting requirements for a HSACU program, the institution shall be notified in writing and given a period of 90 days from the date of notification to be in compliance.

§ 3434.10 Reporting requirements.

(a) The certification process does not involve any reporting requirements.

(b) Reporting requirements for HSACU programs (e.g., HSACU Endowment Fund) shall be established in separate parts.

Appendix A to Part 3434—List of Agriculture-Related Fields

The instructional programs listed in this appendix are observed to be agriculture-related fields for HSACU eligibility purposes. Programs are listed in numerical order by their six-digit CIP code followed by the full title of the instructional program, as listed by the U.S. Department of Education.

01.0000, Agriculture, General
 01.0101, Agricultural Business and Management, General
 01.0102, Agribusiness/Agricultural Business Operations
 01.0103, Agricultural Economics
 01.0104, Farm/Farm and Ranch Management
 01.0105, Agricultural/Farm Supplies Retailing and Wholesaling
 01.0106, Agricultural Business Technology
 01.0199, Agricultural Business and Management, Other
 01.0201, Agricultural Mechanization, General
 01.0204, Agricultural Power Machinery Operation
 01.0205, Agricultural Mechanics and Equipment/Machine Technology
 01.0299, Agricultural Mechanization, Other
 01.0301, Agricultural Production Operations, General
 01.0302, Animal/Livestock Husbandry and Production
 01.0303, Aquaculture
 01.0304, Crop Production
 01.0306, Dairy Husbandry and Production
 01.0307, Horse Husbandry/Equine Science and Management
 01.0308, Agroecology and Sustainable Agriculture
 01.0309, Viticulture and Enology
 01.0399, Agricultural Production Operations, Other
 01.0401, Agricultural and Food Products Processing
 01.0504, Dog/Pet/Animal Grooming
 01.0505, Animal Training
 01.0507, Equestrian/Equine Studies
 01.0508, Taxidermy/Taxidermist
 01.0599, Agricultural and Domestic Animal Services, Other
 01.0601, Applied Horticulture/Horticultural Operations, General
 01.0603, Ornamental Horticulture
 01.0604, Greenhouse Operations and Management
 01.0605, Landscaping and Groundskeeping
 01.0606, Plant Nursery Operations and Management
 01.0607, Turf and Turfgrass Management

01.0608, Floriculture/Floristry Operations and Management
 01.0699, Applied Horticulture/Horticultural Business Services, Other
 01.0701, International Agriculture
 01.0801, Agricultural and Extension Education Services
 01.0802, Agricultural Communication/Journalism
 01.0899, Agricultural Public Services, Other
 01.0901, Animal Sciences, General
 01.0902, Agricultural Animal Breeding
 01.0903, Animal Health
 01.0904, Animal Nutrition
 01.0905, Dairy Science
 01.0906, Livestock Management
 01.0907, Poultry Science
 01.0999, Animal Sciences, Other
 01.1001, Food Science
 01.1002, Food Technology and Processing
 01.1099, Food Science and Technology, Other
 01.1101, Plant Sciences, General
 01.1102, Agronomy and Crop Science
 01.1103, Horticultural Science
 01.1104, Agricultural and Horticultural Plant Breeding
 01.1105, Plant Protection and Integrated Pest Management
 01.1106, Range Science and Management
 01.1199, Plant Sciences, Other
 01.1201, Soil Science and Agronomy, General
 01.1202, Soil Chemistry and Physics
 01.1203, Soil Microbiology
 01.1299, Soil Sciences, Other
 01.9999, Agriculture, Agriculture Operations, and Related Sciences, Other
 03.0101, Natural Resources/Conservation, General
 03.0103, Environmental Studies
 03.0104, Environmental Science
 03.0199, Natural Resources Conservation and Research, Other
 03.0201, Natural Resources Management and Policy
 03.0204, Natural Resources Economics
 03.0205, Water, Wetlands, and Marine Resources Management
 03.0206, Land Use Planning and Management/Development
 03.0207, Natural Resources Recreation and Tourism
 03.0208, Natural Resources Law Enforcement and Protective Services
 03.0299, Natural Resources Management and Policy, Other
 03.0301, Fishing and Fisheries Sciences and Management
 03.0501, Forestry, General
 03.0502, Forest Sciences and Biology
 03.0506, Forest Management/Forest Resources Management
 03.0508, Urban Forestry
 03.0509, Wood Science and Wood Products/Pulp and Paper Technology
 03.0510, Forest Resources Production and Management
 03.0511, Forest Technology/Technician
 03.0599, Forestry, Other
 03.0601, Wildlife and Wildlands Science and Management
 03.9999, Natural Resources and Conservation, Other
 13.1301, Agricultural Teacher Education
 14.0301, Agricultural/Biological Engineering and Bioengineering

19.0501, Foods, Nutrition, and Wellness Studies, General
 19.0504, Human Nutrition
 19.0505, Foodservice Systems Administration/Management
 19.0599, Foods, Nutrition, and Related Services, Other
 30.1901, Nutrition Sciences
 30.3301, Sustainability Studies
 51.0808, Veterinary/Animal Health Technology/Technician and Veterinary Assistant

Appendix B to Part 3434—List of HSACU Institutions, 2011–2012

The institutions listed in this appendix are granted HSACU certification by the Secretary and are eligible for HSACU programs for the period starting October 1, 2011 and ending September 30, 2012. Institutions are listed alphabetically under the state of the school's location, with the campus indicated where applicable.

Arizona (3)

Arizona Western College
 Phoenix College
 Pima Community College

California (22)

Allan Hancock College
 Bakersfield College
 California State Polytechnic University-Pomona
 California State University-Bakersfield
 California State University-Fullerton
 California State University-Monterey Bay
 California State University-San Bernardino
 College of the Desert
 El Camino Community College District
 Fullerton College
 Hartnell College
 Merced College
 Mt. San Antonio College
 Porterville College
 Reedley College
 San Diego Mesa College
 San Joaquin Delta College
 Santa Ana College
 Southwestern College
 University of California-Merced
 West Hills College Coalinga
 Whittier College

Florida (3)

Florida International University
 Miami Dade College
 Saint Thomas University

Illinois (2)

City Colleges of Chicago-Harold Washington College
 Triton College

Kansas (1)

Seward County Community College

New Mexico (7)

Central New Mexico Community College
 Eastern New Mexico University-Main Campus
 New Mexico Highlands University
 New Mexico Institute of Mining and Technology
 Northern New Mexico College
 University of New Mexico-Main Campus

Western New Mexico University

New York (3)

CUNY City College
 CUNY LaGuardia Community College
 Mercy College

Puerto Rico (14)

Bayamon Central University
 Instituto Tecnológico de Puerto Rico-Manati
 Inter American University of Puerto Rico-Aguadilla
 Inter American University of Puerto Rico-Bayamon
 Inter American University of Puerto Rico-Metro
 Inter American University of Puerto Rico-Ponce
 Inter American University of Puerto Rico-San German
 Pontifical Catholic University of Puerto Rico-Ponce
 Universidad Del Turabo
 Universidad Metropolitana
 University of Puerto Rico-Arecibo
 University of Puerto Rico-Medical Sciences Campus
 University of Puerto Rico-Rio Piedras Campus
 University of Puerto Rico-Utuado

Texas (15)

Clarendon College
 Lee College
 Midland College
 Palo Alto College
 Sul Ross State University
 Texas A&M International University
 Texas A&M University-Corpus Christi
 Texas A&M University-Kingsville
 Texas State Technical College-Harlingen
 University of Houston-Clear Lake
 University of Texas at Brownsville
 University of Texas at El Paso
 University of Texas at San Antonio
 University of Texas of the Permian Basin
 University of the Incarnate Word

Washington (1)

Heritage University

Done in Washington, DC, this 15th day of March 2012.

Chavonda Jacobs-Young,

Acting Director, National Institute of Food and Agriculture.

[FR Doc. 2012-10145 Filed 4-26-12; 8:45 am]

BILLING CODE 3410-22-P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AG32

Small Business Investment Companies—Early Stage SBICs

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: In this final rule, the U.S. Small Business Administration (SBA) is defining a new sub-category of small

business investment companies (SBICs) which will focus on making equity investments in early stage small businesses. By licensing and providing SBA leverage to these "Early Stage SBICs," SBA seeks to expand entrepreneurs' access to capital and encourage innovation as part of President Obama's Start-Up America Initiative launched on January 31, 2011. This final rule also sets forth regulations applicable to Early Stage SBICs with respect to licensing, capital requirements, non-SBA borrowing, examination fees, leverage eligibility, distributions, and capital impairment. In addition, the final rule makes certain technical changes to the SBIC regulations.

DATES: This rule is effective April 27, 2012.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Office of Investment, (202) 205-7559 or sbic@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

On January 31, 2011, President Obama announced the "Start-Up America Initiative" to encourage American innovation and job creation by promoting high-growth entrepreneurship across the country with new initiatives to help encourage private sector investment in job-creating startups and small firms, accelerate research, and address barriers to success for entrepreneurs and small businesses. The SBIC program will play a key role in accomplishing these goals by expanding access to capital for early stage businesses.

Early stage businesses face difficult challenges accessing capital, particularly those without the necessary assets or cash flow for traditional bank funding. Although the venture capital industry provided over \$22 billion in financings to U.S. businesses in calendar year 2010, this represented over a 23% decline from 2007. Less than a third of these financing dollars went to early stage or start-up businesses. Of the financings that went to early stage and start-up, over two-thirds went to businesses located in three states: California, Massachusetts, and New York. (Source: ThomsonOne VentureXpert) As a result, less than 10% of U.S. venture financing dollars went to early stage and start-up businesses not in those three states. SBA will seek to expand access to capital for early stage small businesses throughout the United States by allocating from its current debenture authorization up to \$200 million per year (up to \$1 billion

total over five years) beginning in FY 2012 to Early Stage SBICs.

SBA has not typically provided leverage in the form of SBA-guaranteed debentures to SBICs that plan to provide early stage venture capital financing to small businesses. The standard debenture is generally appropriate for investments in small businesses that generate sufficient cash flow to pay interest and/or dividends, so that SBICs in turn can make semi-annual interest payments on their debentures. Investments in early stage companies, which typically cannot make current interest or dividend payments, do not fit naturally with the structure of debenture leverage.

Furthermore, early stage companies have inherently higher risk; although they can offer potentially higher returns than later stage equity or mezzanine debt investments, the returns are much more volatile. Because the debenture program is required by law to operate at zero cost, the Early Stage SBIC initiative contemplates a number of strategies to mitigate risk and limit the initiative's impact on leverage fees, although fee increases will still be necessary.

On December 9, 2011, SBA published a proposed rule to define an Early Stage SBIC and to establish the features of the Early Stage SBIC initiative. The proposed rule also included several new regulatory provisions intended to reduce the risk that an Early Stage SBIC would default on its leverage and to improve SBA's recovery prospects should a default occur. The preamble to the proposed rule also discussed key aspects of the Early Stage initiative that are not addressed in the regulations, including the limits on the aggregate amount of debenture leverage that will be made available to Early Stage SBICs, and SBA's intention to make leverage available to Early Stage SBICs in two forms: (1) A debenture that requires quarterly interest payments throughout its term; and (2) a debenture that is issued at a discount and does not require interest payments during the first five years of its term.

SBA received ten sets of comments on the proposed rule. Some were general comments on the Early Stage initiative and others were specific to individual sections of the proposed regulations. SBA discusses the comments in the following sections.

II. General Comments

Need for Initiative. SBA received six comments that included general statements of support for the goals of the Early Stage initiative. These commenters agreed with SBA's assessment that there is a gap in the

availability of capital for early stage equity investing and that the Early Stage initiative could help to provide early stage small businesses with access to much-needed capital. However, two commenters suggested that SBA address the needs of early stage companies through a new program, separate from the existing SBIC debenture program, to avoid the possibility that failures among higher risk Early Stage SBICs could jeopardize the ability of the current debenture program to operate on a break-even basis. As discussed in the proposed rule, SBA considered seeking legislation to authorize a new program specifically focused on early stage investing, but ultimately chose to pursue an initiative through the existing debenture program because of the compelling need to begin assisting early stage small businesses as quickly as possible.

SBA agrees that the stability of the existing debenture program must be maintained, and has designed the Early Stage initiative with multiple protections to achieve that goal. These protections include: (1) Limiting the total leverage committed to Early Stage SBICs to a maximum of \$200 million per year over a five year period; (2) limiting the maximum leverage available to an individual Early Stage SBIC to the lesser of \$50 million or 100 percent of its Regulatory Capital (as opposed to the lesser of \$150 million or 300 percent of Regulatory Capital for standard debenture SBICs); and (3) establishing special distribution rules to require pro rata repayment of SBA leverage when an Early Stage SBIC makes distributions to its investors. The higher risks of early stage investing have been accounted for in the program formulation model which determines the annual fee needed to keep the debenture program's original subsidy cost at zero, as required by law.

Cost of the Initiative. SBA received four comments expressing concern about the increased leverage fees attributable to the Early Stage initiative. For SBA leverage commitments issued in fiscal year 2012, the initiative adds 13.7 basis points to the annual fee. For fiscal year 2013, the impact of the initiative on the annual fee will be slightly lower, 11.5 basis points, based on updated assumptions. The commenters felt it was unfair or inappropriate to impose the additional costs of the Early Stage initiative on other users of debenture leverage. They indicated that the initiative should not be pursued unless it could break even on a stand-alone basis. Some commenters expressed concern not only about the added cost for fiscal year

2012, but also about the extent to which the annual fee might increase in future years. These commenters noted the large losses that SBA incurred on participating securities, a type of SBA leverage that was offered in the past to SBICs focused on equity investing, much of which was early stage; they also speculated that fees could rise based on the impact of the statutorily mandated “energy saving debentures” that will be available to SBICs making certain types of energy-related investments.

SBA understands that managers of a debenture SBIC may feel that they are being unfairly required to “subsidize” the higher-risk investment strategy of an Early Stage SBIC. However, debenture SBICs already pursue a range of investment strategies that present varying degrees of risk to SBA, yet SBA does not formulate separate fees based on these differences; rather, the leverage fees are calculated based on analysis of the overall SBIC program portfolio. Although the Early Stage initiative does result in a small increase in the annual fee for all new debenture leverage commitments, the resulting fee of roughly 80 basis points for fiscal year 2012 is well below the statutory maximum of 1.38 percent and is also below the actual fees charged in many previous years.

SBA notes that the fiscal year 2012 annual fee reflects the impact of both the Early Stage initiative and the energy saving debentures. In addition, in developing the Early Stage initiative, SBA gave extensive consideration to the lessons learned from the participating securities program.

Leverage availability. The proposed rule stated that SBA would allocate up to \$200 million of debenture leverage per year to Early Stage SBICs, to a total of up to \$1 billion over a five-year period. Two commenters noted that an Early Stage SBIC may need leverage after its fifth year of operations, because either a portion of its leverage commitment expired or it did not obtain commitments for the full amount of leverage it was eligible for. The commenters stated that SBA should ensure that adequate leverage will be available for Early Stage SBICs throughout their partnership terms.

SBA currently intends to issue commitments for Early Stage debenture leverage only until the end of fiscal year 2016. However, SBA recognizes that it is important for Early Stage SBICs to be able to obtain the leverage for which they are eligible, and will explore various options to ensure availability. These options may include allowing an Early Stage SBIC to apply for a new

leverage commitment to replace an expired commitment, provided that SBA has the budget authority to do so, or permitting an Early Stage SBIC to draw the remaining balance of a leverage commitment prior to its expiration, even if does not have a current need for the funds. Because SBA cannot ensure that any of these options will be available in the future, Early Stage SBICs will need to be prepared to manage their portfolios within the existing limitations.

Capital Impairment. SBA did not propose any exceptions to the existing Capital Impairment regulations for Early Stage SBICs. However, SBA received two comments stating that Early Stage SBICs should receive additional forbearance because of the kind of investments they will be making. The commenters felt that Early Stage SBICs should benefit from the same types of exceptions that the regulations provided for participating securities SBICs, such as a maximum allowable Capital Impairment Percentage (CIP) of 85 percent for the five years after a fund’s first issuance of leverage.

SBA believes that adopting this suggestion would result in an unacceptable increase in risk. SBA incurred losses on a large majority of participating securities SBICs that reached an 85 percent CIP, and especially on those that reached 85 percent sooner rather than later.

However, SBA recognizes that an Early Stage SBIC is more likely than a regular debenture SBIC to have some early losses that, combined with a lack of current income, may put upward pressure on the CIP even though the fund’s overall portfolio ultimately proves to be sound. SBA has considered whether there is a low-risk way to offer Early Stage SBICs more flexibility in their CIP calculation, and believes that a change can safely be made in the treatment of “Class 2” unrealized appreciation. Class 2 appreciation arises when an SBIC holds an investment in a company that subsequently receives a new round of financing at a higher price, provided the new round includes a substantial investment by a sophisticated, new, non-strategic investor in an arm’s length transaction. SBA regulations allow Class 2 appreciation (discounted by 50 percent) to offset realized losses in the CIP computation, but in most cases only for 24 months after the new round of financing takes place.

For Early Stage SBICs, SBA believes the 24-month limit can be made more flexible without increasing program risk. In general, at the end of the initial 24 months, an Early Stage SBIC with

“expiring” Class 2 appreciation will be able to request an extension based on an independent third-party valuation of the investment and any other relevant information, as determined by SBA. In addition, in certain instances, based on the valuation of the investment and other relevant information, SBA will permit the Early Stage SBIC to use the Class 2 appreciation in its CIP computation without the 50 percent discount. Full details of these changes are discussed in the section-by-section analysis under new § 107.1845.

SBA believes these capital impairment changes are also responsive in part to a concern that may be implicit in two comments received on proposed § 107.1182, under which SBA has the right to require valuations of an Early Stage SBIC’s investments. In asking how SBA plans to use these valuations and whether SBA will be bound by them, the comments may reflect a concern that SBA is more likely to mandate the write-down of an investment based on a valuation than it is to allow a write-up. While SBA is not adopting a general policy of allowing Early Stage SBICs to write up investments based on independent valuations, this final rule does provide Early Stage SBICs with a degree of assurance that they will continue to receive credit for their Class 2 Appreciation when it is supported by an acceptable third party valuation.

III. Section by Section Analysis

A. Early Stage Initiative Provisions

Section 107.50—Definitions. To implement the Early Stage initiative, SBA proposed to add the defined term “Early Stage SBIC” and revise the existing defined term “Payment Date”.

Early Stage SBIC

SBA received three sets of comments suggesting various changes to the proposed definition. SBA particularly sought input from the public on whether 50 percent was appropriate as the required minimum level of early stage investments, and all comments received on the definition focused on this issue. One commenter suggested that an Early Stage SBIC should be required to invest at least 75 percent of its total financing dollars in small businesses classified as “early stage” at the time of the SBIC’s initial investment. The commenter felt that later stage investments would not support the intent of the initiative and could distract SBIC managers from focusing on their early stage investments. The commenter also viewed early stage investing as a specialized skill. In contrast, two other commenters suggested a change in the

definition to require at least 25 percent of all financing dollars to be invested in later stage investments structured to produce current income. They thought this change would reduce risk and might eliminate the need for the interest reserve required under § 107.1181, which would increase an Early Stage SBIC's total funds available for investment.

SBA has not adopted either of these comments because it believes the commenters' contrasting points of view illustrate the benefits of maintaining the flexibility that the proposed definition provided. SBA expects that some management teams will focus exclusively on early stage companies, while others will opt for a mixed portfolio. Applicants may propose to manage risk in a number of different ways, including making some later-stage investments, taking less than one tier of leverage, or using leverage primarily for follow-on investments in portfolio companies that are performing well. SBA believes that fund managers are in the best position to develop an investment strategy based on their own skills, experience and analysis of market opportunities.

The only other comment received on the Early Stage definition was a suggested clarification. Two commenters thought it would be helpful for the definition to refer specifically to § 107.1810(f)(11), which specifies the time frame within which an Early Stage SBIC must satisfy the early stage investment requirement. SBA agrees and has added a cross-reference to the cited section.

The other key points of the definition were that: (1) An Early Stage SBIC must be organized as a limited partnership; and (2) a small business would be considered "early stage" if it has not yet achieved positive cash flow from operations in any full fiscal year. SBA received no comments on these aspects of the definition and is finalizing them without change.

Payment Date

SBA proposed special distribution rules in § 107.1180 which would require Early Stage SBICs to make mandatory prepayments of outstanding debentures at the same time they make distributions to their private limited partners. The proposed revision of the "Payment Date" definition in § 107.50 designated March 1, June 1, September 1, and December 1 of each year as the dates on which debenture prepayments could be made and required interest payments would be due.

SBA received two comments suggesting a requirement for semi-

annual interest payments (the same as for standard debentures), while preserving the option for an Early Stage SBIC to prepay debentures and make interest payments on a quarterly basis. The commenters reasoned that this added flexibility would be a better fit with the type of investing that Early Stage SBICs will do.

SBA proposed the quarterly Payment Date structure expressly to provide Early Stage SBICs with more frequent distribution opportunities than standard debentures afford. SBA believes that a hybrid structure with both required and optional interest payments would result in excessive administrative burden for SBICs, SBA, and debenture purchasers. Accordingly, SBA is finalizing the Payment Date definition as proposed.

Section 107.210—Minimum capital requirements for Licensees. Proposed § 107.210(a)(3) required an Early Stage SBIC to have at least \$20 million of Regulatory Capital (consisting of paid-in capital contributions from private investors plus binding capital commitments from Institutional Investors, as defined in existing § 107.50). In comparison, the minimum Regulatory Capital is \$5 million for other debenture SBICs and \$10 million for participating securities SBICs.

Two commenters noted that SBA will consider geographic diversity as one factor in evaluating applicants for an Early Stage SBIC license. Based on the presumption that a fund investing in underserved areas might be able to operate effectively with less than \$20 million of capital, they suggested language that would allow SBA to license an Early Stage SBIC with Regulatory Capital as low as \$10 million, provided SBA is satisfied that the fund would be economically viable.

In the proposed rule, SBA specifically requested public input on the \$20 million private capital minimum. The very limited response to this request suggests that the proposed minimum capital requirement was acceptable to most readers. Although SBA recognizes that operating costs differ across geographic locations, SBA's experience in the regular debenture program has not shown a strong connection between the geographic areas in which an SBIC plans to invest and the amount of capital it raises. In light of historical data showing that SBA has experienced higher loss rates on smaller SBICs, with performance statistics improving as private capital approaches \$20 million, SBA does not see a compelling reason to reduce the minimum capital requirement and is finalizing § 107.210 as proposed.

Section 107.300—License application form and fee. Three commenters addressed this section. One commenter expressed concern that small businesses seeking financing from an Early Stage SBIC might be required to pay a \$25,000 fee. That is not the case; the \$25,000 fee would be paid by applicants for an Early Stage SBIC license. The other two commenters each submitted two identical comments. First, they requested clarification that SBA would refund the licensing fee if it did not accept an application for processing. The proposed rule characterized the licensing fee as "non-refundable"; however, if SBA received an application that could not be accepted for processing, and the applicant did not correct the deficiencies, SBA would return the licensing fee along with the application itself. In SBA's experience, this situation has rarely if ever occurred and does not need to be specifically addressed in the regulation. Consistent with current practice, SBA will not refund the fee for an application that is denied, withdrawn, or otherwise dismissed after being accepted for processing.

The commenters also urged SBA to cease adding \$10,000 to the application fee because an applicant is organized as a partnership. The intent of this comment is unclear. For many years, § 107.300 has included an additional \$5,000 charge for partnerships, and the proposed rule did not change that provision. SBA imposed this additional cost because of the more extensive document review that a partnership application requires. It is possible that the commenters intended to address the \$10,000 difference in the licensing fee for an Early Stage SBIC applicant versus a regular debenture applicant (\$25,000 versus \$15,000, assuming both are organized as partnerships). SBA believes the difference is justified by processing differences between the two types of applications, including compressed processing times for Early Stage applications which will require SBA to supplement its licensing staff with outside consultants. Therefore, the proposed section has been finalized without change.

Section 107.305—Evaluation of license applicants. In the proposed rule, SBA specifically requested input from the public on the factors used by SBA to evaluate applicants to the SBIC program, including applicants for an Early Stage SBIC license. These factors were grouped in four broad categories: Management qualifications, performance of managers' prior investments, the applicant's proposed investment strategy, and the applicant's

proposed organizational structure and fund economics. Only two commenters addressed this section, submitting nearly identical comments. SBA is finalizing the proposed section without change, for the reasons discussed in the following paragraphs.

Proposed § 107.305(a) included experience in “implementing best practices for investment firms” as one aspect of management qualifications that SBA would evaluate. The two commenters described this criterion as an amorphous standard on which there is no consensus, and suggested deleting it. SBA disagrees. SBA believes that many best practices are widely acknowledged and disseminated by organizations such as the Institutional Limited Partners Association, the National Venture Capital Association, and the Private Equity Industry Guidelines Group.

Proposed § 107.305(b) included “the contribution of prior investments to the growth of portfolio company revenues and number of employees” as one of the factors SBA would consider in evaluating the performance of fund managers’ prior investments. The two commenters suggested eliminating employment growth as a criterion because investment funds do not usually track this information. SBA understands that not all fund managers will have employment data for the companies in which they previously invested, and will not disqualify an applicant that does not have these data. However, job growth is a critical part of the SBIC program’s mission and SBA believes it should be considered. In fact, the current SBIC license application (which Early Stage SBIC will also use) already requests information on the growth of portfolio company employees and revenues, and most applicants have been able to provide it.

Proposed § 107.305(c) included compliance with SBA regulations as a factor in SBA’s evaluation of an applicant’s investment strategy; proposed § 107.305(d) similarly included regulatory compliance with respect to an applicant’s organizational structure and fund economics. The two commenters felt that compliance was relevant only to applicants that have previously managed an SBIC. However, the provisions relate not to an applicant’s prior funds, but to the likelihood of compliance of the strategy and structure of the proposed new SBIC. Therefore, these provisions pertain to all applicants.

Section 107.310—When and how to apply for licensing as an Early Stage SBIC. Under proposed § 107.310, SBA would not license two Early Stage SBICs

under common control if both would have SBA leverage or leverage commitments outstanding at the same time. SBA received one comment stating that Early Stage SBIC managers should be able to access leverage across multiple funds at the same time, as this modification would strengthen the community of investment firms and individuals that finance early stage companies. SBA has not adopted this comment because portfolio diversification is particularly important with only a five year licensing period for the Early Stage initiative and a limited total leverage allocation.

The proposed section also provided that SBA would accept Early Stage SBIC applications only during specified periods, which would be announced by **Federal Register** notice. One commenter thought, depending on the number of applications received, that SBA might turn down applicants even though they meet the qualification standards for licensing. The commenter suggested that any qualified applicant that is not given a green light to apply for an Early Stage SBIC license should receive a green light to apply for a regular debenture SBIC license. An Early Stage SBIC applicant that does not meet the licensing qualification standards is not prohibited from separately pursuing a regular debenture SBIC license.

Section 107.320—Evaluation of Early Stage SBICs. Proposed § 107.320 stated that SBA would evaluate Early Stage SBIC applicants using the same set of factors applicable to SBIC applicants in general, as set forth in proposed § 107.305. In addition, proposed § 107.320(a) and (b) added two selection criteria specific to Early Stage SBICs, giving SBA the right to consider: (1) Diversification of Early Stage SBICs with respect to “vintage year” (the year in which an investment fund draws its initial capital from investors), and (2) diversification of Early Stage SBICs with respect to geographic location. SBA received no comments specific to this section and is finalizing it without change.

Section 107.565—Restrictions on third-party debt of Early Stage SBICs. Proposed § 107.565 required an Early Stage SBIC to obtain SBA approval to have, incur or refinance any third-party debt, whether secured or unsecured. The proposed rule made an exception for “accounts payable from routine business operations”. Two commenters were concerned that “routine business operations” could be interpreted too narrowly; one asked whether it would include certain legal expenses or specialized audit work performed as part of an Early Stage SBIC’s due

diligence on a potential investment. SBA considers the ordinary expenses of operating an SBIC to come within this exception and other extraordinary expenses would require SBA’s prior approval. SBA is finalizing § 107.565 as proposed.

Section 107.585—Voluntary decrease in Licensee’s Regulatory Capital. The proposed rule required any reduction of Regulatory Capital under § 107.585 by an Early Stage SBIC to be approved by SBA in writing. SBA received two comments suggesting that an Early Stage SBIC that has repaid all of its leverage should be exempt from this prior approval requirement. The requested exemption is available under existing § 107.1000(b), which applies to all SBICs (including Early Stage SBICs) with no outstanding leverage.

Section 107.692—Examination fees. SBA received two comments addressing this section. Both suggested that partnership SBICs should not be charged an additional \$10,000 examination fee; however, neither the existing regulations nor the proposed rule included such a fee. The proposed amendments to § 107.692, which SBA is finalizing without change, require an Early Stage SBIC to pay an examination fee that is 10 percent higher than the base fee until all debenture leverage has been repaid and no further leverage will be issued. The existing regulation also includes a 5 percent addition to the base fee for partnerships. The maximum base fee is \$14,000, so the 5 percent and 10 percent premiums combined cannot exceed \$2,100. SBA charges more for partnerships based on the documentation that must be reviewed; for Early Stage SBICs, SBA expects that the value of unrealized investments will require more review than is needed for other debenture SBICs.

Section 107.1120—General eligibility requirements for Leverage. Proposed paragraph (k) of this section provided for a new certification by Early Stage SBICs seeking an SBA leverage commitment or draw. The Early Stage SBIC would be required to certify that it will provide at least 50 percent of the aggregate dollar amount of its financings to “early stage” companies, in accordance with the Early Stage SBIC definition in § 107.50. The proposed certification was not specific as to when the early stage investment requirement would be met, and two commenters suggested that the clarity of the provision would be improved by adding a cross-reference to the timing requirements in § 107.1810(f)(11). SBA agrees and has revised the final rule accordingly.

Section 107.1150—Maximum amount of leverage for a section 301(c) licensee. In this section, SBA proposed special limits on the maximum amount of leverage that will be available to an Early Stage SBIC. Among other limitations, the maximum leverage that an Early Stage SBIC could have outstanding at any time would be limited to 100 percent of its paid-in private capital (“Leverageable Capital”) or \$50 million, whichever is less. SBA received two comments suggesting that Early Stage SBICs should be able to obtain additional leverage if they invest in low income geographic areas. This benefit is available to other SBICs under existing § 107.1150(c). SBA has not adopted this comment based on its concern that increasing the leverage for which an Early Stage SBIC is eligible would result in increased risk and could ultimately increase the leverage fees that all debenture SBICs must pay.

Section 107.1180—Required distributions to SBA by Early Stage SBICs. In this section, SBA proposed to add distribution requirements that would apply only to Early Stage SBICs. To reduce the risk of the Early Stage initiative, the proposed rule required an Early Stage SBIC to make a distribution to SBA whenever it made a distribution to its investors. Distributions could be made on any quarterly Payment Date (March 1, June 1, September 1, or December 1). SBA would apply any such distribution to the repayment of the SBIC’s outstanding debentures. The Early Stage SBIC would have to be current on its debenture interest and fees before making a distribution. SBA received two comments pointing out a possible conflict in the proposed regulatory language. They noted that proposed § 107.1180 used the existing defined term “Distribution”, which includes “any transfer of cash or non-cash assets to SBA, its agent or Trustee”. Thus, the definition could be presumed to include payments of interest and fees to SBA, which therefore would be subject to the various restrictions on Distributions in the proposed rule. To avoid any confusion, SBA has revised § 107.1180(a) to clarify that Early Stage SBIC with outstanding leverage may pay interest, annual fees, and maturing debenture principal pursuant to the terms of its debentures, and that these payments are not subject to the “Distribution” requirements in § 107.1180.

SBA also received two comments on the provision in proposed § 107.1180(b) that allowed debentures issued by Early Stage SBICs to be prepaid in whole but not in part. The commenters asked how SBA would handle a distribution if the

amount received was not sufficient to pay off a debenture in full. SBA has experience with this issue through the participating securities program, which includes many SBICs that have also issued debentures. These SBICs have pre-planned their distributions so that the amount payable to SBA will be the amount needed to pay off one or more debentures in full. SBICs have the flexibility to issue debentures in fairly small increments, and most do so; as a result, it should not be difficult to arrange a distribution so that debenture prepayments work out properly.

Proposed § 107.1180(d) stated that SBA’s share of a distribution would depend on the Early Stage SBIC’s “highest ratio” of outstanding leverage to Leverageable Capital, and its Capital Impairment Percentage (CIP), as determined under existing § 107.1840. At a CIP of less than 50 percent, distributions would be allocated pro rata (based on the “highest ratio”) between SBA (up to the amount of the outstanding debenture leverage) and the Early Stage SBIC’s investors. However, if the CIP reached 50 percent or more, SBA would receive 100 percent of any distribution until all outstanding debentures have been repaid. If the Early Stage SBIC reduced its CIP below 50 percent, it could resume distributions to its investors.

SBA received one comment on these distribution priority provisions. The commenter stated that for Early Stage SBICs that maintain a low ratio of leverage to Leverageable Capital (for example, funds that raise \$2 or \$3 of private capital for every \$1 of leverage), SBA should not take all distributions when the CIP reaches 50 percent because the SBA leverage would still be fully protected. The commenter proposed a variable formula to determine the CIP at which SBA would be entitled to priority in distributions, suggesting that this change would make the Early Stage initiative more attractive to potential investors. SBA believes that a variable threshold introduces too much complexity, but also agrees that an Early Stage SBIC that takes substantially less than one tier of leverage does represent a lower risk to SBA and should receive the benefit of more favorable distribution rules. Accordingly, SBA is revising § 107.1180(d) so that SBA will be entitled to 100 percent of distributions only if the CIP is 50 percent or greater and the Early Stage SBIC’s highest leverage ratio is greater than 0.5. In other words, an Early Stage SBIC that uses at least \$2 of private capital for every \$1 of leverage will be permitted to continue making pro rata distributions

to SBA and its private investors even if its CIP reaches or exceeds 50 percent, as long as it does not have a condition of capital impairment under § 107.1830.

Section 107.1181—Interest reserve requirements for Early Stage SBICs. Two commenters addressed this section, which required an Early Stage SBIC to maintain funds in reserve to cover interest and Charges on each of its outstanding debentures over the first five years of its term.

The proposed rule provided an exception to the interest reserve requirement for leverage in the form of a discounted debenture, which will not require cash interest payments during the first five years of its term. Instead, the proceeds received by the Early Stage SBIC when the debenture is issued will be discounted; over the first five years following issuance, the carrying value of the debenture will accrete until it reaches face value, and semi-annual interest payments will be required beginning in year six.

For standard debentures, the proposed rule required a reserve sufficient to pay interest and Charges for the first 21 Payment Dates following issuance of a debenture, and both commenters thought the correct period should be 20 Payment Dates, to correspond to a five year period. However, SBA notes that the first of the 21 Payment Dates will come at the end of a “stub period” that is less than a full quarter. The proposed rule correctly provided for the stub period followed by 20 quarters.

Both commenters suggested that SBA should consider permitting Early Stage SBICs to issue discounted debentures as an alternative to the reserve requirements. SBA clearly stated its intention to do so in the preamble to the proposed rule. In the proposed and final rules, § 107.1181(a) states that the reserve requirement applies only to debentures that require periodic interest payments to SBA during the first five years of their term.

Finally, both commenters recommended that the regulation state explicitly that the required reserve on a debenture will be reduced each time the issuing Early Stage SBIC makes an interest payment. SBA believes this point is implicit in the regulation (it was also made explicitly in the preamble to the proposed rule), but has added it to the final rule for avoidance of doubt.

Section 107.1182—Valuation requirements for Early Stage SBICs based on Capital Impairment Percentage. This section would require an Early Stage SBIC to notify SBA in writing if it has a Capital Impairment Percentage of at least 50 percent, even

if its maximum allowable CIP is higher. When SBA receives this notification, or makes its own determination that the CIP is at least 50 percent, SBA would have the right to require the Early Stage SBIC to engage a third party valuation expert, acceptable to SBA, to perform valuations of some or all of the licensee's investments, as determined by SBA. Two commenters asked how SBA plans to use the valuations, and whether Early Stage SBICs will be able to contest them. SBA has not adopted standard procedures for acting upon third-party valuations, in part because valuations are often provided in ranges and have varying degrees of uncertainty associated with them. SBA will use the valuations as additional data points to assess the Early Stage SBIC's financial condition and the repayment prospects of outstanding SBA leverage, as it currently does with valuations for other debenture SBICs. SBICs always have the right to provide additional information if they disagree with a valuation.

Section 107.1810—Events of default and SBA's remedies for Licensee's noncompliance with terms of Debentures. SBA proposed four changes in this section that would apply only to Early Stage SBICs. SBA received no specific comments on this section and is finalizing it as proposed. The change is a revision of § 107.1810(f)(2), which provides that an improper distribution made by an SBIC is an event of default. In the final rule, § 107.1810(f)(2)(iv) adds distributions by Early Stage SBICs, as permitted under proposed § 107.1180, to the list of specific distributions that would *not* be considered improper distributions.

Second, under § 107.1810(f)(11), it is an event of default if an Early Stage SBIC fails to meet the requirement to invest at least 50 percent of its financing dollars in early stage companies, as defined under the proposed Early Stage SBIC definition in § 107.50. This provision would require an Early Stage SBIC to meet the 50 percent requirement as soon as the total dollars invested to date are equal to or greater than Regulatory Capital. Third, under proposed new § 107.1810(f)(12), it would be an event of default if an Early Stage SBIC fails to maintain the interest reserve required under proposed § 107.1181, as discussed earlier in this preamble.

The conditions in proposed § 107.1810(f)(11) and (f)(12) would both be in the category of events of default with opportunity to cure. If the Early Stage SBIC fails to cure to SBA's satisfaction, SBA could invoke the remedies in existing § 107.1810(g), which include the right to declare

outstanding debenture leverage immediately due and payable.

Finally, § 107.1810(j) provides SBA with additional remedies to help maximize recoveries from Early Stage SBICs that have been transferred to a liquidation status. Under this section, if SBA must honor its guarantee and pay the interest and principal of an Early Stage SBIC's debentures, upon such payment SBA has the right to prohibit the SBIC from making additional investments without SBA approval (except for any investments the SBIC had already legally committed itself to make); to prohibit Distributions by the SBIC to any party other than SBA until all leverage and other amounts due to SBA have been repaid; to require all the SBIC's investor commitments to be funded at the earliest time(s) permitted under the SBIC's limited partnership agreement and other applicable documents; to review and re-determine the SBIC's approved Management Expenses (as defined in existing § 107.520); and to the appointment of SBA or its designee as receiver for the SBIC. The receivership would be for the purpose of continuing the SBIC's operations; the appointment of a liquidating receiver is governed by existing provisions of the Small Business Investment Act and is not affected by this rule.

Section 107.1830—Licensee's Capital Impairment—definitions and general requirements. As discussed in the preamble to the proposed rule, SBA did not propose to change the maximum permitted Capital Impairment Percentages set forth in § 107.1830. Under the existing regulation, the maximum allowable CIP for a debenture SBIC with one tier of leverage or less is 70 percent. SBA received one comment suggesting that the maximum allowable CIP should be raised to 80 percent for an Early Stage SBIC with a highest leverage ratio of 0.4 or less. SBA agrees that a lower leverage ratio corresponds to lower credit risk, but has declined to adopt this suggestion, primarily because the CIP formula already allows a fund with a low leverage ratio to incur substantially higher dollar losses than a more highly leveraged fund of the same size before becoming impaired. For example, an Early Stage SBIC with \$30 million of private capital and \$30 million of leverage (i.e., a leverage ratio of 1.0) would be impaired (based on a CIP of 70 percent) if it incurred total net losses of \$21 million. In contrast, an Early Stage SBIC with \$40 million of private capital and \$20 million of leverage (i.e., a leverage ratio of 0.5), and the same \$21 million of losses,

would have a CIP of only 52.5 percent and would not be impaired.

Section 107.1840—Computation of Licensee's Capital Impairment Percentage. SBA did not propose any changes to this section, but is making one change in this final rule in response to comments regarding the need for more flexible capital impairment regulations for Early Stage SBICs. As discussed under "General Comments" in section II of this preamble, SBA is adding an exception for Early Stage SBICs that affects the way Class 2 appreciation is accounted for in the computation of the Capital Impairment Percentage. In § 107.1840(d)(3)(iii) and (d)(4), the final rule provides for the exception and refers the user to new § 107.1845 for the applicable information.

Section 107.1845—Computation of Capital Impairment Percentage for Early Stage SBICs. This new section provides the specific details of a change in the treatment of Class 2 appreciation for Early Stage SBICs. This section represents an exception, for Early Stage SBICs only, to certain provisions of existing § 107.1840(d). Under § 107.1840(d)(3), appreciation qualifies as Class 2 only if it is based on a financing that occurred within 24 months of the date when the SBIC is computing its CIP, or if the financed small business meets a test for positive net operating cash flow. Under § 107.1840(d)(4), an SBIC can use 50 percent of its Class 2 appreciation in the calculation of its "adjusted unrealized gain", which in turn is the amount that the SBIC can use to offset realized losses in the CIP computation.

Under § 107.1845, at the end of the initial 24 months, an Early Stage SBIC with "expiring" Class 2 appreciation will be able to request an extension. In considering this request, SBA may obtain its own valuation of the investments or require the Early Stage SBIC to obtain a valuation performed by an independent third party acceptable to SBA. SBA may also consider any other information that it deems relevant. If supported by the valuation and other information, SBA may grant an extension allowing the Early Stage SBIC to use all or part of the original Class 2 appreciation for up to an additional 24 months; reasons for granting a shorter or no extension might include a high degree of uncertainty associated with the valuation or the expectation that events occurring within a shorter period will further clarify or determine a company's value. At the end of any extension period, the Early Stage SBIC could request a further extension, repeating the original steps. SBA may

reconsider its approval of an extension at any time based on new information that may affect the value of an investment.

At the time of any extension request, an Early Stage SBIC will also be able to request an exception to the requirement to discount Class 2 appreciation by 50 percent in the “adjusted unrealized gain” calculation. SBA may grant this exception based on its consideration of relevant information, including its determination that the appreciation on the Early Stage SBIC’s investment, based on its current fair value, is at least two times the original Class 2 appreciation. If the exception is granted, the Early Stage SBIC will be able to use the original Class 2 appreciation in its CIP computation without the 50 percent discount, for the duration of the extension period.

B. Technical Changes to Regulations

Section 107.130—Requirement for qualified management. SBA proposed one clarification in this section, which has been finalized without change. The revision makes clear that a licensed SBIC (including an Early Stage SBIC) must have qualified management not only when applying for a license, but as long as it holds the license.

Section 107.1130—Leverage fees and additional charges payable by Licensee. This section, which SBA is finalizing as proposed, includes two changes to bring the regulation into conformity with statutory requirements for determining the annual Charge to be paid by SBICs on their outstanding SBA leverage.

IV. Justification for Immediate Effective Date

The Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), requires that “publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.”

The purpose of this provision is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. In the case of this rulemaking, however, there should be no need for any member of the public, including any SBIC, to make any changes in order to prepare for the rule taking effect. This rule implements changes to the SBIC program to stimulate private sector investment in early stage companies, which are expected to contribute to the important goals of creating jobs and fostering innovation. Any further delay in making leverage available to Early Stage SBICs

will only hold back the potential benefits of investment in early stage small businesses. SBA therefore finds that there is good cause for making this rule effective immediately instead of observing the 30-day period between publication and effective date.

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

Executive Order 12866

The Office of Management and Budget has determined that this rule is a “significant” regulatory action under Executive Order 12866. In the proposed rule, SBA set forth its initial regulatory impact analysis, which addressed the following: (1) Necessity of the regulation; (2) alternative approaches to the proposed rule; and (3) the potential benefits and costs of the regulation. SBA received comments which addressed both alternative approaches to and potential costs of the regulation. Those comments are discussed in the final Regulatory Impact Analysis set forth below:

1. Necessity of Regulation

The Small Business Investment Act of 1958 identifies the SBIC program’s mission as follows: “to stimulate and supplement the flow of private equity capital and long-term loan funds which small business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply * * *” Based on venture capital industry data (ThomsonOne VentureXpert), SBA believes that early stage businesses lack access to needed financing capital. Although the venture industry provided over \$22 billion in financings to U.S. businesses in calendar year 2010, this represented over a 23% decline from 2007. Less than a third of these financing dollars went to early stage or start-up businesses. Given the decline in venture capital financings over the past 3 years, SBA seeks to expand access to early stage businesses by implementing an initiative to provide up to \$1 billion in debenture leverage over five years (beginning in FY 2012) to a limited number of SBICs focused on early stage investments.

If SBA debenture leverage is to be used to finance early stage small businesses, the high risk associated with such investments indicates the need for more protections than those provided by the standard SBIC debenture and

current regulations to mitigate risk and cost to the taxpayer. This final rule includes a number of regulatory changes to manage the risks associated with an early stage portfolio, including: (1) Limiting leverage for an individual Early Stage SBIC to 100 percent of Regulatory Capital or \$50 million, whichever is less; (2) establishing special distribution rules to require repayment of leverage whenever an Early Stage SBIC makes distributions to its investors; and (3) implementing risk monitoring actions appropriate to SBA’s leverage guarantor/creditor status. Even with these actions, in order to maintain an initial subsidy rate of zero for the debenture program while limiting the increase in leverage fees, SBA can only issue leverage to Early Stage SBICs as a very small percentage of its portfolio.

2. Alternative Approaches to Regulation

SBA considered several alternatives to these regulations. The first alternative was for SBA not to pursue the Early Stage initiative and continue with its current credit policy of not providing debenture leverage to SBICs that focus on early stage equity investing. SBA rejected this alternative because of the critical need for early-stage funding, particularly in the \$1 to \$5 million range that fits well with SBA’s small business size standards.

SBA also considered seeking legislation for a new program specifically focused on investing in early stage small businesses. Although such an alternative could have provided an opportunity to introduce useful risk-management provisions, such as SBA profit sharing, SBA chose not to pursue this alternative because of the compelling need to begin assisting early stage small businesses as quickly as possible. A third alternative was for SBA to modify its credit policies to license and approve leverage to qualified early stage focused SBICs without changes in program regulations or in the terms of debenture leverage. SBA believes that doing so would not be financially responsible and would present an excessively high risk of losses to the taxpayer. Ultimately, SBA decided that it could responsibly license a limited number of early stage SBICs after implementing appropriate regulatory changes to manage the associated risk.

In proposing the definition for an Early Stage SBIC, SBA considered both the type of investment that should qualify as “early stage” and whether an Early Stage SBIC’s portfolio should be limited to early stage investments exclusively. Many small businesses in the earliest stages of product

development (“seed stage” companies) could benefit from access to additional capital. However, SBA chose not to limit the Early Stage initiative to seed stage investments because of their high risk and the long holding periods they typically require. Although Early Stage SBICs would not be prohibited from investing in seed stage companies, to use SBA debenture leverage successfully they will likely need to start generating cash returns on investments within 4 to 6 years after licensing. This timing concern is also why the proposed definition required only 50 percent of an Early Stage SBIC’s portfolio to be in early stage investments. SBA received one comment suggesting that Early Stage SBICs should be required to invest at least 75% of their investment dollars in early stage small businesses. However, two other commenters believed not only that the 50% requirement was sufficient, but that SBA should also consider requiring an Early Stage SBIC to invest at least 25% of its total financing dollars in current pay investments in later stage businesses. The commenters felt this would decrease the risks of Early Stage SBICs, thereby lowering the costs, and could perhaps offset the need for an interest reserve. SBA believes these varying points of view illustrate that fund managers are in the best position to identify the portfolio mix that would be best suited to their skills and experience, and has finalized the Early Stage SBIC definition as proposed.

In determining the maximum amount of leverage for which an Early Stage SBIC would be eligible, SBA decided that a one-to-one match between leverage and private capital (one “tier” of leverage) would provide the best balance between program cost and attractiveness to fund managers and investors. A second tier of leverage would result in a much higher projected loss rate, and a correspondingly greater increase in annual leverage fees for all debenture SBICs receiving new leverage commitments. SBA also considered a model in which SBA would have provided only half a tier of leverage. This lower ratio of leverage to private capital would have a much lower impact on leverage fees but would be unlikely to attract some high quality fund managers and investors.

SBA also considered various dollar limits on the maximum leverage available to an Early Stage SBIC, in order to avoid an excessive concentration of risk in a small number of funds. A low dollar limit could allow more funds to be licensed, but could be unattractive to stronger applicants with

the ability to raise and deploy larger amounts of capital. SBA believes the proposed limit of \$50 million is sufficient to attract high quality applicants. SBA also believes that \$50 million of leverage, in combination with at least \$50 million of private capital, is more than adequate to support a primarily early stage portfolio, with most financings expected to be in the \$1 to \$5 million range.

3. Potential Benefits and Costs

SBA anticipates that this rule will provide significant benefit to early stage small businesses seeking investments by Early Stage SBICs. In estimating the impact, SBA considered that \$1 billion in anticipated leverage will be matched by a minimum of \$1 billion in private capital over the next 5 years, beginning in FY 2012. SBA expects that Early Stage SBICs will invest over a 5 to 7 year period after licensing. Allowing for payment of management expenses and interest, SBA estimates that the \$1 billion in leverage guaranteed by the Early Stage initiative will result in approximately \$125 million annually in financings to small businesses over an 8 to 10 year period.

As stated in the proposed rule, Early Stage debentures will impose additional cost in the form of increased annual fees on all debenture SBICs seeking new leverage commitments. The estimated cost has been incorporated into the program formulation model which determines the annual fee needed to keep the debenture program’s original subsidy cost at zero, as required by law. For FY 2012, SBA has budgeted \$150 million in leverage commitments to Early Stage SBICs, within the anticipated appropriated SBIC Debenture loan levels, representing approximately 7 percent of total expected debenture commitments. This 7 percent allocation would increase the annual fee on all new debenture commitments by approximately 13.7 basis points. For FY 2013, SBA has budgeted \$200 million in leverage commitments to Early Stage SBICs, representing approximately 8.3 percent of all new expected debenture commitments. This 8.3 percent allocation would increase the annual fee on all new debenture commitments by approximately 11.5 basis points using updated model assumptions. The fee increases reflect the additional risk associated with the early stage equity investments contemplated by the Early Stage initiative. Early stage investing is higher-risk than the typical SBIC portfolio, and would have required fees in excess of statutory caps if operated on a stand-alone basis. To align fees and

costs to the taxpayers with the overall policy goals, the Early Stage initiative incorporates terms designed to mitigate risk, and is limited to no more than \$200 million per fiscal year to keep the annual fees at reasonable levels. The cost is expected to vary each year based on the factors and assumptions used to develop the annual fee, including the total amount of debenture leverage commitments estimated, the amount committed to Early Stage SBICs, and interest rates.

Executive Order 12988

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

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action is included above in the Regulatory Impact Analysis under Executive Order 12866.

In connection with the launch of the President’s “Start-Up America Initiative”, SBA announced its commitment to making financing available to early stage small businesses through the SBIC program. In an effort to engage interested parties in this regulatory action, SBA has since made presentations at SBIC association meetings, Start-up America-related public events, and venture capital industry forums to discuss both the market need for new sources of early stage financing and key issues associated with the design of the Early Stage initiative. SBA announced a series of public Webinars regarding the Early Stage Initiative during the comment period. 76 FR 81430 (December 28, 2011). SBA also placed explanatory material on its Web site to assist the public with understanding the program, as proposed. <http://www.sba.gov/content/early-stage-small-business-investment-company-sbic-initiative>. The public Webinars attracted a range of participants, including individuals with prior experience managing either participating securities SBICs or non-SBIC equity funds; SBIC industry service providers; and current debenture program participants. The Webinar presentations provided a general introduction to the SBIC program as well as to the goals and proposed structure of the Early Stage initiative. Among other things, participants asked questions about the timetable for implementing the initiative, when an Early Stage SBIC applicant would have

to complete its fundraising, and procedures for submitting license application and obtaining a leverage commitment. Participants were broadly supportive of using the SBIC program to expand the financing options available to early stage small businesses, while adding key protective provisions to manage program risk.

Executive Order 13132

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

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

SBA has determined that this final rule will not impose additional reporting or recordkeeping requirements. Early Stage SBIC applicants will submit the same license application form as other SBIC program applicants (OMB Control Number 3245-0062). Post-licensing, Early Stage SBICs will have the same recordkeeping and reporting requirements as any other licensed SBIC.

Regulatory Flexibility Act, 5 U.S.C. 601-612

When an agency promulgates a rule, the Regulatory Flexibility Act (5 U.S.C. 601-612) requires the agency to prepare a final regulatory flexibility analysis (FRFA) describing the potential economic impact of the rule on small entities and alternatives that may minimize that impact. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing a FRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This final rule affects all SBICs issuing debentures, of which there are approximately 150, most of which are small entities. Therefore, SBA has determined that this final rule will have an impact on a substantial number of small entities. However, SBA has determined that the impact on entities affected by the rule will not be significant. SBA intends to maintain the SBIC program's initial subsidy cost to taxpayers at zero by charging up front and annual fees on its leverage. SBA calculates the annual fee each year using historical data to assess the appropriate fee to offset expected losses.

The actual costs for SBIC guarantees may be higher or lower, and SBA will monitor program performance closely. Because SBA expects Early Stage SBICs to be riskier than standard SBICs, the annual fees needed to keep the debenture program's original subsidy cost at zero are higher than if there were no Early Stage SBICs. For FY 2012, SBA estimates \$150 million in leverage commitments to Early Stage SBICs, which increases the annual fee charged to all SBICs seeking new debenture commitments by approximately 13.7 basis points. For FY 2013, SBA estimates \$200 million in leverage commitments to Early Stage SBICs, which increases the annual fee charged to all SBICs seeking new debenture commitments by approximately 11.5 basis points. Since annual leverage fees were introduced in FY 1998, the annual fee has ranged from a high of 100 basis points (1 percent) to a low of 29 basis points, with a 13-year median of 88 basis points. Although the cost will vary in the future based on economic factors and assumptions used to develop the annual fee, SBA expects the fee to remain under 1 percent, comparable to historical annual fees and below the statutory maximum of 1.38 percent. For debenture leverage committed and drawn by SBICs in FY 2012, SBA estimates that the sum of the debenture interest rate plus the annual fee will be in the vicinity of 5 percent. Debenture SBICs typically use the proceeds of debenture leverage to make loans to small businesses at interest rates in the 12 to 16 percent range, providing them with a significant spread over their cost of funds. Accordingly, the Administrator of the SBA hereby certifies that this final rule will not have a significant impact on a substantial number of small entities. In the proposed rule, SBA solicited comments from the public regarding any perceived significant impact, either on SBICs or on companies that receive funding from SBICs, and received none.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends part 107 of title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g, 687m and Pub. L. 106-554, 114 Stat. 2763; and Pub. L. 111-5, 123 Stat. 115.

■ 2. Amend § 107.50 by adding a definition of “Early Stage SBIC” and revising the definition of “Payment Date” to read as follows:

§ 107.50 Definition of terms.

* * * * *

Early Stage SBIC means a Section 301(c) Partnership Licensee, licensed pursuant to § 107.310 of this part, in which at least 50 percent of all Loans and Investments (in dollars) must be made to Small Businesses that are “early stage” companies at the time of the Licensee's initial Financing (see also § 107.1810(f)(11)). For the purposes of this definition, an “early stage” company is one that has never achieved positive cash flow from operations in any fiscal year.

* * * * *

Payment Date means:

(1) For a Participating Securities issuer, each February 1, May 1, August 1, and November 1 during the term of a Participating Security, or

(2) For an Early Stage SBIC, each March 1, June 1, September 1, and December 1 during the term of a Debenture.

* * * * *

■ 3. Amend § 107.130 by revising the first sentence to read as follows:

§ 107.130 Requirement for qualified management.

When applying for a license, and while you have a license, you must show, to the satisfaction of SBA, that your current or proposed management team is qualified and has the knowledge, experience and capability necessary for investing in the types of businesses contemplated by the Act, the regulations in this part 107, and your business plan. * * *

■ 4. Amend § 107.210 by revising paragraph (a)(1) subject heading and the first sentence of its introductory text and by adding a paragraph (a)(3) to read as follows:

§ 107.210 Minimum capital requirements for Licensees.

(a) * * *

(1) *Licensees other than Participating Securities issuers and Early Stage SBICs.* Except for Participating Securities issuers and Early Stage SBICs, a Licensee must have Regulatory Capital of at least \$5,000,000. * * *

* * * * *

(3) *Early Stage SBICs*. An Early Stage SBIC must have Regulatory Capital of at least \$20 million.

* * * * *

■ 5. Amend § 107.300 by revising the introductory text and adding a paragraph (d) to read as follows:

§ 107.300 License application form and fee.

The license application must be submitted on SBA Form 2181 together with all applicable exhibits on SBA Form 2182 and a non-refundable processing fee computed as follows:

* * * * *

(d) All applicants seeking to be licensed as Early Stage SBICs will pay the fee for a Partnership Licensee plus an additional \$10,000 fee, for a total of \$25,000.

■ 6. Add § 107.305 to subpart C to read as follows:

§ 107.305 Evaluation of license applicants.

SBA will evaluate a license applicant based on the submitted application materials, any interviews with the applicant's management team, and the results of background investigations, public record searches, and other due diligence conducted by SBA and other Federal agencies. SBA's evaluation will consider factors including the following:

(a) Management qualifications, including demonstrated investment skills and experience as a principal investor; business reputation; adherence to legal and ethical standards; record of active involvement in making and monitoring investments and assisting portfolio companies; successful history of working as a team; and experience in developing appropriate processes for evaluating investments and implementing best practices for investment firms.

(b) Performance of managers' prior investments, including investment returns measured both in percentage terms and in comparison to appropriate industry benchmarks; the extent to which investments have been realized as a result of sales, repayments, or other exit mechanisms; and the contribution of prior investments to the growth of

portfolio company revenues and number of employees.

(c) Applicant's proposed investment strategy, including clarity of objectives; strength of management's rationale for pursuing the selected strategy; compliance with this part 107 and applicable provisions of part 121 of this chapter; fit with management's skills and experience; and the availability of sufficient resources to carry out the proposed strategy.

(d) Applicant's proposed organizational structure and fund economics, including compliance with this part 107; soundness of financial projections and underlying assumptions; a compensation plan that provides managers with appropriate economic incentives; a reasonable basis for allocations of profits and fees to Persons not involved in management; and governance procedures that provide appropriate checks and balances.

■ 7. Add § 107.310 to subpart C to read as follows:

§ 107.310 When and how to apply for licensing as an Early Stage SBIC.

From time to time, SBA will publish a Notice in the **Federal Register**, inviting the submission of applications for licensing as an Early Stage SBIC. SBA will not consider an application from an Early Stage SBIC applicant that is under Common Control with another Early Stage SBIC applicant or an existing Early Stage SBIC (unless it has no outstanding Leverage or Leverage commitments and will not seek additional Leverage in the future). Applicants must comply with both the regulations in this part 107 and any requirements specified in the Notice, including submission deadlines. The Notice will specify procedures for a particular application period.

■ 8. Add § 107.320 to subpart C to read as follows:

§ 107.320 Evaluation of Early Stage SBICs.

SBA will evaluate an Early Stage SBIC license applicant based on the same factors applicable to other license applicants, as set forth in § 107.305, with particular emphasis on managers'

skills and experience in evaluating and investing in early stage companies. In addition, SBA reserves the right to maintain diversification among Early Stage SBICs with respect to:

- (a) The year in which they commence operations, and
- (b) Their geographic location.

■ 9. Add § 107.565 to subpart E to read as follows:

§ 107.565 Restrictions on third-party debt of Early Stage SBICs.

If you are an Early Stage SBIC and you have outstanding Leverage or a Leverage commitment, you must get SBA's prior written approval to have, incur, or refinance any third-party debt other than accounts payable from routine business operations.

■ 10. Amend § 107.585 by revising the first sentence to read as follows:

§ 107.585 Voluntary decrease in Licensee's Regulatory Capital.

You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year, unless otherwise permitted under §§ 107.1560 and 107.1570, *provided however*, that if you are an Early Stage SBIC, you must obtain SBA's prior written approval for any reduction of your Regulatory Capital, including any reduction pursuant to a Distribution under § 107.1180 of this part. * * *

■ 11. Amend § 107.692 by redesignating paragraphs (c)(4) and (5) as paragraphs (c)(5) and (6), adding a new paragraph (c)(4), and revising the table in paragraph (d) to read as follows:

§ 107.692 Examination fees.

* * * * *

(c) * * *

* * * * *

(4) If you are an Early Stage SBIC with outstanding Leverage or Leverage commitments, you will pay an additional charge equal to 10% of your base fee;

* * * * *

(d) * * *

Examination fee discounts	Amount of discount— % of base examination fee	Examination fee additions	Amount of addition— % of base examination fee
No prior violations	15	Partnership or limited liability company	5
Responsiveness	10	Participating Security Licensee	10
		Records/Files at multiple locations	10
		Early Stage SBIC	10

* * * * *

■ 12. Amend § 107.1120 by adding paragraph (k) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(k) If you are an Early Stage SBIC, certify in writing that in accordance with § 107.1810(f)(11), at least 50 percent of the aggregate dollar amount of your Financings will be provided to “early stage” companies as defined under the definition of Early Stage SBIC in § 107.50 of this part.

■ 13. Amend § 107.1130 by revising the first sentence of paragraph (d)(1) and the first sentence of paragraph (d)(2) to read as follows:

§ 107.1130 Leverage fees and additional charges payable by Licensee.

* * * * *

(d) * * *

(1) *Debentures.* You must pay to SBA a Charge, not to exceed 1.38 percent per annum, on the outstanding amount of your Debentures issued on or after October 1, 1996, payable under the same terms and conditions as the interest on the Debentures. * * *

(2) *Participating Securities.* You must pay to SBA a Charge, not to exceed 1.46 percent per annum, on the outstanding amount of your Participating Securities issued on or after October 1, 1996, payable under the same terms and conditions as the Prioritized Payments on the Participating Securities. * * *

* * * * *

■ 14. Amend § 107.1150 by revising the first sentence of the introductory text, redesignating paragraphs (c) and (d) and paragraphs (d) and (e), respectively, and adding a new paragraph (c) to read as follows:

§ 107.1150 Maximum amount of Leverage for a Section 301(c) Licensee.

A Section 301(c) Licensee, other than an Early Stage SBIC, may have maximum outstanding Leverage as set forth in paragraphs (a) through (c) of this section. An Early Stage SBIC may have maximum outstanding Leverage as set forth in paragraph (d) of this section. * * *

* * * * *

(c) *Early Stage SBICs.* Subject to SBA’s credit policies, if you are an Early Stage SBIC:

(1) The total amount of any and all Leverage commitments you receive from SBA shall not exceed 100 percent of your highest Regulatory Capital or \$50 million, whichever is less;

(2) On a cumulative basis, the total amount of Leverage you have issued

shall not exceed the total amount of capital paid in by your investors; and
(3) The maximum amount of Leverage you may have outstanding at any time is the lesser of:

- (i) 100 percent of your Leverageable Capital, or
- (ii) \$50 million.

■ 15. Amend subpart I of part 107 by adding an undesignated center heading and §§ 107.1180, 107.1181, and 107.1182 to read as follows:

Subpart I—SBA Financial Assistance for Licenses (Leverage)

* * * * *

Special Rules for Leverage Issued by an Early Stage SBIC

Sec.

107.1180 Required distributions to SBA by Early Stage SBICs.

107.1181 Interest reserve requirements for Early Stage SBICs.

107.1182 Valuation requirements for Early Stage SBICs based on Capital Impairment Percentage.

* * * * *

§ 107.1180 Required distributions to SBA by Early Stage SBICs.

(a) *Distribution requirement.* If you are an Early Stage SBIC with outstanding Leverage, you may make Distributions to your investors and to SBA only as permitted under this section. See also § 107.585. For the purposes of this section, “Distributions” do not include required payments to SBA of interest and Charges and payments of Leverage principal at maturity, all of which shall be paid in accordance with the terms of the Leverage. You may make a Distribution on any Payment Date. Unless SBA permits otherwise, you must notify SBA in writing of any planned distribution under this section, including computations of the amounts distributable to SBA and your investors, at least 10 business days before the distribution date.

(b) *How SBA will apply Distributions.* Any amounts you distribute to SBA, or its designated agent or Trustee, under this section will be applied to repayment of principal of outstanding Debentures in order of issue. You may prepay any Debenture in whole, but not in part, on any Payment Date without penalty.

(c) *Condition for making a Distribution.* You may make a Distribution under this section only if you have paid all interest and Charges on your outstanding Debentures that are due and payable, or will pay such interest and Charges simultaneously with your Distribution.

(d) *SBA’s share of Distribution.* For each proposed Distribution, determine SBA’s share of the Distribution as follows:

(1) Determine the highest ratio of outstanding Leverage to Leverageable Capital that you have ever attained (your “Highest Leverage Ratio”). For the purpose of determining your Highest Leverage Ratio, any deferred interest Debentures issued at a discount must be included in the computation at their face value.

(2) Determine SBA’s percentage share of cumulative Distributions:

(i) If your Capital Impairment Percentage under § 107.1840 is less than 50 percent as of the Distribution date or your Highest Leverage Ratio equals 0.5 or less, except as provided in paragraph (d)(2)(iii) of this section, SBA’s percentage share of cumulative Distributions equals:

[Highest Leverage Ratio / (Highest Leverage Ratio + 1)] × 100

For example, if your Highest Leverage Ratio equals 1, then SBA’s share of any distribution you make will be 50 percent.

(ii) If your Capital Impairment Percentage under § 107.1840 is 50 percent or greater as of the Distribution date and your Highest Leverage Ratio is greater than 0.5, SBA’s percentage share of cumulative Distributions equals 100 percent.

(iii) If you have a condition of Capital Impairment under § 107.1830 and your Highest Leverage Ratio equals 0.5 or less as of the Distribution date, SBA’s percentage share of cumulative Distributions equals 100 percent.

(3) Multiply the sum of all your prior Distributions and your current proposed Distribution (including Distributions to SBA, your limited partners and your General Partner) by SBA’s percentage share of cumulative Distributions as determined in paragraph (d)(2) of this section.

(4) From the result in paragraph (d)(3) of this section, subtract the sum of all your prior Distributions to SBA under this § 107.1180.

(5) The amount of your Distribution to SBA will be the least of:

(i) The result in paragraph (d)(4) of this section;

(ii) Your current proposed Distribution; or

(iii) Your outstanding Leverage.

(e) *Additional Leverage prepayment.* On any Payment Date, subject to the terms of your Leverage, you may make a payment to SBA to be applied to repayment of the principal of one or more outstanding Debentures in order of issue, without making any Distribution to your investors.

§ 107.1181 Interest reserve requirements for Early Stage SBICs.

(a) *Reserve requirement.* If you are an Early Stage SBIC with outstanding Leverage, for each Debenture which requires periodic interest payments to SBA during the first five years of its term, you must maintain a reserve sufficient to pay the interest and Charges on such Debenture for the first 21 Payment Dates following the date of issuance. This reserve may consist of any combination of the following:

(1) Binding unfunded commitments from your Institutional Investors that cannot be called for any purpose other than the payment of interest and Charges to SBA, or the payment of any amounts due to SBA; and

(2) Cash maintained in a separate bank account or separate investment account permitted under § 107.530 of this part and separately identified in your financial statements as “restricted cash” available only for the purpose of paying interest and Charges to SBA, or for the payment of any amounts due to SBA.

(b) The required reserve associated with an individual Debenture shall be reduced on each Payment Date upon payment of the required interest and Charges. If you prepay a Debenture prior to the 21st Payment Date following its date of issuance, the reserve requirement associated with that Debenture shall be correspondingly eliminated.

(c) Your limited partnership agreement must incorporate the reserve requirement in paragraph (a) of this section.

§ 107.1182 Valuation requirements for Early Stage SBICs based on Capital Impairment Percentage.

(a) If you are an Early Stage SBIC, you must compute your Capital Impairment Percentage and determine whether you have a condition of Capital Impairment in accordance with §§ 107.1830 and 107.1840 of this part.

(b) You must promptly notify SBA in writing if your Capital Impairment Percentage is at least 50 percent, even if your maximum permitted Capital Impairment Percentage is higher.

(c) Upon receipt of your notification under paragraph (b) of this section, or upon making its own determination that your Capital Impairment Percentage is at least 50 percent, SBA has the right to require you to engage, at your expense, an independent third party, acceptable to SBA, to prepare valuations of some or all of your Loans and Investments, as designated by SBA.

■ 16. Amend § 107.1810 by revising paragraphs (f)(2)(ii) and (iii) and adding

paragraphs (f)(2)(iv), (f)(11), (f)(12), and (j) to read as follows:

§ 107.1810 Events of default and SBA's remedies for Licensee's noncompliance with terms of Debentures.

* * * * *

(f) * * *

(2) * * *

(ii) Payments from Retained Earnings Available for Distribution based on either the shareholders' pro-rata interests or the provisions for profit distributions in your partnership agreement, as appropriate;

(iii) Distributions by Participating Securities issuers as permitted under §§ 107.1540 through 107.1580; and

(iv) Distributions by Early Stage SBICs as permitted under § 107.1180.

* * * * *

(11) *Failure by an Early Stage SBIC to meet investment requirements.* You are an Early Stage SBIC and, beginning on the first fiscal quarter end when your cumulative total Financings (in dollars) are at least equal to your Regulatory Capital, you have not made at least 50 percent of such Financings to Small Businesses that at the time of your initial Financing were “early stage” companies, as defined under the definition of Early Stage SBIC in § 107.50 of this part.

(12) *Failure by an Early Stage SBIC to maintain required interest reserve.* You are an Early Stage SBIC and you fail to maintain a sufficient reserve to pay interest and Charges on your Debentures as required under § 107.1181 of this part.

* * * * *

(j) *Additional SBA remedies applicable to Debentures issued by Early Stage SBICs.* If you are an Early Stage SBIC, upon SBA's payment pursuant to its guarantee of any of your Debentures, SBA shall have the following additional rights and you consent to SBA's exercise of any or all of such rights:

(1) To prohibit you from making any additional investments except for investments under legally binding commitments you entered into before such payment by SBA and, subject to SBA's prior written approval, investments that are necessary to protect your investments;

(2) Until all Leverage is repaid and amounts related thereto are paid in full, to prohibit Distributions by you to any party other than SBA, its agent or Trustee;

(3) To require all your commitments from investors to be funded at the earliest time(s) permitted in accordance with your Articles;

(4) To review and re-determine your approved Management Expenses; and

(5) To the appointment of SBA or its designee as your receiver under section 311(c) of the Act for the purpose of continuing your operations.

■ 17. Amend § 107.1840 by revising paragraph (d)(3)(iii) and paragraph (d)(4) introductory text to read as follows:

§ 107.1840 Computation of Licensee's Capital Impairment Percentage.

* * * * *

(d) * * *

(3) * * *

(iii) Except as provided for Early Stage SBICs in § 107.1845, such financing occurred within 24 months of the date of the Capital Impairment computation, or the Small Business's pre-tax cash flow from operations for its most recent fiscal year was at least 10 percent of the Small Business's average contributed capital for such fiscal year.

(4) Except as provided for Early Stage SBICs in § 107.1845, perform the appropriate computation from the following table:

* * * * *

■ 18. Add § 107.1845 to read as follows:

§ 107.1845 Determination of Capital Impairment Percentage for Early Stage SBICs.

This section applies to Early Stage SBICs only. Except as modified by this section, all provisions of § 107.1840 apply to an Early Stage SBIC.

(a) To determine your Class 2 Appreciation under § 107.1840(d)(3), use the following provisions instead of § 107.1840(d)(3)(iii):

(1) Such financing occurred within 24 months of the date of the Capital Impairment computation. At the end of the 24 month period following the financing, you may request SBA's written approval to retain the use of the original Class 2 Appreciation on the investment for up to 24 additional months.

(2) In considering your request, SBA may obtain its own valuation of the investment, require you to obtain a valuation performed by an independent third party acceptable to SBA, and may consider any other information that it deems relevant. To the extent that the valuation and any other relevant information conclusively support the original Class 2 appreciation, SBA may approve an extension to use all or part of the original Class 2 Appreciation for up to an additional 24 months (the “extension period”).

(3) At the end of any extension period, you may submit a new request to retain the use of the original Class 2 Appreciation, repeating the steps in paragraphs (a)(1) and (2) of this section.

(4) SBA may reconsider its approval to retain the use of the original Class 2 Appreciation at any time based on information that may affect the value of an investment.

(b) Any time you submit a request for SBA approval to retain the use of the original Class 2 Appreciation under paragraph (a) of this section, you may also request SBA's written approval to modify your computation of Adjusted Unrealized Gain under § 107.1840(d)(4) as provided in paragraph (c) of this section.

(c) If SBA determines that the appreciation on an investment, based on its current fair value, is at least two times the original Class 2 Appreciation on the investment, SBA may allow you, based on relevant information, to compute your Adjusted Unrealized Gain for the duration of the extension period as follows:

(1) Compute Adjusted Unrealized Gain in accordance with § 107.1840(d)(4).

(2) If your result in paragraph (c)(1) of this section was computed using the first line of the table in § 107.1840(d)(4):

(i) Calculate 50 percent of the original Class 2 Appreciation on the individual investment that is the subject of this paragraph (c), and

(ii) Add it to the result from paragraph (c)(1) of this section to determine your Adjusted Unrealized Gain.

(3) If your result in paragraph (c)(1) of this section was computed using the second line of the table in § 107.1840(d)(4):

(i) Calculate 50 percent of the original Class 2 Appreciation on the individual investment that is the subject of this paragraph (c).

(ii) Subtract your Class 1 Appreciation from your Net Appreciation, and multiply the result by 50 percent.

(iii) Add the lesser of (c)(3)(i) and (ii) of this section to the result from paragraph (c)(1) of this section to determine your Adjusted Unrealized Gain.

Karen G. Mills,
Administrator.

[FR Doc. 2012-10120 Filed 4-26-12; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 120314191-2216-01]

RIN 0694-AF61

Addition of Certain Persons to the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by adding sixteen persons under eighteen entries to the Entity List. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These persons will be listed on the Entity List under the countries of Afghanistan, Pakistan and the United Arab Emirates (U.A.E.).

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited.

DATES: *Effective Date:* This rule is effective April 27, 2012.

FOR FURTHER INFORMATION CONTACT:

Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482-5991, Fax: (202) 482-3911, Email: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (Supplement No. 4 to Part 744) provides notice to the public that certain exports, reexports, and transfers (in-country) to entities identified on the Entity List require a license from BIS and that the availability of license exceptions in such transactions is limited. Entities are placed on the Entity List on the basis of certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-user Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to

the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add sixteen persons under eighteen entries to the Entity List on the basis of Section 744.11 (license requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The eighteen entries added to the Entity List consist of twelve entries in Afghanistan, three in Pakistan, and three in the U.A.E. Two of the eighteen entries cover multiple addresses, in different countries for two of the persons being added to the Entity List.

The ERC reviewed Section 744.11(b) (Criteria for revising the Entity List) in making the determination to add these persons to the Entity List. Under that paragraph, persons for which there is reasonable cause to believe, based on specific and articulable facts, that the persons have been involved, are involved, or pose a significant risk of being or becoming involved in, activities that are contrary to the national security or foreign policy interests of the United States and those acting on behalf of such persons may be added to the Entity List pursuant to Section 744.11. Paragraphs (b)(1)-(b)(5) of Section 744.11 include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States. All sixteen persons are believed to have been involved in activities described under paragraphs (b)(1) and (b)(2) of Section 744.11. Specifically, the sixteen persons are being added to the Entity List on the basis of their provision of support to persons engaged against U.S. and Coalition forces in Afghanistan. All sixteen of the persons are involved in supply networks that provide components used to make improvised explosive devices (IEDs) used against U.S. and coalition troops in Afghanistan.

For the sixteen persons added to the Entity List under eighteen entries, the ERC specified a license requirement for all items subject to the EAR, and established a license application review policy of a presumption of denial. The license requirement applies to any transaction in which items are to be exported, reexported, or transferred (in-country) to such persons or in which such persons act as purchaser,

intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to those persons being added to the Entity List.

This final rule adds the following sixteen persons under eighteen entries to the Entity List:

Afghanistan

(1) *Afghan-German Construction Company*, Golaye Park, Shari Naw, Kabul, Afghanistan; and Dasht Qala, Takhar Province, Afghanistan;

(2) *Haji Khalil Construction Company*, Wazir Akbar Khan, Road Number 10, In front of National Bank, District 10, Kabul, Afghanistan;

(3) *Khalil Zadran*, a.k.a., the following eight aliases:

—Samar Gul Khalil;
—Khalil Samar Gul;
—Samer Khalil;
—Samer Gul Khalil;
—Khalil Khalil;
—Kalil Khalil;
—Khalil Khualil; and
—Haji Khalil.

Shahreno, Kabul, Afghanistan (See alternate address in Pakistan);

(4) *Heim German Afghan Khalil Company*, Wazir Akbar Khan, District 10, Kabul, Afghanistan; and Shahr-e-Now, Kabul, Afghanistan; and Paktiyakoot, Jalalabad Road, District #9, Kabul, Afghanistan;

(5) *Ibrahim Haqqani*, a.k.a., the following two aliases:

—Hajji Sahib; and
—Maulawi Haji Ibrahim Haqqani.

(6) *Khalil Zadran Company*, a.k.a., the following alias:
—Khalil Construction.

Afghanistan (See alternate address in Pakistan);

(7) *Onyx Construction Company*, Shahr-e-Now, Charahi Haji Yaqoub, In front of the AIB Bank, District 10, Kabul, Afghanistan; and Char Rahi Ansari, Toaward Kolola Poshta, Shar-Naw Kabul, Afghanistan 11496;

(8) *Triangle Technologies*, Afghanistan;

(9) *Zurmat Construction Company offices*, House No. 319, 10th Street Wazeer Akbar Khan, Kabul, Afghanistan; and Wazir Akbar Khan, District 10, Apartment 319, Kabul, Afghanistan; and Tarin Cot City, Afghanistan; and Behind UNAMA Office, Pir Bagh Office, Gardez, Afghanistan; and House No. 01, Street No. 01, Muhaqeq Road (Behind Pakistan and Turkish Embassies), Mazar-e-Sharif, Afghanistan; and Hazratan Street

(Behind Jalalabad Teaching Hospital), Jalalabad, Afghanistan; and Aino Mena, Street No. 22 (Blue Color House Left Side of Road), Kandahar, Afghanistan;

(10) *Zurmat Foundation*, House No. 319, 10th Street Wazeer Akbar Khan, Kabul, Afghanistan; and Wazir Muhammad—Akbar Khan, Kabul, Afghanistan; and Wazir Akbar Khan, District 10, Apartment 319, Kabul, Afghanistan;

(11) *Zurmat Group of Companies*, House No. 319, 10th Street Wazeer Akbar Khan, Kabul, Afghanistan; and
(12) *Zurmat Material Testing Laboratory*, House 01, Street 01, Kart-e-3 (opposite of Habibia High School), Dar-ul-Aman Road, Kabul, Afghanistan; and House No. 02, Street No. 01, Kart-e-Malemin, Khandahar, Afghanistan.

Pakistan

(1) *Khalil Zadran*, a.k.a., the following eight aliases:

—Samar Gul Khalil;
—Khalil Samar Gul;
—Samer Khalil;
—Samer Gul Khalil;
—Khalil Khalil;
—Kalil Khalil;
—Khalil Khualil; and
—Haji Khalil.

House 14, Street 13, Sector F-7/2, Islamabad, Pakistan; and House 20-B, Main College Road, Sector F-7/2, Islamabad, Pakistan (See alternate address in Afghanistan);

(2) *Jalaluddin Haqqani*, a.k.a., the following seven aliases:

—General Jalaluddin;
—Haqqani Sahib;
—Maulama Jalaluddin;
—Maulawi Haqqani;
—Molvi Sahib;
—Mulawi Jalaluddin; and
—Mullah Jalaluddin.

Miram Shah, Pakistan; and

(3) *Khalil Zadran Company*, a.k.a., the following alias:

—Khalil Construction.

Pakistan (See alternate address in Afghanistan).

United Arab Emirates

(1) *Al Maskah Used Car and Spare Parts*, Maliha Road, Industrial Area 6, Sharajah, U.A.E.;

(2) *Feroz Khan*, a.k.a., the following three aliases:

—Haaje Khan;
—Haaji Khan, and
—Firoz.

Maliha Road, Industrial Area 6, Sharajah, U.A.E.; and

(3) *Zurmat General Trading*, Office No. 205, Platinum Business Center,

Baghdad Street, Al-Nahda 2, Al-Qusais, Dubai, U.A.E.; and P.O. Box No. 171452, Dubai, U.A.E.; and 1st Street, Industrial Area 4th, Sharajah, U.A.E. (Behind the Toyota Showroom); and P.O. Box 35470, Sharajah, U.A.E.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on April 27, 2012, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR).

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). 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 been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694-0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to Jasmeet_K_Seehra@omb.eop.gov, or by fax to (202) 395-7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (See 5 U.S.C. 553(a)(1)). BIS implements this rule to protect U.S. national security or foreign policy interests by preventing items from being exported, reexported, or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List once a final rule was published, it would create an incentive for these persons to either

accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States, and/or to take steps to set up additional aliases, change addresses, and other measures to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of September 21, 2011, 76 FR 59001 (September, 22, 2011); Notice of November 9, 2011, 76 FR 70319 (November 10, 2011); Notice of January 19, 2012, 77 FR 3067 (January 20, 2012).

- 2. Supplement No. 4 to part 744 is amended:
 - (a) By adding under Afghanistan, in alphabetical order, twelve Afghan entities;
 - (b) By adding under Pakistan, in alphabetical order, three Pakistani entities; and
 - (c) By adding under the United Arab Emirates, in alphabetical order, three Emirati entities.

The additions read as follows:

Supplement No. 4 to Part 744—Entity List

Country	Entity	License requirement	License review policy	Federal Register citation
Afghanistan	*	*	*	*
	Afghan-German Construction Company, Golaye Park, Shari Naw, Kabul, Afghanistan, <i>and</i> Dasht Qala, Takhar Province, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*
	Haji Khalil Construction Company, Wazir Akbar Khan, Road Number 10, In front of National Bank, District 10, Kabul, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*
	Heim German Afghan Khalil Company, Wazir Akbar Khan, District 10, Kabul, Afghanistan; <i>and</i> Shahr-e-Now, Kabul, Afghanistan, <i>and</i> Paktiyakoot, Jalalabad Road, District #9, Kabul, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*
	Ibrahim Haqqani, a.k.a., the following two aliases: —Hajji Sahib; <i>and</i> —Maulawi Haji Ibrahim Haqqani. Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Khalil Zadrán, a.k.a., the following eight aliases: —Samar Gul Khalil; —Khalil Samar Gul; —Samer Khalil; —Samer Gul Khalil; —Khlil Khalil; —Kalil Khalil; —Khalil Khaalil; <i>and</i> —Haji Khalil. Shahreno, Kabul, Afghanistan. (See alternate address in Pakistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Khalil Zadrán Company, a.k.a., the following alias: —Khalil Construction. Afghanistan (See alternate address in Pakistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*
	Onyx Construction Company, Shahr-e-Now, Charahi Haji Yaqoub, In front of the AIB Bank, District 10, Kabul, Afghanistan; <i>and</i> Char Rahi Ansari, Toaward Kolola Poshta, Shar-Naw Kabul, Afghanistan 11496.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	*	*	*	*
	Triangle Technologies, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Zurmat Construction Company offices, House No. 319, 10th Street Wazeer Akbar Khan, Kabul, Afghanistan; <i>and</i> Wazir Akbar Khan, District 10, Apartment 319, Kabul, Afghanistan; <i>and</i> Tarin Cot City, Afghanistan; <i>and</i> Behind UNAMA Office, Pir Bagh Office, Gardez, Afghanistan; <i>and</i> House No. 01, Street No. 01, Muhaqqeq Road (Behind Pakistan and Turkish Embassies), Mazar-e-Sharif, Afghanistan; <i>and</i> Hazratán Street (Behind Jalalalabad Teaching Hospital), Jalalalabad, Afghanistan, <i>and</i> Aino Mena, Street No. 22 (Blue Color House Left Side of Road), Kandahar, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Zurmat Foundation, House No. 319, 10th Street Wazeer Akbar Khan, Kabul, Afghanistan; <i>and</i> Wazir Muhammad—Akbar Khan, Kabul, Afghanistan; <i>and</i> Wazir Akbar Khan, District 10, Apartment 319, Kabul, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Zurmat Group of Companies, House No. 319, 10th Street Wazeer Akbar Khan, Kabul, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Zurmat Material Testing Laboratory, House 01, Street 01, Kart-e-3 (opposite of Habibia High School), Dar-ul-Aman Road, Kabul, Afghanistan; <i>and</i> House No. 02, Street No. 01, Kart-e-Malemin, Khandahar, Afghanistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
Pakistan	*	*	*	*
	Jalaluddin Haqqani, a.k.a., the following seven aliases: —General Jalaluddin; —Haqqani Sahib; —Maulama Jalaluddin; —Maulawi Haqqani; —Molvi Sahib; —Mulawi Jalaluddin; <i>and</i> —Mullah Jalaluddin. —Miram Shah, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Khalil Zadran, a.k.a., the following eight aliases: —Samar Gul Khalil; —Khalil Samar Gul; —Samer Khalil; —Samer Gul Khalil; —Khlil Khalil; —Kalil Khalil; —Khalil Khaalil; <i>and</i> —Haji Khalil. House 14, Street 13, Sector F-7/2, Islamabad, Pakistan; <i>and</i> House 20-B, Main College Road, Sector F-7/2, Islamabad, Pakistan (See alternate address in Afghanistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Khalil Zadran Company, a.k.a., the following alias: —Khalil Construction. Pakistan (See alternate address in Afghanistan).	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
*	*	*	*	*
United Arab Emirates	*	*	*	*
	Al Maskah Used Car and Spare Parts, Maliha Road, Industrial Area 6, Sharajah, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Feroz Khan, a.k.a., the following three aliases: —Haaje Khan; —Haaji Khan; <i>and</i> —Firoz. Maliha Road, Industrial Area 6, Sharajah, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
	Zurmat General Trading, Office No. 205, Platinum Business Center, Baghdad Street, Al-Nahda 2, Al-Qusais, Dubai, U.A.E.; <i>and</i> P.O. Box No. 171452, Dubai, U.A.E.; <i>and</i> 1st Street, Industrial Area 4th, Sharajah, U.A.E. (Behind the Toyota Showroom), <i>and</i> P.O. Box 35470, Sharajah, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	77 FR [INSERT FR PAGE NUMBER] 4/27/12.
*	*	*	*	*

Dated: April 23, 2012.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2012-10104 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-33-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 100222109-2171-02]

RIN 0648-AY35

Flower Garden Banks National Marine Sanctuary Regulations

AGENCIES: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; Public availability of final management plan and environmental assessment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is amending the regulations for Flower Garden Banks National Marine Sanctuary to improve vessel and user safety, protect sanctuary resources from user impacts, clarify discharge language, and make other technical changes and corrections.

DATES: *Effective Date:* May 29, 2012.

ADDRESSES: Copies of the final management plan (FMP) and environmental assessment (EA) described in this rule and the Finding of No Significant Impact (FONSI) are available upon request to Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551. The FMP and EA can also be viewed on the Web and downloaded at <http://flowergarden.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: George Schmahl, Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551. *Email:* fgbmanagementplan@noaa.gov. *Phone:* (409) 621-5151.

SUPPLEMENTARY INFORMATION:

I. Background

The National Marine Sanctuaries Act (NMSA) (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate and protect as a national marine sanctuary areas of the marine environment that are of special national significance due to their

conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). The primary objective of the NMSA is to protect sanctuary resources, such as coral reefs, and cultural resources, such as historical shipwrecks, historic structures, and archaeological sites.

NOAA designated Flower Garden Banks National Marine Sanctuary (FGBNMS or sanctuary) on December 5, 1991 (56 FR 63634). Congress subsequently passed a law recognizing the designation in January 1992 (Pub. L. 102-251, Title I, Sec. 101). At the time, the Sanctuary consisted of two areas known as East and West Flower Garden Banks (56 FR 63634). Congress later added Stetson Bank in 1996 (Pub. L. 104-283).

These three areas are located in the northwestern Gulf of Mexico and are described as underwater hills formed by rising domes of ancient salt. The sanctuary ranges in depth from 55 feet to nearly 500 feet, providing conditions that support several distinct habitats, including the northern-most coral reefs in the continental United States. These and similar formations throughout the northern Gulf of Mexico provide the foundation for essential habitat for a variety of species. The combination of location and geology makes the sanctuary an extremely productive and diverse ecosystem, but it also presents a unique set of challenges for managing and protecting its natural wonders.

The FGBNMS regulations implementing the sanctuary were first published on December 5, 1991 (56 FR 63634). Those regulations became effective on January 18, 1994 (58 FR 65664). Among other things, the regulations set forth the sanctuary boundaries, prohibit a relatively narrow range of activities, and establish permit and certification procedures. The regulations were revised in December 2000 to add Stetson Bank to the boundary pursuant to Public Law 104-283 (65 FR 81176). NOAA amended the FGBNMS regulations again in 2001 (66 FR 58370) to conform to the regulations adopted by the International Maritime Organization and prohibit all anchoring in the sanctuary and restrict mooring to vessels 100 feet (30.48 meters) or shorter.

The ONMS is required by NMSA Section 304(e) to periodically review sanctuary management plans to ensure that sanctuary management continues to best conserve, protect, and enhance the

sanctuaries' nationally significant living and cultural resources. Management plans generally outline regulatory goals, describe boundaries, identify staffing and budget needs, and set priorities and performance measures for resource protection, research, and education programs. The plans also guide the development of future management activities.

The FGBNMS management plan review process began in the fall of 2006 with the release of the *Flower Garden Banks National Marine Sanctuary State of the Sanctuary Report*. At the outset, NOAA held a series of public meetings to obtain information about the public's interests and priorities for FGBNMS management (71 FR 52757; September 7, 2006). NOAA then worked with the FGBNMS Advisory Council to prioritize issues and develop appropriate management strategies and activities for the preparation of a draft revised management plan. Based on this input, NOAA prepared a revised management plan consisting of six action plans: Sanctuary expansion, education and outreach, research and monitoring, resource protection, visitor use, and operations and administration. Because the resource protection and visitor use action plans include several strategies that require changes to the FGBNMS regulations, NOAA sought to amend the regulations for the sanctuary. Pursuant to the National Environmental Policy Act, 42 U.S.C. 4331-4345 (NEPA), NOAA also prepared a programmatic environmental assessment to analyze the environmental impacts associated with the proposed management plan revision and proposed rule. On October 22, 2010, the proposed rule, draft management plan, and programmatic environmental assessment were released for 90-day public review and comment (75 FR 65256).

NOAA is now amending the FGBNMS regulations to reflect these new strategies. The changes address: Potential conflicts between vessels and divers; protection of rays and whale sharks; and discharges and deposits. The changes also eliminate outdated references to paragraphs that no longer exist, update cross references to other paragraphs, and establish definitions for various new terms adopted in this rulemaking.

II. Summary of the Revisions

This rulemaking:

1. Requires any vessel moored in the sanctuary to exhibit the blue and white International Code flag "A" ("alpha" dive flag) or red and white "sports diver" flag whenever a SCUBA diver from that vessel is in the water and

remove the “alpha” dive flag or “sports diver” flag after all divers exit the water and return on board the vessel, consistent with U.S. Coast Guard guidelines relating to sports diving as contained within “Special Notice to Mariners” (00–208) for the Gulf of Mexico;

2. Clarifies and updates the prohibition on discharges or deposits of any material or other matter;

3. Prohibits killing, injuring, attracting, touching, or disturbing a ray or whale shark; and

4. Makes technical corrections.

A. Dive Flag Requirements

NOAA is requiring any vessel engaged in diving activity within the FGBNMS to clearly exhibit the blue and white International Code flag “A” (“alpha” dive flag) or the red and white “sports diver” flag whenever a SCUBA diver from that vessel is in the water and remove the “alpha” dive flag or “sports diver” flag after all SCUBA divers exit the water and return on board the vessel. This is consistent with U.S. Coast Guard guidelines relating to sports diving as contained within “Special Notice to Mariners” (00–208) for the Gulf of Mexico. Specifically, the U.S. Coast Guard (USCG) requires any vessel in federal waters engaged in diving operations to use an “alpha” dive flag, when that vessel is of a size that makes it impracticable to exhibit all lights and shapes prescribed in USCG regulations (33 CFR 83.27). However, the U.S. Coast Guard makes the distinction between diving operations where divers are attached to the vessel (i.e. surface supplied diving) vs. “free swimming” divers (i.e. SCUBA).

In a “Special Notice to Mariners” (00–2008) for the Gulf of Mexico (“Special Notice to Mariners”), issued in 2009 (available online at: <http://www.uscg.mil/d8/waterways/marinfo.asp>), the U.S. Coast Guard encourages the use of the red and white “sports diver” flag for “free swimming” divers. The Special Notice to Mariners states, “The Alpha flag is to be flown on small vessels engaged in diving operations whenever these vessels are restricted in their ability to maneuver if divers are attached to the vessel. But in sports diving, where divers are usually free swimming, the Alpha flag does not have to be shown and the Coast Guard encourages the continued use of the traditional sports diver flag. The distinction the Coast Guard wants to make clear is: The Alpha flag is a navigational signal intended to protect the vessel from collision. The sports diver flag is an unofficial signal that, through custom, has come to be used to

protect the diver in the water. It is the responsibility of the operator of a diving vessel to determine if his craft’s movements are restricted.”

NOAA acknowledges that Federal law and policy strongly favor uniform rules wherever it is deemed practical and appropriate. Because the entire sanctuary is within federal waters, NOAA proposes to make the regulations consistent with USCG dive flag requirements.

B. General Discharge/Deposit Prohibition

NOAA is updating and amending the prohibition on discharges or deposits (hereafter referred collectively as “discharges”) in the FGBNMS regulations by: (1) Clarifying that the prohibition applies to discharges into the sanctuary as well as from within the sanctuary boundaries; (2) modifying the exception for the discharge of fish parts; (3) revising the exception for effluent from marine sanitation devices (MSDs); (4) requiring that MSDs be locked; (5) eliminating the word “biodegradable” and replacing that term with a more clear standard; and (6) clarifying the scope of the exception for discharges associated with “routine vessel operation.”

1. Clarification of a “direct discharge.” Since the sanctuary was designated in 1992, NOAA has prohibited discharges or deposits of material or other matter. In doing so, NOAA’s regulations have differentiated between discharges that originate from within the boundaries of the sanctuary (hereafter referred to as “direct discharges”) and those that originate from beyond the sanctuary boundaries, enter the sanctuary, and injure sanctuary resources. The primary difference between these two classes is that proof of injury is required with respect to the latter class for there to be a violation whereas no such proof is required for a violation arising from a direct discharge.

To clarify the intended application of the direct discharge prohibition and to ensure consistency among the regulations for other sanctuaries, this rule clarifies that the prohibition on discharging or depositing any material or other matter applies to discharges or deposits from within “or into” the sanctuary.

By adding the words “or into”, NOAA is clarifying that the prohibition does not only apply to discharges originating in the waters of the sanctuary, the prohibition also applies, for example, to immediate discharges and deposits into the sanctuary from aircraft, when waste

is thrown into the sanctuary from a vessel, or from other similar activities.

This regulatory change will not have an effect on the existing oil and gas activities in the vicinity of the sanctuary. For example, the two existing platforms closest to the sanctuary are: (a) High Island 384, located 0.26 miles (1373 feet) from the boundary of West Flower Bank; and (b) High Island 376, located 0.22 miles (1162 feet) from East Flower Garden Bank. Because of the distance between those platforms and the sanctuary boundaries, NOAA does not foresee that either platform would be impacted by the new rule because NOAA does not envision conditions that would enable a discharge from these platforms to be considered a direct discharge under sanctuary regulations and consequently violate 15 CFR 922.122(a)(3)(i).

The purpose of the regulation is not to create new restrictions on otherwise lawful activities occurring beyond, but adjacent to, the sanctuary boundaries. Rather, NOAA’s goal is to ensure consistency among the regulations of other sanctuaries and clarify the discharge and deposit regulations. Discharges or deposits originating from beyond the sanctuary would still remain subject to the regulations at § 922.122(a)(3)(ii), which requires proof of entry into the sanctuary and injury to sanctuary resources to constitute a violation.

In the event NOAA decides to pursue sanctuary expansion (as described in the final management plan for the sanctuary, published concurrently with this rulemaking), NOAA will consider the need to revise this regulation and consult with stakeholders, including the oil and gas industry, to ensure adjacent activities are not unnecessarily affected.

2. Exception for discharges of fish parts. The rule also clarifies that the exception to the prohibition on discharges or deposits (hereafter referred collectively as “discharges”) for fish, fish parts, or chumming materials (bait) applies only to discharges made during the conduct of fishing with conventional hook and line gear within the sanctuary. This rule prevents the dumping of fish, fish parts, or chumming materials at all other times except for during fishing with conventional hook and line gear within the sanctuary.

3. Exception for MSD effluent. This rule clarifies that the exception for discharge or deposit of vessel waste generated by a federally approved marine sanitation device was not intended to allow the discharge of untreated sewage (e.g., discharges from Type III MSDs) into the sanctuary. Type

I and Type II MSDs treat sewage, whereas Type III MSDs store sewage until it is removed at designated pump-out stations on shore or discharged at sea. Therefore, NOAA is modifying the FGBNMS regulations to clarify that only discharges of effluent from properly functioning Type I or II MSDs are allowed in the sanctuary.

4. Locking MSDs. In addition, NOAA is requiring all MSDs be locked in a manner that prevents discharge or deposit of untreated sewage. The requirement that MSDs be locked (e.g., locking closed an overboard discharge valve) helps prevent both intentional and unintentional overboard discharges of untreated sewage within the sanctuary.

5. Standard for excepted discharges or deposits. The revised regulations would only allow a vessel to discharge clean effluent from a Type I or Type II MSD. The use of the word “clean” would replace the use of the word “biodegradable” in the regulations. Under the revised regulations, “clean” means not containing detectable levels of harmful matter; and “harmful matter” means any substance, or combination of substances, that because of quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks, fuel, oil, and those contaminants (regardless of quantity) listed at 40 CFR 302.4 (§ 922.131) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C 9601(14)).

NOAA decided to remove the term “biodegradable” from the regulations because NOAA has determined that the term has no recognized legal definition, and products are labeled “biodegradable” without reference to a fixed set of standards. NOAA could define the term; however, it would not be reasonable to expect a vessel operator to know which of the wide spectrum of products labeled as “biodegradable” meet NOAA’s definition. Defining the terms “clean” and “harmful matter” provide vessel operators with a definition of what is prohibited, and focuses on the types of contaminants that pose the greatest threat to water quality within the sanctuary.

6. Scope of discharges or deposits from routine vessel operations. NOAA is replacing the exception for “water generated from routine vessel operations” with an exception for clean deck wash down, clean cooling water, and clean bilge water provided they are free of detectable levels of “harmful matter” as defined by the regulations.

This facilitates compliance by clearly identifying what types of discharges from routine vessel operations are allowed, and focusing on those contaminants that pose the greatest threat to water quality. The requirement also makes the regulations consistent with recent requirements governing other national marine sanctuaries.

C. Killing, Injuring, Attracting, Touching or Disturbing a Ray or Whale Shark

Approximately 20 species of sharks and rays have been documented at the Flower Garden and Stetson Banks; some are seasonal, and others frequent the sanctuary year-round. During the winter months, spotted eagle rays (*Aetobatus narinari*) visit all three banks. The reason for the seasonal visits is unclear, but the occurrence is quite predictable. Summer months usually bring whale sharks (*Rhincodon typus*). These filter-feeding creatures can reach over 30 feet (9 meters) in length. Manta rays (*Manta birostris*) and the very similar-looking mobula rays (*Mobula spp.*) are regular visitors to the sanctuary throughout the year. At least 58 different individual manta rays have been documented and identified by distinctive markings on their undersides. Recent acoustic tracking of the manta rays has revealed that the mantas are moving between the three banks of the sanctuary.

Whale sharks and rays are transient creatures and migrate between areas for feeding and mating. The sanctuary is a place where rays and whale sharks should be protected from human-induced death, injury, or other harm. Humans can physically harm rays and whale sharks by attracting, touching, riding, or pursuing these animals. Their external sensory systems are affected by unnatural activation, which has unknown consequences on their ability to sense their environment. These animals may actively avoid diver interaction by changing direction or diving, and may exhibit violent shuddering. When these responses occur, rays and whale sharks expend energy in ways other than feeding and other natural activities, which can adversely affect their overall health. In addition, people can injure the skin of these animals through touching, and can expose the animals to other potential injuries. Finally, attracting rays and whale sharks changes their behavior and may negatively impact their health. As an example of how rays have been affected by divers, stingrays in the Cayman Islands have developed shoaling behavior and altered feeding habits, as well as exhibit skin abrasions from handling. Scientific citations regarding the concerns and examples

here can be found in the references section of the environmental assessment (see **ADDRESSES** for instructions on obtaining a copy).

Rays and whale sharks are not listed under the Endangered Species Act (ESA). These species are also not designated as depleted under the Marine Mammal Protection Act (MMPA) because they are not mammals. Therefore, they are not protected in the same manner as threatened or endangered species protected under the ESA or depleted marine mammals protected under the MMPA. With this final rule, NOAA is strengthening the protection of rays and whale sharks from harm (or likelihood thereof) in the sanctuary by prohibiting killing, injuring, attracting, touching, or disturbing these animals. The intent is to prevent intentional human interaction with rays and whale sharks in such a manner that the animals change direction, dive away from human interaction, shudder, or have any other adverse behavioral or physical reaction. An exception to this new prohibition is made for incidental by-catch of a ray or whale shark when using conventional hook-and-line fishing gear. In order to make this new prohibition as clear as possible, NOAA is adding definitions for the terms “attract or attracting” and “disturb or disturbing a ray or whale shark” in § 922.121.

D. Technical Corrections

NOAA is making a technical correction to eliminate the references in the regulations to § 922.122(a)(4), because that clause no longer exists. This subparagraph references a specific prohibition on vessel anchoring activities that was eliminated from the FGBNMS regulations in 2001 (66 FR 58370).

NOAA also is updating cross references in § 922.122(c) through (g) and updating cross references in § 922.123(a) and (c) that may change as a result of the re-designation of paragraphs associated with this rule.

Last, NOAA is amending the regulations to update the sanctuary office address in § 922.123(b). The sanctuary office moved from Bryan, TX to Galveston, TX in 2006, and the regulations were not amended immediately following the move.

III. Differences Between the Proposed Rule and the Final Rule

The Administrative Procedure Act (APA) notice-and-comment process (5 U.S.C. 553) contemplates that changes may be made to the proposed rule without triggering an additional round

of public notice and comment so long as the changes are “in character with the original scheme” and are of a type that could have been reasonably anticipated by the public (i.e., a logical outgrowth of the proposal or comments received) (*Foss v. National Marine Fisheries Service*, 161 F.3d 584, 591 (9th Cir. 1998); *Chemical Mfrs Ass’n v. United States Environmental Protection Agency*, 870 F.2d 177 (5th Cir. 1989)). In addition, the APA provides exceptions to notice and comment rulemaking for “(A) interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest” (5 U.S.C. 553(b)). The proposed rule text published in October 2010 (75 FR 65256) and this final rule, including the bases for changes, are summarized as follows:

A. NOAA is amending the “alpha” dive flag requirement (proposed as § 922.122(a)(2)(iii)). The proposed rule published in October 2010 only required the use of the “alpha” flag (75 FR 65256). In this final rule, NOAA is requiring any vessel engaged in diving activity within the FGBNMS to clearly exhibit the blue and white International Code flag “A” (“alpha” dive flag) or the red and white “sports diver” flag whenever a SCUBA diver from that vessel is in the water and remove the “alpha” dive flag or “sports diver” flag once all SCUBA divers exit the water and return on board the vessel. This is consistent with U.S. Coast Guard guidelines relating to sports diving as contained within “Special Notice to Mariners” (00–208) for the Gulf of Mexico. NOAA is making this change in the final rule to ensure consistency with the U.S. Coast Guard regulations and the Special Notice to Mariners (available online at: <http://www.uscg.mil/d8/waterways/marinfo.asp>). NOAA views the change in the final rule as a logical outgrowth of the originally proposed rule.

B. NOAA is amending the definition for “disturb or disturbing a ray or whale shark”. NOAA received many public comments requesting a change to the definition proposed in the Notice of Proposed Rulemaking published in 75 FR 65256. The public was mainly concerned that under the definition (as originally proposed) a violation could arise if the animal initiated interaction or if the animal exhibited some natural behavioral traits (like shuddering) without provocation. That was not NOAA’s intent. Therefore, in response to these comments, the final rule

clarifies that behavioral responses by the animal produced by passive interaction with a human does not constitute a violation of the regulations. NOAA is only concerned with active human conduct that disturbs a ray or whale shark, through (but not limited to) touching, handling, riding, pursuing, chasing, hunting, or restraining the animal.

C. NOAA is creating a new exception for the prohibition on killing, injuring, attracting, touching or disturbing a ray or whale shark. Public comments received by NOAA indicate that some small rays such as sting rays can sometimes be caught as by-catch by lawful hook-and-line fishing. NOAA’s intention with this new regulation was not to impose restrictions on users of conventional hook and line gear, as the species of rays and whale sharks NOAA is concerned about protecting would not be likely by-catch of hook and line recreational fishing. By adding an exception for the use of conventional hook and line gear, NOAA clarifies that the prohibition on killing, injuring, attracting, touching or disturbing rays and whale sharks does not apply to incidental by-catch during lawful fishing in the sanctuary.

D. NOAA is amending the regulations to update the sanctuary office address in § 922.123(b). The sanctuary office moved from Bryan, TX to Galveston, TX in 2006, and the regulations were not amended immediately following the move. NOAA finds good cause to change the address because the public must be able to contact the office for permit applications and other reasons, and the modification is exempt from normal notice and comment procedures since it is a minor technical change affecting current agency organization or practice.

E. NOAA is amending § 922.122(a)(4) to clarify that the only exception to the prohibition on drilling into, dredging or otherwise altering the seabed is for activities conducted in areas of the sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas (§ 922.122(c)). The original regulatory language provided a broad exception for anchoring; however, this was rendered obsolete with the promulgation of the anchoring prohibition in 2001 (66 FR 58370). Since the only anchoring currently allowed in FGBNMS pertains to § 922.122(c), NOAA finds good cause to clarify the regulations. NOAA views this as a technical change and logical outgrowth of the 2001 rulemaking. This change does not alter the intent of the regulations, nor is it expected to

substantially impact any users of the sanctuary since the existing anchoring prohibition in FGBNMS has been in effect for more than a decade; therefore, no changes were made to the environmental assessment associated with this rulemaking and additional notice and comment is not required under the APA.

For ease of reference and understanding, NOAA is reprinting section 922.122 as it would read in its entirety as amended, and section 922.123(a) through (c), rather than printing individual, editorial instructions to the **Federal Register**. Except as noted above, there are no additional changes to the sections from the proposed rule.

IV. Responses to Public Comments

The National Oceanic and Atmospheric Administration (NOAA) conducted two public hearings to gather input on the FGBNMS draft management plan (DMP)/programmatic environmental assessment (PEA) and proposed rule during the public comment period from October 22, 2010 to January 20, 2011. All written and verbal comments received during the public comment period were compiled and grouped into eight categories. Similar comments from multiple submissions have been treated as one comment for purposes of response. NOAA considered all comments (including editorial comments on the DMP/PEA) and, where appropriate, made changes that are reflected in this final rule, the final management plan (FMP), and the programmatic environmental assessment (EA). Substantive comments received are summarized below, followed by NOAA’s response.

Sanctuary Expansion

Comment 1. Sanctuary expansion is not necessary because the proposed reefs and banks have relatively low visitation by scuba divers and fishers compared to other sanctuaries. Are there other ways to protect additional reefs and banks in the Gulf of Mexico without sanctuary expansion?

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities as national marine sanctuaries. It is this concept of special places that persuades us to protect and enhance certain marine areas, even before impacts occur or without immediate

pressures on the resource. Sanctuary expansion would allow other reefs and banks in the northwestern Gulf of Mexico to benefit from comprehensive management, something currently not available by other means.

The sanctuary expansion action plan does not make any determination regarding the various options for expanding the sanctuary or regulations within expansion areas. The action plan only lays out the framework for conducting a thorough environmental review required by NEPA and NMSA. Alteration to the boundaries of FGBNMS (or expanding the sanctuary) would necessitate a change to the FGBNMS terms of designation, regulations, and coordinates. Should NOAA decide to pursue boundary expansion, NOAA would prepare a draft environmental impact statement (DEIS) and conduct extensive public review.

Other means of protecting additional reefs and banks in the Gulf of Mexico include, for example, No Activity Zones managed by the Bureau of Ocean Energy Management (BOEM) or Habitat Areas of Particular Concern managed by NOAA's National Marine Fisheries Service. These kinds of conservation measures have specific purposes and are not designed to address the need to protect an ecosystem from a holistic perspective.

Comment 2. The public should not have limited access to and use of potential new sanctuary areas. Regulations in any new sanctuary areas should not prohibit fishing and diving.

This final rule does not expand any area of the Sanctuary. NOAA has yet to determine potential areas to be added to the sanctuary or what regulations are needed in possible new expansion areas. The management plan states that new areas would be subject to the regulations of the current sanctuary, which generally allow fishing and diving; however, site specific regulations may be appropriate. The current FGBNMS management plan would apply or a new management plan would be written and applied to any new areas. Should NOAA decide to pursue boundary expansion, NOAA would prepare a DEIS and conduct extensive public review.

Comment 3. NOAA has not conducted socioeconomic studies to support sanctuary expansion or research only areas.

Activity 1.1 of the sanctuary expansion action plan in the final management plan states that NOAA will develop a DEIS to evaluate alternatives for incorporating additional reefs and banks in the northwestern Gulf of Mexico into FGBNMS. The DEIS will

discuss the consequences of sanctuary expansion on the human environment or the socioeconomic resources of the region. The socioeconomic impact analysis will focus on the industries/user groups that depend on the resources of the current FGBNMS and the banks currently being evaluated for inclusion in FGBNMS through sanctuary expansion.

Comment 4. If sanctuary expansion occurs, NOAA should install mooring buoys at all new sites to enhance fishing and diving activities as anchoring would be prohibited.

NOAA agrees that mooring buoys are a useful tool to promote sanctuary use that is compatible with resource protection. Activity 3.1 of the visitor use action plan in the final management plan proposes to create a mooring buoy plan that will evaluate the need for additional buoys, both in the existing sanctuary and in the event any new areas are considered in a sanctuary expansion process. The sanctuary expansion action plan does not make any determination regarding the various options for expanding the sanctuary or regulations within expansion areas. The action plan only lays out the framework for conducting a thorough environmental review required by NEPA and NMSA. Alteration to the boundaries of FGBNMS (or expanding the sanctuary) would necessitate a change to the FGBNMS terms of designation, regulations, and coordinates. Should NOAA decide to pursue boundary expansion, NOAA will prepare a draft environmental impact statement (DEIS) and conduct extensive public review. NOAA has yet to determine the areas to be potentially added to the sanctuary or what regulations are needed in possible new expansion areas. The management plan states that as an extension of the current sanctuary, it is assumed that if any areas are considered for future addition those new areas will be subject to the regulations of the current sanctuary; however, site specific regulations may be appropriate. The current FGBNMS management plan would apply or a new management plan would be written and applied to any new areas. Should NOAA decide to pursue boundary expansion, NOAA would prepare a DEIS and conduct extensive public review.

Comment 5. Designating new reefs and banks in the northwestern Gulf of Mexico as sanctuaries will increase visibility and activity by fishers and divers leading to increased impacts to the resources. Similarly, too much information about the habitats of the sanctuary and surrounding areas, and

fishing sites, is provided on the FGBNMS Web site.

The criteria for evaluation of potential new sites were based on the primary NMSA mandate of resource protection. The benefits of a comprehensive management approach offered by sanctuary designation could outweigh any risk that might exist from increased visibility and activity by fishers and divers. Should NOAA decide to pursue boundary expansion, NOAA will prepare a DEIS that would include an analysis of the potential impacts of increased visibility and visitation.

Research results and information provided on both the FGBNMS Web site and the National Coastal Data Development Center (NCDDC) Web site are in the public domain and intended for use by sanctuary users and constituents. One of the purposes and policies of the NMSA is to enhance public awareness, understanding, appreciation, and wise and sustainable use of the marine environment, and the natural, historical, cultural, and archeological resources of the National Marine Sanctuary System. NOAA's goal is to make people aware of their impacts and give them the knowledge and skills to become good stewards of the sanctuary and the regional marine environment.

Fishing

Comment 6. NOAA's gear prohibition for fish harvesting in FGBNMS should be reconsidered. The impact of spearfishing on the sanctuary environment is minimal. What research has been done to support the current prohibition and why is spearfishing not allowed in the sanctuary?

NOAA is not proposing to change regulations associated with spearfishing, or any other type of fishing, at this time. If the boundary of FGBNMS is expanded, however, any regulations related to fishing, including spearfishing, would be evaluated through a public process for each new area under consideration.

Spearfishing has been prohibited in FGBNMS since its designation in 1992. The prohibition was due primarily to concerns raised by studies that demonstrated that spearfishing could be detrimental to fisheries resources through the selective removal of large predator species. Research conducted since sanctuary designation supports this concern and reinforces the rationale for a spearfishing prohibition. A summary of this research is available on the sanctuary Web site (<http://flowergarden.noaa.gov>).

Comment 7. NOAA should allow boaters to carry stowed spearguns on

board vessels in FGBNMS to facilitate spearfishing in areas outside of the sanctuary before or after a sanctuary visit.

Sanctuary regulations prohibit the possession of any type of fishing equipment (including spearguns), except for conventional hook and line gear, unless passing through without interruption. The reason for this restriction is related to the ability to reasonably enforce the regulation. It is difficult to enforce a spearfishing prohibition if the possession of spearfishing equipment is allowed in the sanctuary. If only the use of such equipment is prohibited, it would require that direct observation of spearfishing activity be made by a law enforcement entity. In a remote location such as FGBNMS, where the activity would occur 70–100 feet below the surface, enforcement by observation only would be nearly impossible. The existing regulation has been in effect since designation 20 years ago, and it has not resulted in undue restriction on visitor use and activity. Therefore, the regulation will remain as written. If expansion is considered in future analysis, when regulations are considered for any potential new areas to be added to the sanctuary, the use and possession of spearguns would be evaluated on an individual area basis.

Comment 8. NOAA should limit the use of inappropriate fishing gear to protect sanctuary resources or prohibit fishing altogether in the existing sanctuary.

National marine sanctuaries are managed by NOAA to protect and conserve their resources, and to allow uses that are compatible with resource protection. Current FGBNMS regulations limit fishing within the sanctuary to conventional hook and line gear. Fishing by use of any other gear, including spear guns, is prohibited.

During the scoping process for the revised management plan and in response to the DMP, many commenters asked NOAA to consider closing all or portions of the FGBNMS to fishing. Although fishing pressure is perceived to be moderate, the impact on local fish populations is not well known at this time. The spatial resolution of fishing data is currently not precise enough to quantitatively assess fishing pressure within the sanctuary. The research and monitoring action plan and the visitor use action plan in the final management plan lay out strategies to obtain information that would allow NOAA to evaluate compatible uses of the sanctuary. In addition, Activity 2.3 of the resource protection action plan addresses the need for additional

measures to protect resources from impacts associated with inappropriate fishing gear.

Comment 9. NOAA has not presented evidence that further fishing restrictions are needed or that fish populations are declining. Why are fishing and diving impact studies necessary?

At this time, NOAA is not proposing any regulations that would further restrict fishing activity.

It is well documented that most fishery stocks for which there are stock assessments in the northern Gulf of Mexico have undergone or are still undergoing overfishing. Many species, such as snapper, some species of grouper, amberjack and others have declined significantly in the Gulf of Mexico since records have been kept. Although there are recent data to suggest that some species (such as red snapper) have shown limited recovery in population size, they are still much lower than historical levels. It is logical to assume that fish populations within FGBNMS have also been similarly affected by the general decline of fish stocks throughout the Gulf of Mexico. However, the data that do exist, such as fish landing survey information, have not been collected at a scale to adequately evaluate impacts on an area the size of the sanctuary. Therefore, NOAA believes that the fishing and diving impact studies would provide valuable information for the management of the sanctuary.

Diving

Comment 10. Through multiple DMP proposals, NOAA is pursuing policies that seem to discourage recreational diving. The recreational dive community should be embraced and encouraged to assist with resource protection.

ONMS embraces and welcomes diving at FGBNMS. The management strategies are not intended to discourage recreational diving within the sanctuary. Rather, NOAA is protecting the resource while enhancing visitor safety. Traditionally, recreational divers have been among the strongest supporters of the sanctuary—from leading the effort for sanctuary designation, to serving as naturalists onboard charter boats, to reporting observations when visiting the sanctuary. NOAA intends that the changes in sanctuary management will not diminish the recreational diver's experience. By working together with sanctuary users, especially recreational divers, NOAA can more effectively meet its goals and protect sanctuary resources.

Comment 11. NOAA should adopt the "Blue Star" program for FGBNMS.

The Blue Star program was established by Florida Keys National Marine Sanctuary management to recognize charter boat operators who promote responsible, sustainable, and educational diving and snorkeling practices. An activity to examine the implementation of the Blue Star program for FGBNMS was added to the Education and Outreach Action Plan (activity 3.3).

Ray/Whale Shark Regulations

Comment 12. The proposed regulation prohibiting the disturbance of whale sharks and all species of rays is too broad. The prohibition should only apply to manta rays and whale sharks.

There are a variety of ray species that utilize the habitats within FGBNMS. In addition to the giant manta, there are other pelagic (free swimming) ray species commonly observed, including at least two species of *mobula* (devil) rays, the spotted eagle ray, and the cownose ray. Several species of bottom-dwelling rays also live within the sanctuary, including the southern stingray and roughtail stingray. NOAA believes that all species of rays should be included in the regulation that prohibits disturbance. It has been demonstrated in other areas of the world that stingrays and other rays can be subject to negative disturbance from visitor activities. See the programmatic environmental assessment for additional detail and references regarding impacts on ray species in the FGBNMS.

Comment 13. The proposed regulation to protect rays and whale sharks relies on a definition of "disturb or disturbing a ray or whale shark" that includes any activity that "has the potential to disrupt." NOAA should revise this catch-all phrase in the definition which would potentially place every sanctuary visitor in violation of the proposed rule.

NOAA agrees. The definition has been revised to address this concern and additional information has been added to the preamble.

Comment 14. Using scientific studies from other locations (e.g. the Cayman Islands) to support regulations at FGBNMS is inappropriate because the interactions between sanctuary visitors and wildlife are different at the sanctuary than elsewhere. FGBNMS does not have heavy visitor use like other areas.

The purpose of the reference to the Cayman Island study on stingrays was to provide an example of an area that is experiencing visitor use that may be having potentially detrimental impacts on a species of ray. It is not anticipated

or suggested that this particular issue is or will ever be a problem at FGBNMS. It is relevant, however, because stingrays are included in the proposed regulation for FGBNMS, and it clearly demonstrates that intense visitor activity can affect the behavior and health of a ray species, requiring management action to control potential impacts.

Comment 15. NOAA has not demonstrated that divers are causing physical harm to rays and whale sharks. The proposed regulation is excessive.

NOAA has supplemented the programmatic environmental assessment with additional information and references on the impacts of divers on rays and whale sharks.

Visitor Use

Comment 16. The proposed dive flag regulation should include the use of the red and white diver down or "sports diver" flag, because it is more widely recognized by divers. The proposed regulation also appears to be inconsistent with the existing requirement for use of the alpha flag in the USCG navigation rules.

NOAA agrees. The regulation has been revised to address this concern and make it consistent with USCG navigation rules.

Comment 17. NOAA should implement a vessel registration system for FGBNMS. Access to the sanctuary could be controlled by issuing visitation permits.

Although NOAA agrees that a vessel registration system would provide information on visitor use dynamics, establishing a visitation permitting system would be difficult. NOAA plans to evaluate the effectiveness of the voluntary registration system before considering a mandatory visitation permitting system. NOAA is gathering more information about sanctuary use and has asked visitors to use the voluntary trip report form available on the FGBNMS Web site. Activities 1.1 and 1.2 of the visitor use action plan describe the need for and benefits of voluntary vessel registration and a visitor use monitoring program.

Comment 18. NOAA should collaborate with other agencies and industry to increase enforcement efforts at FGBNMS. More enforcement is needed. Add surveillance equipment to platforms.

NOAA agrees. Currently, enforcement of sanctuary regulations is done with support from the U.S. Coast Guard and NOAA's Office of Law Enforcement. NOAA plans to increase collaboration with those entities as well as the Texas and Louisiana state law enforcement

agencies. Enforcement at the sanctuary is logistically difficult due to the distance from shore. NOAA recognizes that partnering with industry to place monitoring or surveillance equipment on the production platform that lies within current sanctuary boundaries could greatly enhance enforcement capabilities. Therefore, NOAA has added an activity to the resource protection action plan in the final management plan to consider this more thoroughly.

Discharge

Comment 19. NOAA should prohibit all discharges within the sanctuary, including treated sewage.

NOAA is not prepared to prohibit all discharges within the sanctuary at this time. Given the distance from shore, water depth, number and type of vessels currently operating in the area, and current scientific knowledge, NOAA feels that allowing clean discharges will provide adequate protection for sanctuary resources while still allowing compatible uses.

Comment 20. The new language in the proposed rule that prohibits "discharging or depositing from within or into the sanctuary" is too broad and open-ended and is cause for concern by the oil and gas industry, especially where entities are already permitted under a National Pollutant Discharge Elimination System (NPDES) general permit for the Gulf of Mexico.

By adding the words "or into", NOAA is clarifying that the prohibition does not only apply to discharges originating in the sanctuary, the prohibition also applies, for example, to immediate discharges and deposits into the sanctuary from aircraft, when waste is thrown into the sanctuary from a vessel, or from other similar activities.

This regulatory change will not have an effect on the existing oil and gas activities in the vicinity of the sanctuary. For example, the two existing platforms closest to the sanctuary are: (a) High Island 384, located 0.26 miles (1373 feet) from the boundary of West Flower Bank; and (b) High Island 376, located 0.22 miles (1162 feet) from East Flower Garden Bank. Because of the distance between those platforms and the sanctuary boundaries, NOAA does not foresee that either platform would be impacted by the new rule because NOAA does not envision conditions that would enable a discharge from these platforms to be considered a direct discharge under sanctuary regulations and consequently violate 15 CFR 922.122(a)(3)(i).

The purpose of the regulation is not to create new restrictions on otherwise

lawful activities occurring beyond, but adjacent to, the sanctuary boundaries. Rather, NOAA's goal is to ensure consistency among the regulations of other sanctuaries. Discharges or deposits originating from beyond the sanctuary would still remain subject to the regulations at § 922.122(a)(3)(ii), which requires proof of entry into the sanctuary and injury to sanctuary resources to constitute a violation.

Education and Outreach

Comment 21. NOAA should build constituency and numbers of sanctuary advocates by increasing volunteer recruitment.

NOAA agrees and recognizes the need for increased volunteer involvement. The strategy to increase public support and stewardship of the sanctuary in the final management plan (EO.3, activity 3.2) includes an activity to enhance the FGBNMS volunteer program. The planned addition of a volunteer coordinator (OA.1, activity 1.1), subject to budget allocations, would enable NOAA to fully develop the FGBNMS volunteer program.

Comment 22. NOAA should establish outreach programs in coastal area communities other than Galveston. It should establish a presence in Louisiana near recommended sanctuary expansion areas.

Due to limited budget for outreach, NOAA is currently focusing the majority of its sanctuary outreach efforts in the Galveston area in order to develop a strong local constituency in the region closest to the sanctuary. Nonetheless, NOAA agrees that outreach efforts should not be limited only to the Galveston area, and welcomes opportunities to work with partners throughout the region. For example, NOAA already has sanctuary outreach programs in the form of exhibits in the Audubon Aquarium of the Americas in New Orleans, LA, the Texas State Aquarium in Corpus Christi, TX and the Tennessee Aquarium in Chattanooga, TN. NOAA has also begun to develop avenues for communicating with fishermen and divers in Louisiana. In the event that the sanctuary is expanded to include banks off of Louisiana, education and outreach programs to reach that region would be developed at that time. The sanctuary expansion action plan does not make any determination regarding the various options for expanding the sanctuary or regulations within expansion areas. The action plan only lays out the framework for conducting a thorough environmental review required by NEPA and NMSA.

Comment 23. Education and outreach programs should emphasize how human activities impact marine habitats and the benefits of marine reserves.

NOAA education and outreach presentations, programs, and products routinely include information about human impacts on marine habitats. NOAA also recognizes the value and importance of educating people about a variety of marine management techniques, including marine reserves. For example, NOAA produces lesson plans and activities on topics such as watersheds and marine debris. In addition, information about human impacts is incorporated throughout the FGBNMS Web site.

Other

Comment 24. The FGBNMS management plan should thoroughly address the potential risks to FGBNMS associated with oil and gas industry operations in the Gulf of Mexico. NOAA should consider additional regulations due to the potential impact of oil spills.

The FGBNMS is located within one of the most heavily developed offshore oil and gas exploration areas in the world. The potential for impact to the marine environment of the Flower Garden Banks from an oil-related incident has been considered since before the area became a national marine sanctuary. Beginning in the 1970s, the Minerals Management Service (now reorganized into the Bureau of Ocean Energy Management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE)), identified the Flower Garden Banks and many other reefs and banks of the northwestern Gulf of Mexico as areas that warranted special protection. They developed a set of requirements, called stipulations, to help minimize the threat of impact from offshore oil and gas activities (Reference: Notice to Lessees, NTL No. 2009-G39, "Biologically-Sensitive Underwater Features and Areas", Effective Date: January 27, 2010). The earliest such stipulations were published in the Final Environmental Impact Statement for the Gulf of Mexico Outer Continental Shelf (OCS) lease sale 34 in May 1974. Since the time that these, and other stipulations, have been in place, they have shown to be very effective in protecting the sanctuary from routine operations associated with offshore oil and gas exploration and development.

Planning for an appropriate response to an oil spill or other hazardous material release in the vicinity of the Flower Garden Banks is of the highest priority for the sanctuary. The Oil Pollution Act of 1990 requires the U.S. Coast Guard to develop an Area

Contingency Plan (ACP) for each region of coastal waters. NOAA continues to coordinate with the USCG on updating and refining the ACP for Texas and Louisiana offshore waters. In addition, NOAA will assist the USCG in the development of a specific sub-area contingency plan for oil spill response for the Flower Garden Banks National Marine Sanctuary area, as described in Activity 2.4 of the Resource Protection Action Plan.

Prior to the Deepwater Horizon event in April 2010, which occurred slightly east of the northwestern Gulf of Mexico, there had not been a significant hydrocarbon spill or other incident in the region since the designation of FGBNMS. However, a similar incident could potentially occur in an area that would threaten the health of sanctuary resources. For that reason, NOAA is working closely with BOEM and EPA in reviewing, and revising, if necessary, environmental policies related to offshore oil and gas leasing and development to ensure the highest level of protection of sensitive biological communities.

Given these existing various mechanisms geared toward protecting the FGBNMS from the disastrous effects of a potential oil spill, NOAA did not include a specific action plan on this topic in the revised management plan. Rather, staff effort will focus on continuing to coordinate with other agencies. Similarly, NOAA did not revise the sanctuary regulations. NOAA believes the current regulations in place addressing disturbance of the seafloor and discharges in the sanctuary are adequate at this time.

Comment 25. Climate change is the biggest threat to sanctuary resources.

NOAA recognizes that climate change is a potential threat to sanctuary resources. In 2010, NOAA finalized a Climate Strategy for national marine sanctuaries and implemented a "Climate-Smart Sanctuaries" Initiative. Language has been added to the operation and administration and education and outreach action plans to incorporate various aspects of this initiative. In addition, NOAA will develop a climate change site scenario and climate change action plan for FGBNMS and plans to pursue Climate-Smart Sanctuary Certification as detailed in activity 2.6 of the resource protection action plan in the final management plan.

Comment 26. Artificial reefs should be protected.

There are no artificial reefs in FGBNMS. If presented with opportunities to make recommendations during decommissioning processes for

platforms within sanctuary boundaries, NOAA would examine the options on a case-by-case basis.

Comment 27. NOAA must take aggressive action to prevent the establishment of the invasive lionfish in FGBNMS.

Lionfish have been observed in sanctuary waters since July 2011. As stated in Activity 5.2 of the research and monitoring action plan in the final management plan, NOAA is currently developing research priorities and a response plan to study and manage the impacts of invasive species, including lionfish, on sanctuary resources.

At this time, NOAA's policy is to remove any lionfish encountered in sanctuary boundaries using prescribed protocols. Permits for the removal of lionfish have been issued to some dive masters of recreational dive charters that frequent the sanctuary to assist in this effort. The diving public is also encouraged to help monitor the situation by reporting any lionfish sightings, including date, time, location, size of the lionfish, and any other information about the habitat or the behavior of the fish to sanctuary staff.

Comment 28. The cost to implement the management plan is unreasonably high. NOAA should carefully consider availability of funds during the proposed sanctuary expansion and prioritize activities, which should include R/V Manta operations.

The budget estimates given in the draft management plan are those necessary to support all of the activities identified within the various action plans. While the plan was developed with realistic expectations, NOAA recognizes that not all of the activities can or will be carried out due to budgetary restrictions or other factors. Therefore, NOAA agrees with the suggestion that activities should be prioritized in the plan, and this has been added to the document. However, over the years, NOAA has taken a number of steps to increase resources available for sanctuaries. These have included pursuing outside funding sources for critical operations such as grants, partner cost-sharing, donations, and special use permit fees. NOAA has also been successful in leveraging partner capabilities and in-kind support. For example, the U.S. Coast Guard has provided aerial overflights for surveillance and enforcement at FGBNMS.

During the preliminary evaluation of possible sanctuary expansion alternatives by the Sanctuary Advisory Council, budgetary factors were taken into consideration. For example, the areas presented for potential expansion

by the Sanctuary Advisory Council were limited by the distance that could be serviced within the operational capabilities of the existing sanctuary vessel (approximately 200 miles from Galveston TX), reducing the need for additional vessels or infrastructure. Priority consideration was also given to the anticipated amount of funds available in the sanctuary budget to operate the *R/V Manta* in other areas of the Gulf of Mexico.

The effective operation of the *R/V Manta* is necessary in the implementation of almost all aspects of sanctuary management. As such, the continued maintenance of this asset is a high priority for NOAA, and will be given due consideration in the allocation of available resources.

V. Classification

A. National Environmental Policy Act

NOAA has prepared a final programmatic environmental assessment to analyze the potential environmental impacts of this rulemaking. The programmatic environmental assessment analyzes the administrative and programmatic activities associated with the No Action Alternative and the Preferred Alternative to revise the FGBNMS management plan and take regulatory actions. Administrative activities conducted within existing facilities, such as consultations, outreach, administrative frameworks, development of plans, and data analysis will have little to no potential to significantly affect the quality of the human environment according to NEPA standards. Activities to manage the sanctuary as outlined in the final management plan, considered together with the many natural and human-induced stressors to sanctuary resources, generally result in a cumulative beneficial impact to these resources. However, as with the administrative activities, the positive impacts do not meet the NEPA threshold for significance. This is because at a programmatic level, no single activity, when taken in consideration with others, will have significant beneficial or negative impacts on any individual or combined resource.

To the extent that future activities considered under any of the action plans (which range from infrastructure construction, management measures to implement sanctuary expansion, or establishment of an experimental closure to evaluate the impacts of diving and fishing) are conducted in the human environment, a NEPA review to

analyze the impacts of alternatives would be conducted.

The programmatic environmental assessment on the final management plan and revised regulations for FGBNMS results in a Finding of No Significant Impact (FONSI). Accordingly, no environmental impact statement was prepared. Copies of the environmental assessment and FONSI are available at the address and Web site listed in the **ADDRESSES** section of this final rule.

B. Executive Order 12866: Regulatory Impact

Under Executive Order 12866, if the proposed regulations are “significant” as defined in section 3(f) of the Order, an assessment of the potential costs and benefits of the regulatory action must be prepared and submitted to the Office of Management and Budget. This rule has been determined to be not significant within the meaning of Executive Order 12866.

C. Executive Order 13132: Federalism Assessment

All of the actions occur in the Exclusive Economic Zone beyond state jurisdiction. NOAA has concluded this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

D. Paperwork Reduction Act

This rule does not contain any new information or revisions to the existing information collection requirement that was previously approved for this rule by OMB (OMB Control Number 0648–0141) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

E. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule. As a

result, a final regulatory flexibility analysis was not prepared.

VI. References for Citations

All references that NOAA used as a basis for this rule can be made available to the public upon request as specified in the **ADDRESSES** section.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Fish, Fisheries, Historic preservation, Intergovernmental relations, Marine resources, Monuments and memorials, Natural resources, Wildlife, Wildlife refuges, Wildlife management areas.

Dated: April 18, 2012.

David M. Kennedy,

Assistant Administrator for Ocean Services and Coastal Zone Management.

For the reasons discussed in the preamble, part 922, title 15 of the Code of Federal Regulations is amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

■ 1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

■ 2. Revise § 922.121 to read as follows:

§ 922.121 Definitions.

As used in this subpart:

Attract or attracting means the conduct of any activity that lures or may lure any animal in the Sanctuary by using food, bait, chum, dyes, decoys (e.g., surfboards or body boards used as decoys), acoustics or any other means, except the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers, surfers).

Clean means not containing detectable levels of harmful matter.

Disturb or disturbing a ray or whale shark means to, or attempt to touch, handle, ride, pursue, chase away, hunt, restrain, detain (no matter how temporarily), capture, collect, or conduct any other activity that disrupts or has the potential to disrupt any ray or whale shark in the Sanctuary by any means. Notwithstanding the above, the mere presence of human beings (e.g., swimmers, divers, boaters, kayakers) is exempted from this definition.

Harmful matter means any substance, or combination of substances, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a present or potential threat to Sanctuary resources or qualities, including but not limited to: Fishing nets, fishing line, hooks,

fuel, oil, and those contaminants (regardless of quantity) listed at 40 CFR 302.4 pursuant to 42 U.S.C. 9601(14) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended.

No-activity zone means the two geographic areas delineated by the Department of the Interior in stipulations for OCS lease sale 112 over and surrounding the East and West Flower Garden Banks, and the geographic area delineated by the Department of the Interior in stipulations for OCS lease sale 171 over and surrounding Stetson Bank, as areas in which activities associated with exploration for, development of, or production of hydrocarbons are prohibited. The precise aliquot part description of these areas around the East and West Flower Garden Banks are provided in appendix B of this subpart; the no-activity zone around Stetson Bank is defined as the 52 meter isobath. These particular aliquot part descriptions for the East and West Flower Garden Banks, and the 52 meter isobath around Stetson Bank, define the geographic scope of the “no-activity zones” for purposes of the regulations in this subpart. The descriptions for the East and West Flower Garden Banks no-activity zones are based on the “1/41/41/4” system formerly used by the Department of the Interior, a method that delineates a specific portion of a block rather than the actual underlying isobath.

■ 3. Revise § 922.122 to read as follows:

§ 922.122 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (c) through (h) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing, or producing oil, gas, or minerals except outside of all no-activity zones and provided all drilling cuttings and drilling fluids are shunted to the seabed through a downpipe that terminates an appropriate distance, but no more than ten meters, from the seabed.

(2) (i) Anchoring any vessel within the Sanctuary.

(ii) Mooring any vessel within the Sanctuary, except that vessels 100 feet (30.48 meters) or less in registered length may moor to a Sanctuary mooring buoy.

(iii) Mooring a vessel in the Sanctuary without clearly displaying the blue and white International Code flag “A” (“alpha” dive flag) or the red and white “sports diver” flag whenever a SCUBA diver from that vessel is in the water

and removing the “alpha” dive flag or “sports diver” flag after all SCUBA divers exit the water and return back on board the vessel, consistent with U.S. Coast Guard guidelines relating to sports diving as contained within “Special Notice to Mariners” (00–208) for the Gulf of Mexico.

(3)(i) Discharging or depositing from within or into the Sanctuary any material or other matter except:

(A) Fish, fish parts, chumming materials, or bait used in or resulting from fishing with conventional hook and line gear in the Sanctuary, provided that such discharge or deposit occurs during the conduct of such fishing within the Sanctuary;

(B) Clean effluent generated incidental to vessel use by an operable Type I or Type II marine sanitation device (U.S. Coast Guard classification) approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended (FWPCA), 33 U.S.C. 1322. Vessel operators must lock marine sanitation devices in a manner that prevents discharge or deposit of untreated sewage;

(C) Clean vessel deck wash down, clean vessel engine cooling water, clean vessel generator cooling water, clean bilge water, or anchor wash;

(D) Engine exhaust;

(E) In areas of the Sanctuary outside the no-activity zones, drilling cuttings and drilling fluids necessarily discharged incidental to the exploration for, development of, or production of oil or gas in those areas and in accordance with the shunting requirements of paragraph (a)(1) of this section unless such discharge injures a Sanctuary resource or quality.

(ii) Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(3)(i)(A) through (D) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(4) Drilling into, dredging, or otherwise altering the seabed of the Sanctuary (except as allowed under paragraph (c) of this section); or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

(5) Injuring or removing, or attempting to injure or remove, any coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota, or carbonate rock within the Sanctuary.

(6) Taking any marine mammal or turtle within the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, 16 U.S.C.

1361 *et seq.*, and the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.*

(7) Killing, injuring, attracting, touching, or disturbing a ray or whale shark in the Sanctuary. Notwithstanding the above, the incidental and unintentional injury to a ray or whale shark as a result of fishing with conventional hook and line gear is exempted from this prohibition.

(8) Injuring, catching, harvesting, collecting, or feeding, or attempting to injure, catch, harvest, collect, or feed, any fish within the Sanctuary by use of bottom longlines, traps, nets, bottom trawls, or any other gear, device, equipment, or means except by use of conventional hook and line gear.

(9) Possessing within the Sanctuary (regardless of where collected, caught, harvested or removed), except for valid law enforcement purposes, any carbonate rock, coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota, or fish (except for fish caught by use of conventional hook and line gear).

(10) Possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear.

(11) Possessing, except for valid law enforcement purposes, or using explosives or releasing electrical charges within the Sanctuary.

(b) If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a Sanctuary regulation, the regulation deemed by the Director as more protective of Sanctuary resources and qualities shall govern.

(c) The prohibitions in paragraphs (a)(2)(i), (a)(4), and (a)(11) of this section do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas.

(d) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(e)(1) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to activities being carried out by the Department of Defense as of the effective date of Sanctuary designation (January 18, 1994). Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. The prohibitions in paragraphs (a)(2)

through (11) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impacts on Sanctuary resources or qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. New activities with the potential for significant adverse impacts on Sanctuary resources or qualities may be exempted from the prohibitions in paragraphs (a)(2) through (11) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by a component of the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to § 922.48 and § 922.123 or a Special Use permit issued pursuant to section 310 of the Act.

(g) The prohibitions in paragraphs (a)(2) through (11) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 18, 1994, provided that the applicant complies with § 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(h) Notwithstanding paragraphs (f) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under § 922.48 and § 922.123 or a Special Use permit under section 10 of the Act authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas, or minerals in a no-activity zone. Any leases, permits, approvals, or other authorizations authorizing the exploration for, development of, or

production of oil, gas, or minerals in a no-activity zone and issued after the January 18, 1994 shall be invalid.

■ 4. Amend § 922.123 by revising paragraphs (a) through (c) as follows:

§ 922.123 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by § 922.122(a)(2) through (11) if conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and § 922.48.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; Attn: Superintendent, Flower Garden Banks National Marine Sanctuary, 4700 Avenue U, Building 216, Galveston, TX 77551.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by § 922.122(a)(2) through (11), if the Director finds that the activity will: Further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director shall consider such factors as: The professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

* * * * *

[FR Doc. 2012-10093 Filed 4-26-12; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0046]

RIN 1625-AA08

Special Local Regulation for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Ocean City Maryland Offshore Grand Prix, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the enforcement period for a special local regulation for one recurring marine event in the Fifth Coast Guard District, specifically, the "Ocean City Maryland Offshore Grand Prix," hydroplane races on the North Atlantic Ocean near Ocean City, Maryland. The event consists of approximately 50 V-hull and twin-hull inboard hydroplanes racing in heats counter-clockwise around an oval race course, this regulation is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the North Atlantic Ocean near Ocean City, Maryland during the event.

DATES: This rule is effective from 11 a.m. to 5 p.m. on May 13, 2012.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket are part of docket USCG-2012-0046 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0046 in the "Search" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LCDR Hector Cintron, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757-668-5581, email Hector.L.Cintron@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On March 16, 2012, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulation for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Ocean City Maryland Offshore Grand Prix, Ocean City, Maryland in the **Federal Register** (77 FR 15647). We received no comments on the proposed rule. No public meeting was requested, and none was held.

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**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment during the fireworks event; therefore, a 30-day delayed effective date is impracticable. Delaying the effective date would be contrary to the regulation's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Background and Purpose

Marine events are frequently held on the navigable waters within the boundary of the Fifth Coast Guard District. The water activities that typically comprise marine events include sailing regattas, power boat races, swim races and holiday parades. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation will temporarily change the enforcement period of special local regulations for one recurring marine event within the Fifth Coast Guard District. This regulation applies to one marine event in 33 CFR 100.501, Table to § 100.501.

The Offshore Performance Association (OPA) Racing LLC annually sponsors the "Ocean City Maryland Offshore Grand Prix", on the waters of the North Atlantic Ocean near Ocean City, Maryland. This year, the event will be held on May 13, 2012. The regulation at 33 CFR 100.501 is effective annually for the Ocean City Offshore Challenge marine event. The event consists of approximately 50 V-hull and twin-hull inboard hydroplanes racing in heats counter-clockwise around an oval race course. A fleet of spectator vessels is expected to gather near the event site to view the competition. Therefore, to ensure the safety of participants, spectators, support and transiting vessels, the Coast Guard will

temporarily restrict vessel traffic in the event area during the hydroplane races. The regulation at 33 CFR 100.501 would be enforced for the duration of the event. Under the provisions of 33 CFR 100.501, from 11 a.m. to 5 p.m. on May 13, 2012, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing a safety zone on specified waters on the North Atlantic Ocean, Ocean City, Maryland.

Discussion of Rule

The Coast Guard is establishing a temporary special local regulation on specified waters of the North Atlantic Ocean, in Ocean City, Maryland. The regulated area will be established in the interest of public safety during the "Ocean City Offshore Grand Prix", and will be enforced from 11 a.m. to 5 p.m. on May 13, 2012. The Coast Guard, at its discretion, when practical will allow the passage of vessels when races are not taking place. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this rule prevents traffic from transiting a portion of certain waterways during specified times, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made

to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

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.

The rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor on the North Atlantic Ocean in the vicinity of Ocean City, Maryland from 11 a.m. until 5 p.m. on May 13, 2012.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it. This regulation will not have a significant impact on a substantial number of small entities because: (i) It will be enforced only for a short period of time one day; (ii) vessels may be granted the opportunity to transit the regulated area during the period of enforcement if the Patrol Commander deems it safe to do so; (iii) vessels may transit around the regulated area; and (iv) before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

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 the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Protest Activities

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule 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 affect 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

This rule is not a "significant energy action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Technical Standards

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 M16475.1D, 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 which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. In § 100.501:

■ a. Suspend line No. (c).7 in the Table to § 100.501.

■ b. Add temporary line No.(c.)24 in Table to § 100.501 to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

* * * * *

TABLE TO § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

Number	Date	Event	Sponsor	Location
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(c.) Coast Guard Sector Hampton Roads—COTP Zone

TABLE TO § 100.501—Continued

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

Number	Date	Event	Sponsor	Location
24	May 13, 2012 ...	Ocean City Maryland Offshore Grand Prix.	Offshore Performance Assn. Racing, LLC.	The waters of the Atlantic Ocean commencing at a point on the shoreline at latitude 38°25'42" N, longitude 075°03'06" W; thence east southeast to latitude 38°25'30" N, longitude 075°02'12" W, thence south southwest parallel to the Ocean City shoreline to latitude 38°19'12" N, longitude 075°03'48" W; thence west northwest to the shoreline at latitude 38°19'30" N, longitude 075°05'00" W. The waters of the Atlantic Ocean bounded by a line drawn from a position along the shoreline near Ocean City, MD at latitude 38°22'25.2" N, longitude 075°03'49.4" W, thence easterly to latitude 38°22'00.4" N, longitude 075°02'34.8" W, thence southwesterly to latitude 38°19'35.9" N, longitude 075°03'35.4" W, thence westerly to a position near the shoreline at latitude 38°20'05" N, longitude 075°04'48.4" W, thence northerly along the shoreline to the point of origin.

* * * * *

Dated: April 18, 2012.

Mark S. Ogle,*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 2012-10258 Filed 4-26-12; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 100**

[Docket No. USCG-2012-0340]

RIN 1625-AA08

Special Local Regulation; Hebda Cup Rowing Regatta, Trenton Channel; Detroit River, Wyandotte, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on the Trenton Channel of the Detroit River, Wyandotte, Michigan. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after the Hebda Cup Rowing Regatta. This special local regulation will establish restrictions upon, and control movement of, vessels in a portion of the Trenton Channel. During the enforcement period, no person or vessel may enter the regulated area without permission of the Captain of the Port.

DATES: This rule is effective from 7:30 a.m. until 4:30 p.m. on April 28, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0340 and are available online by going to <http://www.regulations.gov>, inserting

USCG-2012-0340 in the "Search" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone 313-568-9508, email Adrian.F.Palomeque@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 waiting for a notice and comment period to run would be impracticable and contrary to the public interest. The final details of this boat race were not received in sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, delaying this temporary rule to wait for a notice and

comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with this boat race, which are discussed further below.

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

Background and Purpose

On April 28, 2012, the Wyandotte Boat Club is holding a rowing race that will require the immediate area to be clear of all vessel traffic. The rowing race will occur between 7:30 a.m. until 4:30 p.m. on April 28, 2012. The Captain of the Port Detroit has determined that the likely combination of recreation vessels, commercial vessels, and large numbers of spectators in close proximity to the boat race along the water could easily result in serious injuries or fatalities.

Discussion of Rule

In light of the aforesaid hazards, the Captain of the Port Detroit has determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass all waters, starting at a point on land at position 42°10'58" N, 083°9'13" W; following the Trenton Channel north to position 42°11'44" N, 083°8'56" W; and will be enforced on April 28, 2012, from 7:30 a.m. until 4:30 p.m. All geographic coordinates are North American Datum of 1983 (NAD 83).

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

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The Coast Guard's use of this special local regulation will be of relatively short duration, and it is designed to minimize the impact on navigation. Moreover, vessel may, when circumstances allow, obtain permission from the Captain of the Port to transit through the area affected by this special local regulations. Overall, the Coast Guard expects insignificant adverse impact to mariners from the enforcement of this special local regulation.

Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The 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 would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this portion of the Trenton Channel near Wyandotte, MI between 7:30 a.m. until 4:30 p.m. on April 28, 2012.

This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect and enforced for nine hours on one day. The race event will be temporarily stopped for any deep draft vessels transiting through the shipping lanes. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect, allowing vessel owners and operators to plan accordingly.

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 the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have

analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Protest Activities

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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 M16475.1D, 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 which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(h), of the Instruction. This rule involves a special local regulation issued in conjunction with a regatta or marine parade, therefore (34)(h) of the Instruction applies. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

- 2. Add § 100.35T09-0340 to read as follows:

§ 100.35T09-0340 Special Local Regulation; Hebda Cup Rowing Regatta, Wyandotte, MI.

(a) *Regulated area.* A regulated area is established to include all waters of the Trenton Channel in the Detroit River, Wyandotte, Michigan, starting at a point on land at position $42^{\circ}10'58''$ N, $083^{\circ}9'13''$ W; following the Trenton Channel north to position $42^{\circ}11'44''$ N, $083^{\circ}8'56''$ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Special local regulation.* No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Enforcement period.* This regulation will be enforced from 7:30 a.m. until 4:30 p.m. on April 28, 2012.

(d) Vessel operators desiring to enter or operate within the regulated area shall contact the Coast Guard Patrol Commander to obtain permission to do so. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Coast Guard Patrol Commander.

Dated: April 16, 2012.

J.E. Ogden,

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

[FR Doc. 2012-10254 Filed 4-26-12; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0170]

RIN 1625-AA08

Special Local Regulation; Galveston Bay, Kemah, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation in Galveston Bay in the vicinity of Kemah, Texas. This temporary special local regulation is necessary to provide for the safety of swimmers participating in the Memorial Hermann Kemah Triathlon. All vessels will be prohibited from transiting in or near the area except as specifically authorized by the Captain of the Port or a designated representative.

DATES: This rule is effective on April 29, 2012 from 6 a.m. until 12 noon.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0170 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0170 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Margaret Brown, Coast Guard; telephone 713-678-9001, email Margaret.A.Brown@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. The intended date for this charitable event is April 29, 2012. Publishing an NPRM is impracticable because it would delay the effective date for this special local regulation.

This event and special local regulation are part of a Direct Final Rule (DFR) creating a list of annually recurring special local regulations under 33 CFR part 100, taking place in the Eighth Coast Guard District. The DFR published in the **Federal Register** on March 1, 2012, (77 FR 12456), provides for a comment period and is scheduled to go into effect May 30, 2012 which is after the April 29, 2012 scheduled date for this event. A comment period is provided in the DFR, but awaiting the DFR effective date and delaying or foregoing the special local regulation needed for the safety of triathlon participants would be contrary to public interest.

For the same reasons, 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**. Immediate action is needed to protect swimmers participating in the Memorial Hermann Kemah Triathlon.

Basis and Purpose

The swimming portion of the Memorial Hermann Triathlon will feature swimmers entering the water from a vessel and swimming approximately one mile to shore. This

special local regulation provides a protected area for the swimmers from recreational and other vessels that might be in the area.

Discussion of Rule

The Coast Guard is establishing a temporary special local regulation in Galveston Bay. The area regulated begins at Latitude 29°32'38.02" N, Longitude 095°00'58.30" W thence east to Latitude 29°32'46.73" N, Longitude 094°59'50.36" W, thence south to Latitude 29°32'36.98" N, Longitude 094°59'50.32" W, thence west to 29°32'30.86" N, Longitude 095°00'56.91" W thence along the shoreline to the point of beginning. This rule is established to allow for the safety of swimmers participating in a triathlon. Vessels will not be allowed to transit within the designated area immediately before, during, and after the swim portion of the triathlon.

Regulatory Analyses

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

Regulatory Planning and Review

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

This regulation will only be in effect for six hours. Notifications to the marine community will be made through broadcast notice to mariners and electronic mail. The special local regulation will not affect channel navigation and will only affect few recreational vessels. The impacts on routine navigation are expected to be minimal.

Small Entities

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

governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not affect small entities because the special local regulation does not inhibit navigation. Recreational vessels may navigate around the restricted area. If you are a small business entity and are significantly affected by this regulation please contact LT Margaret Brown, Coast Guard Sector Houston-Galveston, at (713) 678–9001.

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 the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 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

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

Technical Standards

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(h), of the Instruction. This rule involves establishing a special local regulation, requiring a permit wherein an analysis of the environmental impact of the regulations was performed. Under figure 2-1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. A new temporary § 100.35T08-0170 is added to read as follows:

§ 100.35T08-0170 Special Local Regulation; Galveston Bay, Kemah, TX

(a) *Location.* Under this temporary rule, the following area is a regulated area: Galveston Bay, beginning at Latitude 29°32'38.02" N, Longitude 095°00'58.30" W thence east to Latitude 29°32'46.73" N, Longitude 094°59'50.36" W, thence south to Latitude 29°32'36.98" N, Longitude 094°59'50.32" W, thence west to 29°32'30.86" N, Longitude 095°00'56.91" W thence along the shoreline to the point of beginning.

(b) *Enforcement date.* This temporary rule will be enforced from 6 a.m. to 12 noon on April 29, 2012.

(c) *Special local regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry into this area is prohibited immediately before, during and immediately following the swimming portion of this triathlon event.

(2) Vessels shall not transit through or within the restricted area during the

swimming portion of the triathlon event.

(3) No vessel shall anchor, block, loiter, or impede the swimming portion of this triathlon event.

(4) Persons or vessels requiring deviation from these restrictions must request permission from the Captain of the Port Houston-Galveston, or a designated representative. They may be contacted at "Sector Houston-Galveston" on VHF-FM Channels 16, or by phone at (713) 671-5113. Requests to deviate from these restrictions will be reviewed on a case-by-case basis.

(5) All persons and vessels shall comply with the instructions of the Captain of the Port Houston-Galveston and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) *Informational Broadcasts.* Notifications of changes in enforcement periods and changes to this special local regulation will be made through Vessel Traffic Services and broadcast notice to mariners.

Dated: April 16, 2012.

J.H. Whitehead,

Captain, U.S. Coast Guard, Captain of the Port Houston-Galveston.

[FR Doc. 2012-10255 Filed 4-26-12; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0342]

RIN 1625-AA08

Special Local Regulation; Wy-Hi Rowing Regatta, Trenton Channel; Detroit River, Wyandotte, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation on the Trenton Channel of the Detroit River, Wyandotte, Michigan. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after the Wy-Hi Rowing Regatta. This special local regulation will establish restrictions upon, and control movement of, vessels in a portion of the Trenton Channel. During the enforcement period, no person or vessel may enter the regulated area

without permission of the Captain of the Port.

DATES: This rule is effective from 7:30 a.m. until 4:30 p.m. on May 5, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2012-0342 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0342 in the "Search" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568-9508, email Adrian.F.Palomeque@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 waiting for a notice and comment period to run would be impracticable and contrary to the public interest. The final details of this regatta were not received in sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, delaying this temporary rule to wait for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with this event, which are discussed in further detail below. Alternately, delaying this temporary rule would require the event sponsor and participants to reschedule, which is contrary to the public interest of

allowing this event to go on as scheduled.

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

Background and Purpose

On May 5, 2012, the Wyandotte Boat Club is holding a rowing race that will require the immediate area to be clear of all vessel traffic. The rowing race will occur between 7:30 a.m. until 4:30 p.m. on May 5, 2012. The Captain of the Port Detroit has determined that the likely combination of recreation vessels, commercial vessels, and large numbers of spectators in close proximity to rowing regatta could easily result in serious injuries or fatalities.

Discussion of Rule

In light of the aforesaid hazards, the Captain of the Port Detroit has determined that a special local regulation is necessary to protect spectators, vessels, and participants. The special local regulation will encompass all waters, starting at a point on land at position 42°10'58" N, 083°09'13" W; following the Trenton Channel north to position 42°11'44" N, 083°08'56" W; and will be enforced on May 5, 2012, from 7:30 a.m. until 4:30 p.m. All geographic coordinates are North American Datum of 1983 (NAD 83).

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

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866

or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The Coast Guard's use of this special local regulation will be of relatively short duration, and it is designed to minimize the impact on navigation. Moreover, vessel may, when circumstances allow, obtain permission from the Captain of the Port to transit through the area affected by this special local regulations. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the enforcement of this special local regulation.

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 would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in this portion of the Trenton Channel near Wyandotte, MI between 7:30 a.m. until 4:30 p.m. on May 5, 2012.

This special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect and enforced for nine hours on one day. The race event will be temporarily stopped for any deep draft vessels transiting through the shipping lanes. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect, allowing vessel owners and operators to plan accordingly.

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 the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

Protest Activities

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

Unfunded Mandates Reform Act

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

do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

Environment

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

(34)(h), of the Instruction. This rule involves a special local regulation issued in conjunction with a regatta or marine parade, therefore (34)(h) of the Instruction applies. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.35T09-0342 to read as follows:

§ 100.35T09-0342 Special Local Regulation; Wy-Hi Rowing Regatta, Wyandotte, MI.

(a) *Regulated Area.* A regulated area is established to include all waters of the Trenton Channel in the Detroit River, Wyandotte, Michigan, starting at a point on land at position 42°10'58" N, 083°9'13" W; following the Trenton Channel north to position 42°11'44" N, 083°8'56" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Special Local Regulation.* No vessel may enter, transit through, or anchor within the regulated area without the permission of the Coast Guard Patrol Commander.

(c) *Enforcement Period.* This regulation will be enforced from 7:30 a.m. until 4:30 p.m. on May 5, 2012.

(d) Vessel operators desiring to enter or operate within the regulated area shall contact the Coast Guard Patrol Commander to obtain permission to do so. Vessel operators given permission to enter or operate in the regulated area must comply with all directions given to them by the Coast Guard Patrol Commander.

Dated: April 16, 2012.

J.E. Ogden,

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

[FR Doc. 2012-10256 Filed 4-26-12; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0280]

Drawbridge Operation Regulation; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Montlake Bridge across the Lake Washington Ship Canal, mile 5.2, at Seattle, WA. This deviation is necessary to accommodate the Beat the Bridge charity foot race scheduled for Sunday, May 20, 2012. This deviation allows the bridge to remain in the closed position to allow safe movement of event participants.

DATES: This deviation is effective from 7:30 a.m. on May 20, 2012 through 9 a.m. May 20, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG-2012-0280 and are available online by going to <http://www.regulations.gov>, inserting USCG-2012-0280 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: The Washington State Department of Transportation has requested that the Montlake Bridge remain closed to vessel traffic to facilitate safe passage of participants of the Beat the Bridge charity event. Beat the Bridge is an annual foot race held in Seattle, WA to benefit diabetes research. The race course passes over the Montlake Bridge. The Montlake Bridge crosses the Lake Washington Ship Canal at mile 5.2 and while in the closed position provides 30

feet of vertical clearance throughout the navigation channel and 46 feet of vertical clearance throughout the center 60-feet of the bridge; vertical clearance referenced to the Mean Water Level of Lake Washington. Vessels which do not require a bridge opening may continue to transit beneath the bridge during this closure period. Under normal conditions this bridge operates in accordance with 33 CFR 117.1051(e) which requires the bridge to open on signal, except that the bridge need not open for vessels less than 1,000 gross tons between 7 a.m. and 9 a.m. and 3:30 p.m. and 6:30 p.m. Monday through Friday. This deviation period is from 7:30 a.m. on May 20, 2012 through 9 a.m. on Sunday, May 20, 2012. The deviation allows the bascule span of the Montlake Bridge to remain in the closed position and need not open for maritime traffic from 7:30 a.m. through 9 a.m. on May 20, 2012. The bridge shall operate in accordance to 33 CFR 117.1051(e) at all other times. Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The draw span will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

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

Dated: March 30, 2012.

Randall D. Overton,
Bridge Administrator.

[FR Doc. 2012-10186 Filed 4-26-12; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-1173]

RIN 1625-AA00

Safety Zones; TriMet Bridge Project, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones encompassing the work trestles and construction

cranes involved in the construction of the TriMet Bridge on the Willamette River, in Portland, OR. This action is necessary to ensure the safety of recreational vessels and commercial vessels transiting in close proximity to cranes and overhead work associated with this construction project. These safety zones replace the prior safety zones established for the TriMet Bridge construction site and are more focused in nature than the previous safety zone. During the enforcement period, all vessels will be required to transit the area at a safe distance from the work being conducted.

DATES: This rule is effective from April 27, 2012 until October 31, 2014.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG-2011-1173 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1173 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email ENS Ian McPhillips, Waterways Management Division, Coast Guard MSU Portland; telephone 503-240-9319, email Ian.P.McPhillips@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 to do so would be impracticable, since bridge construction is already underway and the safety zone continues to be immediately necessary to help ensure the safety of recreational

and commercial vessels transiting in close proximity to cranes, barges, and temporary structures associated with this construction project.

Under 5 U.S.C. 553(d)(1), the Coast Guard finds that this rule may be made effective less than 30 days after publication in the **Federal Register** because it relieves restrictions imposed by the prior safety zones, which were broader in scope. Furthermore, under 553(d)(3), we find that any delay in the effective date of this rule would constitute a danger to the vessels in this area as well as the structures associated with the construction project.

Background and Purpose

Currently, a safety zone exists around the TriMet Bridge Project on the Willamette River. This temporary rule is being published to modify the safety zone at issue, so that the exclusionary zone does not extend from riverbank to riverbank in this section of the river, and also to clarify that the safety zones are only temporary. The new zones will require vessels passing through the area to remain a distance of 100 feet in all directions away from the work trestles and 140 feet in all directions from the cranes. To ensure the safety of construction crews on the barges, temporary structures, and cranes, two safety zones on each side of the river are being established to require vessels in the vicinity of the construction area to remain outside of the two designated safety zones. Additionally, this will ensure that the vessels operating in the vicinity of the designated areas will not be in any dangerous areas.

Discussion of Rule

The two safety zones created by this rule cover all waters of the Willamette River; however, the establishment of the safety zones does not close this section of the Willamette River to vessels desiring to pass through the area when transiting up-bound or down-bound. The section of the Willamette River between the safety zones will remain open for vessel transits throughout the entirety of the project unless otherwise specified by the Captain of the Port Columbia River. Vessels passing through the area will be required to remain a distance of 100 feet in all directions away from the work trestles and 140 feet in all directions of the cranes. The safety zones will ensure the safety of all vessels and crew that are working and transiting in the construction areas. Other maritime users, such as dragon boats, kayaks, and canoes, will also be able to transit through the open section.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Coast Guard has made this determination based on the fact that the safety zones created by this rule will not significantly affect the maritime public because vessels may still transit in the vicinity of the safety zones.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), The Coast Guard has 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 and operators of vessels intending to operate in the area covered by the safety zones. The safety zones will not have a significant economic impact on a substantial number of small entities because the area can still be used to transit through this section of the river. Other maritime users, such as dragon boats, kayaks, and canoes, will be able to transit through the open section.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers 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. The Coast Guard has analyzed this rule under that Order and has 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 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

The Coast Guard has 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

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Coast Guard has 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

The Coast Guard has analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969

(NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Remove § 165.1338.

■ 3. Add § 165.T13–209 to read as follows:

§ 165.T13–209 Safety Zones; TriMet Bridge Project, Willamette River; Portland, OR.

(a) Location. The following are safety zones: All waters within 100 feet of work trestles, in all directions, and within 140 feet, in all directions, of the TriMet bridge construction cranes.

(b) Regulation. In accordance with the general regulations in 33 CFR Part 165, Subpart C, no vessel operator may enter or remain in the safety zones without the permission of the Captain of the Port or Designated Representative. The Captain of the Port may be assisted by other Federal, state, or local agencies with the enforcement of the safety zones.

(c) Authorization. All vessel operators who desire to enter the safety zones must obtain permission from the Captain of the Port or Designated Representative by contacting the on-scene patrol craft. Vessel operators granted permission to enter the zones will be escorted by the on-scene patrol craft until they are outside of the safety zones.

(d) Enforcement Period. The safety zones detailed in paragraph (a) of this section will be enforced from 12:01 a.m.

on July 1, 2011 through 11:59 p.m. on October 30, 2014.

Dated: April 6, 2012.

B.C. Jones, Captain, U. S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2012–10261 Filed 4–26–12; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Picture Permit Imprint Indicia

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service will revise Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®) 604.5 to add picture permit imprint indicia standards allowing customers to include business-related color images, such as corporate logos, company brand or trademarks, in the permit indicia area of First-Class Mail® full-service automation letters and postcards, and all Standard Mail® letters.

DATES: Effective Date: June 24, 2012.

FOR FURTHER INFORMATION CONTACT: Nii-Kwashie Aryeetey 202–268–7442 or Suzanne Newman at 202–268–5581.

SUPPLEMENTARY INFORMATION: The use of picture permit imprint indicia is designed to improve the effectiveness of a mailpiece by including a business-related color image within the permit imprint indicia. When tested, indicia placed in the upper right corner of the mailpiece that contained color images did not impede the Postal Service’s ability to obtain the required postage payment information from the permit indicia.

Additionally, market research shows that customers believe that picture permit imprint indicia will enhance the perception of mail. Mailers indicated that they would use picture permit imprints for existing mail volume and some said they would increase their mail volumes if picture permit imprint indicia were allowed.

Therefore, this final rule expands current permit imprint standards to allow mailers to, subject to additional Postal Service standards, include a color image of a business-related design, such as corporate logos or trademarks, as part of their permit imprint indicia on full service automation IMb™ mailings, for a per piece fee in addition to postage. Mailers interested in picture permit imprint indicia may contact

picturepermit@usps.com for more information.

Pending favorable action by the Postal Regulatory Commission on the Postal Service’s March 28, 2012 filing of the price and classification changes related to charges for picture permit imprint indicia, the Postal Service adopts the following changes to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

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

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

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

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

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods

* * * * *

5.0 Permit Imprint (Indicia)

5.1 General Standards

5.1.1 Description

[Revise 5.1.1 by adding a new last sentence to read as follows:]

* * * A picture permit imprint indicia (5.4) may not be used on reply mail pieces.

* * * * *

5.1.4 Permit and Fees

[Revise the text of 5.1.4 as follows:]

A mailer may obtain a permit to use a permit imprint indicia by submitting PS Form 3615, Mailing Permit Application and Customer Profile, and the applicable fees to the Post Office where mailings are made. Except for mailpieces bearing picture permit imprint indicia (5.4), there are no other fees for the use of a permit imprint indicia but other fees (e.g., an annual

presort mailing fee) may be due depending on the class of mail to be prepared.

* * * * *

5.3 Indicia Design, Placement, and Content

* * * * *

5.3.4 Indicia Placement on Mailpiece

[Revise the second sentence of 5.3.4 and the text of 5.3.4a as follows:]

* * * The indicia may not be placed below the address or encroach on reserved space (e.g., ACS participant code, delivery point barcode). The indicia can be placed in one of these four positions:

a. Upper right corner of the mailpiece. (Also the recommended location for picture permit imprint indicia)

* * * * *

[Revise 5.3.4c as follows:]

c. Upper right area (not lower than the address area) on an affixed address label or when printed in an address block.

* * * * *

5.3.11 Indicia Formats

[Revise the text of 5.3.11 as follows:]

Unless prepared under 5.3.12 or 5.4, permit imprint indicia on mailpieces must be prepared in one of the formats in Exhibit 5.3.11, as applicable to the price claimed or type of mail. (Not all permissible combinations of content elements are shown.) Specific markings may be required as applicable for the price claimed.

* * * * *

5.3.12 Optional Indicia Format

[Revise the introductory text in 5.3.12 as follows:]

As options to the basic format under 5.3.11, permit imprint indicia may be prepared as picture permit imprint indicia under 5.4 or in other formats subject to these conditions:

* * * * *

[Add new 5.4 as follows:]

5.4 Picture Permit Imprint Indicia

5.4.1 Description

Picture permit imprint indicia may contain business-related color images, such as corporate logos, brand, trademarks and other pictorial business images (5.4.3 5.4.5). These images are known as picture permit imprints and may be used to pay postage and extra service fees on full service IMb mailings of First-Class Mail automation letters and postcards, and Standard Mail letters.

5.4.2 Postage and Fees

Picture permit imprint is charged a per piece fee, in addition to the postage applicable for the class of mail. See Notice 123—*Price List*.

5.4.3 Prohibitions

Color images used in picture permit imprint indicia must maintain neutrality on social or political issues in order to avoid the creation of a public forum for the debate or dissemination of political ideas by private parties and must also adhere to the following prohibitions:

a. Must not resemble or imitate U.S. postage stamps, a postage evidencing system indicia (604.4), postcard postage, Customized Postage, postage printed from USPS Automated Postal Centers (APCs) and USPS Certified 3rd Party Kiosks, precancelled postage stamps or other postage payment methods.

b. The color image used in picture permit imprint indicia must not include USPS-registered trademarks or words, symbols, or designs used by the USPS to identify a class of mail, price of postage, or level of service, unless such elements are correctly used under the applicable standards for the mailpiece on which they appear and the corresponding postage and fees have been paid.

c. Two-toned, black and white images are not permitted.

d. Only commercial images and/or text are eligible for inclusion. *Commercial images and/or text* means images and/or text that promote nothing other than a product or service available in commerce. Images and/or text that take a position, explicitly or implicitly, on government, public policy, morality, politics, or religion (whether or not they also convey a commercial message) are not eligible for inclusion.

e. Eligible commercial images and/or text must not: (1) Be indecent or obscene; (2) depict violent or sexual material that would be harmful to minors; (3) be unlawful or legally actionable; (4) compete with a Postal Service product or service; or (5) promote alcohol, tobacco, weapons, or gambling.

f. A picture permit imprint indicia (5.4) may not be used on reply mail pieces.

5.4.4 Application

A Picture Permit Imprint Application must be completed and Postal Service authorization must be obtained for individual picture permit imprint indicia prior to the acceptance of mailpieces bearing these indicia. Customers must sign an indemnification

statement and, upon request, provide a valid addressed sample of mailpieces bearing the color images for testing. Contact the manager, Transaction and Correspondence (608.8.1) for more information. Additional information on the customer agreement is available at <http://picturepermit.usps.com>.

5.4.5 Picture Permit Imprint Indicia Format

As options to the basic format under 5.3.11, permit imprint indicia may be prepared in Picture Permit Imprint format subject to these conditions:

a. Indicia elements must be OCR readable (prefer sans serif) and no smaller than 8 point font.

b. The class of mail must be printed in all capital letters.

c. Indicia must not be placed in any location lower than the complete address information. The upper right corner of the mailpiece is the preferred location.

d. A clear space of at least ¼ inch must be maintained to the right and above the picture permit imprint indicia.

e. A clear space of at least 0.050 inch must be maintained to the left and below the picture permit imprint indicia.

f. Mailpieces bearing picture permit indicia must be presented as full service automation IMb mailings, under 705.24.

g. All pieces in the mailing must bear a picture permit.

h. Imprint (i.e.: image and text area) dimensions may be between 1.625" to 2.00" in height and between 1.31" to 1.50" in width.

i. Image dimensions may be between .84" to 1.00" in height and between 1.31" to 1.5" in width.

j. A clear space of 5/32 inch (+/- 1/32 inch) on all sides must be maintained between the color image and indicia text.

k. Only color images are permitted in image area (two-tone, black and white print is prohibited).

* * * * *

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

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012-10014 Filed 4-26-12; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0082; FRL-9634-1]

Revisions to the Hawaii State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Hawaii State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC), oxides of nitrogen (NO_x), and particulate matter (PM) emissions from motor vehicles, water separation, pumps, compressors, waste gas, and open burning, as well as several administrative requirements. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 26, 2012 without further notice, unless EPA receives adverse comments by May 29, 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-2012-0082, 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: Nicole Law, EPA Region IX, (415) 947-4126, law.nicole@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 rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the Hawaii Department of Health (HDOH).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised	Submitted
HDOH	11-60.1-1	Definitions	11/14/03	12/14/11
HDOH	11-60.1-2	Prohibition of air pollution	11/14/03	12/14/11
HDOH	11-60.1-4	Certification	11/14/03	12/14/11
HDOH	11-60.1-8	Reporting discontinuance	11/14/03	12/14/11
HDOH	11-60.1-11	Sampling, testing, and reporting methods	11/14/03	12/14/11
HDOH	11-60.1-14	Public access to information	11/14/03	12/14/11
HDOH	11-60.1-15	Reporting of equipment shutdown	11/14/03	12/14/11
HDOH	11-60.1-16	Prompt reporting of deviations	11/14/03	12/14/11
HDOH	11-60.1-17	Prevention of air pollution emergency episodes	11/14/03	12/14/11
HDOH	11-60.1-20	Severability	11/14/03	12/14/11
HDOH	11-60.1-32	Visible emissions	11/14/03	12/14/11
HDOH	11-60.1-34	Motor vehicles	11/14/03	12/14/11
HDOH	11-60.1-40	Volatile organic compound water separation	11/14/03	12/14/11
HDOH	11-60.1-41	Pump and compressor requirements	11/14/03	12/14/11
HDOH	11-60.1-42	Waste gas disposal	11/14/03	12/14/11
HDOH	11-60.1-51	Definitions	11/14/03	12/14/11
HDOH	11-60.1-53	Agricultural burning: permit requirement	11/14/03	12/14/11
HDOH	11-60.1-54	Agricultural burning: applications	11/14/03	12/14/11
HDOH	11-60.1-56	Agricultural burning: recordkeeping and monitoring	11/14/03	12/14/11

On January 27, 2012, EPA determined that the submittal for Hawaii Department of Health Chapter 60.1 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 these rules?

There are no previous versions of Rules 11–60.1–4, 11–60.1–14, 11–60.1–40, 11–60.1–41, 11–60.1–42, and 11–60.1–51 in the SIP. We approved earlier versions of Rules 11–60.1–1 (formerly numbered 11–60–1), 11–60.1–2 (11–60–17), 11–60.1–8 (11–60–10), 11–60.1–11 (11–60–15 and 11–60–6), 11–60.1–15 (11–60–16), 11–60.1–16 (11–60–16), 11–60.1–17 (11–60–35), 11–60.1–20 (11–60–38), 11–60.1–32 (11–60–24), 11–60.1–34 (11–60–25), 11–60.1–53 (11–60–19), 11–60.1–54 (11–60–20), and 11–60.1–56 (11–60–22) into the SIP on August 18, 1983 (48 FR 37402). The HDOH adopted revisions to the SIP-approved versions on November 14, 2003 and submitted them to us on December 14, 2011.

C. What is the purpose of the submitted rule revisions?

VOCs and NO_x help produce ground-level ozone and smog, which harm human health and the environment. PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control VOC, NO_x, and PM emissions. New rules requiring controls on water separation units, pumps, compressors, and waste gas disposal have been adopted. Several rule revisions have been made to update and clarify administrative rules. EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), and must not relax existing requirements (see sections 110(l)). Section 193 of the CAA does not apply to this action because the entire State of Hawaii is designated unclassifiable/attainment for all of the current NAAQS.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance

regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action.

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill 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 May 29, 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 June 26, 2012. This will incorporate these rules 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 26, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does

it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations,

Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 1, 2012.
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 M—Hawaii

■ 2. In § 52.620, the table in paragraph (c) is amended by:

■ a. Removing the following thirteen entries under the category for Title 11,

Chapter 60: 11–60–1, 11–60–6, 11–60–10, 11–60–15, 11–60–16, 11–60–17, 11–60–19, 11–60–20, 11–60–22, 11–60–24, 11–60–25, 11–60–35, and 11–60–38.

■ b. Following all entries in the category for Chapter 60, adding a new category for Chapter 60.1.

■ c. Adding the following nineteen new entries under the category for Chapter 60.1: sections 11–60.1–1, 11–60.1–2, 11–60.1–4, 11–60.1–8, 11–60.1–11, 11–60.1–14, 11–60.1–15, 11–60.1–16, 11–60.1–17, 11–60.1–20, 11–60.1–32, 11–60.1–34, 11–60.1–40, 11–60.1–41, 11–60.1–42, 11–60.1–51, 11–60.1–53, 11–60.1–54, and 11–60.1–56.

The amendments to paragraph(c) read as follows:

§ 52.620 Identification of plan.

* * * * *
 (c) * * *

EPA-APPROVED STATE OF HAWAII REGULATIONS

State citation	Title/subject	Effective date	EPA approval date	Explanation
11–60.1–1	Definitions	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–1.
11–60.1–2	Prohibition of air pollution	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–17.
11–60.1–4	Certification	11/14/2003	4/27/2012 [Insert page number where the document begins].	New regulation.
11–60.1–8	Reporting discontinuance	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–10.
11–60.1–11	Sampling, testing, and reporting methods.	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–15 and 11–60–6.
11–60.1–14	Public access to information	11/14/2003	4/27/2012 [Insert page number where the document begins].	New regulation.
11–60.1–15	Reporting of equipment shutdown.	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–16.
11–60.1–16	Prompt reporting of deviations	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–16.
11–60.1–17	Prevention of air pollution emergency episodes.	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–35.
11–60.1–20	Severability	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–38.
11–60.1–32	Visible emissions	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–24.
11–60.1–34	Motor vehicles	11/14/2003	4/27/2012 [Insert page number where the document begins].	Supersedes 11–60–25.

EPA-APPROVED STATE OF HAWAII REGULATIONS—Continued

State citation	Title/subject	Effective date	EPA approval date	Explanation
11-60.1-40	Volatile organic compound water separation.	11/14/2003	4/27/2012 [<i>Insert page number where the document begins</i>].	New regulation.
11-60.1-41	Pump and compressor requirements.	11/14/2003	4/27/2012 [<i>Insert page number where the document begins</i>].	New regulation.
11-60.1-42	Waste gas disposal	11/14/2003	4/27/2012 [<i>Insert page number where the document begins</i>].	New regulation.
11-60.1-51	Definitions	11/14/2003	4/27/2012 [<i>Insert page number where the document begins</i>].	Supersedes 11-60-1.
11-60.1-53	Agricultural burning: permit requirement.	11/14/2003	4/27/2012 [<i>Insert page number where the document begins</i>].	Supersedes 11-60-19.
11-60.1-54	Agricultural burning: applications.	11/14/2003	4/27/2012 [<i>Insert page number where the document begins</i>].	Supersedes 11-60-20.
11-60.1-56	Agricultural burning: record-keeping and monitoring.	11/14/2003	4/27/2012 [<i>Insert page number where the document begins</i>].	Supersedes 11-60-22.

* * * * *

[FR Doc. 2012-10102 Filed 4-26-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60**

[EPA-HQ-OAR-2009-0559; FRL-9664-9]

RIN 2060-AP90

Denial of Reconsideration Petitions on Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Denial of petitions for reconsideration.

SUMMARY: The EPA is providing notice that it has denied two petitions for reconsideration of a final rule published in the **Federal Register** on March 21, 2011. The rule established new source performance standards and emission guidelines for sewage sludge incineration units located at wastewater treatment facilities designed to treat domestic sewage sludge, and was issued pursuant to the EPA's authority under Clean Air Act section 129 to regulate solid waste incineration units. After publication of the rule, the EPA received petitions for reconsideration of the final rule from the National Association of Clean Water Agencies (NACWA) (dated May 24, 2011) and the Sierra Club (dated May 20, 2011). After carefully considering the petitions and

supporting information, in reaching a decision on the petitions, EPA Administrator Lisa P. Jackson denied the petitions for reconsideration on April 6, 2012, in separate letters to the petitioners. EPA denied the petitions because they fail to meet the procedural test for reconsideration under CAA section 307(d)(7)(B), and/or are not of central relevance to the outcome of the rule, both of which are necessary conditions precedent to granting reconsideration. The letters explain in detail EPA's reasons for the denials.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Hambrick, Sector Policies and Programs Division (E143-03), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-0964; fax number: (919) 541-3470; email address: hambrick.amy@epa.gov.

SUPPLEMENTARY INFORMATION:**I. How can I get copies of this document and other related information?**

This **Federal Register** notice, the petitions for reconsideration, and the letters denying the petitions for reconsideration are available in the docket that the EPA established for the "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units" under Docket ID No. EPA-HQ-OAR-2009-0559. The document identification numbers for the petitions for reconsideration are: Sierra Club, EPA-HQ-OAR-2009-0559-0173; and NACWA, EPA-HQ-OAR-2009-0559-0174 (petition). The document

identification number for EPA's response letters are EPA-HQ-OAR-2009-0559-0181. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, e.g., 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 through www.regulations.gov or in hard copy at the EPA Docket Center (Air 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 Docket is (202) 566-1742.

This **Federal Register** notice, the petitions for reconsideration and the letters denying the petitions can also be found on the EPA's Web site at <http://www.epa.gov/ttn/atw/129/ssi/ssipg.html>. The "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units" rules were published in the **Federal Register** on March 21, 2011, at 76 FR 15372.

II. Judicial Review

Any petitions for review of the letters denying the petitions for

reconsideration described in this Notice must be filed in the Court of Appeals for the District of Columbia Circuit by June 26, 2012.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 18, 2012.

Lisa P. Jackson,
Administrator.

[FR Doc. 2012-10098 Filed 4-26-12; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket No. 11-82; FCC 12-22]

Extension of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission extends the outage reporting requirements of the Commission's rules to interconnected Voice over Internet Protocol (VoIP) service providers and defers action with respect to reporting of outages of broadband Internet services. In addition, the NPRM for The Proposed Extension of Part 4 of the Commission's Rules Regarding Outage Reporting to Interconnected Voice Over Internet Protocol Service Providers and Broadband Internet Service Providers proposal included reporting of both outages based on the complete loss of service and those where, while service is technically available, technical conditions effectively prevent communication. The rule adopted applies only to outages resulting from complete loss of service and only to interconnected VoIP services. Collecting this data will help the Commission help ensure the Nation's 9-1-1 systems are as reliable and resilient as possible and also allow the Commission to monitor compliance with the statutory 9-1-1 obligations of interconnected VoIP service providers.

DATES: The rules in this document contain information collection requirements that have not been approved by OMB. The Federal

Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Gregory Intocchia, Special Counsel, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418-1470 or gregory.intocchia@fcc.gov (email). For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Judith Boley-Herman, (202) 418-0214 or PRA@fcc.gov (email).

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PS Docket No. 11-82, FCC 12-22, released to the public on February 21, 2012, and NPRM released in **Federal Register** in Vol. 76, No. 111, June 9, 2011; and correction Vol. 76, No. 121, June 23, 2011. The full text of the document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street SW., Washington, DC 20554, or online at http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0221/FCC-12-22A1.pdf.

Initial Paperwork Reduction Act of 1995

Document FCC 11-184 seeks comment on potential new information collection requirements. If the Commission adopts any new information collection requirement, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

Synopsis

I. Introduction

1. Consumers are increasingly using interconnected VoIP services in lieu of traditional telephone service. Interconnected VoIP services allow a wireline or wireless user generally to receive calls from and make calls to the legacy public telephone network, including calls to 9-1-1. As of the end of 2010, 31 percent of U.S. residential telephone subscriptions were provided by interconnected VoIP providers, an increase of 21 percent from the previous year. The public's increased reliance on

interconnected VoIP services is also reflected in 9-1-1 usage trends; approximately 31 percent of residential wireline 9-1-1 calls are made using VoIP service. The availability and resilience of our communications infrastructure, specifically 9-1-1, directly impacts public safety and the ability of our first responders to fulfill their critical mission. The most effective way to maintain emergency preparedness is to work continuously to minimize the incidence of routine outages.

2. The Commission's public safety mission is one of its core functions. In 2008, Congress affirmed the Commission's efforts to accomplish this mission by codifying the requirement for interconnected VoIP providers to provide 9-1-1 services. Also, Presidential Directives and Executive Orders and related documents charge the Commission with ensuring the resilience and reliability of the Nation's commercial and public safety communications infrastructure. The Commission also has the responsibility to ensure continuous operations and reconstitution of critical communications and services, and plays an active role in Emergency Support Function 2 (ESF2), the communications branch of the National Response Framework, which guides the Nation's conduct during an all-hazards response. Executive Order 12472, which establishes the National Communications System, the functions of which include coordination of the planning for and provision of national security and emergency preparedness communications for the Federal government, also requires Commission participation.

3. There is cause to be concerned about the ability of interconnected VoIP subscribers to reach emergency services when they need them. In the past several years, a series of significant VoIP outages has increased our concern about the availability of 9-1-1 over VoIP service. Unlike other outages of voice service, VoIP outages are not reported to the Commission because the current outage reporting requirements apply only to traditional voice and paging communications services over wireline, wireless, cable, and satellite, but not to outages affecting interconnected VoIP services. Without detailed information about these outages, the Commission is unable to know whether and how well providers are meeting their statutory obligation to provide 9-1-1 and Enhanced 9-1-1 (E9-1-1) service.

4. Seeking to ensure the availability of 9-1-1 service, this Report and Order: Extends the Commission's mandatory

outage reporting rules to facilities-based and non-facilities-based interconnected VoIP service providers; applies the current Part 4 definition of an outage to outages of interconnected VoIP service, covering the complete loss of service and/or connectivity to customers; and requires that these providers submit electronically a notification to the Commission of the affected 9-1-1 facility as the provider's contact person for communications outages at that facility. Requiring interconnected VoIP service providers to report even significant outages imposes a burden on them, but the cost to these providers of implementing the rules adopted herein is justified by the overwhelming public benefit of a reliable 9-1-1 system.

II. Background

5. To perform our statutory and administrative duties effectively, the Commission needs timely, accurate information about the Nation's communications infrastructure. Since 1992, the Commission has required wireline providers to report major disruptions to their communications services. In 2004, the Commission extended reporting requirements to providers of wireless (including paging), cable, and satellite communications. Reports are submitted online via the Commission's Network Outage Reporting System (NORS). The Commission uses outage information submitted pursuant to Part 4 of the rules to carry out its statutory mission to promote "safety of life and property." Specifically, Commission staff analyzes NORS data to spot statistically meaningful outage trends, then works either with an individual providers or through industry groups, as appropriate, to identify the cause of outages and best practices that would reduce the incidence of such outages. As a result of reporting and our subsequent analysis, measureable reliability improvements have been achieved, and reporting has led to improvements in communications infrastructure and services and emergency readiness.

6. For example, wireline outages spiked in 2008, decreasing the reliability of 9-1-1 services. Systematic analysis of monthly wireline outages and subsequent work helped to understand the root causes of this trend, and resulting in improved industry practices that reduced the estimated number of lost wireline 9-1-1 calls by 40 percent.

7. Before the adoption of this rule, interconnected VoIP services were not covered by the Commission's outage reporting rules, which meant that the Commission had little knowledge of the

reliability of these services, including with respect to 9-1-1, and could not include these services in the process of continual evaluation and improvement. Yet, the Communications Act and Commission rules impose 9-1-1-related obligations on interconnected VoIP service providers. Outages of interconnected VoIP service negatively affect the ability of interconnected VoIP service providers to meet basic and enhanced 9-1-1 service obligations.

8. To remedy this situation, on May 12, 2011, we adopted an NPRM proposing to extend outage reporting obligations under Part 4 of the rules to interconnected VoIP services for both complete service outages and situations where, though service is technically available, performance conditions prevent communication. In the NPRM, we also proposed to apply the Part 4 outage reporting rules to both broadband access and broadband backbone Internet services for both complete and technical performance outages. In this Report and Order, we extend Part 4 reporting obligations to interconnected VoIP services with respect to complete service outages, and defer action on technical performance outages. We also defer action on all outage reporting of broadband Internet services.

III. Need for Collecting Outage Information

A. Need for the Requirement

9. We conclude that significant outages of interconnected VoIP service should be reported to the Commission. In the NPRM, we proposed to extend the Part 4 outage reporting requirements to both facilities- and non-facilities-based interconnected VoIP services. The Commission recognized that monitoring and analysis of outages is needed in light of increasing evidence that major VoIP service outages are occurring and given that such outages may disable 9-1-1 and other service capabilities.

10. *Comments.* Most industry commenters argue that the Commission does not need to collect interconnected VoIP service outage information because service providers have market incentives to ensure that their systems are reliable. Some industry commenters argue that the interconnected VoIP information is unnecessary because broadband network technologies are designed to reroute traffic to avoid loss of service and/or connectivity, and thus, an outage of a facility for interconnected VoIP service may have no effect on the ability to continue to send or receive the related traffic. Some industry commenters argue that the burdens of

extending the Part 4 requirements outweigh the benefits or are otherwise not justified. State government and commenters from critically important industry sectors, however, indicate that this additional outage information is needed to protect the public.

11. *Discussion.* Outage reporting is the most effective and least burdensome way to ensure that interconnected VoIP providers are meeting their statutory obligation to provide 9-1-1. Without such reporting, we will continue to have extremely limited visibility into the reliability of access to 9-1-1 emergency services. Since the institution of the Part 4 rules in 2004, we have reviewed and analyzed outage data on both an individual provider and an aggregated basis. We regularly collaborate with providers to identify the causes of outages, develop and apply best practices to address the causes of outages.

12. The Commission is uniquely positioned to piece together an overall picture of aggregated network performance because of the ability to collect and analyze outage data provided by communications providers that would otherwise be disinclined to share sensitive outage data. The Commission's ability to look at information received from different providers allows us to assess large-scale outages when they occur, thereby increasing the opportunities for federal assistance in dealing with the immediate problem. Analysis of NORS data has served as a uniquely effective precipitating force for improving network reliability, and thus the reliability of 9-1-1 services. This happens via a number of mechanisms:

13. First, the Commission regularly provides the Network Reliability Steering Committee (NRSC) with aggregated outage data across all entities subject to Part 4 of the rules and draws attention to those categories of outages showing a statistically significant trend upward in the number of outages. Depending on the type of outage, the Commission may request that the NRSC create a team to recommend procedures, best practices and, in some cases, equipment design alterations to address the underlying issue. For example, following this process, in one six-month period in the 2008-2009 time frame, the Commission worked with the NRSC to reverse the trend in an increase in wireline outages, and consequently there was a more than 40-percent reduction in the estimated lost 9-1-1 calls due to wireline outages.

14. Second, using outage reporting data and coordinating with providers, the Commission has been able to spot

upward trends in the number of outages filed by particular providers. In these cases, the Commission contacts the provider and works with it to identify causes and solutions. Consequently, some service providers have implemented large-scale improvements to their networks, reducing outages and increasing resiliency of the communications infrastructure and availability of the public safety services that rely on the communications infrastructure.

15. Third, the Commission staff can identify industrywide issues through NORS analysis. In 2010, Commission staff discerned from outage reports that a significant number of outages associated with delivery of 9-1-1 services were being caused by a relatively small number of factors, each of which could be addressed by applying known best practices, and a Public Notice was released identifying these particular practices and urging communications providers to implement them widely in their networks.

16. Fourth, the Commission can leverage outage data to assist in emergency responses. For example, during emergency situations, the Commission can provide "Notification" data in NORS to the U.S. Department of Homeland Security, where it is used to support the emergency response.

17. In these ways, the Commission's intervention has resulted in tangible improvements to the communications reliability necessary to support 9-1-1 service. No single provider has the data to spot trends across industry and lead efforts to address reliability problems. Therefore, we disagree with commenters that argue that market incentives eliminate the need for network outage reporting. In addition, we are not persuaded that outage reporting is unnecessary because broadband technologies reliably reroute traffic, particularly in light of the rise in the incidence of significant VoIP outages. Observers in critical infrastructure industries and in government, domestically and abroad, are becoming increasingly aware of the need to track reliability data obtained from services relying on broadband technologies to help ensure the reliability of emergency services and critical communications.

18. Further, reporting outage data is the most efficient means for the Commission to ensure that interconnected VoIP service providers are complying with their statutory obligation to provide 9-1-1 service, and to obtain critical information needed to monitor the reliability and availability of VoIP 9-1-1/E9-1-1 services. Both the

Act and the Commission's rules mandate that interconnected VoIP service providers provide 9-1-1 and E9-1-1 service. The rules we adopt today will provide the Commission with a mechanism in place to monitor whether these providers are complying with this basic obligation. Requiring interconnected VoIP service providers to promptly file reports when they experience outages that meet certain thresholds appears vastly superior, for example, to a complaint-driven process; the latter would likely be ineffective in enabling the Commission to detect and resolve quickly.

B. Mandatory or Voluntary Requirement

19. We conclude that reporting significant outages of interconnected VoIP service should be mandatory, as was proposed in the NPRM. Mandatory reporting would permit the Commission to obtain a comprehensive, nationwide view of significant outages and assess and address their impact on 9-1-1 and other services, while voluntary reporting would likely create substantial gaps in data that would thwart efforts to monitor compliance with statutory obligations and to analyze and facilitate improvement of the Nation's 9-1-1 system.

20. *Comments.* Some commenters suggest that, if the Commission extends its outage reporting rules, then reporting should be entirely voluntary; some argue that existing voluntary efforts by providers and their ongoing involvement in public-private coordination efforts to share information and promulgate best practices are sufficient to minimize risks to the communications infrastructure. Several industry parties argue that any reporting process should be voluntary and modeled after the voluntary Disaster Information Reporting System (DIRS).

21. *Discussion.* Our experience has been that competitive friction frequently makes service providers reluctant to voluntarily disclose detailed information about their own service outages. There was a history of several years of unsuccessful voluntary outage reporting trials conducted by groups working under the auspices of Network Reliability and Interoperability Council (NRIC). Those trials showed that provider participation was spotty, and the quality of information obtained was very poor. Based on this experience, the existing Part 4 reporting system was adopted as a mandatory reporting scheme to ensure timely, complete and accurate reporting. The record in this proceeding provides us with no reason to believe that long-term, voluntary reporting would fare any better this time

around. This reluctance would inhibit the development of a highly reliable, nationwide 9-1-1 service, because it inhibits the kinds of information sharing and analysis described above. Moreover, even if VoIP providers were not reluctant to share this information, an individual provider would have insufficient incentive to share such data, because some of the benefits would accrue to other providers. As we explained earlier, the outage information shared by one provider has led to the development of industry best practices that have benefited all providers nationwide. Given the significant increase in VoIP usage, the risks of a less vigilant approach in this context are becoming indefensible.

22. We are also not persuaded that any new outage reporting process should apply the voluntary DIRS model. DIRS is a reporting system for use during large-scale disasters. DIRS is rarely activated, and the urgent events that lead to its activation tend to motivate communications providers to cooperate. Outage reporting, on the other hand, is designed to enable the Commission to identify key network failures quickly to facilitate restoration and, over time, to create a consistent body of data to permit analysis of trends. Moreover, apart from the outage reports themselves, the Commission may otherwise be unaware of the underlying cause of the outage, such as an internal network failure, whereas outages reported under DIRS are generally widely known and created by an external event.

23. The Commission's poor experience with voluntary outage reporting is not unique. The New York Public Service Commission, for example, comments that—based on its experience—voluntary reporting does not ensure that providers "will provide timely, accurate outage information." Likewise, the Japanese government finds it necessary to require mandatory outage reporting from broadband communications providers, including high-quality VoIP service.

24. As we observed, the Commission attempted a voluntary outage reporting trial without success before adoption of the Part 4 rules. The record in this proceeding provides us no reason to believe that long-term, voluntary reporting would fare any better this time around. We believe a mandatory reporting requirement best meets the needs of the Commission to ensure the statutory mandate that interconnected VoIP service providers deliver reliable 9-1-1 service.

25. In short, given the long-term upward trend in VoIP subscription and

use, the growing dependence on VoIP for 9–1–1 communications, our prior experience with voluntary reporting, and the statutory mandate that VoIP providers provide 9–1–1, we adopt mandatory outage reporting of interconnected VoIP service. To the extent that interconnected VoIP service providers have affiliated and/or non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications, these obligations apply to them as well.

26. The rules adopted modify significantly the proposal in the NPRM, in part in response to providers' concerns regarding the costs and burdens. In the NPRM, we proposed to extend Part 4 to broadband Internet in addition to interconnected VoIP services. In addition, we proposed to require reporting of both loss of service/connectivity as well as situations where, though service is technically being provided, packet loss, latency or jitter were experienced at a level that effectively prevented communication. We are not acting at this time on the extension of Part 4 rules to broadband Internet service providers or to outages based on performance degradation, both of which were sharply opposed by industry in part based on the expected costs. The rules we adopt to extend outage reporting to interconnected VoIP services received broad support in the record, and no commenter has argued that this type of reporting would be unduly burdensome. The reporting obligation we impose will allow us to fulfill our own obligations and to adequately monitor providers' compliance with statutory 9–1–1 obligations.

27. The record in this proceeding reflects that the additional costs of compliance with our data collection requirement would be minor and significantly outweighed by the benefits. We require the reporting only of significant outages where customers lose service and/or connectivity and, therefore, the ability to access 9–1–1 services. Given providers' incentives to satisfy their customers, it is reasonable to conclude that every such provider is already tracking this sort of information. The configuration of VoIP service should already make this information available. For example, the Network Management System (NMS) of interconnected VoIP providers is able to auto-poll or execute a manual poll of a portion or all of its VoIP-enabled devices to see if they have connectivity. Thus, interconnected VoIP service providers have the ability to monitor their end-user devices to determine if

connectivity to those devices has been lost. The record shows that the costs involved in determining whether customers are completely out of service do not impose an undue burden. A wide array of commenters submit that the type of outage reporting requirement we are adopting today is either reasonable, not unduly burdensome, or could be applied so as not to be unduly burdensome. Even small providers do not assess our outage reporting requirement to be a burden. This Report and Order limits outage reporting to a complete loss of interconnected service, an approach that achieves Commission purposes but is sensitive to costs.

28. As interconnected VoIP service providers are driven by business reasons to monitor for service outages, it follows that tracking such information under our rules should not be unduly burdensome. It is significant that not one commenter has stated that it would have to install any additional equipment into its network to detect when a large number of VoIP customers are out of service. We find that mandatory reporting of significant outages is minimally intrusive and fully justified by the benefits of ensuring compliance with statutory 9–1–1 statutory obligations and benefits to public safety through robust 9–1–1 communications that we expect to result from our analysis and use of the reports.

29. Because service providers already have business reasons to routinely collect outage information, the costs of compliance with a reporting requirement are essentially those of identifying reportable outages, then electronically reformatting and uploading that information into NORS. Many of the interconnected VoIP customers are served by providers that already have years of experience filing outage reports in NORS with respect to other services. Industry-wide, the total operating cost for reporting on interconnected VoIP outages and administering outage reporting programs likely is less than \$1 million in the first year and less than \$500,000 per year thereafter for all the providers who will report.

30. In arriving at our decision, we considered feasible alternatives. We evaluated the cost effectiveness of our adopted approach against a less stringent option as well as several more stringent options. We also considered other mechanisms, such as certification. Our approach captures most of the expected benefits while avoiding the much larger costs associated with more intrusive options. Even a modest improvement in the reliability of 9–1–1 services potentially represents lives

saved. Based on the record, our analysis concluded the net benefits will be greater with the approach we are adopting. With respect to the less stringent option, our adopted approach provides all the benefits of increased reliability at a nominal cost estimated to be less than \$1 million industrywide. With respect to the more stringent option, our approach captures most of the expected benefits while avoiding the much larger costs associated with those options.

31. While some commenters urge a period of transition before any mandatory outage reporting requirements go into effect, we find any significant delay unjustified in light of the fact that providers already monitor this type of activity in the ordinary course of their business and that the costs of electronically reporting related outages will not be substantial. Also, the vast majority of interconnected VoIP services are provided by an entity that also provides legacy services and, therefore, has years of experience filing in NORS. Finally, as our ultimate approach is much more circumscribed than the one proposed in the NPRM, implementing the required reporting will be far less complicated. However, to ensure that NORS updates are completed to receive these new reports and that PSHSB has an opportunity to present the updates to reporting providers and resolve questions, the mandatory reporting requirement will become effective after data collection approval from the Office of Management and Budget, and we will publish in the **Federal Register** an announcement of a date certain that the mandatory reporting requirement will become effective.

C. Legal Authority To Require the Outage Reporting

32. In the NPRM, we requested comment on the Commission's legal authority to extend the Part 4 outage reporting rules to interconnected VoIP service providers. We conclude that the Commission has sufficient legal authority to require the reporting of outages of interconnected VoIP service.

33. *Comments.* Some commenters originally expressed harsh opposition to the requirements proposed in the NPRM. Several industry commenters argue that the Commission lacks authority to take the actions proposed in the NPRM with regard to interconnected VoIP. Others argue that the Commission's authority is either unclear or questionable. Several parties maintain that the link between the obligation to ensure 9–1–1 compliance by VoIP service providers and the

imposition of outage reporting requirements on them is too tenuous to support any assertion of direct or ancillary jurisdiction. Others suggest, however, that the Commission has some authority, or even that our authority here is “unambiguous.” In more recent *ex parte* filings, some providers focus their legal objections on NPRM proposals that we do not adopt.

34. *Discussion.* We focus our analysis here on our authority to impose outage reporting requirements on interconnected VoIP. We are not persuaded by arguments that the Commission lacks authority to extend our outage reporting requirements to interconnected VoIP service. Consistent with our mission in section 1 to “promote[e] safety of life and property,” section 615a-1 of the Communications Act clearly imposes a “duty” on “each IP-enabled voice service [interconnected VoIP] provider to provide 9-1-1 service and enhanced 9-1-1 service to its subscribers in accordance with the requirements of the Federal Communications Commission.” Further, section 615a-1(c) generally directs the Commission to issue regulations implementing the statute. Section 615a-1(c) thus grants the Commission authority to require network outage reporting with respect to interconnected VoIP services as provided herein. In addition, the Communications Act grants the Commission broad authority to take necessary steps to implement the Act’s mandates, and thus provides concurrent sources of authority for our actions to require network outage reporting. Sections 4(i) and 303(r) generally authorize the Commission to take any actions “as may be necessary” to ensure that interconnected VoIP providers fulfill their statutory 9-1-1 and E9-1-1 duties in section 615a-1. Network outage reporting for interconnected VoIP providers is one of the less intrusive means by which the Commission may monitor compliance with the statutory obligation to provide 9-1-1 and E9-1-1 service and identify and work to eliminate barriers to that compliance. Section 403 authorizes the Commission to launch inquiries to resolve compliance matters and other questions regarding the provisions of the Communications Act. With regard to affiliates of common carriers—the subscribers of which represent an increasing share of all residential interconnected VoIP subscribers, currently over ten percent—the Commission also is authorized to impose outage reporting requirements under section 218, which grants the Commission broad investigatory powers

to inquire into the management of the business, which would include VoIP service providers that are affiliates of common carriers subject to the Act. Finally, section 4(o) directs the Commission to study of all phases of a problem for the purpose of effective communications in connection with safety of life or property. We do just that when we collect and examine outage reports. Hence, the Commission is on solid ground to adopt the subject reporting rules.

35. We disagree with commenter assessments of the relationship between Section 615a-1 and our authority. AT&T, for instance, argues that section 615a-1 is not an express grant of authority to the Commission to order the regulation of VoIP service providers, but rather the Commission’s role under that provision is to “pave the way” for VoIP service providers to provide 9-1-1 and E9-1-1 service by adopting regulations applicable to the owners and controllers of 9-1-1 facilities, who are ILECs, CLECs, and third-party providers, to make that possible. AT&T points to the context of the enactment of section 615a-1 as indicative of the limited nature of its scope.

36. AT&T’s arguments are inconsistent with the express terms of the statute, which covers VoIP service providers and plainly is not limited to the owners and controllers of trunks and routers. Among the Commission rules that section 615a-1 codified are rules directly applicable to VoIP service providers. These rules impose detailed obligations on the manner in which interconnected VoIP providers provide E9-1-1. Further, AT&T’s arguments are inconsistent with the Commission’s previous views on the scope of section 615a-1. Following enactment of the NET 911 Improvement Act, the Commission in implementing section 615a-1 adopted rules in the NET 911 Report and Order, which requires interconnected VoIP service providers to comply with all applicable industry network security standards to the same extent as traditional telecommunications carriers when accessing capabilities traditionally used by carriers. This standard is comprehensive and not limited to network security standards that are ostensibly E9-1-1-related.

37. With respect to CTIA’s concern about technological neutrality expressed in section 615a-1(e)(1) limitation, nothing in this Report and Order violates that limitation. The outage reporting requirement and threshold in this Report and Order do not favor or disfavor any particular technology. To the contrary, our action arguably corrects an imbalance that existed by

requiring some providers of voice and 9-1-1 service to report outages, but not others.

38. The Commission has ancillary authority to ensure both that interconnected VoIP providers fulfill their duty to provide 9-1-1 services and to address major obstacles to their doing so, such as failures in underlying communications networks. For example, CTIA argues that “the proposed rules sweep too broadly to be linked to the expressly delegated responsibility to provide 9-1-1 services, and Verizon argues that the Commission has provided no explanation regarding how its proposed requirements would result in ensuring that VoIP providers meet their statutory duty to provide 9-1-1 service. The relationship between network reliability and reliable 9-1-1 service is clear: without reliable network operations, there can be no reliable 9-1-1 service. As explained throughout the decision, reporting obligations act as a critical element to enable the Commission to identify and evaluate lapses in the provision of 9-1-1 service in order to enable providers to meet their obligations under the statute. Indeed, as a general matter, the Commission regularly imposes reporting requirements on its regulatees to ensure compliance with statutory and regulatory obligations. The imposition of such reporting requirements in this instance is appropriate not only to enable the Commission to ensure that providers are complying with their legal obligations, but also to enhance the reliability of such service industry-wide.

D. Outage Metrics and Thresholds

39. *Facilities-Based vs. Non-Facilities-Based Interconnected VoIP Services.* We conclude that the outage reporting requirements should apply to both facilities- and non-facilities-based interconnected VoIP services. Given that interconnected VoIP services increasingly are now viewed by consumers as a substitute for traditional telephone service, in the NPRM, we proposed to extend our outage reporting rules to both facilities-based and non-facilities-based interconnected VoIP service providers.

40. *Comments.* Several commenters agree that, if the Commission adopts rules extending outage reporting to interconnected VoIP services, the rules should apply equally to both facilities-based and non-facilities-based interconnected VoIP services. For example, NASUCA and the New Jersey Division of Rate Counsel take this position as both types of VoIP services are already subject to 9-1-1 service obligations. Some commenters argue

against inclusion of non-facilities-based, interconnected VoIP services, saying that non-facilities-based interconnected VoIP service providers have no visibility into other providers' networks.

41. *Discussion.* We adopt our proposal to extend the outage reporting rules to both facilities-based and non-facilities-based interconnected VoIP service providers because both types of providers are subject to the same statutory and regulatory duties to provide E9-1-1, and subscribers of non-facilities-based interconnected VoIP services should benefit from our work with industry to ensure robust access to emergency services just as subscribers of facilities-based interconnected VoIP and traditional services do.

42. Accounting for technical differences between facilities-based and non-facilities based interconnected VoIP service providers, we require non-facilities-based VoIP service providers to report service outages that involve facilities that they own, operate, lease, or otherwise utilize. Non-facilities-based VoIP providers must report service outages that meet the threshold to the extent that they have access to information on service outages affecting their customers. As both facilities- and non-facilities-based interconnected VoIP providers are able to use NMS to determine the connectivity of their end-devices, we expect that they will be able to report on the loss of service and/or connectivity to their customers' terminals. The non-facilities VoIP providers may not be able to tell where connectivity has failed if the failure has occurred in another provider's network, but it can tell that its call management cannot reach the end-user devices, and thus, an outage has occurred that affects its customers. They should be able to report significant outages where their call management systems have lost connectivity to their customers' end-user devices. Also, even where broadband networks provide facilities-based VoIP service, there will still be a number of end-users that will use a non-facilities-based interconnected VoIP service instead of the broadband service associated with the facilities-based interconnected VoIP service provider. Thus, the Commission would not know the true loss of voice service to end-users, as it is actually facilities-based plus non-facilities-based outages that should be counted. Thus, we will require both facilities-based and non-facilities-based interconnected VoIP to report service outages.

43. *Definition of Outage.* We conclude that the current Part 4 definition of "outage" should apply also to outages of interconnected VoIP service. Currently

under Part 4 of our rules, an "outage" is defined to include "a significant degradation in the ability of an end user to establish and maintain a channel of communication as a result of failure or degradation in the performance of a communications provider's network." Our current rules tailor the definition of a reportable significant degradation to communications over cable, telephony carrier tandem, satellite, SS7, wireless, or wireline facilities. Broadband networks operate differently than legacy networks, so the impact of outages is likely to be different. This difference does not appear to require a different definition of outage for reporting purposes, so in the NPRM, the Commission proposed to apply the existing definition of outage to interconnected VoIP, tailored to the characteristics of the broadband technologies. In the NPRM, the Commission also proposed a broad standard of a "loss of generally-useful availability and connectivity" to represent the degradation in the performance of a communication provider's network and sought comment on packet loss, round-trip latency, and jitter as appropriate metrics to trigger the outage reporting.

44. *Comments.* Many commenting parties support applying the current Part 4 definition of an "outage" to interconnected VoIP service providers. Other parties raise concerns with the definition of "outage." CTIA is concerned about a regulatory scheme for VoIP service that would treat perceived or actual performance degradation as a reportable outage. MegaPath states that the current outage definition is overly broad and fails to take into account the unique characteristics of the broadband network.

45. Several commenting parties do not support the concept of "loss of generally-useful availability or connectivity" in differentiating among outages. MetroPCS argues that a broad standard of "loss of generally-useful availability and connectivity" exacerbates the problem of precisely associating an outage with underlying network conditions. Vonage argues that the measures proposed in the NPRM—packet loss, latency, and jitter—do not relate to actual outages, but are instead measures of call quality. Vonage further argues that the collection of such quality of service information simply will not indicate when a VoIP customer loses the ability to make an emergency call.

47. *Discussion.* We apply to interconnected VoIP services the current Part 4 definition of an "outage" as "a significant degradation in the ability of an end user to establish and maintain a

channel of communications as a result of failure or degradation in the performance of a communications provider's network." Yet, the triggering criteria for a reportable "outage" for interconnected VoIP outage reporting purposes that we adopt today excludes the concept of a "loss of generally-useful availability and connectivity" proposed in the NPRM based on performance degradations. We defer a decision on that issue. For the purposes of the rules we adopt today, a "significant degradation" resulting in "the complete loss of service or connectivity to customers" is a reportable outage if it meets the reporting criteria and thresholds.

47. We are persuaded by arguments that the proposed reporting of an interconnected VoIP outage be based on the "the complete loss of service or connectivity to customers." We agree with the rationale that triggering the reporting of an interconnected VoIP outage based on the loss of a user's ability to make or receive a call, as opposed to the loss of generally-useful availability and connectivity, as measured by packet loss, latency, and jitter standards, would avoid the need to revise packet loss, latency, and jitter standards as providers continue to improve performance.

48. Furthermore, we accept that determining what constitutes a "loss of generally-useful availability and connectivity" in a broadband environment is considerably more complicated than in the legacy network context. In the environment in which interconnected VoIP service operates, voice is a real-time application that utilizes broadband connectivity and is more sensitive to network impairments than non-real-time applications such as email. Although we believe performance degradations affect the ability of facilities-based and non-facilities-based interconnected VoIP service providers to establish and maintain 9-1-1 calls, adopting bright-line reporting criteria reduces the burden on the providers while, we expect, delivering to us the information we need.

49. *Reporting Thresholds.* We conclude that the outage reporting thresholds for interconnected VoIP service outages should be similar to the existing Part 4 outage reporting thresholds. Based on how interconnected VoIP service is typically configured and provided, the NPRM proposed that a significant degradation of interconnected VoIP service exists and must be reported when an interconnected VoIP service provider has experienced an outage or service degradation for at least 30 minutes: on

any major facility that it owns, operates, leases, or otherwise utilizes; potentially affecting generally useful availability and connectivity of at least 900,000 user minutes; or otherwise potentially affecting special offices, or special facilities, including 9–1–1 PSAPs. The rule we adopt requires reporting of outages where there is a complete loss of service. We defer action on the issue of reporting outages for performance degradation that involves less than a total loss of service.

50. *Comments.* NASUCA comments that it is plausible that industry would be tracking significant performance degradation in order to compete effectively in relevant markets, but most industry commenters oppose the adoption of any performance degradation metric as a triggering mechanism for a reportable outage. The parties argue the reporting of outages should be based on actual loss of service rather than performance degradation measurements that were proposed in the NPRM. Other parties argue that requiring outage reports based on quality of service measurements would greatly increase regulatory compliance burdens and expand the obligations of interconnected VoIP service providers beyond those that apply to providers of circuit-switched telephony under the current Part 4 Rules.

51. With respect to reporting outages or service degradation as a result of a major facility failure, Verizon states that it deploys many of these elements in a redundant, diverse manner such that an outage on a given network element may have no impact on a subscriber's ability to establish and maintain a channel of communications.

52. *Discussion.* We adopt outage reporting thresholds for interconnected VoIP service outages similar to the existing Part 4 wireline and wireless communications service outage reporting thresholds. We apply to interconnected VoIP service providers the obligation to report when they have experienced, on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration: (1) That potentially affects at least 900,000 users; (2) that potentially affects any special offices and facilities (in accordance with paragraphs (a)–(d) of section 4.5); or (3) that potentially affects a 9–1–1 special facility (as defined in (e) of section 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 9–1–1 facility as the provider's contact person for communications outages at that facility,

and they shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on callers to that facility.

53. We defer action at this time on the performance degradation reporting metrics and thresholds proposed in the NPRM. Based on the record, we believe that the simpler rules we adopt today will provide a clear view into E9–1–1 compliance as well as advance the goals we have laid out above with regard to working with industry to improve performance. The rules we adopt today are more consistent with the rules we apply to other providers under the existing rules. Therefore, we will not at this time require reporting based on packet loss, latency, or jitter. Instead, we will require the reporting of an interconnected VoIP outage based on the complete loss of service or connectivity.

54. With respect to reporting outages due to major facility failures, after carefully studying the record, we will not at this time adopt the proposal in the NPRM to require outage reporting when an interconnected VoIP service experiences a major facility failure. We believe the rules, as adopted, sufficiently account for major facility failures that result in reportable outages meeting the thresholds defined. We recognize a major facility failure, depending on how the interconnected VoIP service provider has engineered those major facilities, may not necessarily result in a reportable outage meeting the thresholds, and we, therefore, do not require, at this time, the reporting of outages on this basis.

55. *Reporting Process for Outages of Interconnected VoIP Service.* We conclude that the reporting process for significant outages of interconnected VoIP service should differ in certain respects from the proposal in the NPRM. We extend the time frame for notification of an outage and reduce and the number of required submissions. The NPRM proposed to follow the current Part 4 reporting process for interconnected VoIP service providers. Under the current rules, providers are required to notify the Commission with very basic information within two hours of discovering a reportable outage, file an initial report within 72 hours, and file a final report within 30 days that provides detail on the outage. The Final Communications Outage Report must contain all potentially significant information known about the outage after a good faith effort has been made to obtain it. The current NORS process provides an electronic reporting template to facilitate outage reporting by

those currently subject to our Part 4 rules. In the NPRM, we proposed to follow the same reporting process.

56. *Comments.* The majority of parties commenting on this issue focused on the burden of filing multiple reports, and filing those reports while simultaneously seeking to resolve the network outage. Although state government commenters generally support the proposed deadlines, industry commenters argue that the proposed deadlines would be too restrictive. Opposition to the proposed reporting timeframes centers on several arguments: reporting requires critical personnel to spend time reporting instead of fixing the underlying problem; the complexity of the network makes it too difficult to report within two hours; and, to develop best practices, the only report needed is a 30-day final report.

57. *Discussion.* We are persuaded by commenters' arguments to adopt a reporting process similar to NORS, but lengthen the notification interval to allow more time for interconnected VoIP service providers to work the outage problem as opposed to reporting on the outage. We agree with MetroPCS' rationale for lengthening the initial notification in that "this change is particularly important since data networks operate differently than voice networks, and the cause of some degradations of service may not be as clearly identifiable, which can lead to inaccurate reporting, or over-reporting, under strict time constraints." Therefore, with respect to outages that meet the reporting threshold, a notification will be due within 24 hours of discovering that an outage is reportable and a final report within 30 days.

58. Verizon's suggested two-reporting system, in which a provider would file a notification within four hours and a final report within thirty days, makes more sense to us in situations that could have the potential to have a significant negative impact on the 9–1–1 infrastructure. A two-tier report system would still provide a measure of "situational awareness" to allow the Commission to become involved in significant outages early should it choose to do so. Final reports would still give the Commission the opportunity to obtain the full details within the same timeframe as it does so today. Yet, eliminating the initial report would reduce the providers' workloads, and if implemented in conjunction with a four-hour window for the notification, would likely still provide the Commission with valuable information at the outset of the outage.

59. We do not, however, adopt the 24-hour interval with respect to outages that may have a significant negative impact on the 9–1–1 infrastructure. For these outages, we adopt Verizon’s suggested two-tier reporting structure and require notification for outages that may have a significant negative impact on the 9–1–1 infrastructure within four hours and a final report within 30 days. This provides a measure of “situational awareness” to allow the Commission to become involved in significant outages early should it choose to do so. Final reports would still give the Commission the opportunity to obtain the full details within the same timeframe as it does so today. Yet, eliminating the initial report would reduce providers’ workloads considerably without harming the Commission’s ability to react in the short term or facilitate the development and application of best practices in the long term.

60. Accordingly, the Commission will require all interconnected VoIP service providers to submit electronically a Notification to the Commission within four hours of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that potentially affects a 9–1–1 special facility. In such situations, they also must notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 9–1–1 facility as the provider’s contact person for communications outages at that facility, and the provider must convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on efforts to communicate with that facility. Such timing of the Notification targets conditions in which the 9–1–1 infrastructure is most likely to experience a negative impact, and balancing costs and burdens.

61. Interconnected VoIP service providers that experience a reportable outage that does not affect a 9–1–1 special facility must submit electronically a Notification to the Commission within twenty-four hours of discovering such an outage. This timing recognizes that these outages are less likely to impact the 9–1–1 infrastructure negatively, though the ability of users to make individual 9–1–1 calls may nonetheless be impaired. This distinction also balances different potential benefits with costs and burdens.

62. Regardless of which of the two above conditions prompts the Notification, not later than 30 days after

discovering the outage, the provider must submit electronically a Final Communications Outage Report to the Commission. We adopt a very similar level of specificity in reporting content and the same electronic reporting processing as is required by NORS.

63. The process we adopt for reporting significant outages of interconnected VoIP services reduces the burden on providers from that proposed in the NPRM. Reducing the number of reports from three to two and extending the time frame for reporting will provide the Commission with the information it needs while reducing the reporting burden on the providers. It is likely that most interconnected VoIP service providers currently collect information on significant outages in the ordinary course of their business in order to serve their customers effectively. We conclude that the reporting burden is minimal and well-justified by the benefits to 9–1–1 reliability.

E. Part 4 Rules and Voice Service—New Wireless Spectrum Bands

64. We clarify that Part 4 of the rules currently covers all providers of Commercial Mobile Radio Service (CMRS) voice (and paging) service regardless in which spectrum band the service is provided and that the process that applies to reporting outages of these services should be the process in the current Part 4 rules. In 2004, when the Commission extended in its outage reporting requirements beyond wireline providers in its 2004 Part 4 Order to include wireless providers, the Commission enumerated several types of licensees providing wireless service that would be covered by the Part 4 outage reporting obligations. Since that time, licensing in additional spectrum bands, e.g., Advanced Wireless Services (AWS) and 700 MHz licensing, has become available for wireless services. Our 2004 Part 4 Order suggests that the Commission intended to extend the scope of outage reporting to include all non-wireline providers, including new technologies developed after the adoption of the decision which established the existing outage reporting rules. In the NPRM, we sought comment on whether we should amend Section 4.3(f) to clarify and reflect this meaning.

65. *Comments.* MetroPCS argues that competition and innovation are best served by not extending the current outage reporting rules to new spectrum bands or technologies. It, however, recognizes that if the Commission were to adopt MetroPCS’s recommendation to not extend the current Part 4 rules to licensees in the AWS and 700 MHz spectrum bands, an unlevel wireless

service provider playing field may result. The WCS Coalition also argues that AWS, 700 MHz, WCS and other similarly situated licensees should be exempt from new Part 4 outage reporting requirements until such time as they are required to meet their initial performance or substantial service obligations under their service-specific rules.

66. *Discussion.* We believe that the existing rules apply to wireless service providers including CMRS communications providers that use cellular architecture and CMRS paging providers. That includes AWS and 700 MHz, as well as Personal Communications Service (PCS), Broadband Radio Service (BRS) that elect common carrier service, Educational Broadband Service (EBS) that elect common carrier service, and Wireless Communications Service (WCS) wireless service providers, inter alia, operating as CMRS communications providers that use cellular architecture or as CMRS paging providers, are subject to the outage reporting obligation. We also believe that our 2004 Part 4 Order establishing the existing outage reporting rules extended the scope of outage reporting to include all non-wireline providers, including new technologies developed after adoption of our 2004 Part 4 Order. To eliminate any potential for confusion, we amend the rule by eliminating specific examples of services. This elimination will avoid any potential for confusion as to the rule’s scope as new spectrum bands are authorized and/or reallocated.

67. We are not persuaded by commenters’ arguments that AWS and 700 MHz services should be exempt from outage reporting requirements. To provide an exemption for AWS and 700 MHz would lead to an unlevel playing field among competing mobile service providers. These newer wireless technologies are forming the core of major deployments where an outage could impact an increasingly large number of users.

68. *Reporting Process.* We conclude that the reporting process as reflected in the existing reporting structure in NORS should be the same for AWS and 700 MHz wireless service providers as for the other wireless service providers. Since we have clarified that section 4.3(f) should be read broadly to include such services as AWS and 700 MHz as among those wireless service providers covered by the Part 4 reporting obligations, the technical requirements for making the reports used for these other wireless service providers should also apply to AWS and 700 MHz service

providers. We see no reason that would warrant different treatment.

IV. Sharing of Information and Confidentiality

69. We will apply the same confidential treatment and restricted information sharing to reports of interconnected VoIP service outages as currently apply to outage reports of services already subject to Part 4 of the rules. The NPRM proposed to treat outage reports filed with respect to interconnected VoIP service as presumptively confidential, the same manner outage reporting data is currently treated under Part 4. The NPRM also sought comment on making aggregated information across companies public, and whether the Commission should share this new outage information with other Federal agencies on a presumptively confidential basis.

70. *Comments.* Most commenters addressing the issue support treating reported information as presumptively confidential. ATIS, AT&T, CenturyLink, and New York PSC support the Commission's sharing of information with other Federal agencies. AT&T, CenturyLink, ATIS, and WISPA do not oppose the public disclosure of aggregated outage information provided the individual service provider data will not be identified. Telecommunications Industry Association (TIA) opposes the public disclosure of the aggregated information, arguing that the Commission has acknowledged that "disclosure of outage reporting information to the public could present an unacceptable risk of more effective terrorist activity."

71. *Discussion.* We direct that individual outage reports of interconnected VoIP service providers also be treated on a presumptively confidential basis, that sharing of such reports with other Federal agencies, as needed, be conducted on the same basis, and that aggregated information across providers may be publicly reported. The Commission makes existing outage reports available to the U.S. Department of Homeland Security (DHS) pursuant to the authority of DHS under the Homeland Security Act of 2002. Sharing confidential materials with other Federal agencies is governed by Section 0.442 of the Commission's rules, which provides that the Commission may share with other Federal agencies materials received under a request for confidential treatment or that are presumptively confidential, and the confidentiality of the records travels with the records. The approach here is identical to the one we took with regard

to outage reports from traditional providers subject to the existing Part 4 rules; we are aware of no problems resulting from the current approach.

V. Voluntary Dialogue on Internet Service Outage Issues

72. The NPRM addressed whether the Commission should extend its outage reporting requirements to significant outages of broadband Internet service, and if so, what outage metrics and thresholds should apply. The technical issues involved in identifying and reporting such outages require further study. The record in this proceeding shows a willingness by broadband Internet service providers to participate in a voluntary process to improve the Commission's understanding of the underlying technical issues associated with broadband Internet service outages to assist public safety and first responders.

VI. Conclusion

73. We adopt outage reporting requirements for interconnected VoIP service providers and conclude that this action will best serve the public interest by enabling the Commission to obtain the necessary information regarding services disruptions in an efficient and expeditious manner. This action addresses the need for information on service disruptions that could affect homeland security, public health and safety, including the reliability of the Nation's 9-1-1 system. This action takes into account the associated costs and burdens, the trend in greater VoIP service usage and its potential impact on the Nation's 9-1-1 infrastructure, and the increasing importance of IP networks.

VII. Procedural Matters

A. Accessible Formats

74. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

B. Regulatory Flexibility Analysis

75. As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The FRFA is set forth in Appendix B of the document.

C. Paperwork Reduction Act Analysis

76. The Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other interested parties are invited to comment on the new information collection requirements contained in this proceeding.

77. We note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506 (c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix B, *infra*.

D. Congressional Review Act

78. The Commission will send a copy of the Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), see 5 U.S.C. 801(a)(1)(A).

E. Final Regulatory Flexibility Analysis

79. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the NPRM in PS Docket No. 11-82. The Commission sought written comment on the proposals in this docket, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

VIII. Ordering Clauses

80. Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i)-(k), 4(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 615a-1, 621(b)(3), 621(d), and 1302(a), and 1302(b) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)-(k), 154(o), 218, 219, 230, 256, 301, 302(a), 303(f), 303(g), 303(j), 303(r), 403, 615a-1, 621(b)(3), 621(d), 1302(a), and 1302(b) and Section 1704 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998, 44 U.S.C. 3504, this Report and Order in PS Docket No. 11-82 *is adopted* and that Part 4 of the Commission's Rules, 47 CFR part 4 is amended as set forth in Appendix C.

81. *It is further ordered* that the rules in this document contain information collection requirements that have not

been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

82. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 4

Communications common carriers, Communications equipment.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 4 as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

■ 1. The authority for part 4 is revised to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 154, 155, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b).

■ 2. Section 4.3 is amended by revising paragraph (f) and redesignating paragraph (h) as paragraph (i) and adding new paragraph (h) to read as follows:

§ 4.3 Communications providers covered by the requirements of this part.

(f) *Wireless service providers* include Commercial Mobile Radio Service communications providers that use cellular architecture and CMRS paging providers. *See* § 20.9 of this chapter for the definition of Commercial Mobile Radio Service. Also included are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications.

(h) *Interconnected Voice over Internet Protocol (VoIP) providers* are providers of interconnected VoIP service. *See* § 9.3 of this chapter for the definition of interconnected VoIP service. Such providers may be facilities-based or non-facilities-based. Also included are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications.

■ 3. Section 4.7 is amended by revising paragraphs (e)(1) and (2) as follows:

§ 4.7 Definitions of metrics used to determine the general outage-reporting threshold criteria.

* * * * *

(e) * * *

(1) Assigned telephone number minutes (as defined in paragraph (c) of this section), for telephony, including non-mobile interconnected VoIP telephony, and for those paging networks in which each individual user is assigned a telephone number;

(2) The mathematical result of multiplying the duration of an outage, expressed in minutes, by the number of end users potentially affected by the outage, for all other forms of communications. For wireless service providers and interconnected VoIP service providers to mobile users, the number of potentially affected users should be determined by multiplying the simultaneous call capacity of the affected equipment by a concentration ratio of 8.

* * * * *

■ 4. Section 4.9 is amended by adding paragraph (g) to read as follows:

§ 4.9 Outage reporting requirements—threshold criteria.

* * * * *

(g) *Interconnected VoIP Service Providers.* (1) All interconnected VoIP service providers shall submit electronically a Notification to the Commission:

(i) Within 240 minutes of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration that potentially affects a 9–1–1 special facility (as defined in (e) of § 4.5), in which case they also shall notify, as soon as possible by telephone or other electronic means, any official who has been designated by the management of the affected 9–1–1 facility as the provider's contact person for communications outages at that facility, and the provider shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on efforts to communicate with that facility; or

(ii) Within 24 hours of discovering that they have experienced on any facilities that they own, operate, lease, or otherwise utilize, an outage of at least 30 minutes duration:

(A) That potentially affects at least 900,000 user minutes of interconnected VoIP service and results in complete loss of service; or

(B) That potentially affects any special offices and facilities (in accordance with paragraphs § 4.5(a) through (d)).

(2) Not later than thirty days after discovering the outage, the provider shall submit electronically a Final Communications Outage Report to the Commission. The Notification and Final reports shall comply with all of the requirements of § 4.11.

[FR Doc. 2012–9749 Filed 4–26–12; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120208116–2416–03]

RIN 0648–BB83

Fisheries of the Northeastern United States; 2012–2013 Northeast Skate Complex Fishery Specifications

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

ACTION: Final rule.

SUMMARY: This rule implements catch limits and associated measures for the Northeast skate complex fishery for the 2012–2013 fishing years. The action was developed by the New England Fishery Management Council pursuant to the provisions of the Northeast Skate Complex Fishery Management Plan. The catch limits are supported by the best available scientific information and reflect recent increases in skate biomass. **DATES:** This rule is effective May 1, 2012.

ADDRESSES: An environmental assessment (EA) was prepared that describes the action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273; fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) is responsible for developing management measures for skate fisheries in the northeastern U.S. through the Northeast Skate Complex Fishery Management Plan (Skate FMP). Seven skate species are managed under the Skate FMP: Winter, little, thorny, barndoor, smooth, clearnose, and rosette. The Council's Scientific and Statistical Committee reviews the best available information on the status of skate populations and makes recommendations on acceptable biological catch (ABC) for the skate complex (all seven species). This recommendation is then used as the basis for catch limits and other management measures for the skate fisheries.

A detailed description of how the 2012–2013 skate ABC and associated specification measures were derived is provided in the proposed rule for this action (February 22, 2012, 77 FR 10463), and in its supplementary materials (see **ADDRESSES**). The final approved specifications for the 2012–2013 skate fishery are described below, and are mostly consistent with the measures implemented by Secretarial emergency action during the 2011 fishing year (October 28, 2011, 76 FR 66856), except as noted.

Final Measures

NMFS is implementing the following specifications for the skate fishery for the 2012–2013 fishing years:

1. Skate ABC and annual catch limit (ACL) of 50,435 mt;
2. Annual catch target (ACT) of 37,826 mt;
3. Total allowable landings (TAL) of 21,561 mt (the skate wing fishery is allocated 66.5 percent of the TAL (14,338 mt) and the skate bait fishery is allocated 33.5 percent of the TAL (7,223 mt, divided into three seasons according to the regulations at § 648.322));
4. The skate bait possession limit is increased from 20,000 lb (9,072 kg) to 25,000 lb (11,340 kg) whole weight per trip for vessels carrying a valid Skate Bait Letter of Authorization; and,
5. The skate wing possession limits will remain at status quo levels, as defined in § 648.322(b): 2,600 lb (1,179 kg) wing weight per trip for Season I (May 1 through August 31), and 4,100 lb (1,860 kg) wing weight per trip for Season II (September 1 through April 30) for vessels fishing on a Northeast Multispecies, Monkfish, or Scallop Day-at-Sea. The Northeast Multispecies Category-B Day-at-Sea possession limit remains at 220 lb (100 kg) wing weight

per trip, and the non-Day-at-Sea incidental possession limit remains at 500 lb (227 kg) wing weight per trip.

The proposed rule included reductions to the skate wing possession limits, as recommended by the Council, in an effort to prolong the fishing season and avoid implementation of the incidental skate wing possession limit before the end of the fishing year (i.e., closure of the directed skate wing fishery). The possession limit analysis used by the Council was based on skate landing rates in 2010 and early 2011 when landing rates were particularly high. However, landing rates slowed during 2011, and as of March 31, 2012, the wing fishery only landed 77 percent of its TAL, and is not projected to land its entire TAL before the end of the fishing year. Upon the reasonable assumption that landing rates in 2012 and 2013 will be similar to this year's, implementing the reduced possession limits recommended by the Council may prevent the TAL from being harvested. Therefore, there is no justification to reduce the skate wing possession limits for the 2012–2013 fishing years, and the proposed reduction is disapproved. The skate wing possession limits will remain at status quo levels.

For the reasons described in the proposed rule and environmental assessment for this action (see **ADDRESSES**), this final rule implements updates to stock status determination criteria for skates that reflect the most recent scientific information. These updates include refinement of the survey strata used for determining the stock status of each skate species, and adjusts the overfishing definition for clearnose skate. Overfishing would be deemed to be occurring if the 3-year moving average trawl survey biomass of clearnose skate declines by 40 percent or more.

Additionally, this final rule implements the requirement that skate bait transfers at sea, as recorded on vessel trip reports, be counted against the skate bait fishery quotas. Recent analysis indicated that bait transfers at sea, on average, represented approximately 18 percent of total skate landings, and need to be considered when monitoring catch.

Finally, in order to be consistent with the requirements of Amendment 3, this final rule removes a reference to Northeast multispecies sectors in the skate wing possession limit regulations found at § 648.322(b). The skate wing possession limits were not intended to apply to sector vessels, and this reference should have been removed

from the Amendment 3 final rule (June 16, 2010, 75 FR 34049).

Comments and Responses

On February 22, 2012, NMFS published a proposed rule soliciting public comment on the proposed skate fishery specifications, and accepted comments through March 23, 2012. NMFS received seven comments on the proposed rule. This section summarizes the principal comments contained in the comment letters, and NMFS's response to those comments.

Comment 1: Four commercial fishing groups and the Massachusetts Division of Marine Fisheries were supportive of the proposed TALs, but were opposed to reducing the skate wing possession limits.

Response: NMFS agrees that the TALs reflect the best available science and are consistent with the requirements of the Skate FMP. NMFS also agrees that the skate wing possession limits do not need to be reduced as more fully discussed above in the preamble. Therefore, this final rule maintains the status quo possession limits for the skate wing fishery through the 2013 fishing year.

Comment 2: Three of the commercial fishing groups commented that the prohibition on possession of barndoor skate should be removed, and an incidental possession limit of barndoor skate wings should be implemented.

Response: The issue of barndoor skate possession is beyond the scope of these specifications, and was not part of the proposed rule. Therefore, this issue cannot be added to this final rule. To date, the Council has rejected measures to allow possession of this species, which is no longer overfished, but not yet rebuilt to its target population size. The Council may reconsider species prohibitions in future actions.

Comment 3: One commenter was generally critical of NMFS and opposed to the proposed catch limits. The commenter suggested that skate stock status was inaccurate, and skate quotas should be reduced by 50 percent.

Response: No justification was offered by the commenter to indicate that the proposed specifications were based on inaccurate science. Justification for reducing the skate quotas by 50 percent was also not provided. These specifications are based upon the best available scientific information, as required by the Magnuson-Stevens Act. Skate stock status determinations were developed following stock assessments conducted by the Northeast Fisheries Science Center and rigorously peer-reviewed by external fishery scientists. The skate ABC was recommended by

the Council's Scientific and Statistical Committee, and was based upon precautionary catch levels designed to promote biomass increases in all skates. Therefore, the commenter's assertions are unfounded, and NMFS disagrees that quotas should be reduced.

Comment 4: One commenter was opposed to the proposed catch limits due to concerns of the impacts on thorny skate, a prohibited species that is currently overfished. The commenter argued that these specifications would promote illegal landings of thorny skate, increase discards, and ultimately hinder the rebuilding of this stock. The commenter was particularly critical of NMFS's lack of documented enforcement actions against vessels that may have illegally landed thorny skates. The commenter argued that vessels should be required to report all skate landings by species, skates should only be landed in whole form to improve dockside species identification and enforcement, and additional measures should be implemented to help rebuild thorny skates (e.g., time/area closures in essential thorny skate habitats).

Response: In response to similar comments received on the 2011 emergency action (October 28, 2011, 76 FR 66856), NMFS disagrees that these specifications would have significant negative impacts on thorny skates. NMFS acknowledges the overfished condition and vulnerability of thorny skates, but the skate ABC recommended by the Council was specified at a level that should help promote long-term biomass increases in this stock (which needs to be rebuilt by 2028). Fishing effort in the skate fishery is not greatly affected by skate catch limits, as the vast majority of vessels that land skates catch them incidentally to trips targeting groundfish or monkfish. Effort in these fisheries has declined in recent years, and may decline further in coming years. Discards of all skates have declined in recent years. Therefore, increasing skate catch limits is not expected to promote more fishing effort for, or discards of, thorny skates.

The lack of documented enforcement actions citing illegal possession of thorny skates is not reflective of a total lack of enforcement of this prohibition. As described in NMFS's negative 90-day finding on a petition to list thorny skate as endangered under the Endangered Species Act (December 20, 2011, 76 FR 78891), between 2007 and 2010, thorny skate wings were found in less than 1 percent of sampled skate wing landings. Therefore, there is no basis for concluding that enforcement of this provision is inadequate, and NMFS has ongoing education and outreach efforts

in the skate fishery to improve prohibited species compliance (e.g., <http://www.nero.noaa.gov/sfd/sfdskate.html>). If prohibited species regulations were not being adequately enforced, port sampling would reveal more frequent landings of thorny skate wings. NMFS agrees that landing skates in whole form would improve monitoring of species-specific landings, and help further enforce species prohibitions. However, the Council has rejected such requirements for the skate fishery to date. In addition to closed areas and other measures, the Council may reconsider such measures to help rebuild thorny skate in future actions.

Changes From the Proposed Rule

In § 648.322(b)(1), the proposed change to the skate wing possession limits are not included in this final rule due to the disapproval of this proposed measure.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a determination that this rule is consistent with the Skate FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Office of Management and Budget has determined that this rule is not significant for the purposes of Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement for a 30-day delay in effectiveness under the provisions of section 553(d) of the Administrative Procedure Act. This action would result in a benefit of additional revenues associated with a skate bait possession limit that is 25 percent higher, and provides more opportunity for skate bait vessels to harvest their full allocation of quota. This rule increases the possession limit for skate bait and, consequently, extends fishing opportunity for fishermen that would otherwise be constrained under the current possession limits, which are unnecessarily restrictive. If this rulemaking was delayed to allow for a 30-day delay in effectiveness, the fishery would likely forego some amount of landings and revenues during the delay period. While these restrictions would be alleviated after this rule becomes effective, fishermen may be not able to recoup the lost economic opportunity of foregone landings of skate bait that would result from a delay in the effectiveness of this action. For these reasons, the AA finds good cause to waive the 30-day delay

and to implement this rule on May 1, 2012.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, relevant analyses contained in the action and its EA, and a summary of the analyses completed to support the action in this rule. A copy of the analyses done in the action and EA are available from the Council (see **ADDRESSES**). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Seven comments were received on the proposed rule. For a summary of the comments, and NMFS's responses to them, see the Comments and Responses section above. None of the comments raised issues or concerns related to the IRFA, and no changes were made to the rule as a result of the comments.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

These final specifications will impact vessels that hold Federal open access commercial skate permits that participate in the skate fishery. According to the Framework 1 final rule and its Final Regulatory Flexibility Analysis (76 FR 28328, May 17, 2011), as of December 31, 2010, the maximum number of small fishing entities (as defined by the SBA) that may be affected by this action is 2,607 entities (number of skate permit holders). However, during fishing year 2010, only 601 vessels landed any amount of skate.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with other Federal rules.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

The purpose of this action is to specify catch limits and other management measures that reflect the best available scientific information and the requirements of the Skate FMP. The Council considered one ACL alternative (no action) to the preferred alternative being implemented. The preferred ACL and TALs are expected to extend the duration of the fishing season relative to the no action alternative, and help to prevent the negative economic impacts that would be associated with an early closure of the directed skate fisheries. Under the no action alternative, the skate catch limit would remain at 41,080 mt. This alternative was not selected because it does not represent the best available scientific information, and would likely result in negative economic impacts as compared to the preferred alternative. Compared to the other alternative considered, this action is expected to better maximize profitability for the skate fishery by allowing higher levels of landings for the duration of the 2012 and 2013 fishing years while still being consistent with requirements of the Magnuson-Stevens Act and other applicable law. Therefore, the economic impacts resulting from this action as compared to the no action alternative are positive, since the action would provide additional fishing opportunity for vessels participating in the skate fishery for the 2012–2013 fishing years.

The action is almost certain to result in greater revenue from skate landings. Based on recent landing information, the skate fishery is able to land close to the full amount of skates allowable under the quotas. The estimated potential revenue from the sale of skates under the revised catch limits is approximately \$9.0 million, compared to \$5.8 million if this action were not implemented. Due to the implications of closing the directed skate fisheries early in the fishing year, the higher catch limits associated with this action will result in additional revenue if fishing is prolonged. According to analyses in Framework 1, vessels that participate in the skate fishery derive most (an average of 96 percent) of their revenues from other fisheries (e.g., groundfish, monkfish). Therefore, relative to total fishing revenues, catch limits of other species would be expected to have more significant economic impacts than revenues derived from skates alone. However, as skate prices have begun

increasing in recent years, more vessels are deriving a greater proportion of their income from skates.

The final possession limits in the skate wing and bait fisheries are also expected to result in positive economic impacts compared to the other alternatives considered. The reduced skate wing possession limits described in the proposed rule would have slightly reduced trip level revenues of skates. Maintaining the status quo skate wing possession limits, as implemented in this final rule, will help maintain consistent trip level revenues for skate wings, as well as allow the fishery to operate throughout the fishing year without closures. The increased skate bait possession limit implemented by this final rule is also expected to increase trip level revenue for bait skates, and may help the bait fishery land more of its allocated TAL in 2012 and 2013.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the skate fishery. The guide and this final rule will be available upon request, and posted on the Northeast Regional Office’s Web site at www.nero.noaa.gov.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 24, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.322, revise paragraph (b) introductory text and paragraph (c)(4) to read as follows:

§ 648.322 Skate allocation, possession, and landing provisions.

* * * * *

(b) *Skate wing possession and landing limits.* A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, and fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, unless otherwise exempted under § 648.80 or paragraph (c) of this section, may fish for, possess, and/or land up to the allowable trip limits specified as follows:

* * * * *

(c) * * *

(4) The vessel owner or operator possesses or lands no more than 25,000 lb (11,340 kg) of only whole skates less than 23 inches (58.42 cm) total length, and does not possess or land any skate wings or whole skates greater than 23 inches (58.42 cm) total length.

* * * * *

[FR Doc. 2012–10240 Filed 4–26–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120201086–2418–02]

RIN 0648–XA904

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2012 Atlantic Bluefish Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues final specifications for the 2012 Atlantic bluefish fishery, including an annual catch limit, total allowable landings, a commercial quota and recreational harvest limit, and a recreational possession limit. This action establishes the allowable 2012 harvest levels and other management measures to achieve the target fishing mortality rate, consistent with the Atlantic Bluefish Fishery Management Plan.

DATES: The final specifications for the 2012 Atlantic bluefish fishery are

effective May 29, 2012, through December 31, 2012.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The specifications document is also accessible via the Internet at: <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, (978) 281-9224.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic bluefish fishery is managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). The management unit for bluefish specified in the Atlantic Bluefish Fishery Management Plan (FMP) is U.S. waters of the western Atlantic Ocean. Regulations implementing the FMP appear at 50 CFR part 648, subparts A and J. The regulations requiring annual specifications are found at § 648.160.

The FMP requires the Council to recommend, on an annual basis, annual catch limit (ACL), annual catch target (ACT), and total allowable landings (TAL) that will control fishing mortality (F). The Council may also recommend a research set-aside (RSA) quota, which is deducted from the bluefish TALs (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors.

Pursuant to § 648.162, the annual review process for bluefish requires that the Council's Bluefish Monitoring Committee and Scientific and Statistical Committee (SSC) review and make

recommendations based on the best available data. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the NMFS Northeast Regional Administrator. Because this FMP is a joint plan, the Commission also meets during the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**, and after considering public comment, NMFS publishes final specifications in the **Federal Register**. A proposed rule for this action published in the **Federal Register** on February 15, 2012 (77 FR 8776), and comments were accepted through March 1, 2012.

Final 2012 Specifications

A description of the process used to estimate bluefish stock status and fishing mortality, as well as the process for deriving the ACL and associated quotas and harvest limits, is provided in the proposed rule and in the bluefish regulations at §§ 648.160-162. The stock is not overfished or experiencing overfishing, and the catch limits described below reflect the best available scientific information on bluefish. The final 2012 bluefish ABC, ACL, and ACT are specified at 32.044 million lb (14,535 mt).

The ACT is initially allocated between the recreational fishery (83 percent = 26.597 million lb, 12,064 mt) and the commercial fishery (17 percent = 5.448 million lb, 2,471 mt). After deducting an estimate of recreational discards (commercial discards are considered negligible), the recreational TAL would be 22.819 million lb (10,350

mt) and the commercial TAL would be 5.448 million lb (2,471 mt).

However, the FMP specifies that, if 17 percent of the ACT is less than 10.5 million lb, and recreational fishery is not projected to land its harvest limit for the upcoming year, the commercial fishery may be allocated up to 10.5 million lb as its quota, provided that the combination of the projected recreational landings and the commercial quota does not exceed the ACT. The recreational harvest limit (RHL) would then be adjusted downward so that the ACT would be unchanged. Based on updated data, the recreational fishery landed 11,892,696 lb (5,394 mt) of bluefish in 2011. Assuming recreational landings in 2012 are consistent with those from 2011, the Council's proposed transfer of 5.052 million lb (2,291 mt) from the recreational sector to the commercial sector can be approved. This results in an adjusted commercial quota of 10.5 million lb (4,763 mt), and an adjusted RHL of 17.766 million lb (8,059 mt).

Final RSA, Commercial Quota, and RHL

Three projects that will utilize bluefish RSA were approved by NOAA's Grants Management Division. A total RSA quota of 491,672 lb (223 mt) was approved for use by these projects during 2012. Proportional adjustments of this amount to the commercial and recreational allocations results in a final commercial quota of 10.317 million lb (4,680 mt) and a final RHL of 17.457 million lb (7,919 mt).

Final Recreational Possession Limit

The current recreational possession limit of up to 15 fish per person is maintained to achieve the RHL.

Final State Commercial Allocations

The final state commercial allocations of the 2012 commercial quota are shown in Table 1, based on the percentages specified in the FMP.

TABLE 1—FINAL BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2012
[Including RSA deductions]

State	Percent share	2012 council-final commercial quota (lb)	2012 council-final commercial quota (kg)
ME	0.6685	68,972	31,285
NH	0.4145	42,765	19,398
MA	6.7167	692,986	314,333
RI	6.8081	702,416	318,611
CT	1.2663	130,649	59,261
NY	10.3851	1,071,466	486,009
NJ	14.8162	1,528,639	693,379
DE	1.8782	193,781	87,897
MD	3.0018	309,707	140,481
VA	11.8795	1,225,649	555,945

TABLE 1—FINAL BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2012—Continued
[Including RSA deductions]

State	Percent share	2012 council-final commercial quota (lb)	2012 council-final commercial quota (kg)
NC	32.0608	3,307,827	1,500,405
SC	0.0352	3,632	1,647
GA	0.0095	980	445
FL	10.0597	1,037,894	470,781
Total	100.0001	10,317,362	4,679,878

Comments and Responses

The public comment period for the proposed rule ended on March 1, 2012. Five comments were received on the proposed rule. A summary and response to the concerns raised by the commenters are included below.

Comment 1: One commenter generally criticized the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission for using poor data and allowing overharvest of bluefish, but provided no clear evidence to support their claims.

Response: Atlantic bluefish are not overfished, nor are they subject to overfishing; therefore, there is no scientific basis for making changes to the quotas based on this comment. NMFS used the best scientific information available and selected specifications for the bluefish fishery that are consistent with the FMP and recommendations of the Council.

Comment 2: Three commenters opposed the quota transfer from the recreational sector to the commercial sector. They suggested that the transfer would increase the total takes from the fishery overall and allow the commercial sector to harvest the most mature fish which would lead to an unsustainable fishery. Additionally, they commented that the increased commercial quota as a result of the transfer allows commercial fishermen to take fish once reserved for the recreational sector.

Response: These comments included no scientific justifications for decreasing or eliminating the transfer between sectors. NMFS used the best scientific information available and selected specifications for the bluefish fishery that are consistent with the FMP and recommendations of the Council. Bluefish are not considered overfished or subject to overfishing, and the recreational sector is not projected to harvest its allocation. Sufficient analysis and scientific justification for NMFS's action in this final rule are contained within the supporting documents.

Comment 3: A charter/party boat operator in the Atlantic bluefish fishery in Massachusetts was supportive of the proposed ACL.

Response: NMFS agrees that the approved ACL meets the requirements of the Atlantic Bluefish FMP.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule is exempt from review under Executive Order 12866. This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

The FRFA included in this final rule was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA and a summary of analyses completed to support the action. No significant issues were raised by the public comment in response to the IRFA, other than the comment noted above. A public copy of the EA/RIR/IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are contained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Five comments were submitted on the proposed rule. However, none were specific to the IRFA or to the economic impacts of the proposed rule more generally.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

Small businesses operating in commercial and recreational (i.e., party and charter vessel operations) fisheries have been defined by the Small Business Administration as firms with gross revenues of up to \$4.0 and \$6.5 million, respectively. The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for Atlantic bluefish, as well as owners of vessels that fish for Atlantic bluefish in state waters. All federally permitted vessels fall into the definition of small businesses; thus, there would be no disproportionate impacts between large and small entities as a result of the final rule.

An active participant in the commercial sector was defined as any vessel that reported having landed 1 or more lb (0.45 kg) in the Atlantic bluefish fishery in 2010 (the last year for which there are complete data). The active participants in the commercial sector were defined using two sets of data. The Northeast seafood dealer reports were used to identify 718 vessels that landed bluefish in states from Maine through North Carolina in 2010. However, the Northeast dealer database does not provide information about fishery participation in South Carolina, Georgia, or Florida. South Atlantic Trip Ticket reports were used to identify 732 vessels that landed bluefish in North Carolina, and 827 vessels that landed bluefish on Florida's east coast. Some of these vessels were also identified in the Northeast dealer data; therefore, double counting is possible. Bluefish landings in South Carolina and Georgia were near zero in 2010, representing a negligible proportion of the total bluefish landings along the Atlantic Coast. Therefore, this analysis assumed that no vessel activity for these two states took place in 2010. In recent years, approximately 2,063 party/charter vessels may have been

active in the bluefish fishery and/or have caught bluefish.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken To Minimize Economic Impact on Small Entities

Specification of commercial quota, recreational harvest levels, and possession limits is constrained by the conservation objectives of the FMP, under the authority of the Magnuson-Stevens Act. The commercial quota contained in this final rule is 10 percent higher than the 2011 quota and 113 percent higher than actual 2011 bluefish landings. All affected states will receive increases in their individual commercial quota allocation in comparison to their respective 2011 individual state allocations. However, the magnitude of the increase varies depending on the state's relative percent share in the total commercial quota, as specified in the FMP.

The RHL contained in this final rule is approximately 2 percent lower than the RHL in 2011. The small reduction in RHL is a reflection of a declining trend in recreational bluefish harvest in recent years. Because the 2012 RHL is greater than the total estimated recreational bluefish harvest for 2011, it does not constrain recreational bluefish harvest below a level that the fishery is anticipated to achieve. The possession limit for bluefish will remain at 15 fish per person, so there should be no impact on demand for party/charter vessel fishing and, therefore, no impact on revenues earned by party/charter vessels. No negative economic impacts on the recreational fishery are anticipated.

The impacts on revenues associated with the proposed RSA quota were analyzed and are expected to be minimal. Assuming that the full RSA quota 491,672 lb (223 mt) is landed and sold to support the proposed research projects, then all of the participants in the fishery would benefit from the improved fisheries data yielded from each project.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the Atlantic bluefish fishery.

In addition, copies of this final rule and guide (i.e., permit holder letter) are available upon request, and posted on the Northeast Regional Office's Web site at www.nero.noaa.gov.

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

Dated: April 24, 2012.

Alan D. Risenhoover,
Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012-10242 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 111220786-1781-01]

RIN 0648-XC002

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2012 commercial summer flounder quota to the Commonwealth of Virginia. NMFS is adjusting the quotas and announcing the revised commercial quota for each state involved.

DATES: Effective April 26, 2012, through December 31, 2012.

FOR FURTHER INFORMATION CONTACT:

Carly Bari, Fishery Management Specialist, 978-281-9224.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are in 50 CFR part 648, and require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i) to evaluate requests for quota transfers or combinations.

North Carolina has agreed to transfer 180,061 lb (81,674 kg) of its 2012 commercial quota to Virginia. This transfer was prompted by summer flounder landings of 12 North Carolina vessels that were granted safe harbor in Virginia due to mechanical failures, between March 2, 2012, and March 31, 2012, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. The Regional Administrator has determined that the criteria set forth in § 648.102(c)(2)(i) have been met. The revised summer flounder quotas for calendar year 2012 are: North Carolina, 1,603,359 lb (727,271 kg); and Virginia, 4,603,985 lb (2,088,332 kg).

Classification

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

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

Dated: April 24, 2012.

Carrie Selberg,

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

[FR Doc. 2012-10246 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 77, No. 82

Friday, April 27, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2011–0028]

RIN 0579–AD61

Importation of Fresh Bananas From the Philippines Into the Continental United States

Correction

In proposed rule document 2012–9063 appearing on pages 22510 through 22514 in the issue of Monday, April 16, 2012, make the following correction:

On page 22513, in the second column, under *Responses per Respondent*, “5,456” should read “5.456”.

[FR Doc. C1–2012–9063 Filed 4–26–12; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–102; NRC–2011–0189]

Petition for Rulemaking; Submitted by the Natural Resources Defense Council, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; consideration in the rulemaking process.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) will consider the issues raised in the petition for rulemaking (PRM), PRM–50–102, submitted by the Natural Resources Defense Council, Inc. (NRDC or the petitioner), in the rulemaking process. The petitioner requested that the NRC amend its regulations to require more realistic, hands-on training and exercises on Severe Accident Management Guidelines (SAMGs) and

Extensive Damage Mitigation Guidelines (EDMGs). The NRC determined that the issues raised in the PRM are appropriate for consideration and will consider them in the ongoing Fukushima Near Term Task Force (NTTF) Recommendation 8 rulemaking.

DATES: The docket for the petition for rulemaking, PRM–50–102, is closed on April 27, 2012.

ADDRESSES: Further NRC action on the issues raised by this petition will be accessible on the Federal rulemaking Web site, <http://www.regulations.gov>, by searching on Docket ID NRC–2012–0031, which is the rulemaking docket for the NTTF Recommendation 8 rulemaking.

You can access publicly available documents related to the petition, which the NRC possesses and is publicly available, using the following methods:

- *Federal Rulemaking Web Site:* Supporting materials related to this petition can be found at <http://www.regulations.gov> by searching on the Docket IDs for PRM–50–102 or the NTTF Recommendation 8 rulemaking, NRC–2011–0189 and NRC–2012–0031, respectively. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668, email: Carol.Gallagher@nrc.gov.

- *NRC’s Public Document Room (PDR):* You may examine and purchase copies of public documents at the NRC’s PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “ADAMS Public Documents” and then select “Begin Web-based ADAMS Search.” For problems with ADAMS, contact the NRC’s PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to PDR.resource@nrc.gov. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

FOR FURTHER INFORMATION CONTACT: Robert Beall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–3874; email:

Robert.Beall@nrc.gov; or Scott Sloan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–1619; email: Scott.Sloan@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petition

On September 20, 2011, the NRC published a notice of receipt (76 FR 58165) of six PRMs filed by the NRDC, including PRM–50–102. The petitioner solely and specifically cited the “Recommendations for Enhancing Reactor Safety in the 21st Century: The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident” (NTTF Report, ADAMS Accession No. ML111861807), dated July 12, 2011, as the rationale for the PRMs. For PRM–50–102, the petitioner cites Section 4.2.5, pages 46–50, of the NTTF Report, regarding the strengthening and integration of onsite emergency response capabilities such as emergency operating procedures (EOPs), SAMGs, and EDMGs. At the time of receipt of the PRMs, the Commission was still in the process of reviewing the NTTF Report, and the NRC did not institute a public comment period for the PRMs.

In PRM–50–102, the petitioner requests the NRC to institute a rulemaking proceeding applicable to nuclear facilities licensed under Title 10 of the *Code of Federal Regulations* (10 CFR) parts 50, 52, and other applicable regulations to revise 10 CFR 50.63 to require more realistic, hands-on training and exercises on SAMGs and EDMGs for all staff expected to implement the strategies and those licensee staff expected to make decisions during emergencies, including emergency coordinators and emergency directors.

Reasons for Consideration

The Commission has established a process for addressing a number of the recommendations in the NTTF Report, and the NRC determined that the issues raised in PRM–50–102 are appropriate for consideration and will consider them in the ongoing NTTF Recommendation 8 rulemaking based on Section 4.2.5 of the NTTF Report.

The public will have the opportunity to provide comments on the issues raised by the petitioner in PRM–50–102 as part of the NTTF Recommendation 8 rulemaking. The NRC will consider the

issues raised by the remaining NRDC PRMs through the process the Commission established for addressing the remaining recommendations in the NTTF Report. This PRM docket is closed.

Dated at Rockville, Maryland, this 13th day of April 2012.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2012-10193 Filed 4-26-12; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 234 and 241

RIN 2139-AA13

[Docket No. DOT-RITA-2011-0001]

Reporting of Ancillary Airline Passenger Revenues

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Notice of Public Meeting.

SUMMARY: This document announces a public meeting on a Notice of Proposed Rulemaking (NPRM) issued on July 15, 2011. The NPRM proposed changes regarding reporting of airline ancillary passenger revenues, computation of mishandled baggage rates, and collection of separate statistics for mishandled wheelchairs and scooters used by passengers with disabilities. During the public meeting, DOT staff will provide a summary of the proposals in the NPRM and seek input on costs and benefits associated with the implementation of the proposals.

DATES: *Meeting Date and Time:* The public meeting is scheduled for May 17, 2012, from 9:30 a.m. to 11:30 a.m. and from 1 p.m. to 3 p.m., Eastern Time.

ADDRESSES: The meeting will be held in the Oklahoma City Conference Room (located on the lobby level of the West Building) at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC. Attendance is open to the public; however, since access to the U.S. DOT headquarters building is controlled for security purposes, any member of the general public who plans to attend this meeting must notify the Department contacts noted below at least ten (10) calendar days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Charles E. Smith, Trial Attorney, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings,

U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), Charles.Smith@dot.gov. You may also contact Blane A. Workie, Deputy Assistant General Counsel, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590, 202-366-9342 (phone), 202-366-7152 (fax), Blane.Workie@dot.gov. TTY users may reach these individuals via the Federal Relay Service toll-free at 800-877-8339. You may obtain copies of this notice in an accessible format by contacting the above named individuals.

SUPPLEMENTARY INFORMATION: On July 15, 2011, the Department of Transportation (DOT or Department) published a notice of proposed rulemaking in the **Federal Register** proposing to collect airline ancillary revenue information in a more detailed manner, change the way mishandled baggage rates are computed from mishandled baggage reports per unit of domestic enplanements to mishandled bags per unit of checked bags, and fill a data gap by collecting separate statistics on mishandled wheelchairs and scooters used by passengers with disabilities. See 76 FR 41726. You may review comments to this NPRM at www.regulations.gov, docket no. DOT-RITA-2011-0001. The Department is holding the public meeting primarily for the purpose of obtaining additional information about current industry practices for processing and accounting for baggage and wheelchairs. This information is critical to determining the cost associated with the proposal to change the manner in which the mishandled baggage rate is calculated and the proposal to report on the number of mishandled wheelchairs/scooters. We are also interested in learning more about the costs associated with the proposal to report airline ancillary fee revenue. Interested persons may provide oral comments at the meeting. The Department will also accept written materials at the public meeting. We will place, in the public docket for this rulemaking, any materials received at the meeting, as well as a summary of the meeting.

Below are examples of questions that the Department intends to pose at the public meeting.

1. Reporting of Ancillary Fee Revenue

- What is the current industry practice regarding ancillary fee revenue reporting for the Form 41 financial data? The Department would like to

understand the process and logistics of how ancillary revenues are collected and transferred into reporting formats. It would also be helpful to know the amount of staff time required to develop the quarterly and semi-annual Form 41 reports.

- How would the aforementioned systems and processes be adapted for carriers to comply with the proposed reporting requirement?

- What new systems and processes would be necessary for carriers to comply with the proposed reporting requirement?

- What other resource requirements, e.g. additional personnel and training, would be necessary for carriers to comply with the proposed reporting requirement? What would be the dollar cost of providing those resources?

- The Department assumes that, as a matter of good business practice, airlines already collect the ancillary fee revenue identified in the proposed reporting requirement. Under this assumption, the costs of compliance with the new reporting requirement are estimated to be the necessary one-time programming costs to adapt existing computer systems (about 40 hours of programming for each carrier to capture the ancillary revenue items), in addition to any recurring annual expenses (e.g. staff time) for developing the additional reports. Are there airlines that don't already gather information about the ancillary fee revenue identified in the NPRM?

- How much lead time is necessary to implement the proposed reporting requirement?

- Is there any other information that the Department should consider regarding the reporting of ancillary fee revenue?

2. The Metric Used To Calculate Mishandled Baggage

- What is the current industry practice regarding processing and accounting for checked bags that are checked at the check-in counter, at the self-service bag drop, at the gate, or at the jet bridge? The Department would like to understand the entire process from what happens on the ground and the associated data systems when passengers check a bag, to what happens on the ground and the associated data systems when passengers claim the bag upon arrival, whether that is at the baggage carousel or at the gate or jet bridge.

- What are the existing processes and data systems associated with reporting mishandled bags? The Department would like to understand the reporting process from the time the passenger

makes a report to the time the airline provides its mishandled baggage data to DOT.

- How could the aforementioned systems and processes be adapted to accommodate the proposed reporting requirement?
- What new systems and processes would be necessary for carriers to comply with the proposed reporting requirement?
- What other resource requirements, e.g. additional personnel and training, would be necessary for carriers to comply with the proposed reporting requirement?
- What would be the dollar cost of adjustments to existing systems and processes, new systems and processes, and other resource requirements?
- The Department assumes that, as a matter of good business practice, airlines already gather and maintain information on the total number of counter-checked bags, gate-checked bags, and valet bags transported in the aircraft compartment. Under this assumption, the costs of compliance would include the adaption of the current reporting systems and processes (or, if they do not exist, the development and implementation of new systems and processes) that gather existing data for the new reporting requirements, in addition to any recurring annual expenses (e.g. staff time) for developing such reports. We are interested in learning if our assumption about current industry practice is inaccurate.
- How much lead time is necessary to implement the proposed reporting requirement?
- Is there any other information that the Department should consider regarding the metric used to calculate mishandled baggage rates?

3. The Reporting of Mishandled Wheelchairs and Scooters

- What is the current industry practice regarding processing and accounting for wheelchairs and scooters that are checked at the check-in counter, at the self-service bag drop, at the gate, or at the aircraft door? Are they accounted for separately from other baggage? The Department would like to understand the entire process from what happens on the ground and the associated data systems when passengers check their wheelchairs or scooters, to what happens on the ground and the associated data systems when passengers claim the assistive device upon arrival whether that is at the baggage carousel, the gate or jet bridge.
- What are the existing processes and data systems associated with reporting

mishandled wheelchairs and scooters transported in the cargo hold?

- How could the aforementioned systems and processes be adapted to accommodate the proposed reporting requirement?
- What new systems and processes would be necessary for carriers to comply with the proposed reporting requirement?
- What other resource requirements, e.g. additional personnel and training, would be necessary for carriers to comply with the proposed reporting requirement?
- What would be the dollar cost of adjustments to existing systems and processes, new systems and processes, and other resource requirements?
- The Department assumes that, as a matter of good business practice, airlines already gather and maintain information on damage, delay, and loss of wheelchairs and scooters transported in the aircraft cargo compartment. Under this assumption, the costs of compliance would include the adaption of the current reporting systems and processes (or, if they do not exist, the development and implementation of new systems and processes) that gather existing data for the new reporting requirements, in addition to any recurring annual expenses (e.g. staff time) for developing such reports. We are interested in learning if our assumption about current industry practice is inaccurate.
- How much lead time is necessary to implement the proposed reporting requirement?
- Is there any other information that the Department should consider regarding the reporting of mishandled wheelchairs and scooters?

Issued in Washington, DC, on April 23, 2012.

Pat Hu,

Director, Bureau of Transportation Statistics.

[FR Doc. 2012-10179 Filed 4-26-12; 8:45 am]

BILLING CODE 4910-HY-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG-2012-0276]

RIN 1625-AA08

Special Local Regulations for Marine Events; Potomac River, National Harbor Access Channel, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations during the “Swim Across the Potomac River” swimming competition, to be held on the waters of the Potomac River on July 8, 2012. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Potomac River during the event.

DATES: Comments and related material must be received by the Coast Guard on or before May 29, 2012. The Coast Guard anticipates that this proposed rule will be effective and enforced on July 8, 2012.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0276 using any one of the following methods:

(1) *Federal eRulemaking Portal:*
<http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410-576-2674, email Ronald.L.Houck@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before the end of the comment period, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

On July 8, 2012, the National Harbor Marina of Oxon Hill, Maryland, will sponsor a swimming competition across the Potomac River between Alexandria, Virginia and Oxon Hill, Maryland. The event consists of up to 250 swimmers on a 1.3-mile linear course located downriver from the Woodrow Wilson Memorial (I-495/I-95) Bridge. The swimmers will be supported by sponsor-provided watercraft. The start will be located at North Point in Jones Point Park and the finish will be located along the shore at National Harbor Marina. Portions of the swim course will cross the Potomac River federal navigation channel and the National Harbor Access Channel. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Potomac River. The regulations will be in effect from 7 a.m. to 11 a.m. on July 8, 2012. The regulated area, approximately 1,900 yards in length and 350 yards in width, extends across the entire width of the Potomac River between the Virginia and Maryland shorelines and includes all waters of the Potomac River, within lines connecting the following positions: From latitude 38°47'35" N, longitude 077°02'22" W, thence to latitude 38°47'12" N, longitude 077°00'57" W, and from latitude 38°47'24" N, longitude 077°03'03" W to latitude 38°46'54" N, longitude 077°01'09" W. The effect of this proposed rule will be to restrict general navigation in the regulated area during

the event. Vessels intending to transit the Potomac River through the regulated area, including the National Harbor Access Channel, will only be allowed to safely transit the regulated area when the Coast Guard Patrol Commander has deemed it safe to do so. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation will prevent traffic from transiting portions of the Potomac River and National Harbor Access Channel during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit safely through a portion of the regulated area, but only after the last participant has cleared that portion of the regulated area and when the Coast Guard Patrol Commander deems it safe to do so.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the effected portion of the Potomac River, including and National Harbor Access Channel, during the event.

Although this regulation prevents traffic from transiting portions of the Potomac River and the National Harbor Access Channel during the event, this proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This proposed rule would be in effect for only a limited period. Though the regulated area extends across the entire width of the river, vessel traffic may be permitted to safely transit a portion of the regulated area, but only after all participants have safely cleared that portion of the regulated area and when the Coast Guard Patrol Commander deems it safe for vessel traffic to do so. All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF-FM channel 16 (156.8 MHz). Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Coast Guard Sector Baltimore, MD. The Coast Guard will not retaliate against small entities that question or complain about this

proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

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

Protest Activities

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045,

Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR Part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sail board racing. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

2. Add a temporary section, § 100.35T05–0276 to read as follows:

§ 100.35T05–0276 Special Local Regulations for Marine Events; Potomac River, National Harbor Access Channel, MD.

(a) *Regulated area.* The following location is a regulated area: All waters of the Potomac River, within lines connecting the following positions: From 38°47'35" N, longitude 077°02'22" W, thence to latitude 38°47'12" N, longitude 077°00'57" W, and from latitude 38°47'24" N, longitude 077°03'03" W to latitude 38°46'54" N, longitude 077°01'09" W. All coordinates reference Datum NAD 1983.

(b) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations:* (1) The Coast Guard Patrol Commander may forbid and control the movement of all vessels and persons in the regulated area. When hailed or signaled by an official patrol vessel, a vessel or person in the regulated area shall immediately comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) Persons desiring to transit the regulated area must first obtain authorization from the Captain of the Port Baltimore or his designated representative. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz). All Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

(3) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–

FM marine band radio announcing specific event date and times.

(d) *Enforcement period:* This section will be enforced from 7 a.m. until 11 a.m. on July 8, 2012.

Dated: April 4, 2012.

Mark P. O'Malley,

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

[FR Doc. 2012–10252 Filed 4–26–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN46

Notice of Information and Evidence Necessary To Substantiate Claim

AGENCY: Department of Veterans Affairs.

ACTION: Withdrawal of proposed rule.

SUMMARY: In a document published in the **Federal Register** on December 11, 2009, the Department of Veterans Affairs (VA) proposed to amend its regulations regarding VA's duty to notify a claimant of the information and evidence necessary to substantiate a claim. This document withdraws that proposed rule.

DATES: The proposed rule is withdrawn as of April 27, 2012.

FOR FURTHER INFORMATION CONTACT: Sarah W. Fusina, Legal Consultant, Regulations Staff (211D), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 11, 2009, VA published a proposed rule in the **Federal Register** (74 FR 65702), notifying the public of VA's intent to amend its regulations regarding its duty to notify a claimant of information and evidence necessary to substantiate a claim. The purpose was to implement the Veterans' Benefits Improvement Act of 2008, which required the promulgation of regulations prescribing the requirements relating to the content of notice to be provided under 38 U.S.C. 5103(a). Public Law 110–389, 122 Stat. 4145, 4147. VA received several comments raising concerns with the proposed rule, including concerns relating to the establishment of effective dates, the clarity of what types of evidence are accepted, the specificity of the contents for notice, and the general clarity and consistency of the text of the proposed rule. Based on consideration of

comments received on the proposed rule and further evaluation of available options, VA intends to propose revised rules warranting a new notice of proposed rulemaking and public-comment period. Thus, VA is withdrawing the proposed rule.

Approved: April 19, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2012–10259 Filed 4–26–12; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0274; FRL–9665–7]

Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_x) emissions from certain boilers, process heaters and steam generators. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by May 29, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0274, 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.

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: Andrew Steckel, EPA Region IX, (415) 947-4115, steckel.andrew@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 addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
ICAPCD	400.2	Boilers, Process Heaters and Steam Generators	02/23/10	07/20/10

On August 25, 2010, EPA determined that the submittal for ICAPCD Rule 400.2 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?

There are no previous versions of Rule 400.2.

C. What is the purpose of the submitted rule?

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. Rule 400.2 regulates emissions of NO_x from boilers, process heaters and steam generators with a heat input rating of 5 MMBtu/hour or more. EPA’s technical support document (TSD) has more information about this rule.

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 classified as moderate or above (see sections 182(b)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The ICAPCD regulates an ozone nonattainment area classified

as moderate (see 40 CFR part 81). Because Rule 400.2 regulates major stationary sources of NO_x, it must fulfill NO_x RACT requirements. On December 3, 2009, EPA determined that ICAPCD attained the 1997 8-hour NAAQS for ozone based upon ambient air monitoring data showing the area had monitored attainment during the 2006–2008 monitoring period (74 FR 63309). This determination suspended some of the planning requirements related to attainment of the 1997 8-hour ozone NAAQS but not the Section 182(b)(2) and 182(f) RACT requirements for major NO_x emission sources. The ICAPCD also regulates a serious PM–10 nonattainment area, and is therefore subject to the requirement under sections 189(b)(1)(B) and 189(e) of the Act to implement Best Available Control Measures (BACM, which includes Best Available Control Technology or BACT) for control of PM–10 and PM–10 precursor emissions.

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

1. “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.
2. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook).
3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,”

EPA Region 9, August 21, 2001 (the Little Bluebook).

4. “State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,” 59 FR 41998 (August 16, 1994).

5. “PM–10 Guideline Document,” EPA 452/R–93–008, April 1993.

6. “Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,” CARB, July 18, 1991.

7. “Alternative Control Techniques Document—NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers,” US EPA 453/R–94–022, March 1994.

8. “Alternative Control Techniques Document—NO_x Emissions from Utility Boilers,” US EPA 452/R–93–008, March 1994.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The 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 rule but are not currently the basis for rule disapproval.

D. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

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

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: April 13, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012-10201 Filed 4-26-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2012-0082; FRL-9634-2]

Revisions to the Hawaii State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Hawaii State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC), oxides of nitrogen (NO_x), and particulate matter (PM) emissions from motor vehicles, water separation, pumps, compressors, waste gas, and open burning, as well as several administrative requirements. We are proposing to approve several local rules to regulate 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 May 29, 2012.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2012-0082, 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: Nicole Law, EPA Region IX, (415) 947-4126, law.nicole@epa.gov.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: Hawaii State Department of Health Rules 11-60.1-1, 11-60.1-2, 11-60.1-4, 11-60.1-8, 11-60.1-11, 11-60.1-14, 11-60.1-15, 11-60.1-16, 11-60.1-17, 11-60.1-20, 11-60.1-32, 11-60.1-34, 11-60.1-40, 11-60.1-41, 11-60.1-42, 11-60.1-51, 11-60.1-53, 11-60.1-54, and 11-60.1-56. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules 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: February 1, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012-10103 Filed 4-26-12; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12-92; RM-11650; DA 12-552]

Radio Broadcasting Services; Centerville and Midway, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Katherine Pyeatt, proposing the allotment of Channel 267A at Midway, Texas, as its first local service; and the substitution of Channel 232A for vacant Channel 267A at Centerville, Texas to accommodate the proposed Midway allotment. Channel 267A can be allotted to Midway consistent with the minimum distance separation requirements of the Rules with a site restriction 7.6 kilometers (4.7 miles) northwest of the community. The reference coordinates for Channel 267A at Midway are 31-03-42 NL and 95-49-06 WL. Additionally, Channel 232A can be allotted to Centerville consistent with the minimum distance separation requirement of the Rules with a site restriction 10.6 kilometers (6.6 miles) northwest of Centerville. The reference coordinates for Channel 232A at Centerville are 31-19-03 NL and 96-03-54 WL.

DATES: Comments must be filed on or before May 29, 2012, and reply comments on or before June 13, 2012.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th

Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Katherine Pyeatt, 2215 Cedar Springs Road, #1605, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418-2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 12-92, adopted April 5, 2012, and released April 6, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 Twelfth Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160 or via email www.BCPIWEB.com. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.
Federal Communications Commission.
Nazifa Sawez,
Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 267A and by adding Channel 232A at Centerville; and by adding Midway, Channel 267A.

[FR Doc. 2012-10269 Filed 4-26-12; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R8-ES-2012-N073; FF0800000-FXES1113080000C4-123]

Endangered and Threatened Wildlife and Plants; 5-Year Reviews of Species in California and Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 5-year reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year reviews for 25 species under the Endangered Species Act of 1973, as amended (Act). We conduct these reviews to ensure that our classification of species on the Lists of Endangered and Threatened Wildlife and Plants as threatened or endangered is accurate. A 5-year review assesses the best scientific and commercial data available at the time of the review. We are requesting any information that has become available since our last 5-year review of each of these species. Based on review results, we will determine whether we should change the listing status of any of these species. In this notice, we also announce 5-year reviews that were completed for 28 species in California and Nevada between March 17, 2011, and February 29, 2012.

DATES: To ensure consideration, please send your written information by June 26, 2012.

ADDRESSES: For how and where to send comments or information, see "VIII., Contacts."

FOR FURTHER INFORMATION CONTACT: For species-specific information, contact the appropriate person listed under "VIII., Contacts." For contact information about completed 5-year reviews, see "IX., Completed 5-Year Reviews."

Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at (800) 877-8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

I. Why do we conduct 5-year reviews?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Then, under section 4(c)(2)(B), we determine whether to remove any species from the List (delist), to reclassify it from endangered to threatened, or to reclassify it from

threatened to endangered. Any change in Federal classification requires a separate rulemaking process.

In classifying, we use the following definitions, from 50 CFR 424.02:

(A) *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, that interbreeds when mature;

(B) *Endangered species* means any species that is in danger of extinction throughout all or a significant portion of its range; and

(C) *Threatened species* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

We must support delisting by the best scientific and commercial data

available, and only consider delisting if data substantiate that the species is neither endangered nor threatened for one or more of the following reasons (50 CFR 424.11(d)):

(A) The species is considered extinct;

(B) The species is considered to be recovered; or

(C) The original data available when the species was listed, or the interpretation of data, were in error.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing the species we are reviewing.

II. What species are under review?

This notice announces our active 5-year status reviews of the species in Table 1.

TABLE 1—CURRENT LISTING STATUS OF SPECIES UNDER 5-YEAR STATUS REVIEW, INCLUDING 5 ANIMAL SPECIES AND 20 PLANT SPECIES IN CALIFORNIA AND NEVADA

Common name	Scientific name	Status	Where listed	Final listing rule
ANIMALS				
Independence Valley speckled dace.	<i>Rhinichthys osculus lethoporus</i> ...	Endangered	U.S.A. (NV)	October 10, 1989 (54 FR 41448).
Paiute cutthroat trout	<i>Oncorhynchus clarki seleniris</i>	Threatened	U.S.A. (CA)	July 16, 1975 (40 FR 29863).
Riverside fairy shrimp	<i>Streptocephalus woottoni</i>	Endangered	U.S.A. (CA)	August 3, 1993 (58 FR 41384).
San Diego fairy shrimp	<i>Branchinecta sandiegonensis</i>	Endangered	U.S.A. (CA)	February, 3 1997 (62 FR 4925).
Sierra Nevada bighorn sheep	<i>Ovis canadensis sierrae</i>	Threatened	U.S.A. (CA)	January 3, 2000 (65 FR 20).
PLANTS				
Ben Lomond wallflower	<i>Erysimum teretifolium</i>	Endangered	U.S.A. (CA)	February 4, 1994 (59 FR 5499).
Burke's goldfields	<i>Lasthenia burkei</i>	Endangered	U.S.A. (CA)	December 2, 1991 (56 FR 61173).
Butte County meadowfoam	<i>Limnanthes floccosa</i> subsp. <i>californica</i> .	Endangered	U.S.A. (CA)	June 8, 1992 (57 FR 24192).
Colusa grass	<i>Neostapfia colusana</i>	Threatened	U.S.A. (CA)	March 26, 1997 (62 FR 14338).
Contra Costa goldfields	<i>Lasthenia conjugens</i>	Endangered	U.S.A. (CA)	June 18, 1997 (62 FR 33029).
Few-flowered navarretia	<i>Navarretia leucocephala</i> subsp. <i>pauciflora</i> .	Endangered	U.S.A. (CA)	June 18, 1997 (62 FR 33029).
Greene's tuctoria	<i>Tuctoria greenei</i>	Endangered	U.S.A. (CA)	March 26, 1997 (62 FR 14338).
Island barberry	<i>Berberis pinnata</i> subsp. <i>insularis</i>	Endangered	U.S.A. (CA)	July 31, 1997 (62 FR 40954).
Island phacelia	<i>Phacelia insularis</i> var. <i>insularis</i> ...	Endangered	U.S.A. (CA)	July 31, 1997 (62 FR 40954).
Lyon's pentachaeta	<i>Pentachaeta lyonii</i>	Endangered	U.S.A. (CA)	January 29, 1997 (62 FR 4172).
Marsh sandwort	<i>Arenaria paludicola</i>	Endangered	U.S.A. (CA)	August 3, 1993 (58 FR 41378).
Menzies' wallflower	<i>Erysimum menziesii</i>	Endangered	U.S.A. (CA)	June 22, 1992 (50 FR 27848).
Peirson's milk-vetch	<i>Astragalus magdalenae</i> var. <i>peirsonii</i> .	Threatened	U.S.A. (CA)	October 6, 1998 (63 FR 53596).
Purple amole	<i>Chlorogalum purpureum</i>	Threatened	U.S.A. (CA)	March 20, 2000 (65 FR 14878).
Sacramento Orcutt grass	<i>Orcuttia viscida</i>	Endangered	U.S.A. (CA)	March 28, 1997 (62 FR 14338).
San Bernardino bluegrass	<i>Poa atropurpurea</i>	Endangered	U.S.A. (CA)	September 14, 1998 (63 FR 49006).
Sebastopol meadowfoam	<i>Limnanthes vinculans</i>	Endangered	U.S.A. (CA)	December 2, 1991 (56 FR 61173).
Sonoma sunshine	<i>Blennosperma bakeri</i>	Endangered	U.S.A. (CA)	December 2, 1991 (56 FR 61173).
Vail Lake ceanothus	<i>Ceanothus ophiochilus</i>	Threatened	U.S.A. (CA)	October 13, 1998 (63 FR 54956).
Willow monardella	<i>Monardella viminea</i>	Endangered	U.S.A. (CA)	October 13, 1998 (63 FR 54938).

III. What information do we consider in our review?

We consider all new information available at the time we conduct a 5-year status review. We consider the best

scientific and commercial data that has become available since our current listing determination or most recent status review, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends (see five factors under heading “IV., How Do We Determine Whether a Species Is Endangered or Threatened?”); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

We specifically request information regarding data from any systematic surveys, as well as any studies or analysis of data that may show population size or trends; information pertaining to the biology or ecology of these species; information regarding the effects of current land management on population distribution and abundance; information on the current condition of habitat; and recent information regarding conservation measures that have been implemented to benefit the species. Additionally, we specifically request information regarding the current distribution of populations and evaluation of threats faced by the species in relation to the five listing factors (as defined below and in section 4(a)(1) of the Act) and the species' listed status as judged against the definition of threatened or endangered. Finally, we request recommendations pertaining to the development of, or potential updates to, recovery plans and additional actions or studies that would benefit these species in the future.

IV. How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

(A) The 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) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

Under section 4(b)(1) of the Act, we must base our assessment of these factors solely on the best scientific and commercial data available.

V. What could happen as a result of our review?

For each species under review, if we find new information that indicates a change in classification may be warranted, we may propose a new rule that could do one of the following:

(A) Reclassify the species from threatened to endangered (uplist);

(B) Reclassify the species from endangered to threatened (downlist); or

(C) Remove the species from the List (delist).

If we determine that a change in classification is not warranted, then the species remains on the List under its current status.

VI. Request for New Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See “III., What Information Do We Consider in Our Review?” for specific criteria. If you submit information, support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Submit your comments and materials to the appropriate Fish and Wildlife Office listed under “VIII., Contacts.”

VII. 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

VIII. Contacts

Send your comments and information on the following species, as well as requests for information, to the corresponding contacts/addresses. You may view information we receive in response to this notice, as well as other documentation in our files, at the following locations by appointment, during normal business hours.

For the Menzies' wallflower, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and

Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521. Information may also be submitted electronically at arcata@fws.gov. To obtain further information, contact Kathleen Brubaker at (707) 822-7201.

For the Peirson's milk-vetch, Riverside fairy shrimp, San Bernardino bluegrass, San Diego fairy shrimp, Vail Lake ceanothus, and Willoway monardella, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011. Information may also be submitted electronically at fw8cfwocomments@fws.gov. To obtain further information, contact Bradd Baskerville-Bridges at the Carlsbad Fish and Wildlife Office at (760) 431-9440.

For the Independence Valley speckled dace and Paiute cutthroat trout, send information to State Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, Nevada 89502-7147. Information may also be submitted electronically at fw1nfw0_5yr@fws.gov. To obtain further information, contact Jill Ralston at the Nevada Fish and Wildlife Office at (775) 861-6300.

For the Burke's goldfields, Butte County meadowfoam, Colusa grass, Contra Costa goldfields, few-flowered navaretia, Greene's tuctoria, Sacramento Orcutt grass, Sebastopol meadowfoam, and Sonoma sunshine, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825. Information may also be submitted electronically at fw1sfo5year@fws.gov. To obtain further information, contact Josh Hull at the Sacramento Fish and Wildlife Office at (916) 414-6600.

For the Ben Lomond wallflower, island barberry, island phacelia, Lyon's pentachaeta, marsh sandwort, purple amole, and Sierra Nevada bighorn sheep, send information to Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003. Information may also be submitted electronically at fw8vfw05year@fws.gov. To obtain further information on the animal species, contact Mike McCrary at the Ventura Fish and Wildlife Office at (805) 644-1766. To obtain further information on the plant species, contact Connie Rutherford at the Ventura Fish and Wildlife Office at (805) 644-1766.

All electronic information must be submitted in Text format or Rich Text format. Include the following identifier in the subject line of the email: Information on 5-year review for [NAME OF SPECIES], and include your name and return address in the body of your message.

IX. Completed 5-Year Reviews

We also take this opportunity to inform the public of 5-year reviews that we completed between March 17, 2011, and February 29, 2012, for 28 species in California and Nevada (Table 2). Reviews for these 28 species can be

found at <http://www.fws.gov/angered/species/index.html>. Any recommended change in listing status resulting from these completed reviews will require a separate rulemaking process.

TABLE 2—SUMMARY OF 28 SPECIES IN CALIFORNIA AND NEVADA FOR WHICH 5-YEAR REVIEWS WERE COMPLETED BETWEEN MARCH 17, 2011 AND FEBRUARY 29, 2012

Common name	Scientific name	Recommendation	Lead fish and wildlife office	Contact
ANIMALS				
Alameda whipsnake (=striped racer).	<i>Masticophis lateralis euryxanthus</i> .	No status change	Sacramento	Josh Hull, (916) 414-6600.
Buena Vista Lake shrew	<i>Sorex ornatus relictus</i>	No status change	Sacramento	Josh Hull, (916) 414-6600.
California freshwater shrimp ..	<i>Syncaris pacifica</i>	No status change	Sacramento	Josh Hull, (916) 414-6600.
Little Kern golden trout	<i>Oncorhynchus aguabonita whitei</i> .	No status change	Sacramento	Josh Hull, (916) 414-6600.
Lotis blue butterfly	<i>Lycaeides argyrognomon lotis</i> .	No status change	Arcata	Kathleen Brubaker, (707) 822-7201.
Morro Bay kangaroo rat	<i>Dipodomys heermanni morroensis</i> .	No status change	Ventura	Mike McCrary, (805) 644-1766.
Peninsular bighorn sheep	<i>Ovis Canadensis</i>	No status change	Carlsbad	Bradd Baskerville-Bridges, (760) 431-9440.
Stephens' kangaroo rat	<i>Dipodomys stephensi</i>	Downlist	Carlsbad	Bradd Baskerville-Bridges, (760) 431-9440.
PLANTS				
Ash Meadows sunray	<i>Enceliopsis nudicaulis</i> var. <i>corrugata</i> .	No status change	Nevada	Jill Ralston, (775) 861-6300.
Bakersfield cactus	<i>Opuntia treleasei</i>	No status change	Sacramento	Josh Hull, (916) 414-6600.
Beach layia	<i>Layia carnosa</i>	Downlist	Arcata	Kathleen Brubaker, (707) 822-7201.
Ben Lomond spineflower	<i>Chorizanthe pungens</i> var. <i>hartwegiana</i> .	No status change	Ventura	Connie Rutherford, (805) 644-1766.
Coyote ceanothus	<i>Ceanothus ferrisae</i>	No status change	Sacramento	Josh Hull, (916) 414-6600.
Encinitas baccharis	<i>Baccharis vanessae</i>	No status change	Carlsbad	Bradd Baskerville-Bridges, (760) 431-9440.
Fleshy owl's-clover	<i>Castilleja campestris</i> subsp. <i>succulenta</i> .	No status change	Sacramento	Josh Hull, (916) 414-6600.
Gambel's watercress	<i>Nasturtium gambelii</i>	No status change	Ventura	Connie Rutherford, (805) 644-1766.
Gaviota tarplant	<i>Deinandra increscens</i> subsp. <i>villosa</i> .	No status change	Ventura	Connie Rutherford, (805) 644-1766.
Hoffmann's rock-cress	<i>Arabis hoffmannii</i>	No status change	Ventura	Connie Rutherford, (805) 644-1766.
Howell's spineflower	<i>Chorizanthe howellii</i>	No status change	Arcata	Kathleen Brubaker, (707) 822-7201.
Kneeland prairie pennycress	<i>Thlaspi californicum</i>	No status change	Arcata	Kathleen Brubaker, (707) 822-7201.
Marin dwarf-flax	<i>Hesperolinon congestum</i>	No status change	Sacramento	Josh Hull, (916) 414-6600.
Pedate checkermallow	<i>Sidalcea pedata</i>	No status change	Carlsbad	Bradd Baskerville-Bridges, (760) 431-9440.
Pennell's bird's-beak	<i>Cordylanthus tenuis</i> subsp. <i>capillaris</i> .	No status change	Sacramento	Josh Hull, (916) 414-6600.
San Mateo woolly sunflower ..	<i>Eriophyllum latilobum</i>	No status change	Sacramento	Josh Hull, (916) 414-6600.
Sonoma alopecurus	<i>Alopecurus aequalis</i> var. <i>sonomensis</i> .	No status change	Sacramento	Josh Hull, (916) 414-6600.
Tiburon mariposa lily	<i>Calochortus tiburonensis</i>	No status change	Sacramento	Josh Hull, (916) 414-6600.
Vine Hill clarkia	<i>Clarkia imbricata</i>	No status change	Sacramento	Josh Hull, (916) 414-6600.
Yellow larkspur	<i>Delphinium luteum</i>	No status change	Sacramento	Josh Hull, (916) 414-6600.

X. Authority

We publish this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 30, 2012.

Margaret T. Kolar,

Acting Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012-10212 Filed 4-26-12; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 640

RIN 0648-BB44

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 11

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 11 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP) for review, approval, and implementation by NMFS. Amendment 11 proposes to limit spiny lobster fishing using trap gear in certain areas in the exclusive economic zone off the Florida Keys to protect threatened species of corals.

DATES: Written comments must be received on or before June 26, 2012.

ADDRESSES: You may submit comments on the amendment identified by "NOAA-NMFS-2011-0223" 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:** Susan Gerhart, 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. NMFS will accept anonymous comments (enter N/A in the required field if you wish to remain anonymous).

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2011-0223" in the search field and click on "search." After you locate the document "Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic; Amendment 11," click the "Submit a Comment" link in that row. This will display the comment web form. You can then enter your submitter information (unless you prefer to remain anonymous), and type your comment on the web form. You can also attach additional files (up to 10MB) in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Comments received through means not specified in this notice will not be considered.

For further assistance with submitting a comment, see the "Commenting" section at <http://www.regulations.gov/#!faq> or the Help section at <http://www.regulations.gov>.

Electronic copies of Amendment 11 may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:

Susan Gerhart, telephone: 727-824-5305, or email: Susan.Gerhart@noaa.gov.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery of the Gulf of Mexico (Gulf) and the South Atlantic is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR parts 622 and 640 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

As required under the Endangered Species Act (ESA), NMFS completed a formal consultation, and resulting biological opinion, on the continued authorization of the Gulf of Mexico and South Atlantic spiny lobster fishery in 2009 (<http://sero.nmfs.noaa.gov/pr/esa/Fishery%20Biops/Final%20SL%20BO.pdf>). The biological opinion contained specific terms and conditions required to implement the prescribed reasonable and prudent measures (RPMs), including creation of new or expansion of existing closed areas to protect coral and implementation of trap

line-marking requirements. These actions were originally included in Amendment 10 to the FMP; however, the Councils chose to take no action in Amendment 10 to the FMP to allow for additional stakeholder input into the development of any potential areas closed to spiny lobster harvest and trap line-marking requirements.

Actions Contained in Amendment 11

Amendment 11 considered actions to prohibit spiny lobster trap fishing in designated areas in the Florida Keys to protect threatened *Acropora* species of coral and to require markings on lobster trap lines unique to the spiny lobster fishery.

Lobster Trap Gear Closed Areas

The ESA requires analyses to determine whether, and to what extent, fishing operations impact threatened species such as threatened staghorn and elkhorn corals. The 2009 biological opinion on the spiny lobster fishery requires NMFS and the Councils to work together to protect areas of staghorn and elkhorn coral. RPMs included expansion of existing or creation of new areas closed to lobster trap fishing where colonies of these threatened coral species are present.

Staff from the Councils and NMFS worked with various stakeholders to develop the proposed lobster trap gear closed areas. Areas were chosen to protect colonies with high conservation value and areas of high coral density. Lobster trap fishing would be prohibited in the proposed closed areas. The 60 proposed closed areas would cover 5.9 mi² (15.3 km²) and are distributed throughout the Florida Keys.

Spiny Lobster Trap Line Markings

As described in Amendment 11, trap lines or rope are consistently found as marine debris and most frequently recovered without the buoys or traps still attached. These conditions cause significant difficulty for NMFS and other agencies when determining if line found in the environment, or entangling protected species, originated from the spiny lobster trap fishery. Trap line marking requirements are intended to allow greater accuracy in identifying fishery interaction impacts to benthic habitats and protected species by leading to more targeted measures to reduce the level and severity of those impacts. However, costs and labor for the spiny lobster fishery to mark their lobster trap gear could be high, with little evidence of the durability of the markings. The Florida Fish and Wildlife Conservation Commission is currently conducting a study of various methods

for marking lobster trap lines that should be completed during 2013. The Councils intend to revisit the spiny lobster trap gear marking issue when the results of that study are available. The biological opinion, as amended, requires implementation of the terms and conditions regarding lobster trap line marking by August 6, 2017.

Proposed Rule for Amendment 11

A proposed rule that would implement measures outlined in Amendment 11 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Councils submitted Amendment 11 for Secretarial review, approval, and implementation on April 05, 2012. NMFS' decision to approve, partially approve, or disapprove Amendment 11 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability.

Public comments received on or before June 26, 2012, will be considered by NMFS in its decision to approve, partially approve, or disapprove Amendment 11. All comments received by NMFS on Amendment 11 or the proposed rule for Amendment 11 during their respective comment periods will be addressed in a final rule.

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

Dated: April 24, 2012.

Emily H. Menashes,

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

[FR Doc. 2012-10248 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120417417-2417-01]

RIN 0648-BB35

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Exempted Fishery for the Southern New England Skate Bait Trawl Fishery

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes to modify the regulations implementing the Northeast (NE) Multispecies Fishery Management Plan (FMP) to allow vessels issued a Federal skate permit and a Skate Bait Letter of Authorization to fish for skates in a portion of southern New England from July through October of each year, outside of the NE multispecies days-at-sea (DAS) program. This action would allow vessels to harvest skates in a manner that is consistent with the bycatch reduction objectives of the NE Multispecies FMP.

DATES: Comments must be received no later than 5 p.m., eastern daylight time, on May 14, 2012.

ADDRESSES: An environmental assessment (EA) was prepared for the Secretarial Amendment that describes the proposed action and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of the Secretarial Amendment, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Daniel Morris, Acting Regional Administrator, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available online at <http://www.nero.noaa.gov>.

You may submit comments, identified by FDMS docket number NOAA-NMFS-2012-0098, by any one of the following methods:

- Written comments (paper, disk, or CD-ROM) should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope, "Comments on Skate Bait Exempted Fishery."

- Comments also may be sent via facsimile (fax) to (978) 465-3116.

- Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Instructions: Comments will be posted for public viewing as they are received. 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.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Management Specialist, 978-281-9233; fax 978-281-9135; email: travis.ford@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Current regulations, implemented under Framework Adjustment 9 (60 FR 19364, April 18, 1995) and expanded under Amendment 7 to the FMP (61 FR 27710, May 31, 1996), contain a NE multispecies fishing mortality and bycatch reduction measure that is applied to the Gulf of Maine (GOM), Georges Bank (GB), and Southern New England (SNE) Exemption Areas found in 50 CFR 648.80. A vessel may not fish in these areas unless it is fishing under a NE multispecies or a scallop DAS allocation, is fishing with exempted gear, is fishing under the Small Vessel Handgear (A or B) or Party/Charter permit restrictions, or is fishing in an exempted fishery. The procedure for adding, modifying, or deleting fisheries from the list of exempted fisheries is found in § 648.80. A fishery may be exempted by the Regional Administrator (RA), after consultation with the New England Fishery Management Council (Council), if the RA determines, based on available data or information, that the bycatch of regulated species is, or can be reduced to, less than 5 percent by weight of the total catch and that such exemption will not jeopardize the fishing mortality objectives of the FMP.

Representatives from the NE multispecies sector fleet submitted an exempted fishery request to the RA on April 1, 2011. The petitioners requested that NMFS consider an exempted

fishery for trawl vessels using 6.5-inch mesh nets and targeting skate bait in a portion of SNE from June through November of each year (referred to in the EA and in this proposed rule as Alternative 2). Sector vessels targeting skate bait and fishing on a trip in SNE are currently required to declare a NE multispecies DAS trip. These vessels are charged a discard rate that is determined by the Northeast Fisheries Observer Program (NEFOP) and at-sea monitoring (ASM) discard data. The discard rate is based on the sector, area fished, and gear type, referred to as a discard stratum. Because “target species” is not part of each discard stratum, vessels that are targeting skate bait (and catching very little to no groundfish) are being charged the same discard rate as all other declared groundfish trips in that discard stratum. This has led to higher than observed discard rates of groundfish when targeting skate bait when compared to actual discard rates on observed skate bait trips. Forfeiting the value of discards at a higher rate than is actually occurring has imposed an economic burden on sector fishermen, as the discarded fish that are charged to the sector’s Annual Catch Entitlement (ACE) could otherwise be landed for sale. Reducing a sector’s ACE by a higher rate than is actually occurring has particularly adversely affected the sector’s “choke stocks,” i.e., fish for which the sector has a small amount of ACE, either because of a low catch history or a small annual catch limit (ACL) for the stock.

NEFOP and ASM data were compiled and analyzed with reference to groundfish vessels targeting skate in the area and months requested for the exemption. A second alternative was assessed that reduced both the size of the exempted area and the requested season to July through October (referred to in the EA and in this proposed rule as Alternative 1). The data best supported Alternative 1, revealing that bycatch of regulated species (primarily winter flounder and windowpane flounder) was substantially reduced from the original proposal by reducing the area and contracting the time period. It is important to note that large portions of the original area requested by industry had no associated observer data, and thus could not be evaluated. Therefore, the size of the exemption area was reduced to cover only areas where ASM and NEFOP covered trips existed.

For Alternative 1, all large mesh (6.5-inch mesh) DAS trips from 2010 to 2011 were analyzed, and the data showed that no trips caught more than 5 percent

groundfish. Therefore, there were no trips that caught over 5 percent NE multispecies that would be exempted under this action. The data indicate that Alternative 2 (the non-preferred alternative) would likely result in a higher percentage of groundfish catch in the months of June and November than in July through October.

Exempted fisheries have a maximum allowable bycatch of 5 percent regulated groundfish under § 648.80(a)(8)(i). For the months of July through October, from 2006 to 2011, the average percentage of regulated groundfish catch for trips in the directed SNE skate bait fishery was 1.25 percent, well under the 5 percent limit for an exempted fishery. No single month’s average NE multispecies catch exceeded 2 percent of the total catch. The vast majority of groundfish bycatch species in the skate bait fishery are SNE winter flounder and southern windowpane flounder. Following a recent assessment, SNE winter flounder is no longer experiencing overfishing but remains overfished. Recent information has changed the status of the Southern windowpane flounder stock, which was previously experiencing overfishing but not overfished; it is currently not overfished, is no longer experiencing overfishing, and was rebuilt in 2009. The discards expected from this exemption should not cause the ACL for these species to be exceeded.

Further, because of the relationship between the skate bait fishery and the lobster fishery, this action is not likely to increase effort in the skate bait fishery. Although this action would exempt vessels targeting skate bait from the NE multispecies regulations, the demand for skate bait is dependent on the lobster fishery’s demand for bait. Consequently, this exemption is not expected to increase the demand for skate bait. Further, the skate bait fishery is controlled by a Total Allowable Landing (TAL) limit that prevents the overharvesting of skate bait. Because it would neither increase demand for skate bait nor significantly affect other regulated species, this action is not expected to jeopardize mortality objectives of any stock and would ease some of the burdens on vessels participating in the NE multispecies fishery.

Proposed Measures

Southern New England Skate Bait Trawl Exemption Area

The RA has determined that an exempted skate bait trawl fishery in a specifically defined portion of SNE meets the exemption requirements in

§ 648.80(a)(8)(i) because, based on the analysis of available data, the bycatch of regulated species by vessels targeting skate bait in a portion of SNE is less than 5 percent, by weight, of the total catch. Therefore, this rule proposes to implement an exempted fishery for eligible vessels when using 6.5-inch mesh trawl gear in a portion of SNE from July through October of each year. The area of this proposed exempted fishery would be referred to as the SNE Skate Bait Trawl Exemption Area.

The SNE Skate Bait Trawl Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the RA upon request):

Point	N. lat.	W. long.
SBT 1 ...	Southeastern MA	71/00'
SBT 2 ...	41/00'	71/00'
SBT 3 ...	41/00'	72/05'
SBT 4 ...	Southern CT	72/05'

As required by existing regulations, Vessels participating in the exempted skate fishery would need to hold a Federal skate permit and a valid Skate Bait Letter of Authorization (LOA) from the RA containing an exemption from the skate wing possession limits, which allows them to land whole skates for use as bait. A participating vessel may possess and land up to 20,000 lb (9,072 kg) of whole skates of less than 23 inches (59 cm) total length. In addition, vessels would be limited by the skate bait TAL that is divided into three seasons to help maintain a supply of bait throughout the fishing year. When 90 percent of the seasonal quota is landed in either Season 1 or 2, or when 90 percent of the annual skate bait TAL is landed, the RA would close the directed fishery by reducing the skate bait possession limit to the whole weight equivalent of the skate wing possession limit in effect at that time (either 5,902 lb (2,677 kg), 9,307 lb (4,222 kg), or 1,135 lb (515 kg)).

Granting the SNE Skate Bait Trawl Exemption Area should result in a more accurate discard calculation for skate bait and NE multispecies DAS trips. Exempted skate bait trips would be exempt from NE multispecies regulations. Discards of regulated NE multispecies from skate bait trips would no longer be deducted from sector or common pool sub-ACLs that make up the commercial groundfish sub-ACL. Instead, the calculated discards would be deducted from the “other subcomponents” sub-ACL.

In the NE multispecies fishery, calculated discard rates for regulated

species are calculated over an entire discard stratum, i.e., sector, area, and gear type. Currently, when SNE skate bait vessels are fishing on declared groundfish trips, they are charged a calculated discard rate equivalent to trips targeting groundfish in the same discard stratum. For example, a skate bait vessel catching 20,000 pounds of skate is charged a groundfish discard rate as if that vessel caught 20,000 pounds of groundfish and results in the resulting amount being deducted from the sector or common pool sub-ACL. The data analyzed from observed SNE skate bait trips, however, showed that skate bait trips averaged a catch of 1.25% of multispecies (250 pounds). Calculating discards using this more accurate rate results in a lower deduction from the sub-ACL than applying the groundfish discard rate to 20,000 pounds of catch. Granting this exemption would provide vessels the opportunity to catch the groundfish formerly counted as discarded. Conversely, because the lower multispecies discards observed on skate bait trips will no longer be included when determining the groundfish discard rate for targeted groundfish trips, the actual amounts discarded on declared groundfish trips will be more accurately reflected. The increase in the calculated discard rate for targeted groundfish trips is not expected to be significant.

Classification

NMFS has determined that this proposed rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 603, an IRFA has been prepared, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule, can be found in the preamble to this proposed rule and are not repeated here. There are no Federal rules that duplicate, overlap, or conflict with the proposed rule. This proposed rule does not include any new reporting, recordkeeping or other compliance requirements. This action proposes to create a new skate bait trawl exemption area for trawl vessels targeting skate bait in SNE.

This action was compared to two different alternatives for the exemption.

Alternatives to the proposed exemption include exempting a larger portion of SNE for a longer period of time, from June through November, and a No Action alternative, which would continue to require vessels targeting skate bait in this area to be on a declared NE multispecies trip from July through October.

Description and Estimate of the Number of Small Entities to Which This Proposed Rule Would Apply

The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross receipts not exceeding \$4 million. In Rhode Island, there are two major dealers involved in the skate bait market. One reports supplying skate bait to 100 lobster businesses located in Point Judith, Wickford, Newport, Westerly, and Jamestown, RI, along with businesses scattered throughout Connecticut and Massachusetts. The company buys skate bait from 12–15 vessels throughout the year. The lobster businesses supplied by the company employ between 2–4 crewmembers per vessel. The other major skate dealer in Rhode Island supplies local Newport, Sakonnet, and New Bedford, MA vessels and numerous offshore lobster vessels fishing in the Gulf of Maine. Skates are supplied to this dealer from dragners working out of Newport and Tiverton, RI, and New Bedford, MA.

Due to direct, independent contracts between dragners and lobster vessels, landings of skates are estimated to be under-documented. While skate bait is always landed (rather than transferred at sea), it is not always reported because it can be sold directly to lobster vessels by non-federally permitted vessels, which are not required to report as dealers. A more complete description of the skate bait fishery can be found in Amendment 3 to the NE Skate Complex FMP, available from the Council (<http://www.nefmc.org>).

Economic Impacts of This Proposed Action

Compared to the No Action alternative, the Preferred Alternative (Alternative 1) is expected to benefit the local fishing communities that have historically depended on the skate bait fishery in SNE. This exemption was requested by members of the NE multispecies fishing industry, specifically members of a sector in the SNE area. The cost of fishing for skate bait has become increasingly high primarily due to the deduction of calculated discards from each vessel's sector ACE when fishing under a groundfish DAS. Thus, the proposed

exemption will allow vessels to target skate bait outside of the DAS program, which will prevent the discards being deducted from their sector's ACE at a higher rate than is actually occurring. The EA for this proposed action estimates that the exemption could save the fleet approximately \$24,490 a year in discards and DAS alone.

With the elimination of these low discard trips from the sector's discard stratum, the overall discard rate for the sector will likely increase because skate bait trips that were observed were keeping the discard rate for trips targeting groundfish artificially low. While this change will result in an increase of the overall sector's discard rate, the increase will not represent a significant cost to the SNE sector vessels that are not participating in the exemption. In addition, the calculated discard rates for both groundfish vessels and skate bait vessels will be more accurate as a result of the exemption; more accurate discards are not expected to have an economic effect on the fishing community as a whole.

Economic Impacts of Alternatives to the Proposed Action

The impacts of Alternative 2, which extends the exemption an additional 2 months over a larger area, would be expected to be similar to the impacts of the Preferred Alternative, but the expanded area and time would allow more vessels a greater opportunity to participate in the exempted fishery. The EA for this action estimates that Alternative 2 would save the industry an additional \$ 3,739.37 compared to Alternative 1. However, the months of June and November showed an increased number of trips that caught over 5 percent groundfish, and a large portion of the area could not be evaluated because there was no observer or ASM data available. Providing an exemption for trips that caught over 5 percent groundfish, or areas where no data is available, would be contrary to the purpose and requirements of the Magnuson Stevens Conservation and Management Act and its implementing regulations. For these reasons, this alternative was not selected.

The No Action Alternative would have a negative economic impact on SNE skate bait vessels relative to the preferred alternative. This exemption was requested because of the economic burden that the cost of DAS and calculated discards had on sector fishermen targeting skate bait. As described above it is estimated that this exemption could save the fleet approximately \$24,490 a year in discards and DAS alone compared to

the No Action alternative. Under the No Action Alternative, sector fishermen targeting skate bait would continue fishing on DAS only to be charged a higher than observed groundfish discard rate for their trip targeting skate bait. The skate bait fishery is a valuable resource to those in SNE. The groundfish discards that are attributed to these trips come directly out of the vessel's sector's ACE, which takes away the opportunity to catch these fish in the future.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 23, 2012.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraph (k)(5)(i) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

- (k) * * *
- (5) * * *

(i) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16), the GOM Grate

Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5), the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; (b)(11), the SNE Scallop Dredge Exemption Area; or (b)(12), the SNE Skate Bait Trawl Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

3. In § 648.80, paragraph (b)(2)(vi) is revised, and paragraph (b)(12) is added to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

- (b) * * *
- (2) * * *

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (b)(12), (c), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under a scallop state waters exemption specified in § 648.54; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing under a General Category scallop permit in accordance with paragraphs (b)(11)(i)(A) and (B) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one

of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(12) *SNE Skate Bait Trawl Exemption Area.* Vessels issued an open access skate permit and a skate bait Letter of Authorization as specified in § 648.322(c) that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, may fish in the SNE Skate Bait Trawl Exemption Area as defined under paragraph (b)(12)(i) of this section, when not under a NE multispecies or scallop DAS, provided the vessel complies with the requirements specified in paragraph (b)(1)(ii) of this section.

(i) *Area definition.* The SNE Skate Bait Trawl Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SNE SKATE BAIT TRAWL EXEMPTION AREA

[July 1 through October 31]

Point	N. lat.	W. long.
SBT 1 ...	Southeastern MA	71/00'
SBT 2 ...	41/00'	71/00'
SBT 3 ...	41/00'	72/05'
SBT 4 ...	Southern CT	72/05'

(ii) *Requirements.* (A) A vessel fishing in the SNE Skate Bait Trawl Exemption Area specified in this paragraph (b)(12) may not fish for, possess on board, or land any NE regulated species.

(B) Vessels must use trawl gear, as specified in § 648.80(b)(2)(i).

(C) Vessels must possess an active skate bait letter of authorization issued by the Regional Administrator, as specified in § 648.322(c) and fish pursuant to the terms of authorization.

(D) Fishing may only occur from July 1 through October 31 of each fishing year.

* * * * *

[FR Doc. 2012-10121 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 77, No. 82

Friday, April 27, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meeting of the Committee on Adjudication of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given of a public meeting of the Committee on Adjudication of the Assembly of the Administrative Conference of the United States. At this meeting, the committee will continue consideration of the draft recommendation based on the Conference's Immigration Adjudication Project as noted below. Complete details regarding the committee meeting, the nature of the project, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), and how to submit comments to the committee can be found on the Conference's Web site, at <http://www.acus.gov>. Click on "Research," then on "Committee Meetings."

Comments may be submitted by email to Comments@acus.gov, with "Committee on Adjudication" in the subject line, or by postal mail to the appropriate committee at the address given below.

DATES: *Committee on Adjudication:* Monday, May 7, 2012 from 1:30 p.m. to 4:30 p.m.

ADDRESSES: The meetings will be held at 1120 20th Street NW., Suite 706 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Funmi E. Olorunnipa (Committee on Adjudication), Designated Federal Officer, Administrative Conference of the United States, 1120 20th Street NW., Suite 706 South, Washington, DC 20036; Telephone 202-480-2080; Email: folorunnipa@acus.gov.

SUPPLEMENTARY INFORMATION: A meeting of the Committee on Adjudication has been scheduled for May 7, 2012. At the meeting, the Committee on Adjudication will continue to consider and vote on the draft recommendation in the Conference's Immigration Adjudication Project. The draft recommendation is based in part on a report, prepared by Professor Lenni B. Benson (New York Law School) and Russell Wheeler (Brookings Institution), which presents the findings of a study of potential improvements to the procedures for immigration adjudication. Funmi E. Olorunnipa is the Designated Federal Officer for the committee. More information can be found in the "About" section of the Conference's Web site, at <http://www.acus.gov>. Click on "About," then on "The Committees," and then on "Committee on Adjudication."

Dated: April 23, 2012.

Shawne C. McGibbon,

General Counsel.

[FR Doc. 2012-10094 Filed 4-26-12; 8:45 am]

BILLING CODE 6110-01-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 24, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs,

Office of Management and Budget (OMB),

OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

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.

Grain Inspection, Packers and Stockyard Administration

Title: Export Inspection and Weighing Waiver for High Quality Specialty Grains Transported in Containers.

OMB Control Number: 0580-0022.

Summary of Collection: The United States Grain Standards Act, as amended (7 U.S.C. 71-87) (USGSA), with few exceptions, requires that all grain shipped from the United States must be officially inspected and weighed. The Grain Inspection, Packers and Stockyards Administration (GIPSA) amended section 7 CFR 800.18 of the regulations to waive the mandatory inspection and weighing requirements of the USGSA for high quality specialty grain exported in containers. GIPSA established this waiver to facilitate the marketing of high quality specialty grain exported in containers.

Need and Use of the Information: To comply with the waiver of the mandatory inspection and weighing requirements, GIPSA requires exporters of high quality specialty grain to maintain records generated during the normal course of business that pertain to these shipments and make these documents available to GIPSA upon request for review or copying purposes. These records are maintained for a period of 3 years. This requirement is essential to ensure exporters of high quality specialty grain in containers comply with the waiver requirements.

Description of Respondents: Business or other for-profit.

Number of Respondents: 40.
 Frequency of Responses:
 Recordkeeping.
 Total Burden Hours: 240.

Charlene Parker,
 Departmental Information Collection
 Clearance Officer.

[FR Doc. 2012-10205 Filed 4-26-12; 8:45 am]

BILLING CODE 3410-KD-P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

**Agency Information Collection
 Activities: Proposed Collection;
 Comment Request—Report of School
 Programs—FNS-10**

AGENCY: Food and Nutrition Service
 (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this existing information collection. This collection is a revision of a currently approved collection for reporting school programs data on a monthly basis for the National School Lunch Program, the School Breakfast Program, and the Special Milk Program.

DATES: Written comments must be received on or before June 26, 2012.

ADDRESSES: Comments are invited on:
 (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
 (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d)

ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Jon Garcia, Acting Branch Chief, Program Analysis and Monitoring Branch, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, VA 22302.

Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Jon Garcia at (703) 305-2600.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 210 National School Lunch Program, Part 220 School Breakfast Program, and Part 215 Special Milk Program.

Form Number: FNS-10.

OMB Number: 0584-0002.

Expiration Date: 08/31/2012.

Type of Request: Revision, of a currently approved collection.

Abstract: The Food and Nutrition Service administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the Richard B. Russell

National School Lunch Act (NSLA), as amended (42 U.S.C. 1751, *et seq.*), and the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771, *et seq.*). As provided in 7 CFR 210.5 (d)(1), 210.4(b)(1)(ii), 215.10(b), and 220.13 (b)(2), "Each State agency must submit a final report of School Program Operations (FNS-10) to FNS for each month." FNS uses form FNS-10 to collect data on school program operations from State agencies on a monthly basis. The form is an intrinsic part of the accounting system currently being used by the subject programs to ensure proper reimbursement in a timely manner. The FNS-10 form is provided to States through a Web-based Federal reporting system, and 100 percent of the information is collected through electronic means. The burden hours have decreased from the previously approved burden (-2,448) due to a previous assessment of burden on the submission of optional reports (i.e., "90-Day" report revisions due to audits, investigations, or management evaluations and "60-Day" reports) of School Program Operations. For an example of the FNS-10 and its instructions, see Appendix A at the end of this notice.

Affected Public: State agencies.

Estimated Number of Respondents: 56 State agencies.

Estimated Number of Responses per Respondent: 24 (Each State agency will submit a 30-day report and a 90-day report for each month in the year.).

Estimated Total Annual Responses: 1,344.

Reporting Time per Response: 2.25 hours.

Estimated Annual Reporting Burden: 3,024 hours.

See the table below for estimated total annual burden for each type of respondent.

Affected public	Instrument	Estimated number of respondents	Responses per respondent	Total annual responses	Estimated average number of hours per response	Annual burden hours
State agency	FNS-10, Report of School Program Operations.	56	24	1,344	2.25	3,024
Total Reporting Burden .....	.....	56	.....	1,344	.....	3,024

Dated: April 19, 2012.

Audrey Rowe,
Administrator, Food and Nutrition Service.

**Attachment: Appendix A: FNS-10
Report of School Program Operations**

**Appendix A—Sample Version of the
Proposed FNS-10 and Instructions**

BILLING CODE 3410-30-P

FORM APPROVED OMB NO. 0584-0002
Expiration Date: XX/XX/XXXX

U.S. DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE REPORT OF SCHOOL PROGRAM OPERATIONS STATE AGENCY: Submit report according to the instructions 30 and 90 days following the month being reported. Send original to the Regional Administrator, Food & Nutrition Service.	1. STATE 2. CALENDAR YEAR 3. MONTH	4. TYPE OF SUBMISSION ("X" ONE) A. <input type="checkbox"/> 30 - DAY B. <input type="checkbox"/> 60 - DAY C. <input type="checkbox"/> 90 - DAY D. <input type="checkbox"/> 90 - DAY REVISION NO. (1 = 1st rev., 2 = 2nd, etc.) E. <input type="checkbox"/> CLOSEOUT F. <input type="checkbox"/> OTHER - (Describe)	FOR FNS USE ONLY CAL YEAR MONTH TYP <table border="1" style="width:100%; text-align: center;"> <tr> <td style="width:33%;"> </td> <td style="width:33%;"> </td> <td style="width:33%;"> </td> </tr> </table> STATE CODE <table border="1" style="width:100%; text-align: center;"> <tr> <td style="width:33%;"> </td> <td style="width:33%;"> </td> <td style="width:33%;"> </td> </tr> </table>						

PART A - (Complete Monthly)

ITEM <small>(Include Residential Child Care Institutions (RCCIs) in Items 5 thru 8.)</small>	FOR FNS USE ONLY	NUMBER OF MEALS AND HALF-PINTS SERVED				
		PAID (A)	FREE (B)	REDUCED PRICE (C)	TOTAL (D)	AVERAGE DAILY MEALS (E)
5. NATIONAL SCHOOL LUNCH PROGRAM a. Total lunches served in the NSLP <small>(Include all lunches reported in 5b1 and 5b2)</small>	ACTUAL					
	ESTIMATED					
	TOTAL					
b1. Lunches served in school food authorities that qualify the state for additional payment	ACTUAL					
	ESTIMATED					
	TOTAL					
b2. Lunches served in school food authorities certified for performance based reimbursement	ACTUAL					
	ESTIMATED					
	TOTAL					
c. Total afterschool snacks served in all approved schools and sites. (Include in Col. B, all free snacks reported in item 5d, below)	ACTUAL					
	ESTIMATED					
	TOTAL					
d. Total afterschool snacks served in area eligible schools and sites	ACTUAL					
	ESTIMATED					
	TOTAL					
6. SCHOOL BREAKFAST PROGRAM <small>(Include schools with severe need)</small>	ACTUAL					
	ESTIMATED					
	TOTAL					
7. SCHOOL BREAKFAST PROGRAM <small>(Severe need only)</small>	ACTUAL					
	ESTIMATED					
	TOTAL					
8. COMMODITY SCHOOLS <small>(Lunches only)</small>	ACTUAL					
	ESTIMATED					
	TOTAL					
9. SPECIAL MILK PROGRAM a. Schools <small>(Include Residential Child Care Institutions)</small>	ACTUAL					
	ESTIMATED					
	TOTAL					
b. Nonresidential Child Care Institutions	ACTUAL					
	ESTIMATED					
	TOTAL					
c. Summer camps	ACTUAL					
	ESTIMATED					
	TOTAL					

FORM FNS-10 (04-09) Previous Editions Obsolete

SBU

Electronic Form Version Designed in Adobe 9.1 Version

NO FURTHER MONIES OR OTHER BENEFITS MAY BE PAID OUT UNDER THESE PROGRAMS UNLESS THIS REPORT IS COMPLETED AND FILED AS REQUESTED BY EXISTING REGULATIONS (7 C.F.R. 210, 215, & 220)

PART B - (Complete Once A Year As Specified)									
ITEM	FOR FNS USE ONLY	NUMBER OF MEALS SERVED					AVERAGE DAILY MEALS (E)		
		PAID (A)	FREE (B)	REDUCED PRICE (C)	TOTAL (D)				
10. REPORT NO. OF MEALS SERVED IN PRIVATE SCHOOLS ONLY									
a. National School Lunch Program									
b. Afterschool snacks (include area eligible snacks reported in 10c.)									
c. Afterschool snacks served in area eligible schools & sites.									
d. School Breakfast Program (include severe need)									
e. Severe Need School Breakfast Program									
11. REPORT NO. OF MEALS SERVED IN RCCI'S ONLY									
a. National School Lunch Program									
b. NSLP - Snacks									
c. School Breakfast Program (include severe need)									
d. Severe Need School Breakfast Program									
OCTOBER	OPERATING A PROGRAM THIS MONTH		NATIONAL SCHOOL LUNCH (F)	NSLP SNACKS (All schs & sites; incl. Col. H) (G)	NSLP SNACKS (Area Elig. Only) (H)	SCHOOL BREAKFAST (Inc. Sev. Nd) (I)	SCHOOL LUNCH (Sev. Nd Only) (J)	COMMODITY (K)	SPECIAL MILK (L)
	12a. Number of Public Schools								
	b. Membership (Enrollment)								
	13a. Number of Private Schools								
	b. Membership (Enrollment)								
	14a. Number of Residential Child Care Institutions								
	b. Membership (Enrollment)								
	15. NUMBER OF CHILDREN APPROVED FOR:								
	a. Free Lunches - - TOTAL								
	b. Reduced-price Lunches - - TOTAL								
	16. NUMBER OF NONRESIDENTIAL CHILD CARE INSTITUTIONS								
	JULY	17. NUMBER OF SUMMER CAMPS OPERATING A PROGRAM FOR THE MONTH OF JULY ONLY							

18. REMARKS

▶	I CERTIFY THAT THIS REPORT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.		19. AGENCY
	20. SIGNATURE	21. TITLE	22. DATE SIGNED

INSTRUCTIONS

(ALL ITEMS SELF-EXPLANATORY UNLESS NOTED BELOW)

For each applicable month, all schools, residential and nonresidential child care institutions, and summer camps known to have operated a program during the month being reported should be accounted for on this report. The 30-day report should include "actual" data from valid claims on hand, and "estimated" data for those claims which have not been validated or received by the reporting due date. In any event, data reported which is not based on valid claim data should represent the best estimate of the reporting office of the actual level of operation. The 30-day report is due in the FNS Regional Office 30 days following the month being reported.

A 60-day report is not required.

The 90-day report containing only valid final claim data must be submitted to the FNS Regional Office within 90 days following the month being reported. The 90-day report must not contain "estimated" data for any item.

For completion of the Form FNS-10, the following reporting schedule should be followed:

1. Items 5 through 9, MONTHLY.
2. Items 10 through 16, ONCE A YEAR, October.
3. Item 17, ONCE A YEAR, July.

If any of the items do not apply to the State Agency's operation, please leave appropriate spaces blank.

DEFINITIONS (for the purpose of this report):

1. "Average Daily Meals" is the number of meals served on an average day during the month being reported. It may be determined in accordance with the following example: School A served for 20 days a total of 2,000 meals; 2,000 divided by 20 equals an average of 100 meals served daily. School B served for 16 days a total of 2,400 meals; 2,400 divided by 16 equals an average of 150 meals served daily. School C served for 30 days a total of 1,800 meals; 1,800 divided by 30 equals an average of 60 meals served daily. One hundred (Average daily meals served for School A) plus 150 (Average daily meals served for School B) plus 60 (Average daily meals served for School C) equals 310, total aggregate average daily meals for the three schools.

The reporting office may use any valid method to determine the number of average daily meals. The method chosen however, should provide a result similar to the result obtained in the calculation method cited above. Under normal circumstances, the number of average daily meals should not vary appreciably from one month to the next. If there is any significant monthly change in the number of average daily meals served, it should be explained in the "Remarks" section of the report.

Note: Unless all schools and residential child care institutions in the State have the same number of food service operating days, do not divide total meals served in the State by the number of calendar school days in order to determine the number of average daily meals for the State. This method will result in significant monthly variations in the data reported, and is not an accurate measure of the number of average daily meals.

In addition to the "Paid", "Free", and "Reduced Price" meals reported each month, "Average Daily Meals" is the primary element used by FNS during the fiscal year to project State agency operational levels.

2. A "Commodity School" is a school that does not participate in the NSLP but which operates a nonprofit lunch program and receives donated foods, or receives donated foods and cash or services of a value of up to 5 cents per lunch in lieu of donated food for processing and handling the foods.

3. A "Free Meal" is one which is served to a needy child determined to be eligible for such meal under the eligibility criteria of the School Food Authority or residential child care institution approved by the State Agency.

4. "Free Milk" is milk served under the Special Milk Program to needy children determined to be eligible for such milk under the eligibility criteria of the School Food Authority or child care institution approved by the State Agency.

5. **Membership (Enrollment)** - A pupil is a member of a school from the date he presents himself/herself at school and is placed on the current roll until he/she permanently leaves the school for one of the causes recognized as sufficient by the State. The date of permanent withdrawal should be the date on which it is officially known that the pupil has left school, and not necessarily the first day after the date of last attendance. Membership is obtained by adding the total original entries and the total reentries and subtracting the total withdrawals; it may also be obtained by adding the total number present and the total number absent. This term is also known as the number belonging. This same definition may be applied to residential child care institutions.

Membership should be based on the State agency's best assessment of available records for the month of October. Membership may be determined either by using one operating day or by averaging several or all operating days in October.

6. A "Nonresidential Child Care Institution" is a licensed nonschool public or nonprofit private institution providing day care services where children are not maintained in residence.

7. A "Paid Meal" is one which is served to a child who has not been determined to be eligible to receive "free or reduced price meals," as defined herein.

8. A "Reduced Price Meal" is one which is served to a needy child determined to be eligible for such meal under the eligibility criteria of the School Food Authority or residential child care institution approved by the State Agency. The reduced meal price must be less than the full meal price and must be 40 cents or less for lunches and 30 cents or less for breakfasts.

9. A "Residential Child Care Institution" is a public or licensed nonprofit private organization including but not limited to orphanages, homes for the mentally retarded, etc., where children are maintained in residence.

10. A "School" is an educational unit of high school grade or under operating under public or nonprofit private ownership in a single building or complex of buildings. When separately administered elementary and secondary grade levels are housed in the same building, each is considered a separate school. When both levels are administered as one unit, it should be considered a single school.

11. A "School Food Authority" is the governing body which is responsible for the administration of one or more schools and which has the legal authority to operate a lunch program therein.

12. A school with "severe need" is a school which is approved for School Breakfast Program reimbursement in excess of the specified standard rates of reimbursement.

13. "Total Meals" and "Total Half-pints of Milk" are all free, reduced price, and paid meals and all free and paid milk served during the month being reported to all eligible children participating in the child nutrition programs covered by this report.

14. A "site" is a nonschool facility participating under the agreement of a School Food Authority and offering afterschool snacks.

15. "Area eligible" means a school or site located in the attendance area of a school in which at least 50% of the enrolled children are certified eligible for free or reduced price meals.

16. A school food authority certified for "Performance based" reimbursement earns an additional National Lunch Program per lunch reimbursement of 6 cents, adjusted annually.

MONTHLY REPORTING

Note: If complete valid claim data is not available for Items 5 through 9 by the due date, estimates will need to be developed in order to complete the 30-day report. While the reporting office may use whatever methods are most suitable to their needs, the following method is suggested:

For all claims not received for schools and institutions known to be operating a program(s), adjust the most recently received valid claim record available for a full operating month for each reporting unit to the days of operation for the current month. The sum of the estimated outstanding claims should be reported on the "estimated data" line. The sum of the valid claims received should be reported on the "actual data" line. The sum of estimated outstanding claims when added to the tabulation of valid claims actually received should be reported on the "total data" line.

It should be noted that this method may not be appropriate for estimating data for the summer months, the beginning of the fall school term, or any other month affected by inclement weather, strikes, widespread illness, etc.

Any estimation method used by the reporting office will be measured by FNS for accuracy. Reporting offices should make reasonable adjustments for any known program growth or decline.

Item

5a. Enter in appropriate columns the total number of lunches served in schools and residential child care institutions to eligible participants. Any lunches served to persons not eligible for program participation or any served that do not meet the Lunch Pattern Requirements are examples of lunches that must not be reported. (Include all lunches reported in 5b.)

5b1. Enter total number of lunches served in school food authorities that qualify the State for additional payment.

5b2. Enter the total number of lunches served in school food authorities certified to receive performance based reimbursement.

5c. Enter in appropriate columns, the total number of snacks served to eligible children in after school care programs as authorized by regulation. Any snacks served to persons not eligible for program participation or any served that do not meet the meal pattern requirements are examples of snacks that must not be reported.

5d. Enter in Column B, the total number of snacks served free to children in afterschool care programs in area eligible schools and sites. Any snacks served to persons not eligible for program participation or any served that do not meet the meal pattern requirements are examples of snacks that must not be reported.

6. Enter in appropriate columns the number of breakfasts served in schools and residential child care institutions to eligible participants. Include breakfasts served in schools and residential child care centers designated by the State Agency as Severe Need programs. Any breakfasts served to persons not eligible for program participation, or any served that do not meet at least the basic meal requirements are examples of breakfasts that must not be reported.

7. Following the same procedure as for Item 6, report only free and reduced-price breakfasts served in the Severe Need Programs. Those breakfasts should be included in Item 6. Report the total of free and reduced-price Severe Need breakfasts in Column D of Item 7.

8. Enter in appropriate columns the number of lunches served to eligible participants. Include lunches served in both Commodity schools and Commodity residential child care institutions. Any lunches served to persons not eligible for program participation, or any served that do not meet the requirements as set forth in Part 210.10 of the NSLP regulations, are examples of lunches that must not be reported.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB Control Number for this information collection is 0584-0002. The time required to complete this information collection is 2 hours and 15 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

Note: For Items 5, 6, 7, 8, 10, and 11, Column E, compute "Average Daily Meals" in accordance with Definition No. 1.

9. Enter in appropriate columns by applicable outlet unit the number of half-pints of milk served in the Special Milk Program (SMP) to eligible participants. Milk served in nonpricing outlets should be counted as paid milk served. Include SMP milk served in residential child care institutions with milk served in schools.

ONCE-A-YEAR REPORTING
FOR THE MONTH OF OCTOBER
(90-day report only)

Item

10. Enter in appropriate columns the number of lunches, breakfasts and snacks served in private schools to eligible participants. Any meals served to persons not eligible for program participation, or any served that do not meet at least the basic meal requirements are examples of meals that must not be reported. For Item 10e, report the total of free and reduced-price Severe Need breakfasts in Column D.

11. Enter in appropriate columns the number of lunches, snacks, and breakfasts served in residential child care institutions to eligible participants. Any meals served to persons not eligible for program participation, or any served that do not meet at least the basic meal requirements are examples of meals that must not be reported. For Item 11d, report the total of free and reduced-price severe need breakfasts in Column D.

12. Enter in appropriate columns the number of public schools participating in the child nutrition programs covered by this report. Report in Column G the total number of public schools and sites serving afterschool snacks, including area eligible schools and sites. Report only the area eligible public schools and sites in Column H. Enter in the appropriate columns the aggregate membership (enrollment) of participating public schools only.

13. Enter in appropriate columns the number of private schools participating in the child nutrition programs covered by this report. Report in Column G the total number of private schools and sites serving afterschool snacks, including area eligible schools and sites. Report only the area eligible private schools and sites in Column H. Enter in the appropriate columns, the aggregate membership (enrollment) of participating private schools only.

14. Enter in appropriate columns the number of residential child care institutions (public and private combined) participating in the lunch, snack, breakfast, commodity, and milk programs and their aggregate membership (enrollment).

15. Enter in Column F the number of children approved for free lunches in public schools, private schools, and RCCIs, and the number of children approved for reduced-price lunches in public schools, private schools, and RCCIs.

16. Enter in Column L the number of nonresidential child care institutions (public and private combined) participating in the Special Milk Program.

ONCE-A-YEAR REPORTING
FOR THE MONTH OF JULY

17. Enter in Column L the number of nonprofit summer camps (public and private combined) which served milk in the Special Milk Program during the month of July.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Supplemental Nutrition Assistance Program—Disaster Supplemental Nutrition Assistance Program (D-SNAP)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed collection. This information collection is based on the Robert T. Stafford Disaster Relief and Emergency Assistance Act and Section 5(h) of the Food and Nutrition Act of 2008, which provide the Secretary of Agriculture with the authority to develop a Disaster Supplemental Nutrition Assistance Program (D-SNAP) to address the needs of families temporarily in need of food assistance after a disaster. The information collection under this notice is required for the establishment and operation of a D-SNAP.

DATES: Written comments must be received on or before June 26, 2012.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information 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 respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Angela Kline, Chief, Certification Policy

Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 812, Alexandria, VA 22302. Comments may also be faxed to the attention of Ms. Kline at (703) 305-2486. The Internet address is: Angela.Kline@FNS.USDA.GOV. Comments will also be accepted through the Federal eRulemaking Portal. Go to <http://www.regulations.gov> and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the FNS during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Room 800, Alexandria, Virginia 22302.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ms. Kline at (703) 305-2495.

SUPPLEMENTARY INFORMATION:
Title: Disaster Supplemental Nutrition Assistance Program (D-SNAP) .

OMB Number: 0584-0336.

Expiration Date: 09/30/2012.

Type of Request: Extension of a previously approved collection.

Abstract: Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100-707, and Section 5(h) of the Food and Nutrition Act of 2008, 7 U.S.C. 2014(h), the Secretary of Agriculture has the authority to develop a Disaster Supplemental Nutrition Assistance Program (D-SNAP) to address the temporary food needs of people following a disaster. The information collected under this notice is required from State agencies in order to receive approval from the Food and Nutrition Service (FNS) to operate a D-SNAP.

The number of disasters that occur annually and the average number of households affected by the disasters cannot be predicted. During the period from calendar year 2006 through calendar year 2011, the number of State requests for disaster programs ranged from 4 to 25 requests. These included

program modifications requested by some States to accommodate evacuees from disasters which did not directly affect the States themselves. The information collection under this reporting burden is limited to the burden experienced by State agencies in preparing their requests to operate D-SNAPs. The burden associated with the actual operation of D-SNAPs, including the processing of applications from households affected by disasters, is included under OMB information collection No. 0584-0064, titled "Food Stamp Forms: Applications, Periodic Reporting, Notices" (expiration date 03/31/2013), which includes all information collection activities associated with the certification of participating and applicant households. The D-SNAP participation and issuance form FNS-292-B, Report of Disaster Supplemental Nutrition Assistance Benefit Issuance, is covered under the OMB information collection No. 0584-0037 (expiration date: 07/31/2014) and will not be reflected in this submission.

FNS estimates that approximately 10 hours of State personnel time are required to prepare D-SNAP requests. The burden associated with preparing requests to operate a D-SNAP does not vary significantly from disaster to disaster and is relatively independent of the scope of the disaster. Major disasters require little additional document preparation time than relatively minor disasters. Based on an estimate of 14 State agency requests per year to operate D-SNAPs and 10 hours of State agency personnel time to prepare each application, FNS has calculated an estimated burden of 140 hours per year in an average year. No increase in burden was estimated under this collection.

Summary of burden hours:

Affected Public: State agencies and local governments.

Estimated Number of Respondents: 14.

Estimated Number of Responses: 14.

Estimated Hours per Response: 10.

Estimated Total Annual Burden on Respondents: 140.

OMB No. 0584-0336 affected public	Estimated number of respondents	Report filed annually	Total annual responses	Estimated avg. number of man-hours per response	Estimated total man-hours
Reporting Burden:					
State Agencies	14	1	14	10	140
Total Annual Burden Estimate .....	.....	.....	.....	.....	140

Dated: April 19, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2012-10268 Filed 4-26-12; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Amended Land Management Plans for the Angeles, Cleveland, Los Padres, and San Bernardino National Forests, California

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Supplemental Environmental Impact Statement (EIS) for a proposed amendment of the Land Management Plans for the Angeles, Cleveland, Los Padres, and San Bernardino National Forests (hereinafter referred to as Land Management Plans). This notice describes the specific portions of the current Land Management Plans to be amended, estimates dates for filing the supplemental environmental impact statement, information concerning public participation, and the names and contact information of the agency officials who can provide additional information. The Forest Service proposes to amend the Land Management Plans to change Land Use Zone allocations within select Inventoried Roadless Areas (IRAs) in the four southern California National Forests. The amendment also proposes to change the Land Management Plan monitoring protocols for the four forests. This joint planning process will maintain the consistent management direction and format across the four Forests. One Supplemental Environmental Impact Statement (EIS) will be prepared with a Record of Decision (ROD) for each Land Management Plan.

DATES: Comments concerning the scope of the analysis must be received by June 11, 2012. The draft supplemental environmental impact statement is expected November 2012. There will be a 90 day comment period on the draft supplemental environmental impact statement. The final supplemental environmental impact statement is expected June 2013.

ADDRESSES: Send written comments to Cleveland National Forest, 10845 Rancho Bernardo Road, Suite 200, San Diego, CA 92127-2107, ATTN: LMP

Amendment. Comments may also be sent via email to socal_nf_imp_amendment@fs.fed.us, or filed through the project web page at <http://www.fs.fed.us/nepa/fs-usda-pop.php?project=35130>.

FOR FURTHER INFORMATION CONTACT: Bob Hawkins, Project Manager at socal_nf_imp_amendment@fs.fed.us, or visit the project Web site at <http://www.fs.fed.us/nepa/fs-usda-pop.php?project=35130>.

SUPPLEMENTARY INFORMATION: The Southern California National Forests (the Angeles, Cleveland, Los Padres, and San Bernardino National Forests, collectively, "four forests") propose to amend the Land Management Plans adopted in 2006. The proposed amendment revises land use zone allocations for select Inventoried Roadless Areas (IRAs) within the four forests and amends Land Management Plan monitoring protocols. This proposed Land Management Plan amendment is a result of the Settlement Agreement approved January 3, 2011 for *California Resources Agency, et al v. United States Department of Agriculture, and Center for Biological Diversity, et al v. United States Department of Agriculture*. The IRAs included in the analysis are: Antimony, Barker Valley, Black Mountain, Cactus Springs B, Caliente, Cedar Creek, Coldwater, Cucamonga B, Cucamonga C, Cuyama, Diablo, Dry Lakes, Eagle Peak, Fish Canyon, Fox Mountain, Garcia Mountain, Juncal, Ladd, Machesna Mountain, Malduce Buckhorn, No Name, Pyramid Peak A, Quatal, Raywood Flat B, Red Mountain, Salt Creek, Sawmill—Badlands, Sespe—Frazier, Sill Hill, Spoor Canyon, Tequepis, Trabuco, Tule, Upper San Diego River, West Fork, Westfork, White Ledge.

Purpose and Need for Action

The purpose of the proposed action is to amend Land Management Plan land use zone allocations for select IRAs and to amend Land Management Plan monitoring protocols. This action is needed to respond to the terms of the Settlement Agreement between the Forest Service, State of California, and other settlement parties.

Land Management Plans are required by the National Forest Management Act (NFMA). They are an integrated document that describes the goals, objectives, and management direction for each component of the National Forest System. The original Land Management Plans for the four southern California national forests were adopted between 1986 and 1989, and revised in

2006 consistent with NFMA requirements. This proposed amendment to the 2006 Land Management Plans is limited in scope and designed to address the terms of the settlement agreement.

Proposed Action

The action proposed by the Forest Service to meet the purpose and need is to modify the existing land use zones in the identified IRAs to include more Back Country Non-Motorized (BCNM) and Recommended Wilderness (RW) areas. An alternate monitoring framework is also proposed.

The proposed action would change the LUZ allocation to BCNM on approximately 300,000 acres, and change the LUZ allocation to RW on approximately 80,000 acres. The majority of the additional BCNM allocations are located in IRAs on the Los Padres National Forest, and San Bernardino National Forest. Additions to the RW allocations are within IRAs on the Angeles and Cleveland National Forests.

On the Angeles National Forest, the Fish Canyon and Salt Creek IRAs were combined to create the proposed 40,000 acre Fish Canyon RW area. On the Cleveland National Forest, the proposed 23,000 acre Eagle Peak RW area includes portions of the Eagle Peak, Sill Hill, and No Name IRAs, along with portions of the Cedar Creek and Upper San Diego River undeveloped areas. The 11,000 acre Barker Valley and 5,000 acre Caliente RW areas are also proposed on the Cleveland National Forest.

The proposed action monitoring and evaluation requirements are based on the current monitoring framework (Part 3, Appendix C of the Land Management Plans). Revisions include updates to the monitoring requirements for forest health, riparian condition, and biological resource condition. Monitoring indicators were also clarified to reflect current inventory methodology in several areas, and an indicator was added to track unclassified (unauthorized) roads and trails. The revision also include more details on how monitoring will be implemented, and how projects will be selected for monitoring.

Lead and Cooperating Agencies

The Forest Service is the lead federal agency for the Land Management Plan Amendment. The U.S. Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, State of California Natural Resources Agency (including the Departments of Fish and Game, Parks and Recreation, and Forestry and Fire

Protection), Ventura County, and Orange County Fire Authority have agreed to participate as cooperating agencies. Other federal, state, and local agencies as well as tribes are invited to join as cooperators.

Responsible Official

Cleveland National Forest Supervisor Will Metz is the lead Forest Supervisor for the joint planning effort between the Angeles, Cleveland, Los Padres, and San Bernardino National Forests and is the Responsible Official for purposes of this notice. If the proposed amendment results in a significant change to the LMPs (as described by Forest Service policy), Regional Forester Randy Moore will be the Responsible Official for the decision. If the proposed amendment does not result in a significant change to the LMP, each individual Forest Supervisor may act as the Responsible Official for the decision. Refer to Forest Service Manual section 1926 for more detail.

Nature and Scope of Decision To Be Made

Given the purpose and need, the Responsible Official reviews the proposed action, the other alternatives, and the environmental consequences in order to determine whether the LMPs will be amended as proposed, modified by an alternative, or not at all. The decision framework is limited in scope to the proposed changes to the land use zone allocations for select IRAs and to the monitoring protocols.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the supplemental environmental impact statement. The four forests will host a series of open house workshops during the scoping period. Forest Service staff will be available during the open house workshops to answer questions about the proposed action.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however anonymous

comments will not provide the Agency with the information needed to provide the respondent with subsequent environmental documents.

Planning Process

The LMP amendment will be developed under the transition provisions of the new Forest Service planning rule found at 36 CFR 219.17, which provides that plan amendments may be initiated under the provisions of the prior planning regulations (see 74 FR 67062, December 18, 2009 for more information on the prior planning rule). Under those transition provisions, this plan amendment will be conducted under the 1982 planning rule, however, the pre-decisional administrative review process described under 36 CFR 219 subpart B will apply.

Meetings

The Forest Service will be hosting multiple open house workshops during the scoping period. The content and format of each meeting will be the same. Forest Service staff will be available to answer questions about the proposed action. Maps of the proposed changes will be available for viewing. The meeting times and locations are:

May 29, 2012, 4 p.m. to 7 p.m., Avenue Adult Center, 550 N. Ventura Avenue, Ventura, CA 93001 (Hosted by Los Padres National Forest).

May 30, 2012, 4 p.m. to 7 p.m., Angeles National Forest Headquarters, 701 North Santa Anita Avenue, Arcadia, CA 91006.

May 31, 2012, 4 p.m. to 7 p.m., Santa Maria Red Cross, 3030 Skyway Drive, Santa Maria, CA 93455 (Hosted by Los Padres National Forest).

May 31, 2012, 4 p.m. to 7 p.m., Santa Clara Mojave Rivers Ranger District Office, 33708 Crown Valley Road, Acton, CA 93510.

May 31, 2012, 4 p.m. to 7 p.m., San Bernardino National Forest Headquarters, 602 S. Tippecanoe Ave., San Bernardino, CA 92408.

May 31, 2012, 4 p.m. to 7 p.m., Palomar Ranger District Office, 1634 Black Canyon Road, Ramona, CA 92065.

June 1, 2012, 1 p.m. to 4 p.m., Frazier Park Library, 3732 Park Drive, Frazier Park, CA 93225 (Hosted by Los Padres National Forest).

June 5, 2012, 4 p.m. to 7 p.m., Descanso Ranger District office, 3348 Alpine Blvd., Alpine, CA 91901.

June 5, 2012, 4 p.m. to 7 p.m., Trabuco Ranger District office, 1147 E. 6th Street, Corona, CA 92879.

Dated: April 17, 2012.

William Metz,

Forest Supervisor, Cleveland National Forest.

[FR Doc. 2012-9909 Filed 4-26-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Environmental Impact Statement for Issuance of a Special Use Permit for the Continued Operation of the Winchester Canyon Gun Club; Los Padres National Forest, California

AGENCY: Forest Service, USDA.

ACTION: Reissuance of a notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: The USDA, Forest Service, Los Padres National Forest, gives notice of intent to conduct an analysis and prepare an EIS for reissuance of a 20-year special use permit for the Winchester Canyon Gun Club (WCGC). This notice announces the beginning of scoping, describes the proposed action and the decision to be made, and estimates the dates for filing the draft and final EIS. This notice also provides information concerning public participation and the names and addresses of Agency officials, who can provide information. The Agency issued an NOI in the **Federal Register** (Vol. 74, No. 230, Wednesday, December 2, 2009). However, issuance of the draft EIS has been delayed. Because of this delay, the Agency is reissuing the NOI to ensure timely scoping and a timely release of the documents.

DATES: Comments concerning the scope of the analysis must be received by June 11, 2012. The draft EIS is expected in the fall of 2012 and the final EIS is expected the end of 2012.

ADDRESSES: Send written comments to: Los Padres National Forest, 6755 Hollister Avenue, Suite 150, Goleta, CA 93117, attention: Jeff Bensen. Comments may also be sent via email to *commentspacificsouthwest-los-padressanta-barbara@fs.fed.us* or via facsimile to (805) 561-5729. Comments received in response to this solicitation, including the names and addresses of those who comment, will be part of the public record for this proposed action.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action may be directed to Jeff Bensen, Project Team Leader, Los Padres National Forest, 6755 Hollister Avenue, Suite 150, Goleta, CA 93117; telephone: (805) 961-5744; email: *commentspacificsouthwest-los-padres-*

santabarbara@fs.fed.us. Individuals, who use telecommunication devices for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 1 (800) 877-8339 between 8 a.m. and 8 p.m. Eastern time Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The WCGC has been authorized to operate on the Los Padres National Forest by a special use permit since the late 1960s. The last term permit expired in 1995, and from that time on, the WCGC has been authorized by annual special use permits. In 2007, an environmental assessment pertaining to the issuance of a 20-year special use permit was completed, and a Decision Notice/Finding of No Significant Impact was issued. The decision was appealed, and the R5 Regional Forester sent the decision back to the Los Padres National Forest for further analysis. The purpose of this action is to reinitiate the proposed action in an EIS.

Proposed Action

The proposed action would authorize the renewal of a 20-year special use permit for the WCGC. The proposed action would require changes pertaining to historic activities and a reduction in the number of shooting facilities, as well as, the number of acres covered under the special use permit from what had been authorized previously. The total size of the permit area would be reduced from 140 acres, as previously permitted, to 96 acres. Maps are available upon request that display the location of the project area, the existing facilities, and the features of the proposed action. The permit would authorize the following existing facilities:

- Clubhouse with a barbecue area
- Restroom buildings
- Two access roads and gates
- Fire equipment and storage containers
- 50-, 100-, 200-yard rifle and pistol ranges
- Three target range firing line covers
- Parking areas
- Three trap ranges, one skeet range, and a sporting clay course
- Skeet, trap, and sporting clay shot-fall zones
- Safety fences, barriers, and berms
- Permit area perimeter fences and signs
- Generator building
- Propane tank and enclosure

Shooting activities would be restricted to the existing rifle and pistol ranges, three trap ranges, one skeet range, and a sporting clay course, as

listed above. Shotgun ranges would be used in a manner minimizing the size of shot-fall areas, minimize the areas of lead contamination, and minimize the area where lead must be collected and recycled. Sporting clay activities would be conducted in a manner ensuring that the shot fall would overlap the trap and skeet range shot-fall areas. The proposed action would not authorize use of the historic long-bore range in the San Jose basin.

The range would be open year-round, with use authorized from sunrise to sunset. The WCGC would offer access to both club members and the public. Club members would be allowed to access the permit area for appropriate target shooting seven days a week. The public would be allowed shotgun use on Wednesday, Saturday, and Sunday, with rifle/pistol use on Saturday and Sunday. The WCGC would also offer the rifle and pistol ranges to local law enforcement agencies and military affiliates, such as ROTC.

An access trail leading into the trap and skeet shot-fall areas would be constructed on the steep northern portion of the proposed permit area. The trail would be 50 inches wide and approximately $\frac{1}{3}$ mile long. The trail would allow the WCGC to monitor lead deposition and collect and recycle lead shot. Initial lead shot recovery activities would be within 50 feet of the centerline of the trail, focusing primarily on areas of shot concentration.

The objective of the proposed action is to isolate the WCGC from the adjoining San Jose basin to the greatest extent possible, maximize the physical separation of the two areas, and mitigate unavoidable effects. In 2011, the San Jose basin area was recommended as a Traditional Cultural Landscape (TCL), underlining the importance of this objective, and it will be managed as an area of cultural importance. A barrier fence constructed at the ridgeline between the proposed WCGC boundary and the San Jose basin would stop clay target and shot wad (shooting) debris, but noise and some lead shot would still carry into the basin area. This is discussed in greater detail below. The Forest Service and the WCGC are jointly developing an Environmental Stewardship Plan (ESP), which will incorporate a schedule of actions to mitigate effects of the target range on the San Jose basin.

In the San Jose basin, the existing 200-, 300-, and 600-yard-long bore ranges with target structures and impact berms will be permanently removed. Use of these ranges by the WCGC has been denied by the Forest Service since 1998. The structures have remained idle

since that time. To access the range, an existing unused access road, which is $\frac{1}{2}$ -mile long, will be re-opened to remove the structures and soil containing lead from the berms. Minimal work would be done to open the road to utilize a dump truck and a backhoe/loader to remove the steel and wooden target frames, retaining walls, impact berms, and associated target range materials. Contaminated soil at each of the three target structures would be removed from the basin area. It is expected at least the top 12 inches of soil will need to be removed. The contaminated soil and structural timbers will be hauled to the existing rifle and pistol ranges where the material will be used to reinforce the target berms and improve the safety/dividing barriers between the ranges. Once the removal project is completed, the area of the three target structures will be re-contoured, a culvert on the road would be removed, and the road and target areas would be ripped and put to bed. It is expected the road and target sites will naturally re-vegetate with significant recovery within several years.

Continuing impacts to the San Jose basin are lead shotfall and shooting noise. A portion of the skeet range shot fall area overlaps into the northwest edge of the San Jose basin. The overlap would continue with mitigation measures to minimize lead and shooting debris accumulation in the basin area. The overlap is a wedge shaped 4.2 acre area. This area of continued impact is a reduction from 55 acres the WCGC was historically permitted to use in the basin area when the long bore range was included. Mitigation measures are listed below and include construction of a 12-foot high 200-foot long barrier fence along the ridgeline between the skeet range and the San Jose basin to stop shooting debris (target clays and shot wads) and some lead shot from entering the basin area. Mitigations also include monthly clean-up of any shooting debris entering the basin, and planned collection of lead shot in the shot fall area. The potential effects of this lead cleanup will be analyzed in the EIS. To partially mitigate the impact of noise, an MOA with the local Tribe has been developed to provide noise free days. The EIS will also analyze the impacts of noise to surrounding areas.

The ESP incorporates the findings from this environmental document to identify environmental concerns, evaluate and prioritize appropriate actions, and generate a list of short- and long-term action items and the steps necessary to implement each item to protect and manage the permitted area.

The ESP incorporates the U.S. Environmental Protection Agency's guidelines entitled "Best Management Practices for Lead at Outdoor Shooting Ranges." In addition, the ESP contains the following:

- Conduct an annual evaluation of progress by the WCGC and the Forest Service toward the environmental stewardship goals.
- Establish a testing and monitoring schedule for soil pH at target backstops and shotgun shot-fall zones. Soil pH will be maintained between 6.5 and 8.5.
- Establish a soil testing and monitoring schedule for lead content and stability on the site.
- Install physical barriers such as silt dams and berms as needed at target backstops and shot-fall zones to prevent lead migration off-site through groundwater and surface water.
- Use only "environmentally friendly" clay targets.
- Do not allow target clays and wads to accumulate on the trap, skeet, and sporting clay fields. The accumulated "environmentally friendly" and "black" targets on the accessible areas at the trap, skeet, and sporting clay zones will be cleaned up and removed from the site. This project will be completed 3 to 4 years after the permit is issued, and subsequent routine removal of the target debris will be established in the ESP.
- Collect and recycle lead at the rifle/impact berms.
- Collect and recycle lead from the trap and skeet ranges and shot-fall zones.
- Construct a 12-foot-high, 200-foot-long barrier fence on the eastern edge of the skeet range to stop shooting targets and some lead shot from crossing into the San Jose basin.
- Coordinate with the local Native American communities to establish "no shooting days" to mitigate the impact of noise.
- Remove the target frame racks and permanently discontinue use of the 200-, 300-, and 600-yard ranges in the basin, and remove the materials, contaminated soil, and access road when the rehabilitation project is completed.
- Construct a 50-inch-wide access trail into the north-facing trap and skeet range shot-fall zone for lead collection. Lead shot collection will initially be conducted within 50 feet of the trail up and downslope from the trail.
- Collect lead in the skeet range shot-fall overlap area in the San Jose basin by trimming brush only enough to facilitate access to areas of shot accumulation on the soil surface.
- Collect and remove lead for recycling using hand screening or small

mechanized screening equipment if available. The collection methods will be consistent with the recommendations listed in the U.S. Environmental Protection Agency's guidelines entitled "Best Management Practices for Lead at Outdoor Shooting Ranges." Lead shot collection and ground disturbance will be monitored and conducted to reduce the potential for off-site migration of lead.

All facilities will be available and accessible to all people without discrimination based on race, color, national origin, sex, religion, age, disability, political beliefs, or marital or familial status. An operation and maintenance plan, safety plan, and fire plan will be developed by both the WCGC and the Forest Service, attached to the permit, and monitored to ensure compliance.

Possible Alternatives

A full range of alternatives will be considered, including non-renewal of the permit, renewal of the permit, and renewal of the permit with modifications. In addition, alternatives in response to issues generated during the scoping process will be considered. All alternatives will comply with the Los Padres National Forest Land Management Plan.

Responsible Official

Peggy Hernandez, Forest Supervisor, Los Padres National Forest, Goleta, California, is the responsible official for this EIS and its Record of Decision. As the responsible official, the Forest Supervisor will document the decision and the reason for the decision in the Record of Decision. The decision will be subject to Forest Service Appeals Regulations (36 CFR Part 215).

Nature of Decision To Be Made

The responsible official will make a decision by considering the following:

1. Whether the proposed action will proceed as proposed, with modifications, or not at all; and
2. What associated mitigation measures and monitoring requirements will be required.

Preliminary Issues

Preliminary issues identified during earlier public involvement include the following:

1. Potential impacts of lead and other shooting contaminants on-site:
 - (a) At affected areas of San Jose basin from long-bore ranges, and
 - (b) From continued operation of existing facilities proposed to remain;
2. Potential for off-site migration of lead and other shooting contaminants;

3. Impacts on cultural sites in the San Jose basin;
4. Target range safety;
5. Target range potential for starting wildfires; and
6. Need for a controlled regulated shooting facility.

Scoping Process

All scoping comments submitted to the Forest Service in response to the NOI dated December 2, 2009, will be carried through to this current scoping period. Previous respondents are not required to provide duplicate comments; however, all new comments relevant to this proposed action are encouraged and welcome. This scoping process guides the development of the EIS. The Forest Supervisor is seeking public and agency comment on the proposed action to identify issues that could arise. These issues may lead to other alternatives or additional mitigation measures and monitoring requirements. Comments may be provided at any time during the planning process, but it is important that reviewers provide their comments at a time and in a manner that will be most useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments in response to this Notice does not confer status for subsequent administrative appeal but does provide important information for preparation of the document and may be of importance for judicial review.

Dated: April 19, 2012.

Peggy Hernandez,
Forest Supervisor.

[FR Doc. 2012-10192 Filed 4-26-12; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Turning Point Solar LLC: Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: The Rural Utilities Service (RUS) has issued a Finding of No Significant Impact (FONSI) for the Environmental Assessment (EA) associated with a solar generation project. The EA was prepared in accordance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality's

(CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR Parts 1500–1508) and RUS’s NEPA implementing regulations (7 CFR Part 1794, Environmental Policies and Procedures). The EA evaluates the environmental impacts associated with a potential loan or loan guarantee to Turning Point Solar LLC (Turning Point Solar) for the proposal. RUS is considering funding this proposal.

ADDRESSES: To obtain copies of the FONSI or EA, or for further information, contact: Ms. Lauren McGee, Environmental Scientist, USDA, Rural Utilities Service, 1400 Independence Avenue SW., Stop 1571, Room 2244–S, Washington, DC 20250–1571, telephone: (202) 720–1482, fax: (202) 690–0649, or email: lauren.mcgee@wdc.usda.gov. A copy of the FONSI and EA can be viewed online at: <http://www.rurdev.usda.gov/UWP-ea.htm>.

SUPPLEMENTARY INFORMATION: Turning Point Solar proposes to construct a 49.9 MW solar generating facility in Brookfield Township, Noble County, Ohio. The proposal involves the installation of high-efficiency monocrystalline photovoltaic panels mounted on fixed solar racking equipment and the construction of access roads, a powerhouse, transmission improvements, and other supporting facilities. The preferred site is located eight miles northwest of Caldwell, Ohio, on approximately 771 acres of reclaimed strip-mined land owned by Columbus Southern Power Company and Ohio Power Company, collectively American Electric Power Ohio (“AEP Ohio”). The land was mined by the Central Ohio Coal Company between 1969 and 1991, after which time it was reclaimed. The proposed generating facility would interconnect to AEP Ohio’s South Cumberland 69kV substation, subject to completion of the Pennsylvania-New Jersey-Maryland (PJM) Generation Interconnection application process.

A Notice of Intent to prepare an EA and hold a scoping meeting was

published in the **Federal Register** on June 27, 2011, and in newspapers within the general circulation of the proposal area from June 27, 2011 to July 5, 2011. A public meeting was held on July 14, 2011, at the Caldwell Elementary School, located at: 44350 Fairground Road, Caldwell, Ohio. A scoping summary report can be found at the RUS Web site listed in this Notice. The notice of availability of the EA for public review was published in the **Federal Register** on February 1, 2012, and in newspapers within the general circulation of the proposal area on January 26, 2011 to January 30, 2011. The EA was available for public and agency review on the RUS Web site listed in this Notice and at Caldwell Public Library, located at: 517 Spruce Street, Caldwell, Ohio 43724. The 30-day comment period ended on March 2, 2012. RUS received three agency comments and one public comment. They are addressed in the FONSI.

Turning Point Solar hired URS Corporation to prepare an EA for RUS that described the proposal and assessed its potential environmental impacts. RUS conducted an independent evaluation of the EA and concurred with its scope and content. In accordance with RUS’s Environmental Policies and Procedures at 7 CFR 1794.41, RUS accepted the document as its EA.

Based on its EA, RUS has concluded that the proposal would have no significant impacts to water quality, wetlands, the 100-year floodplain, land use, aesthetics, transportation, or human health and safety. The proposal will have no adverse effects on historic properties listed or eligible for listing on the National Register of Historic Places. RUS has also concluded that the proposal is not likely to affect federally listed threatened and endangered species or designated critical habitat. The proposal would not disproportionately affect minority and low-income populations.

No other potential significant impacts resulting from the proposal have been identified. Therefore, RUS has determined that this FONSI fulfills its obligations under NEPA for its action related to the proposal. RUS is satisfied that the environmental impacts of the proposal have been adequately addressed. If RUS takes a federal action on the proposal, it will not result in significant impacts to the quality of the human environment. Accordingly, an Environmental Impact Statement will not be prepared for the proposal.

Dated: April 19, 2012.

Nivin Elgohary,

Assistant Administrator, Electric Programs, USDA, Rural Utilities Service.

[FR Doc. 2012–10194 Filed 4–26–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance (TAA) from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm’s workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE
[02/24/2012 through 04/20/2012]

Firm name	Firm address	Date accepted for investigation	Product(s)
Pertech Resources, Inc	860 College View Drive, Riverton, WY 82501.	02/24/2012	The firm manufactures printers and scanners for the banking and healthcare industries.
Rogue Valley Door, Inc	123 N.E. Beacon Drive, Grants Pass, OR 97526.	02/27/2012	The firm manufactures custom interior and exterior solid wood doors.
Frank Shatz & Co., Inc	61 Dewey Avenue, Warwick RI 02886 ..	4/11/12	The firm manufactures wooden furniture for offices.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE—
Continued

[02/24/2012 through 04/20/2012]

Firm name	Firm address	Date accepted for investigation	Product(s)
Schermerhorn, Inc	165 Front Street, Chicopee, MA 01013	4/17/12	The firm manufactures cartons, boxes, and cases of corrugated paper and paperboard.
First Aid Only, Inc	11101 N.E. 37th Circle, Vancouver, WA 98682.	4/19/2012	The firm manufactures retail, commercial, and industrial first aid products and kits.
Astro Tool and Die Corporation	5201 South Whitnall Avenue, Cudahy, WI 53110.	4/20/12	The firm manufactures various metal stampings for the power tool, climate systems, aquarium, safety equipment, and screw machining industries.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: April 20, 2012.

Bryan Borlik,

Director, TAA for Firms.

[FR Doc. 2012-10123 Filed 4-26-12; 8:45 am]

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The application was processed in accordance with T/IM procedures, as authorized by FTZ Board Orders 1347 (69 FR 52857, 8/30/2004) and 1480 (71 FR 55422, 9/22/2006), including notice in the **Federal Register** inviting public comment (77 FR 14000-14001, 03/08/2012). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures. Pursuant to the authority delegated to the FTZ Board Executive Secretary in the above-referenced Board Orders, the application is approved, effective this date, until April 23, 2014, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: April 23, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012-10244 Filed 4-26-12; 8:45 am]

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Ali Mahdavi, Chairman, Aban Air, No. 1267, Vali Asr Avenue, Tehran, Iran 157177 36511;

Mahmoud Khali Hamze (a/k/a Mahmoud Khalil) a/k/a Mahmoud Hamza Khalil), Managing Director, Aviation Legacy (Gambia) Limited, Flat 2907, Almeriki Tower, Sheikh Zayed Road, Dubai, United Arab Emirates;

Everex Global Cargo and Courier, Nos. 7 and 8, Opposite Terminal 2, Mahrabad International Airport, Tehran, Iran, and No. 1267, Vali Asr Avenue, Tehran, Iran 157177 36511;

Pursuant to Section 766.24 of the Export Administration Regulations ("EAR" or the "Regulations"),¹ the Bureau of Industry and Security ("BIS"), U.S. Department of Commerce, through its Office of Export Enforcement ("OEE"), has requested that I issue an Order temporarily denying, for a period of 180 days, the export privileges under the EAR of:

Sayegh Group Aviation, P.O. Box 5822, Sharjah, United Arab Emirates; Aban Air, No. 1267, Vali Asr Avenue, Tehran, Iran 157177 36511; Sam Air Corporation Limited, P.O. Box 5822, Sharjah, United Arab Emirates, and 18th Hill Street, Banjul, The Gambia, West Africa; Aviation Legacy (Gambia) Limited, c/o Mahmoud Khali Hamze, Flat 2907, Almeriki Tower, Sheikh Zayed Road, Dubai, United Arab Emirates, and G 15, Kanifing Housing Estate, The Gambia, West Africa; Abdullah Khaled Ramadan, Managing Director, Sam Air Corporation Limited;

¹ The EAR is currently codified at 15 CFR parts 730-774 (2011). The EAR are issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000)) ("EAA"). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive presidential notices, the most recent being that of August 12, 2011 (76 FR 50661 (Aug. 16, 2011)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, et seq.) ("IEEPA").

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T-3-2012]

Foreign-Trade Zone 126, Temporary/ Interim Manufacturing Authority, Brightpoint North America L.P. (Cell Phone Kitting and Distribution); Notice of Approval

On March 2, 2012, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board filed an application submitted by the Economic Development Authority of Western Nevada, grantee of FTZ 126, requesting temporary/interim manufacturing (T/IM) authority, on behalf of Brightpoint North America L.P., to produce cell phone kits under FTZ procedures within FTZ 126—Site 23, in Reno, Nevada.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Temporarily Denying Export Privileges

Sayegh Group Aviation, P.O. Box 5822, Sharjah, United Arab Emirates; Aban Air, No. 1267, Vali Asr Avenue, Tehran, Iran 157177 36511; Sam Air Corporation Limited, P.O. Box 5822, Sharjah, United Arab Emirates, and 18th Hill Street, Banjul, The Gambia, West Africa; Aviation Legacy (Gambia) Limited, c/o Mahmoud Khali Hamze, Flat 2907, Almeriki Tower, Sheikh Zayed Road, Dubai, United Arab Emirates, and G 15, Kanifing Housing Estate, The Gambia, West Africa; Abdullah Khaled Ramadan, Managing Director, Sam Air Corporation Limited, P.O. Box 5822, Sharjah, United Arab Emirates;

P.O. Box 5822, Sharjah, United Arab Emirates;
 Ali Mahdavi, Chairman Aban Air, No. 1267, Vali Asr Avenue, Tehran, Iran 157177 36511;
 Mahmoud Khali Hamze a/k/a Mahmoud Khalil a/k/a Mahmoud Hamza Khalil, Managing Director, Aviation Legacy (Gambia) Limited, Flat 2907, Almeriki Tower, Sheikh Zayed Road, Dubai, United Arab Emirates.

OEE also has requested pursuant to Sections 766.23 and 766.24 of the Regulations that the following party also be named to the TDO as a related person to Aban Air and Ali Mahdavi, in order to prevent evasion of the TDO:

Everex Global Cargo and Courier, Nos 7 and 8, Opposite Terminal 2, Mahrabad International Airport, Tehran, Iran, and No. 1267, Vali Asr Avenue, Tehran, Iran.

I. Issuance of Temporary Denial Order

A. Legal Standard

Pursuant to Section 766.24(b) of the Regulations, BIS may issue a TDO upon a showing that the order is necessary in the public interest to prevent an “imminent violation” of the Regulations. 15 CFR 766.24(b)(1). “A violation may be ‘imminent’ either in time or degree of likelihood.” 15 CFR 766.24(b)(3). BIS may show “either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.” *Id.* As to the likelihood of future violations, BIS may show that “the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent [.]” *Id.* A “lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.” *Id.*

B. Background and Findings

OEE submits that three U.S.-origin Boeing 747 planes, Manufacturer Serial Number (“MSN”) 23408 (Tail Number C5-SAM), MSN 23224 (Tail Number C5-AKR), and MSN 23823 (Tail Number C5-SAG), items subject to the Regulations, classified under Export Control Classification Number 9A991.b, and controlled for Anti-Terrorism reasons, have been reexported or are intended for reexport to Iran, without the required U.S. Government authorization, as a result of a series of related transactions involving Sayegh Group Aviation, Sam Air Corporation Limited (“Sam Air”), Aviation Legacy (Gambia) Limited (“Aviation Legacy”),

and Aban Air. Sayegh Group Aviation and Sam Air are located in the United Arab Emirates (“U.A.E.”), and are subsidiaries or affiliates of National Paints Factories Company Limited and the Sayegh Group, also located in the U.A.E. Aviation Legacy has addresses in the U.A.E. and Gambia, West Africa, and was, as discussed further below, created as a “clean” company for the purpose of facilitating the lease of the 747s to an Iranian airline or airlines. Aban Air is based in and operates out of Tehran, Iran.

On April 16, 2012, Abdullah Khaled Ramadan (“Ramadan”), Managing Director of both Sayegh Group Aviation and Sam Air, informed BIS and provided transaction documents indicating that three 747s at issue were obtained by Sayegh Group Aviation from Qantas Airlines in the United States in August 2010, sold to Sam Air in July 2011, and then sold yet again to Aviation Legacy on December 20, 2011. Less than ten days later, on or about December 29, 2011, Aviation Legacy leased one of the 747s for reexport to Aban Air in Iran. Ramadan also stated that this 747 aircraft, MSN 23408, is currently in Iran and is scheduled to be reexported again on or about April 30, 2012.

The lease was signed for Aviation Legacy by its chairman, Mahmoud Khalil Hamze (a/k/a Mahmoud Khalil, a/k/a Mahmoud Hamza Khalil), and for Aban Air by its chairman, Ali Mahdavi. Hamze was present when Ramadan made these statements to BIS, and did not contradict or seek to contradict any statements made by Ramadan.

Ramadan provided details about the transactions and the parties and aircraft involved. He was in possession of all of the pertinent Bills of Sale for the three aircraft as well as the subsequent leasing agreement to Aban Air. He admitted that the transactions were structured so that the lease to Aban Air would appear to be through a “clean” company, Aviation Legacy, created for reasons he vaguely described as having to do with an administrative dispute. He also indicated that Sam Air had been created at the order of Saleem Al Sayegh, the chief executive officer of Sam Air’s parent company, the National Paints Factories Company Limited, but declined to explain the reasons why that had been necessary.

Under the terms of the lease, Aban Air’s operations under the lease began on or about March 15, 2012, with the leased 747 (MSN 23408) to be reexported back and forth between Tehran, Iran, and Bangkok, Thailand. Ramadan denied that any of the Tehran-Bangkok flights had occurred, but

indicated that this aircraft currently is located in Iran with Aban Air, and is expected to be flown out of Iran by on or about April 30, 2012.

Ramadan also indicated that the other two 747s have been flown in and out of various countries in the Middle East, including Syria, and that at least one of these 747s is currently located in the U.A.E.

OEE submits, in sum, that future violations of the EAR are imminent as defined in Section 766.24 of the Regulations. I agree. As provided in Section 746.7 of the Regulations, no person may export or reexport any item that is subject to the EAR, if such transaction is prohibited by the Iranian Transactions Regulations (31 CFR part 560) and has not been authorized by the Treasury Department’s Office of Foreign Assets Control (“OFAC”). The evidence shows that the respondents have already reexported one Boeing 747 aircraft (MSN 23408) to Iran without having received the required OFAC authorization. Ramadan, Managing Director of both Sayegh Group Aviation and Sam Air, admitted this unauthorized reexport and admitted another such reexport of this aircraft was imminent in time. As noted above, these statements were made in the presence of Hamze, Aviation Legacy’s chairman, who did not contradict the statements in any way. Moreover, Aviation Legacy was created by Sam Air/Ramadan in an attempt to make the lease to Aban Air appear to be by a “clean” company, and as discussed above, two other 747 aircraft are owned and intended for lease through Aviation Legacy.

Thus, the conduct in this case is deliberate, significant, and likely to occur again absent the issuance of a TDO. Therefore, I find that a TDO naming Sayegh Group Aviation Sam Air Corporation Limited, Abdullah Khaled Ramadan, Aviation Legacy (Gambia) Limited, Mahmoud Khali Hamze (a/k/a Mahmoud Khalil a/k/a Mahmoud Hamza Khalil), Aban Air, and Ali Mahdavi is necessary, in the public interest, to prevent an imminent violation of the EAR.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS’s showing of an imminent violation.

II. Related Person

A. Legal Standard

Section 766.24(c) of the Regulations provides that a temporary denial order may be made applicable to related persons in accordance with Section 766.23. 15 CFR 766.24(c). Section

766.23 provides, in turn, that “[i]n order to prevent evasion, [temporary denial orders] under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business.” 15 CFR 766.23(a). Pursuant to Section 766.23(b), a temporary denial order may be made applicable to a related person on an *ex parte* basis under Section 766.24(a) without need to provide prior notice. 15 CFR 766.23(a).

B. Analysis and Findings

Everex Global Cargo and Courier (“Everex”) has a significant corporate relationship with Aban Air and Ali Mahdavi. OEE has presented evidence that Ali Mahdavi, who is chairman of Aban Air and signed the lease discussed above that resulted in the unlawful reexport of a 747, also is the chairman of Everex. The two entities have the same offices at the Tehran, Iran Airport. Everex also lists its branch office in Tehran as the same location as Aban Air’s Iranian headquarters. Finally, according to open source information obtained by OEE, Everex acts as the General Sales Agent for Aban Air in several countries, including Iran and the U.A.E.

I find pursuant to Section 766.23 that Everex Global Cargo and Courier is a related person to Aban Air and Ali Mahdavi, and that adding Everex Global Cargo and Courier to the TDO is necessary to prevent evasion of the TDO.

III. Order

It is therefore ordered: FIRST, that the Respondents, SAYEGH GROUP AVIATION, P.O. Box 5822, Sharjah, United Arab Emirates; ABAN AIR, No. 1267, Vali Asr Avenue, Tehran, Iran 157177 36511; SAM AIR CORPORATION LIMITED, P.O. Box 5822, Sharjah, United Arab Emirates, and 18th Hill Street, Banjul, The Gambia, West Africa; AVIATION LEGACY (GAMBIA) LIMITED, c/o Mahmoud Khali Hamze, Flat 2907, Almeriki Tower, Sheikh Zayed Road, Dubai, United Arab Emirates, and G 15, Kanifing Housing Estate, The Gambia, West Africa; ABDULLAH KHALED RAMADAN, Managing Director, Sam Air Corporation Limited, P.O. Box 5822, Sharjah, United Arab Emirates; ALI MAHDAVI, Chairman Aban Air, No. 1267, Vali Asr Avenue, Tehran, Iran 157177 36511; MAHMOUD KHALI HAMZE (a/k/a MAHMOUD KHALIL a/k/a MAHMOUD HAMZA KHALIL), Managing Director, Aviation Legacy

(Gambia) Limited, Flat 2907, Almeriki Tower, Sheikh Zayed Road, Dubai, United Arab Emirates; and EVEREX GLOBAL CARGO AND COURIER, Nos. 7 and 8, Opposite Terminal 2, Mahrabad International Airport, Tehran, Iran, and No. 1267, Vali Asr Avenue, Tehran, Iran 157177 36511, and each of their successors or assigns and, when acting for or on behalf of any of the foregoing, each of their officers, representatives, agents or employees (each a “Denied Person” and collectively the “Denied Persons”) may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Export Administration Regulations (“EAR”), or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

SECOND, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has

been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

In accordance with the provisions of Section 766.24(e) of the EAR, the Respondents may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202-4022.

BIS may seek renewal of this Order by filing a written request with the Assistant Secretary of Commerce for Export Enforcement in accordance with the provisions of Section 766.24(d) of the EAR, which currently provides that such a written request must be submitted not later than 20 days before the expiration date. A Respondent may oppose a request to renew this Order in accordance with Section 766.24(d), including by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, supported by appropriate evidence. Any opposition ordinarily must be received not later than seven days before the expiration date of the Order.

Notice of the issuance of this Order shall be given to Respondents in accordance with Sections 766.5(b) and 766.24(b)(5) of the Regulations. This Order also shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Dated: Issued this 23rd day, of April 2012.

Donald G. Salo, Jr.,

Acting Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2012-10190 Filed 4-26-12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-891]

Hand Trucks and Certain Parts Thereof From the People's Republic of China; Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 27, 2012.

FOR FURTHER INFORMATION CONTACT:

Scott Hoefke or Fred Baker, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-4947 or (202) 482-2924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 2012, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the 2009-2010 administrative review of the antidumping duty order on hand trucks and certain parts thereof from the People's Republic of China. *See Hand Trucks and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 1464 (January 10, 2012) (*Preliminary Results*).

Extension of Time Limits for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires that the Department complete the final results of an administrative review within 120 days after the date on which notice of the preliminary results was published in the **Federal Register**. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days after the publication date of the preliminary results.

The Department finds that it is not practicable to complete the final results

of this review within the original time frame because the Department continues to require additional time to analyze issues raised in recently filed case and rebuttal briefs. Thus, the Department finds it is not practicable to complete this review by the current deadline (*i.e.*, May 9, 2012). Accordingly, the Department is extending the time limit for completion of the final results of this administrative review by an additional 60 days (*i.e.*, until July 8, 2012), in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: April 20, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012-10270 Filed 4-26-12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-838]

Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on seamless refined copper pipe and tube from Mexico for the period November 22, 2010, through April 30, 2011, in response to a request from GD Affiliates S. de R.L. de C.V. (GD Affiliates).

We preliminarily find that the U.S. sales of subject merchandise produced and exported by Golden Dragon¹ were not sold below normal value (NV). If these preliminary results are adopted in our final results, the Department will instruct U.S. Customs and Border Protection (CBP) to collect cash deposits of zero percent and to liquidate without regard to antidumping duties any entries for which the assessment rate is zero or *de minimis*. *See* the "Assessment Rate" section of this notice. Interested parties are invited to comment on these preliminary results.

¹The Department uses the name Golden Dragon when we refer to the collective group of Golden Dragon companies, which includes GD Affiliates. *See* "Corporate Structure" section below.

See the "Preliminary Results of New Shipper Review" section of this notice.

DATES: *Effective Date:* April 27, 2012.

FOR FURTHER INFORMATION CONTACT:

Dennis McClure or Joy Zhang, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-5973 or (202) 482-1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on seamless refined copper pipe and tube from Mexico on November 22, 2010. *See Seamless Refined Copper Pipe and Tube From Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico*, 75 FR 71070 (November 22, 2010). On May 31, 2011, the Department received a request from GD Affiliates in accordance with 19 CFR 351.214(c), to conduct a new shipper review of the antidumping duty order on seamless refined copper pipe and tube from Mexico. The Department found that the request for review met the statutory and regulatory requirements for initiation in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(d), and initiated the review on June 30, 2011. *See Seamless Refined Copper Pipe and Tube From Mexico: Notice of Initiation of Antidumping Duty New Shipper Review*, 76 FR 39850 (July 7, 2011).

On July 1, 2011, the Department issued its new shipper questionnaire to GD Affiliates. On August 22, 2011, Golden Dragon submitted its section A through D response. On September 6, 2011, the petitioners² filed a cost allegation. On October 6, 2011, the Department initiated a cost investigation. On September 21, 2011, the Department issued its first supplemental questionnaire for sections A through D, to Golden Dragon, for which a response was filed on October 12, 2011. On October 26, 2011, the petitioners requested that the Department rescind the review, because GD Affiliates was neither the producer nor exporter of the subject merchandise, and the review was not requested by Golden Dragon's affiliate, Hong Kong GD Trading Co., Ltd., the affiliated

²The domestic interested parties for this proceeding are Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products, Inc. and Mueller Copper Tube Company, Inc. (collectively, the petitioners).

company that owns the subject merchandise, arranged for its production in Mexico, and sold it in the United States. On November 4, 2011, Golden Dragon responded to the petitioners' request that the Department rescind the review. Golden Dragon contended that the subject merchandise was produced in Mexico and was exported from Mexico by GD Affiliates. Golden Dragon also contended that there is 100 percent common ownership of all Golden Dragon companies involved in the production in Mexico of the subject merchandise sold in the United States.

The Department issued a second, third, and fourth supplemental questionnaire for section D, on December 21, 2011, January 30, 2012, and March 27, 2012. Golden Dragon submitted its responses to the section D supplemental on January 18, 2012, February 21, 2012, and April 6, 2012, respectively.

On December 23, 2011, the Department extended the deadline for the preliminary results to April 23, 2012. *See Seamless Refined Copper Pipe and Tube from Mexico: Extension of Time Limits for the Preliminary Results of Antidumping Duty New Shipper Review*, 76 FR 80333 (December 23, 2011).

Scope of the Order

For the purpose of the order, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 mm) in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter (OD), regardless of wall thickness, bore (e.g., smooth, enhanced with inner grooves or ridges), manufacturing process (e.g., hot finished, cold-drawn, annealed), outer surface (e.g., plain or enhanced with grooves, ridges, fins, or gills), end finish (e.g., plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (e.g., plastic, paint), insulation, attachments (e.g., plain, capped, plugged, with compression or other fitting), or physical configuration (e.g., straight, coiled, bent, wound on spools).

The scope of the order covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials (ASTM) ASTM-B42, ASTM-B68, ASTM-B75, ASTM-B88, ASTM-B88M, ASTM-B188, ASTM-B251, ASTM-B251M, ASTM-B280, ASTM-B302, ASTM-B306, ASTM-359, ASTM-B743, ASTM-B819, and ASTM-B903 specifications and meeting the physical parameters described therein. Also

included within the scope of the order are all sets of covered products, including "line sets" of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase "all sets of covered products" denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

"Refined copper" is defined as: (1) Metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

Element	Limiting content percent by weight
Ag—Silver	0.25
As—Arsenic	0.5
Cd—Cadmium	1.3
Cr—Chromium	1.4
Mg—Magnesium	0.8
Pb—Lead	1.5
S—Sulfur	0.7
Sn—Tin	0.8
Te—Tellurium	0.8
Zn—Zinc	1.0
Zr—Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of the order are all seamless circular hollows of refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to the order are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States (HTSUS). Products subject to the order may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Corporate Structure

As the petitioners point out, this new shipper review was requested by GD Affiliates. In its initial questionnaire response, as the petitioners noted, GD Affiliates identified affiliated parties involved with the production and sale of subject merchandise from Mexico. Specifically, GD Affiliates identified the following affiliated parties, which are all wholly owned subsidiaries of Golden Dragon Precise Copper Tube Group, Inc., the corporate parent located in the People's Republic of China: (1) GD Copper Cooperatief U.A.; (2) Hong Kong GD Trading Co. Ltd.; (3) Golden Dragon

Holding (Hong Kong) International, Ltd.; (4) GD Copper U.S.A. Inc.; (5) GD Affiliates Servicios S. de R.L. de C.V.; and (6) GD Affiliates. In questionnaire responses, these companies are collectively referred to as Golden Dragon.³

In its responses, Golden Dragon explained that Hong Kong GD Trading Co. Ltd. buys the raw material on the world market and arranges to have it shipped to the production facility in Mexico, where it is converted to subject merchandise under consignment pursuant to a maquila agreement with GD Affiliates.⁴ Subsequently, finished merchandise is shipped to unaffiliated customers. The questionnaire responses set forth the various activities of each of these entities, showing they are operating as a single entity for purposes of the production and sale of subject merchandise from Mexico to the United States.⁵

Based upon the record of this new shipper review, the Department preliminarily determines that Golden Dragon is the producer and exporter of subject merchandise and, therefore, is entitled to this new shipper review.

Bona Fides Analysis

We preliminarily determine that these sales are *bona fide*. In considering the record of this review we find that there are a significant number of U.S. sales made to unaffiliated parties; these sales were made during and after the period of this review. In addition, there is no information indicating that sales are not commercially reasonable. *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005). Because the information is business proprietary, see "Bona Fides Analysis Memorandum" dated April 23, 2012, for a detailed discussion. We will consider this matter further for the final results.

Period of Review

The period of review (POR) for this new shipper review is November 22, 2010, through April 30, 2011.

Fair Value Comparisons

To determine whether Golden Dragon's sales of subject merchandise from Mexico were made in the United States at less than NV, we compared the monthly, weighted-average constructed export price (CEP) to the monthly, weighted-average NV, as described in

³ See Golden Dragon's August 22, 2011, section A response at A-5 through A-8 and Exhibit A-2; Golden Dragon's August 29, 2011, section D response at D-4 through D-5 and D-17.

⁴ *Id.*

⁵ *Id.*

the “U.S. Price” and “Normal Value” sections of this notice. Pursuant to 19 CFR 351.414(c)(1) and (d), we compared CEP to the NV of the foreign like product in the appropriate corresponding calendar month.⁶

Product Comparisons

Pursuant to section 771(16)(A) of the Act, for purposes of determining appropriate product comparisons to the U.S. sales, the Department considers all products, as described in the “Scope of the Order” section of this notice above, that were sold in the comparison or third-country market in the ordinary course of trade. In accordance with sections 771(16)(B) and (C) of the Act, where there are no sales of identical merchandise in the comparison or third-country market made in the ordinary course of trade, we compared U.S. sales to sales of the most similar foreign like product based on the characteristics listed in sections B and C of our antidumping questionnaire: (1) Type and ASTM specification; (2) copper alloy unified number system; (3) outer diameter; (4) wall thickness; (5) physical form; (6) temper designation; (7) bore; (8) outer surface; and (9) attachments. We found that Golden Dragon had sales of foreign like product that were identical or similar in these respects to the merchandise sold in the United States, and therefore compared the U.S. product with identical or similar merchandise sold in the home market, based on the characteristics listed above, in that order of priority.

Date of Sale

Pursuant to 19 CFR 351.401(i), the Department will normally use the date of invoice as the date of sale, unless a different date better reflects the date on which the material terms of sale are established. In its response to the Department’s questionnaire, Golden Dragon reported the invoice date as the date of sale in both markets. However, in section A of Golden Dragon’s response, Golden Dragon reported that the quantity of each transaction is not fixed until the shipment is made. In the case of consignment sales, when the product is withdrawn by a customer, the

invoice date is the appropriate date of sale. *See* Golden Dragon’s Section A response, dated August 22, 2011, at A–17. Golden Dragon also asserted that the Department should compare U.S. sales to home market sales with the same metal exchange and date, because the invoice date alone is not an appropriate basis to determine the transaction dates to be used in the dumping margin calculations. Golden Dragon argues that the price of copper can fluctuate sharply on a daily basis. *See id.* *See also* Golden Dragon’s Section B response, dated August 22, 2011, at B–19–21. However, as noted below, we do not find that this case warrants special treatment of costs which warrants comparison of U.S. sales to home market sales by invoice date and the same metal exchange date. Accordingly, we preliminarily find invoice date to be the appropriate date of sale with respect to Golden Dragon’s sales to the U.S. and home market. However, during the POR, shipment occurred prior to invoice date for certain sales. Therefore, consistent with the Department’s practice, we used the shipment date as the date of sale where the shipment date occurs before the invoice date because the quantity is fixed at the time of shipment. *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18074, 18079–80 (April 10, 2006), unchanged in *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007), and the accompanying Issues and Decision Memorandum at Comments 4 and 5.

U.S. Price

Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter,” as adjusted under sections 772(c) and (d) of the Act. For purposes of this new shipper review, Golden Dragon classified its U.S. sales as CEP sales because Golden Dragon’s U.S. affiliate is responsible for the sale to the unaffiliated customer. Since Golden Dragon’s U.S. affiliate is responsible for the sale to the unaffiliated customer in the United States, we are treating Golden Dragon’s U.S. sales as CEP sales. We calculated

CEP using the price Golden Dragon charged its unaffiliated customer. We made deductions and adjustments, where appropriate, from the starting price for international freight, inland insurance, U.S. warehouse expenses, U.S. brokerage and handling expenses, credit expenses, inventory carrying costs incurred in the United States, and other indirect selling expenses in the United States associated with economic activity in the United States. *See* sections 772(c)(2)(A) and 772(d)(1) of the Act. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit.

Information about the specific adjustments and our analysis of the adjustments is business proprietary, and is detailed in the Memorandum to The File, through James Terpstra, Program Manager, from Dennis McClure, International Trade Analyst, Analysis Memorandum for Golden Dragon Affiliates S. de R.L. de C.V. for the Preliminary Results of the Antidumping Duty New Shipper Review of Seamless Refined Copper Pipe and Tube from Mexico, dated concurrently with this notice (Preliminary Analysis Memorandum).

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of Golden Dragon’s home market sales of the foreign like product to the volume of its U.S. sale of subject merchandise, in accordance with section 773(a)(1)(B)(ii)(II) of the Act. Based on this comparison, we determined that Golden Dragon had sufficient sales in the home market to serve as a viable basis for calculating NV during the POR. *See* Golden Dragon’s Section A response, dated August 22, 2011, at Exhibit A–1.

B. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export price or CEP sales in the U.S. market. For further discussion of our LOT analysis, see Preliminary Analysis Memorandum.

After analyzing the information on the record with respect to the following selling activities: (1) Sales Forecasting;

⁶ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*). In particular, the Department compared monthly weighted-average export prices (or CEPs) with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

(2) Strategic/Economic Planning; (3) Engineering Services; (4) Advertising; (5) Sales Promotion; (6) Packing; (7) Inventory Maintenance; (8) Order Input/Processing; (9) Direct Sales Personnel; (10) Sales/Marketing Support; (11) Technical Assistance; (12) Manage Cash Discounts; (13) Pay Commissions; (14) Provide After-Sales Services; (15) Arrange Freight and Delivery; and (16) Negotiate, Order, and Collect Payment, we preliminarily find that all reported sales are made at the same LOT. For a further discussion of LOT, see “Level of Trade Analysis” section in the Preliminary Analysis Memorandum.

C. Cost of Production Analysis

In accordance with section 773(b)(2)(A) of the Act, to initiate a cost of production (COP) investigation the Department must have “reasonable grounds” to believe or suspect that sales of the foreign like product under consideration for the determination of NV have been made at prices below the COP of that product. An allegation will be deemed to have provided reasonable grounds if: (1) A reasonable methodology is used in the calculation of the COP including the use of the respondent’s actual data, if available; (2) using this methodology, sales are shown to be made at prices below the COP; and (3) the sales allegedly made at below cost are representative of a broader range of foreign models which may be used as a basis for NV. See section 773(b)(2)(A)(i) of the Act and *Notice of Preliminary Results of the New Shipper Review of the Antidumping Duty Order on Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil*, 70 FR 48668, 48670 (August 19, 2005), unchanged in *Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil*, 70 FR 62297 (October 31, 2005). The Department found that pursuant to 773(b)(2)(A)(i) of the Act, the petitioners provided, in their September 6, 2011, sales-below-cost allegation, a reasonable basis to believe or suspect that Golden Dragon was selling seamless refined copper pipe and tube at below the COP in the home market. See Memorandum to Melissa Skinner from the Team, The Domestic Producers’ Allegation of Sales Below the Cost of Production for GD Affiliates S. de R.L. de C.V., Golden Dragon Precise Copper Tube Group, Inc., and GD Copper (U.S.A.), dated October 6, 2011. As a result, the Department initiated an investigation to determine whether Golden Dragon made home market sales during the POR at prices below COP.

Volatility in Raw Materials

Golden Dragon alleges that the volatility in daily commodity metal prices poses unique issues that the Department’s traditional antidumping methodology does not adequately address.⁷ Golden Dragon asserts that because it has shown that the company goes to great lengths in the normal course of business to eliminate all risk associated with metal fluctuations, the Department should rely on Golden Dragon’s reported day-specific⁸ metal costs, rather than POR weighted-average metal costs for purposes of its margin analysis, consistent with the Department’s practice (see *Brass Sheet and Strip from Germany: Amended Final Results of Antidumping Duty Administrative Review*, 75 FR 66347 (October 28, 2010) and accompanying Issues and Decision Memorandum at Comment 1 (*Brass Sheet and Strip*)).

Golden Dragon claims that because of the risks associated with fluctuating copper prices, the company has developed a business practice where Golden Dragon and its customers agree to fix the copper price component of the sales of seamless copper pipe and tube based on published prices from a global commodity futures exchange, such as the London Metals Exchange (LME).⁹ The prices that Golden Dragon subsequently invoices its customers are comprised of two components, the agreed upon fixed metal price and a fabrication charge, both of which are listed separately on the invoice for each sales transaction.¹⁰ Golden Dragon claims that this business model, and the company’s metal hedging mechanism,¹¹ allows Golden Dragon to shift the entire risk of fluctuating metal prices to its customers.¹²

In *Brass Sheet and Strip*, the Department found that the respondent obtained metal neutrality as a result of its business practice of purchasing the same quantity of metal at the same metal price (e.g., LME price) for the same day (“metal fixation day”) as the sale price of the metal agreed to with its customer (i.e., metal price reflected on

the respondent’s sales invoice to the customer). In those instances where the purchase quantity and sales quantity of metal differed on a given day (metal fixation date), the difference in quantity was hedged. Because the Department found that the respondent’s sales and purchases were specifically linked on a daily basis through back-to-back physical purchases or hedging transactions in *Brass Sheet and Strip*, the Department determined that the reliance on the respondent’s reported day-specific metal costs was warranted. As such, the Department departed from its normal practice of calculating a weighted-average POR metal cost and relied instead on the reported day-specific metal costs.

In the instant case, Golden Dragon claims that Hong Kong GD Trading Co., Ltd.’s metal purchasing and hedging mechanism is identical to the *Brass Sheet and Strip* respondent’s metal purchasing and hedging practices. As such, the Golden Dragon asserts that the Department should rely on Golden Dragon’s reported day-specific metal costs consistent with *Brass Sheet and Strip*. We disagree. The record evidence submitted by Golden Dragon does not show that the quantities of metal reported for specific metal fixation dates for Golden Dragon’s sales to customers in Mexico and the United States were specifically linked on a daily basis through back-to-back physical purchases or hedging transactions. For example, for home market and U.S. sales¹³ with metal fixation dates occurring on specific days within December 2010, we were unable to reconcile the sales quantities to the purchasing and hedging transaction information submitted by Golden Dragon for the month of December 2010.¹⁴ Because the record evidence in this case fails to demonstrate that Golden Dragon is able to maintain complete metal cost neutrality, similar to the respondent in *Brass Sheet and Strip*, we preliminarily find that the reliance on a daily metal cost methodology is not warranted. Therefore, we have relied on our normal practice of calculating a POR weighted-average cost of metal for our preliminary analysis.

⁷ See, e.g., Golden Dragon’s August 29, 2011 submission at A–18.

⁸ Day-specific costs reported by Golden Dragon include metal costs specific to a particular day, a week-long average, a monthly average, or an average of months. See, e.g., Golden Dragon’s April 6, 2012 submission at exhibit 1, data field “METALDTH.”

⁹ See Golden Dragon’s Section A response, dated August 22, 2011, at A–17.

¹⁰ See, e.g., Golden Dragon’s January 18, 2012 submission at exhibit SSD–5.

¹¹ See Golden Dragon’s January 18, 2012 submission at 8 for a description of the hedging mechanism.

¹² See Golden Dragon’s Section D response, dated August 29, 2011, at D–16.

¹³ See data file accompanying Golden Dragon’s April 6, 2012 submission titled “GDCOPHM04” and data file accompanying Golden Dragon’s February 21, 2012 submission titled “GDCOPUS02,” respectively.

¹⁴ See, e.g., Golden Dragon’s February 21, 2012 submission at exhibits 3SD–3, 3SD–4, 3SD–5, and 3SD–6.1.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated Golden Dragon's COP based on the sum of materials and conversion for the foreign like product, plus amounts for general and administrative expenses and interest expenses (see "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses). We revised Golden Dragon's reported metal costs to reflect the weighted-average metal consumption cost for the POR. We recalculated the per-unit cost of services provided to GD Affiliates by Hong Kong GD Trading Co., Ltd., and Golden Dragon Holding (Hong Kong) International, Ltd. by applying the reported services ratio to the per-unit total cost of manufacturing rather than the per-unit direct material costs as reported by Golden Dragon. Details regarding the calculation of COP, including adjustments made to the COP reported by Golden Dragon, as well as other calculation details can be found in the Golden Dragon Preliminary Cost Memorandum. See Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—G.D. Affiliates S. de R.L. de C.V., Golden Dragon Precise Copper Tube Group, Inc., and GD Copper (USA) from LaVonne Clark to Neal Halper, dated concurrently with this notice.

2. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(a)(1)(B)(i) of the Act, we compared the adjusted weighted-average COP to the home market sales prices of the foreign like product, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of billing adjustments, where appropriate) were exclusive of any applicable movement charges, discounts, direct and indirect selling expenses, and packing expenses.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act,

where less than 20 percent of the respondent's home market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: (1) they were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Golden Dragon's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV for Golden Dragon on the reported packed, delivered prices, FOB plant, or delivered to the customer's warehouse and sold on a consignment basis to comparison market customers. We made deductions from the starting price, where appropriate, for billing adjustments, early payment discounts, credit expenses, and inland freight, pursuant to section 773(a)(6)(B)(ii) of the Act.

We added U.S. packing costs and deducted home market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the home market or the United States where commissions were granted on sales in one market but not in the other, the "commission offset." Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical

differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise. See 19 CFR 351.411(b).

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415(a) based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of New Shipper Review

As a result of our review, we preliminarily find, in accordance with 19 CFR 351.214(i)(1), that the following weighted-average dumping percentage margin exists for Golden Dragon for the period November 22, 2010, through April 30, 2011:

Manufacturer/exporter	Weighted-average dumping margin (percent)
Golden Dragon	0.00

Assessment Rate

Upon completion of this new shipper review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b). The Department intends to issue assessment instructions for Golden Dragon directly to CBP 15 days after the date of publication of the final results of this new shipper review.

If Golden Dragon's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).¹⁵ We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we intend to instruct CBP to liquidate

¹⁵ In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification for Reviews*, i.e. on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.

without regard to antidumping duties any entries for which the assessment rate is zero or *de minimis* (i.e., less than 0.50 percent). See 19 CFR 351.106(c)(1).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for subject merchandise that is manufactured by Golden Dragon and exported by Golden Dragon established in the final results of this new shipper review, except no cash deposit will be required if its weighted-average dumping margin is *de minimis* (i.e., less than 0.5 percent); (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 26.03 percent, the all-others rate established in the LTFV investigation. See *Seamless Refined Copper Pipe and Tube From Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico*, 75 FR 71070 (November 22, 2010). These requirements, when imposed, shall remain in effect until further notice.

Further, effective upon publication of the final results, we intend to instruct CBP that importers may no longer post a bond or other security in lieu of a cash deposit on imports of seamless refined copper pipe and tube from Mexico, manufactured by Golden Dragon and exported by Golden Dragon. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of public announcement. See 19 CFR 351.224(b). Unless notified by the Department, pursuant to 19 CFR

351.309(c)(ii), interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the deadline for filing the case briefs. See 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Additionally, parties are requested to provide their case briefs and rebuttal briefs in electronic format (e.g., WordPerfect, Microsoft Word, Adobe Acrobat, etc.).

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. See 19 CFR 351.310(c).

The Department will issue the final results of this review, including the results of its analysis of issues raised in any written briefs, within 90 days of signature of these preliminary results, unless the final results are extended. See section 751(a)(2)(B)(iv) of the Act.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this 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.

This new shipper review is issued and published in accordance with sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act, as well as 19 CFR 351.214(i).

Dated: April 23, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012-10241 Filed 4-26-12; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-428-815, A-580-816]

Corrosion-Resistant Carbon Steel Flat Products From Germany and South Korea: Extension of Time Limits for Preliminary and Final Results of Third Antidumping Duty Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 27, 2012.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or James Terpstra at 202-482-5973 or 202-482-3965, respectively, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Background

On January 3, 2012, the Department of Commerce (the Department) initiated the third sunset reviews of the antidumping duty (AD) orders on corrosion-resistant carbon steel flat products (CORE) from Germany and South Korea (Korea), pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See *Initiation of Five-Year ("Sunset") Review*, 77 FR 85 (January 3, 2012). Within the deadline specified in 19 CFR 351.218(d)(1)(i), the Department received notices of intent to participate, in both sunset reviews, on behalf of United States Steel Corporation, Nucor Corporation, and ArcelorMittal Steel USA (collectively, domestic interested parties). Each claimed interested party status under section 771(9)(C) of the Act, as a producer of domestic like product. The Department received timely substantive responses from the domestic interested parties. On February 22, 2012, after analyzing the substantive and rebuttal responses of interested parties, consistent with 19 CFR 351.218(e)(1)(ii)(A), the Department determined to conduct expedited sunset reviews of these AD orders on the basis that no respondent interested party submitted a substantive response in either review.

On February 14, 2012, the Department published in the **Federal Register** a notice entitled *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

In that notice, the Department announced the modification of its methodology regarding the calculation of the weighted-average dumping margins in certain segments of antidumping duty proceedings and stated that it would apply to all sunset reviews for which preliminary or final results were due more than 60 days after publication (*i.e.*, April 16, 2012). On April 20, 2012, the Department reconsidered its determination to conduct expedited sunset reviews of these orders and determined to conduct full sunset reviews of the AD orders on CORE from Germany and Korea. See Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Melissa G. Skinner, Director, Antidumping and Countervailing Duty Operations, Office 3, regarding "Sunset Reviews of the Antidumping Duty Orders on Corrosion-Resistant Carbon Steel Flat Products from Germany and South Korea: Adequacy Redetermination Memorandum," (April 20, 2012). The preliminary results of these full sunset reviews are currently due April 23, 2012.¹

Extension of Time Limits

In accordance with section 751(c)(5)(B) of the Act, the Department may extend the period of time for making its determination by not more than 90 days, if it determines that the sunset review is extraordinarily complicated. We determine that these AD sunset reviews are extraordinarily complicated, pursuant to section 751(c)(5)(C) of the Act, because of a large number of complex issues in each review that the Department must analyze pursuant to the *Final Modification for Reviews*

The preliminary results of these full sunset reviews of the AD orders on CORE from Germany and Korea are currently scheduled for April 23, 2012, and the final results of these reviews are scheduled for August 30, 2012. The Department is extending the deadlines for both the preliminary and final results of these full sunset reviews. As a result, the Department intends to issue the preliminary results of these full sunset reviews of the AD orders on CORE from Germany and Korea no later than July 21, 2012, and the final results of the reviews no later than November

28, 2012. These dates are 90 days from the original scheduled dates of the preliminary and final results of these full sunset reviews.

This notice is issued in accordance with sections 751(c)(5)(B) and (C)(v) of the Act.

Dated: April 20, 2012.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012-10239 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Meeting of the National Advisory Council on Minority Business Enterprise

AGENCY: Minority Business Development Agency, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council for Minority Business Enterprise (NACMBE) will hold its sixth meeting to discuss the work of the three subcommittees and deliberate on final recommendations to accelerate the growth of minority-owned businesses in fulfillment of the NACMBE's charter mandate. The agenda may change to accommodate Council business.

DATES: The meeting will be held on Tuesday, May 15, 2012 from 9 a.m. to 5 p.m. Eastern Time (ET).

ADDRESSES: This meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Demetria Gallagher, National Director's Office, Minority Business Development Agency (MBDA), U.S. Department of Commerce at (202) 482-1624 *email:* dgallagher@mbda.gov.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the NACMBE pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2) on April 28, 2010. The NACMBE is to provide the Secretary of Commerce with recommendations from the private sector on a broad range of policy issues that affect minority businesses and their ability to access successfully the domestic and global marketplace.

Topics to be considered: During the meeting the Council will discuss and

deliberate on final recommendations to accelerate the growth of minority-owned businesses in domestic and global markets. Recommendations for proposed programs and new policies are centered on the areas of focus of each subcommittee. The subcommittee topics include: (1) Definition of Minority Business Enterprises (MBEs) and MBDA's role, (2) Creation of an MBE Forum, and (3) Strategic Alliances & Exports.

Public Participation: The meeting is open to the public. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Demetria Gallagher at the contact information above by 5 p.m. EST on Monday, May 7, 2012, to preregister. Please specify any requests for reasonable accommodation at least ten (10) business days in advance of the meeting. Last minute requests will be accepted, but may not be possible to fulfill.

A limited amount of time, in the afternoon, will be available for pertinent brief oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning affairs of the NACMBE at www.mbda.gov/main/nacmbe-submit-comments. To be considered during the meeting, comments must be received no later than 5 p.m. ET on Wednesday, May 9, 2012, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Demetria Gallagher, at (202) 482-1624, or dgallagher@mbda.gov, at least ten (10) days before the meeting date.

Copies of the NACMBE open meeting minutes will be available to the public upon request.

Dated: April 12, 2012.

David A. Hinson,

National Director, Minority Business Development Agency.

[FR Doc. 2012-10250 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-21-P

¹ The due date actually falls on April 22, 2012, which is a weekend. Therefore, the deadline moves to the next business day which is April 23, 2012. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*; 70 FR 24533 (May 10, 2008).

DEPARTMENT OF COMMERCE**National Institute of Standards and Technology****Announcement of Meeting on “Developing Standard Requirements for Fatigue Performance of Transvenous Cardiac Pacing and Defibrillation Leads”**

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to attend a pre-consortium meeting on “Developing Standard Requirements for Fatigue Performance of Transvenous Cardiac Pacing and Defibrillation Leads.”

DATES: The meeting will take place on May 30, 2012 from 10 a.m. to 11 a.m.

ADDRESSES: The meeting will be held by teleconference. The dial-in number is 888-790-2057; the conference code is 32938.

FOR FURTHER INFORMATION CONTACT: For information about the meeting or joining the Consortium, contact Timothy Quinn, Cell and Tissue Mechanics Group, National Institute of Standards and Technology, 325 Broadway, Stop 853, Boulder, CO 80305-3328, (303) 497-3480, timothy.quinn@nist.gov.

SUPPLEMENTARY INFORMATION: The goal of the consortium will include determining methods that best measure the fatigue performance of transvenous cardiac pacing leads. This goal will be achieved by evaluating current practices used in industry and developing standard requirements. Consortium planning and standard development would be conducted by NIST staff along with at least one technical representative from each participating member entities and any outside technical experts they should designate. Each member of the consortium will be required to sign a Cooperative Research and Development Agreement (“CRADA”) with NIST. Membership fees for participation in the consortium will be Two Thousand (\$2,000) per year. It is anticipated that the initial term of the consortium will be Two (2) years. The deadline for joining the consortium is June 29, 2012. After June 29, 2012 no new members will be able to join the Consortium.

Dated: April 24, 2012.

David Robinson,

Associate Director for Management Resources.

[FR Doc. 2012-10262 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648-XB172

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Habitat and Environmental Protection (Habitat) Advisory Panel (AP) to provide input on measures in Comprehensive Ecosystem-Based Amendment 3 and other habitat related topics. See **SUPPLEMENTARY INFORMATION**.

DATES: The Habitat AP meeting will be held May 15, 2012, from 2 p.m. until 4 p.m.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Persons interested in participating in the webinar should contact Mike Collins via email at mike.collins@safmc.net or by calling the Council office at (843) 571-4366 or toll free (866) SAFMC-10. Information will also be available from the Council’s Web site at www.safmc.net.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: Members of the Habitat AP will meet via webinar from 2 p.m. until 4 p.m. on May 15, 2012. The AP will review management measures currently in the draft Comprehensive Ecosystem-Based Management Amendment 3 (CE-BA 3). Measures under consideration include, but are not limited to, extension of existing deepwater Coral Habitat Areas of Particular Concern, and measures to reduce bycatch mortality on speckled hind and Warsaw grouper through the creation or expansion of marine protected areas. The AP will provide recommendations on measures for inclusion into a public hearing draft for CE-BA3 and discuss other habitat issues as needed.

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 Fishery Conservation and Management Act, provided the public has been notified of the Council’s intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: April 24, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012-10151 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****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’s (Council) Recreational Advisory Panel will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, May 15, 2012 at 9 a.m.

ADDRESSES: The meeting will be held at the Sheraton Colonial, One Audubon Road Wakefield, MA 01880; telephone: (781) 245-9300; fax: (781) 245-0842.

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:

Agenda

The Recreational Advisory Panel (RAP) will meet to discuss Northeast Multispecies management measures for

fishing year 2013 and beyond. RAP members will discuss potential recreational fishing measures for Gulf of Maine cod, Georges Bank cod, Gulf of Maine haddock, and other stocks. The panel may consider such measures as bag limits, minimum size adjustments, seasons, or closed areas. The panel may consider using measures that differ between the party/charter and private fleets. The RAP will also discuss Annual Catch Limits and Accountability Measures, and may recommend changes to how these are implemented for the groundfish fishery. RAP members will also discuss commercial fishing activity in the inshore Gulf of Maine and the possible effects it may have on recreational fishing opportunities. Other business may also be discussed. RAP recommendations will be considered by the Groundfish Oversight Committee at a future date.

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 identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided 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 (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: April 24, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012-10152 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting and public workshop.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of Marine Protected Area (MPA) Expert Workgroup and Public MPA Workshop in Pooler, GA. See **SUPPLEMENTARY INFORMATION**.

DATES: The Expert Workgroup meeting will take place May 16-17, 2012. The public workshop will take place May 16, 2012. See **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings will be held at the Mighty Eighth Air Force Museum, 175 Bourne Avenue, Pooler, GA 31322; telephone: (912) 748-8888; fax: (912) 748-0209.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC, 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC, 29405; telephone: (843) 571-4366 or toll free: (866) SAFMC-10; fax: (843) 769-4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the Marine Protected Area Expert Workgroup will meet from 1 p.m.-5 p.m. on May 16, 2012 and from 8:30 a.m. until 1 p.m. on May 17, 2012. The group of experts, including scientists and fishermen, will provide input on using MPAs to help address bycatch mortality of speckled hind and warsaw grouper. Selection of participants was based on knowledge and expertise of these two species, their habitat, and/or the fishery. Public input on data for the Expert Workgroup to consider will be taken from 5 p.m. until 5:30 p.m. on May 16, 2012.

The Marine Protected Area Public Workshop will begin at 6 p.m. on May 16, 2012. The workshop is part of a series of workshops being held to give the public the opportunity to provide data on locations of speckled hind and warsaw grouper, as well as important habitat locations for these two species. The Council will consider input from the workgroup and workshops during its June meeting in Orlando, FL.

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 these meetings. 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 Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: April 24, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012-10153 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a meeting of the Ad Hoc Private Recreational Data Collection Advisory Panel.

DATES: The meeting will convene at 8:30 a.m. and conclude by 4 p.m. on Thursday, May 17, 2012.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348-1630.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. John Froeschke, Fishery Biologist-Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630 x235.

SUPPLEMENTARY INFORMATION: The Ad Hoc Private Recreational Data Collection Advisory Panel will meet to discuss mechanisms to improve private recreational fisheries data collection in Gulf of Mexico fisheries. The Panel will help identify methods for improving private recreational angler data collection, potentially using additional data collection programs that would

supplement data currently collected through the Marine Recreational Information Program (MRIP). Programs considered must improve the accuracy and timeliness of catch, effort, and discard data for the private boat recreational sector in the Gulf of Mexico. Preferentially, the considered programs should allow participation in the data collection process by private boat recreational anglers. The Advisory Panel will review existing programs and provide recommendations for possible implementation. The meeting will conclude with draft recommendations to be presented to the Gulf of Mexico Fishery Management Council at its June 18–22, 2012 meeting in Tampa, FL.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: April 24, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–10187 Filed 4–26–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA37

Marine Mammals; File No. 978–1857

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that Paul E. Nachtigall, Ph.D., Marine Mammal Research Program, Hawaii Institute of Marine Biology, P.O. Box 1106, Kailua, Hawaii 96734 has been issued a minor amendment to Scientific Research Permit No. 978–1857.

ADDRESSES: 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., Room 1110, Honolulu, HI 96814–4700; phone (808) 944–2200; fax (808) 973–2941.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The original permit, issued on May 17, 2007 (72 FR 29127) authorizes the permit holder to conduct acoustic studies on captive marine mammals at the Hawaii Institute of Marine Biology through May 31, 2012. The minor amendment (No. 978–1857–01) extends the duration of the permit through May 31, 2013, but does not: Change the manner in which animals may be taken, increase the number of animals authorized to be taken, or add new species or geographic locations.

Dated: April 23, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–10227 Filed 4–26–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Commerce Spectrum Management Advisory Committee Meeting

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a public meeting of the Commerce Spectrum Management Advisory Committee (Committee). The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on spectrum management policy matters.

DATES: The meeting will be held on May 30, 2012, from 10 a.m. to 12 p.m., Eastern Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4830, Washington, DC 20230. Public comments may be mailed to Commerce Spectrum Management Advisory Committee, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4099, Washington, DC 20230, or emailed to spectrumadvisory@ntia.doc.gov.

FOR FURTHER INFORMATION CONTACT: Bruce M. Washington, Designated Federal Officer, at (202) 482–6415 or BWashington@ntia.doc.gov; and/or visit NTIA's web site at <http://www.ntia.doc.gov/category/CSMAC>.

SUPPLEMENTARY INFORMATION:

Background: The Committee provides advice to the Assistant Secretary of Commerce for Communications and Information on needed reforms to domestic spectrum policies and management in order to license radio frequencies in a way that maximizes their public benefits, keep wireless networks as open to innovation as possible, and make wireless services available to all Americans. (See charter, at <http://www.ntia.doc.gov/page/2011/csmac-charter>.) This Committee is subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, and is consistent with the National Telecommunications and Information Administration Act, 47 U.S.C. § 904(b). The Committee functions solely as an advisory body in compliance with the FACA. For more information about the Committee visit: <http://www.ntia.doc.gov/category/CSMAC>.

Matters to Be Considered: The Committee will consider the appropriate processes and structure for facilitating the development of recommendations based on a dialogue between industry and relevant federal agencies to make the 1755–1850 MHz band available for wireless broadband, while maintaining essential federal capabilities and maximizing commercial utilization. NTIA will post a detailed agenda on its Web site, <http://www.ntia.doc.gov>, prior to the meeting. The public may provide written comment on the meeting before or after the meeting.

Time and Date: The meeting will be held on May 30, 2012 from 10:00 a.m. to 12:00 p.m., Eastern Daylight Time. The times and the agenda topics are subject to change. The meeting will be available via two-way audio link and may be webcast. Please refer to NTIA's Web site, <http://www.ntia.doc.gov>, for the most up-to-date meeting agenda and access information.

Place: The meeting will be held at the U.S. Department of Commerce, National Telecommunications and Information Administration, 1401 Constitution Avenue NW., Room 4830, Washington, DC 20230. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Washington, at (202) 482-6415 or BWashington@ntia.doc.gov, at least five (5) business days before the meeting.

Status: Interested parties are invited to attend and to submit written comments to the Committee at any time before or after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting must send them to NTIA's Washington, DC office at the above-listed address and comments must be received by close of business on May 25, 2012, to provide sufficient time for review. Comments received after May 25, 2012, will be distributed to the Committee, but may not be reviewed prior to the meeting. It would be helpful if paper submissions also include a compact disc (CD) in HTML, ASCII, Word, or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to spectrumadvisory@ntia.doc.gov. Comments provided via electronic mail also may be submitted in one or more of the formats specified above.

Records: NTIA maintains records of all Committee proceedings. Committee records are available for public inspection at NTIA's Washington, DC office at the address above. Documents including the Committee's charter, member list, agendas, minutes, and any reports are available on NTIA's Committee web page at <http://www.ntia.doc.gov/category/CSMAC>.

Dated: April 24, 2012.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2012-10197 Filed 4-26-12; 8:45 am]

BILLING CODE 3510-60-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the procurement list.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by the nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products previously furnished by such agencies.

DATES: Comments must be received on or before: 5/28/2012.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202-3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603-7740, Fax: (703) 603-0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the products to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to the Procurement List for production by the nonprofit agency listed:

Products

Combat Arms Ear Plugs

NSN: 6515-01-576-8796—Skull Screws Ear Plug, Single Ended, Universal Size.

NSN: 6515-01-576-8837—Single Ended, Size Small.

NSN: 6515-01-576-8861—Single Ended, Size Medium.

NSN: 6515-01-576-8869—Single Ended, Size Large.

NSN: 6515-01-466-2710—Dual Ended, Universal Size.

NPA: New Dynamics Corporation, Middletown, NY.

Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.

Coverage: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products**Towel, Machinery Wiping**

NSN: 7920-00-NIB-0046 .

NPA: East Texas Lighthouse for the Blind, Tyler, TX.

Contracting Activity: General Services Administration, Fort Worth, TX.**Shredders**

NSN: 7490-01-567-4337—Fellowes Model 4000CC.

NSN: 7490-01-567-4338—Fellowes Model 4000SC.

NSN: 7490-01-567-4339—Fellowes Model 970CC.

NPA: L.C. Industries for the Blind, Inc., Durham, NC.

Contracting Activity: General Services Administration, New York, NY.**Flag, Signal, Vehicle, Danger Red**

NSN: 8345-00-260-2724.

NPA: None available since 1996.

Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.**Envelope, Wallet**

NSN: 7530-00-NIB-0260.

NSN: 7530-00-NIB-0261.

NSN: 7530-00-NIB-0262.

NPA: None available since 1998.

Contracting Activity: National Geospatial-Intelligence Agency, Bethesda, MD.**Calendars**

NSN: 7510-01-545-3776—Calendar Pad, Type I, 2011.

NSN: 7530-01-573-4866—DAYMAX System, LE, 2011, Navy.

NSN: 7530-01-573-4866L—DAYMAX System, LE, 2011, Navy w/Logo.

NSN: 7510-01-545-3784—Calendar Pad, Type II, 2011.

NSN: 7510-01-573-4835—DAYMAX, IE/LE Month at a View, 2011, 3-hole.

NSN: 7510-01-573-4839—DAYMAX, IE/LE Week at a View, 2011, 3-hole.

NSN: 7510-01-573-4840—DAYMAX, IE/LE Day at a View, 2011, 3-hole.

NSN: 7510-01-573-4843—DAYMAX, GLE Day at a View, 2011, 7-hole.

NSN: 7510-01-573-4842—DAYMAX, GLE Month at a View, 2011, 7-hole.

NSN: 7510-01-573-4843—DAYMAX, Tabbed Monthly, 2011, 3-hole.

NSN: 7510-01-573-4844—DAYMAX, Tabbed Monthly, 2011, 7-hole.

NSN: 7510-01-573-4847—DAYMAX, GLE Week at a View, 2011, 7-hole.

NSN: 7510-01-573-4856—DAYMAX, Tabbed Monthly, 2011, 6-hole.

NSN: 7530-01-573-4836—DAYMAX System, DOD Planner, 2011.

NSN: 7530-01-573-4837—DAYMAX System, Camouflage Planner, 2011.

NSN: 7530-01-573-4836L—DAYMAX System, DOD Planner w/Logo, 2011.

NSN: 7530-01-573-4837L—DAYMAX System, Camouflage Planner w/Logo, 2011.

NSN: 7530-01-573-4848L—DAYMAX System, JR Version, 2011, Black w/Logo.

NSN: 7530-01-573-4848—DAYMAX System, JR Version, 2011, Black.

NSN: 7530-01-573-4849—DAYMAX

System, GLE, 2011, Black.

NSN: 7530-01-573-4849L—DAYMAX System, GLE, 2011, Black w/Logo.

NSN: 7530-01-573-4850L—DAYMAX System, LE, 2011, Burgundy w/Logo.

NSN: 7530-01-573-4851L—DAYMAX System, GLE, 2011, Navy w/Logo.

NSN: 7530-01-573-4853L—DAYMAX System, JR Version, 2011, Navy w/Logo.

NSN: 7530-01-573-4854L—DAYMAX System, GLE, 2011, Burgundy w/Logo.

NSN: 7530-01-573-4855L—DAYMAX System, Desert, Camouflage Planner, 2011 w/Logo.

NSN: 7530-01-573-4858L—DAYMAX System, JR Version, 2011, Burgundy.

NSN: 7530-01-573-4860—DAYMAX System, IE, 2011, Black.

NSN: 7530-01-573-4860L—DAYMAX System, IE, 2011, Black w/Logo.

NSN: 7530-01-573-4861L—DAYMAX System, IE, 2011, Navy w/Logo.

NSN: 7530-01-573-4864L—DAYMAX System, IE, 2011, Burgundy w/Logo.

NSN: 7530-01-573-4865L—DAYMAX System, LE, 2011, Black w/Logo.

NSN: 7530-01-573-4864—DAYMAX System, IE, 2011, Burgundy.

NSN: 7530-01-573-4865—DAYMAX System, LE, 2011, Black.

NSN: 7530-01-573-4861—DAYMAX System, IE, 2011, Navy.

NSN: 7530-01-573-4858—DAYMAX System, JR Version, 2011, Burgundy.

NSN: 7530-01-573-4855—DAYMAX System, Desert, Camouflage Planner, 2011

NSN: 7530-01-573-4853—DAYMAX System, JR Version, 2011, Navy.

NSN: 7530-01-573-4854—DAYMAX System, GLE, 2011, Burgundy.

NSN: 7530-01-573-4851—DAYMAX System, GLE, 2011, Navy.

NSN: 7530-01-573-4850—DAYMAX System, LE, 2011, Burgundy.

NSN: 7530-01-545-3747—Appointment Book Refill, 2011.

NSN: 7530-01-564-6052L—JR Deluxe Time Management System-JR Deluxe Version.

NSN: 7530-01-564-6052—JR Deluxe Time Management System-JR Deluxe Version.

NSN: 7530-01-564-6051L—JR Deluxe Time Management System-JR Deluxe Version.

NSN: 7530-01-564-6051—JR Deluxe Time Management System-JR Deluxe Version.

NSN: 7530-01-545-3741—Appt. Book Refill, 2010.

NSN: 7530-01-537-7869L—DAYMAX System, Woodland Camouflage Planner, 2010 w/Logo.

NSN: 7530-01-537-7869—DAYMAX System, Woodland, Camouflage Planner, 2010.

NSN: 7530-01-537-7865L—DAYMAX System, DOD Planner, 2010 w/Logo.

NSN: 7530-01-537-7865—DAYMAX System, DOD Planner, 2010.

NSN: 7530-01-537-7862L—DAYMAX System, Desert, Camouflage Planner, 2010 w/Logo.

NSN: 7530-01-537-7862—DAYMAX System, Desert, Camouflage Planner, 2010.

NSN: 7530-01-537-7860L—DAYMAX System, GLE, 2010, Burgundy w/Logo.

NSN: 7530-01-537-7860—DAYMAX

System, GLE, 2010, Burgundy.

NSN: 7530-01-537-7855L—DAYMAX System, GLE, 2010, Navy w/Logo.

NSN: 7530-01-537-7855—DAYMAX System, GLE, 2010, Navy

NSN: 7530-01-537-7851L—DAYMAX System, GLE, 2010, Black w/Logo.

NSN: 7530-01-537-7851—DAYMAX System, GLE, 2010, Black.

NSN: 7530-01-537-7836L—DAYMAX System, LE, 2010, Burgundy w/Logo.

NSN: 7530-01-537-7836—DAYMAX System, LE, 2010, Burgundy.

NSN: 7530-01-537-7835L—DAYMAX System, LE, 2010, Navy w/Logo.

NSN: 7530-01-537-7835—DAYMAX System, LE, 2010, Navy.

NSN: 7530-01-537-7834L—DAYMAX System, LE, 2010, Black w/Logo.

NSN: 7530-01-537-7834—DAYMAX System, LE, 2010, Black.

NSN: 7530-01-537-7833L—DAYMAX System, IE, 2010, Navy w/Logo.

NSN: 7530-01-537-7833—DAYMAX System, IE, 2010, Navy.

NSN: 7530-01-537-7832L—DAYMAX System, JR Version, 2010, Navy w/Logo.

NSN: 7530-01-537-7832—DAYMAX System, JR Version, 2010, Navy.

NSN: 7530-01-537-7831L—DAYMAX System, IE, 2010, Burgundy w/Logo.

NSN: 7530-01-537-7831—DAYMAX System, IE, 2010, Burgundy.

NSN: 7530-01-537-7830L—DAYMAX System, IE, 2010, Black w/Logo.

NSN: 7530-01-537-7830—DAYMAX System, IE, 2010, Black.

NSN: 7530-01-537-7829L—DAYMAX System, JR Version, 2010, Black w/Logo.

NSN: 7530-01-537-7829—DAYMAX System, JR Version, 2010, Black.

NSN: 7530-01-537-7828L—DAYMAX System, JR Version, 2010, Burgundy w/Logo.

NSN: 7530-01-537-7828—DAYMAX System, JR Version, 2010, Burgundy.

NSN: 7510-01-545-3781—Calendar Pad, Type 2, 2010.

NSN: 7510-01-537-7880—DAYMAX, GLE Day at a View, 2010, 7-hole.

NSN: 7510-01-537-7878—DAYMAX, Tabbed Monthly, 2010, 7-hole.

NSN: 7510-01-537-7877—DAYMAX, Tabbed Monthly, 2010, 3-hole.

NSN: 7510-01-537-7866—DAYMAX, IE/LE Month at a View, 2010, 3-hole.

NSN: 7510-01-537-7872—DAYMAX, IE/LE Day at a View, 2010, 3-hole.

NSN: 7510-01-537-7876—DAYMAX, GLE Week at a View, 2010, 7-hole.

NSN: 7510-01-537-7874—DAYMAX, GLE Month at a View, 2010, 7-hole.

NSN: 7510-01-537-7871—DAYMAX, IE/LE Week at a View, 2010, 3-hole.

JR Deluxe Time Management System

NSN: 7510-01-564-6053—JR Tabbed Month Divider.

NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, PA.

Contracting Activity: General Services Administration, New York, NY.**Barry S. Lineback,***Director, Business Operations.*

[FR Doc. 2012-10167 Filed 4-26-12; 8:45 am]

BILLING CODE 6353-01-P

COMMODITY FUTURES TRADING COMMISSION**Sunshine Act Meetings****AGENCY HOLDING THE MEETING:**

Commodity Futures Trading Commission.

TIME AND DATE: 10:00 a.m., Friday May 25, 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. 2012-10317 Filed 4-25-12; 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, May 18, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance, Enforcement Matters and a Rule Enforcement Review. 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. 2012-10326 Filed 4-25-12; 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: 10:00 a.m., Friday, May 4, 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. 2012-10319 Filed 4-25-12; 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, May 11, 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. 2012-10323 Filed 4-25-12; 4:15 pm]

BILLING CODE 6351-01-P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB-2012-0017]

Request for Information Regarding Scope, Methods, and Data Sources for Conducting Study of Pre-Dispute Arbitration Agreements

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and Request for Information.

SUMMARY: Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010 (the "Dodd-Frank Act") requires the Bureau of Consumer Financial Protection (the "Bureau") to "conduct a study of, and * * * provide a report to Congress concerning, the use of agreements providing for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services" (the "Study"). As a preliminary step in undertaking the Study, the Bureau requests specific suggestions from the public to help identify the appropriate scope of the Study, as well as appropriate methods and sources of data for conducting the Study. Based on the information received, the Bureau may consider soliciting further feedback.

DATES: Comments must be submitted on or before June 23, 2012.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB-2012-0017, by any of the following methods:

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: The Bureau encourages the early submission of information and other comments. All submissions must include the agency name and docket number. Please note the number of the question to which you are responding at the top of each response. In general, all submissions received will be posted without change to <http://www.regulations.gov>. In addition, submissions will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All submissions, 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. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Will Wade-Gery, Division of Research, Markets and Regulations, Consumer Financial Protection Bureau, at (202) 435-7700, or william.wade-gery@cfpb.gov.

Authority: 12 U.S.C. 5518(a).

SUPPLEMENTARY INFORMATION: The Bureau seeks information in response to the questions listed below, which are intended to help identify the appropriate scope, methods, and sources of data for the Study required by section 1028(a) of the Dodd-Frank Act. Please feel free to respond to any or all of the questions below, but please be sure to identify the specific question or questions to which you are responding. Comments could include, where appropriate, data sources and study methods that the Bureau might consider. Submissions on scope or subject matter are more likely to provide useful information to the Bureau if the commenter also identifies associated data and applicable methods of study.

The Bureau is not seeking comment on how, if at all, it should exercise its rulemaking authority under section 1028(b) of the Dodd-Frank Act (12 U.S.C. 5518(b)). Thus, the Bureau is not seeking comment on either: (a) Whether it should, by regulation, prohibit or impose conditions or limitations on the use of pre-dispute arbitration agreements with respect to consumer financial products or services; or (b) whether any such regulation would serve to protect consumers or otherwise be in the public interest. Instead, this Notice and Request for Information is directed to the Bureau's mandate under section 1028(a) of the Dodd-Frank Act (12 U.S.C. 5518(a)) to complete a study of, and report to Congress on, the use of pre-dispute arbitration agreements in connection with the offering or providing of consumer financial products or services.

For purposes of this Notice and Request for Information, "consumers" means "consumers" of "consumer financial products and services" as the Dodd-Frank Act defines those terms at sections 1002(4) and (5) (12 U.S.C. 5481(4)-(5)); "covered person" has the meaning given at section 1002(6) of the Dodd-Frank Act (12 U.S.C. 5481(6)); and

"pre-dispute arbitration agreements," unless otherwise noted, "provid[e] for arbitration of any future dispute between covered persons and consumers in connection with the offering or providing of consumer financial products or services" (12 U.S.C. 5518(a)).

Questions

1. Prevalence of Use

The Dodd-Frank Act requires the Bureau to study the "use" of pre-dispute arbitration agreements. The Bureau believes that obligation encompasses, at a minimum, a study of the prevalence of such agreements. As a result, the Bureau seeks information in response to the following questions.

i. Other than with respect to credit card agreements,¹ how should the Bureau determine the prevalence of pre-dispute arbitration agreements in different consumer financial services markets?

ii. Should the Bureau focus on particular markets for consumer financial products and services in reviewing prevalence?

iii. Should the Bureau focus on the prevalence of particular terms in pre-dispute arbitration agreements?

iv. Should the Bureau address how the prevalence of pre-dispute arbitration agreements and the prevalence of particular terms within them have changed over time?

v. To address the questions above, what new data, if any, should the Bureau seek and from which entities? What existing studies or sources of empirical data should the Bureau rely upon to address any of the above questions?

2. Use and Impact in Particular Arbitral Proceedings

A. Claims That Consumers Bring in Arbitration

Pre-dispute arbitration agreements generally provide that the consumer may or must bring claims in arbitration.² The Bureau seeks

¹ Subject to certain *de minimis* exceptions, U.S. issuers must file with the Bureau copies of their consumer credit card agreements. Thus, the Bureau has data to assess the prevalence and features of pre-dispute arbitration agreements for credit cards. The Bureau makes these credit card agreements available online at <http://www.consumerfinance.gov/credit-cards/agreements/>. Prior to the Dodd-Frank Act, the Federal Reserve Board maintained a similar credit card agreement database.

² In some consumer arbitrations, the consumer files his or her claim in arbitration in the first instance, relying on the terms of the pre-dispute arbitration agreement to do so. In other cases, however, the consumer may first file in court and only later file a claim in arbitration after acceding

information responsive to the following questions about claims that consumers bring in arbitration.

i. Should the Bureau determine how often consumers bring claims in arbitration?

ii. Should the Bureau analyze the types of claims that consumers bring in arbitration?

iii. For claims that consumers bring in arbitration, should the Bureau seek to analyze: (a) the cost and speed of dispute resolution; and/or (b) the outcome of disputes?

iv. For consumers who bring claims in arbitration, should the Bureau seek to assess their understanding of, and satisfaction with, the resulting dispute resolution process? Should the Bureau seek to determine the factors that impact consumer understanding and satisfaction?

v. If the Bureau should address some or all of the issues addressed in 2.A.i-iv above, should the Bureau distinguish between claims that a consumer brings in arbitration: (a) in the first instance; and (b) after a covered person (or third party³) successfully invokes the terms of a pre-dispute arbitration agreement to end or limit that consumer's earlier court proceeding? Or should the Bureau consider both forms of arbitration as a single, combined category of consumer use?

vi. If the Bureau should address some or all of the issues identified in 2.A.i-v above, what methods of study should it use? What new data, if any, should the Bureau seek and from which entities? What existing studies or empirical data, if any, should the Bureau use? Should the Bureau focus on particular product markets? Should the Bureau focus on the impact to arbitral proceedings of particular terms in pre-dispute arbitration agreements?

B. Claims That Covered Persons Bring in Arbitration

Pre-dispute arbitration agreements also generally provide that a covered person may or must bring claims in arbitration. As a result, covered persons have brought claims—in particular, debt-collection claims—in arbitration.⁴

to—or opposing and then losing on—a covered person's (or third party's) demand, under the same arbitration clause, that the consumer's dispute proceed, if at all, in arbitration. The Bureau intends to cover both types of consumer arbitration within the terms of this set of questions, except to the extent specifically noted in question 2.v.

³ In some cases, an entity that is not a party to a particular pre-dispute arbitration agreement has invoked that agreement to demand that a consumer's claim proceed only in arbitration.

⁴ In some cases, an entity that is not a party to a particular pre-dispute arbitration agreement has

The Bureau seeks information responsive to the following questions about such covered person or third-party claims.

i. The Bureau is not aware of recent practice by covered persons to bring claims against consumers in arbitration.⁵ Do such arbitrations, in fact, exist at this point? If there are such arbitrations, should the Bureau determine their frequency? If there are no longer such arbitrations, should the Bureau analyze whether covered persons will, in the future, return to bringing claims against consumers in arbitration?

ii. Should the Bureau analyze the types of claims that covered persons bring in arbitration? If covered persons no longer bring claims in arbitration, should the Bureau seek to answer this question for a period in which they did?

iii. For claims that covered persons have brought in arbitration, should the Bureau seek to analyze: (a) the cost and speed of dispute resolution; and/or (b) the outcome of disputes? If covered persons no longer bring claims in arbitration, should the Bureau seek to answer these questions for a period in which they did?

iv. For consumers involved in any such cases, should the Bureau seek to assess their understanding of, and satisfaction with, the resulting arbitration process? If covered persons no longer bring claims in arbitration, should the Bureau seek to answer this question for a period in which they did?

v. If the Bureau should address some or all of the issues identified in 2.B.i–iv above, what methods of study should it use? What new data, if any, should the Bureau seek and from which entities? What existing studies or empirical data, if any, should the Bureau use? Should the Bureau focus on particular product markets? Should the Bureau focus on the impact to arbitral

invoked that agreement to bring claims against a consumer in arbitration. The Bureau intends the following set of questions to cover such third-party claims as well.

⁵Prior to July 2009, the National Arbitration Forum (“NAF”) administered each year a significant number of debt collection arbitrations that various covered persons or third-parties brought against consumers. In July 2009, however, NAF agreed that it would no longer handle consumer arbitrations, including debt collection cases brought against consumers. NAF reached this agreement to settle claims by the Minnesota Attorney General that NAF violated Minnesota’s consumer-fraud, deceptive-trade-practices, and false-advertising statutes. Following the NAF settlement, the American Arbitration Association (“AAA”) announced that it would not administer any consumer finance debt collection arbitrations filed by companies. The AAA’s policy is still in effect according to a “Notice on Consumer Debt Collection Arbitrations” that is available on the organization’s Web site, www.adr.org.

proceedings of particular terms in pre-dispute arbitration agreements?

3. Impact and Use Outside Particular Arbitral Proceedings

Independent of their role in particular arbitral proceedings, pre-dispute arbitration agreements may impact consumers and/or covered persons in other ways. Thus, academics and other parties have claimed that the existence of pre-dispute arbitration agreements may impact:

- The incidence and nature of consumer claims against covered persons;
- The price and availability of financial services products to consumers;
- Compliance with consumer financial protection laws;
- Consumer awareness of potential legal claims against covered persons;
- Consumer awareness and understanding of how potential legal claims against covered persons may be resolved; and
- The development, interpretation, and application of the rule of law.

i. Should the Bureau seek to evaluate how the use of pre-dispute arbitration agreements impacts consumers and/or covered persons in one or more of these ways?

ii. Should the Bureau seek to evaluate how the use of pre-dispute arbitration agreements impacts consumers and/or covered persons in any other ways that are independent of their role in particular arbitral proceedings?

iii. If so, and in either case, what methods of study should the Bureau use? What new data, if any, should the Bureau seek and from which entities? What existing studies or empirical data, if any, should the Bureau use? Should the Bureau focus on particular product markets? Should the Bureau focus on the impact of particular terms in pre-dispute arbitration agreements?

Dated: April 23, 2012.

Meredith Fuchs,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2012–10189 Filed 4–26–12; 8:45 am]

BILLING CODE 4810-AM-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notification of an Open Meeting of the National Defense University Board of Visitors (BOV); Correction

AGENCY: National Defense University, DoD.

ACTION: Notice of open meeting; correction.

SUMMARY: On March 30, 2012 (77 FR 19265–19266), the National Defense University Board of Visitors gave notice of a meeting to be held on May 2 and 3, 2012, from 11:30 a.m. to 5 p.m. on May 2 and continuing on May 3 from 8 a.m. to 1 p.m. The Department of Defense announces that the meeting date and time have been changed. All other information in the notice remains the same.

DATES: The new meeting date and time is May 2, 2012 from 10 a.m. to 5 p.m. The meeting originally scheduled for May 3, 2012 has been cancelled.

ADDRESSES: The Board of Visitors meeting will be held at Marshall Hall, Building 62, Room 155, the National Defense University, 300 5th Avenue SW., Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: The point of contact for this notice is Ms. Dolores Hodge at (202) 685–0082, Fax (202) 685–3748 or HodgeD@ndu.edu.

Dated: April 24, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–10226 Filed 4–26–12; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Air Force

GPS Satellite Simulator Working Group; Notice of Meeting

AGENCY: The United States Air Force, DoD.

ACTION: Amending GPS Simulator Working group Meeting Notice.

SUMMARY: We are requesting to amend the date of the GPS Simulator Working group meeting notice published on April 20, 2012 under 77 FR 23668. The date of the meeting will now be 15 May 2012 from 0730–1600 (Pacific Standard Time). This meeting notice is to inform the public that the Global Positioning Systems (GPS) Directorate will be hosting an open GPS Satellite Simulator Working Group (SSWG) meeting for manufacturers of GPS constellation simulators utilized by the federal government on 15 May 2012 from 0730–1600 (Pacific Standard Time). The purpose of this meeting is to disseminate information about GPS simulators, discuss current and on-going efforts related to simulators and form a functioning GPS Satellite Simulator

Working Group with industry and government participation.

The GPS Satellite Simulator Working Group is open to any current manufacturer of GPS constellation satellite simulators who supply products to the Department of Defense. Please note that participants must possess a SECRET clearance to attend. **FOR FURTHER INFORMATION CONTACT:** We request that you register for this event no later than 8 May 2012. Please send the registration to justin.deifel@losangeles.af.mil and wayne.urubio@losangeles.af.mil and provide your name, organization, telephone number, address and security clearance information.

Henry Williams Jr,

Acting Air Force Federal Register Liaison Officer, DAF.

[FR Doc. 2012-10148 Filed 4-26-12; 8:45 am]

BILLING CODE 5001-10-P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant Exclusive Patent Licenses to TroCept Micro Ltd. L.L.C.

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: In compliance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i), the Department of the Army hereby gives notice of its intent to grant to TroCept Micro Ltd. L.L.C., a corporation having its principle place of business at 2711 Centerville Rd, Suite 400, Wilmington, DE 19808, exclusive licenses relative to the following U.S. Patents:

- 6,501,099; "Modified-anode gate turn-off thyristor;" December 31, 2002.
- 6,703,642; "Silicon carbide (SiC) gate turn-off (GTO) thyristor structure for higher turn-off gain and larger voltage blocking when in the off-state;" March 9, 2004.
- 6,734,462; "Silicon carbide (SiC) gate turn-off (GTO) thyristor structure for higher turn-off gain and larger voltage blocking when in the off-state;" February 8, 2000.
- 6,759,683; "Formulation and fabrication of an improved Ni based composite Ohmic contact to n-SiC for high temperature and high power device applications;" July 6, 2004.
- 6,900,477; "Processing technique to improve the turn-off gain of a silicon carbide gate turn-off thyristor and an article of manufacture;" May 31, 2005.
- 7,297,626; "Process for nickel silicide Ohmic contacts to n-SiC;" November 20, 2007.

- 7,304,363; "Interacting current spreader and junction extender to increase the voltage blocked in the off state of a high power semiconductor device;" December 4, 2007.

- 7,851,274; "Processing technique to improve the turn-off gain of a silicon carbide gate turn-off thyristor;" December 14, 2010.

DATES: The prospective exclusive licenses may be granted unless within fifteen (15) days from the date of this published notice, the U.S. Army Research Laboratory receives written objections including evidence and argument that establish that the grant of the licenses would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by the U.S. Army Research Laboratory within fifteen (15) days from the date of this published notice will also be treated as objections to the grant of the contemplated exclusive licenses.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Send written objections to Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, Attn: RDRL-DB/Bldg. 434, Aberdeen Proving Ground, MD 21005-5425.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, telephone (410) 278-5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012-10169 Filed 4-26-12; 8:45 am]

BILLING CODE 3710-08-P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Draft Supplemental Environmental Impact Statement for the Proposed San Acacia to Bosque del Apache Project, Socorro County, NM

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The Albuquerque District, U.S. Army Corps of Engineers (Corps) has prepared a draft Supplemental Environmental Impact Statement (SEIS) on the findings of a flood risk management study along the Rio Grande

from San Acacia downstream to San Marcial in Socorro County, New Mexico. The recommended plan is to replace the existing embankment between the Low Flow Conveyance Channel and the Rio Grande with a structurally competent levee capable of containing high-volume, long-duration flows. This engineered levee would substantially reduce the risk of damage from floods emanating from the Rio Grande. The local cost-sharing sponsors of the proposed project are the Middle Rio Grande Conservancy District and the New Mexico Interstate Stream Commission.

DATES: All comments must be submitted or postmarked no later than June 11, 2012.

ADDRESSES: Comments, questions, requests for copies of the draft SEIS, and requests for notification of the public meeting can be addressed to: William DeRagon, email: william.r.deragon@usace.army.mil; or Mark Doles, email: mark.w.doles@usace.army.mil; U.S. Army Corps of Engineers, 4101 Jefferson Plaza NE., Albuquerque, New Mexico 87109.

FOR FURTHER INFORMATION CONTACT: Mr. William DeRagon, telephone: (505) 342-3358; or Mark Doles, telephone: (505) 342-3364.

SUPPLEMENTARY INFORMATION:

Previously, an environmental impact statement (1992) and a supplement (1977) were published regarding this project. Currently, a new draft SEIS has been prepared to evaluate effects of revised levee design and additional alternatives. The draft SEIS is integrated with a draft General Reevaluation Report, and the integrated document is entitled: *Draft General Reevaluation Report and Supplemental Environmental Impact Statement II: Rio Grande Floodway, San Acacia to Bosque del Apache Unit, Socorro County, New Mexico* (hereafter referred to as the draft GRR/SEIS-II).

Alternatives developed and evaluated during the current and previous studies consist of levee reconstruction; flood and sediment control dams; local levees; intermittent levee replacement; watershed land treatment; floodproofing of buildings; levee-alignment setbacks; and no action. Issues analyzed in the development of the draft GRR/SEIS-II included the effect of alternatives on flood risk, developed lands and structures, water quality, ecological resources, endangered species, social welfare, cultural resources, and aesthetic qualities.

Public Review: The 45-day long review public review period for the

draft SEIS begins on April 27, 2012; or on the filing date published by the U.S. Environmental Protection Agency in the **Federal Register**, if later. Copies of the draft SEIS are available at: <http://www.spa.usace.army.mil/fonsi/>. Copies also are available for review at the Socorro Public Library, 401 Park St, Socorro, NM.

A public meeting will be held during the review period in Socorro, New Mexico. An announcement of the exact date and location of the public meeting will be published in the Socorro, Albuquerque, and Santa Fe newspapers.

Julie A. Alcon,

U.S. Army Corps of Engineers Acting Chief, Planning Branch.

[FR Doc. 2012-10168 Filed 4-26-12; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF EDUCATION

Applications for New Awards; Investing in Innovation Fund, Scale-Up Grants

Correction

In notice document 2012-7362 appearing on pages 18216-18229 in the issue of Tuesday, March 27, 2012 make the following corrections:

1. On page 18225, in the second column, in the second bulleted paragraph, in the sixth line "4:30 p.m." should read "4:30:00 p.m."
2. On the same page, in the same column, in the same paragraph, in the twelfth line "4:30 p.m." should read "4:30:00 p.m."
3. On the same page, in the same column, in the same paragraph, in the twenty-first line "4:30 p.m." should read "4:30:00 p.m."
4. On the same page, in the third column, in the third line from the bottom "4:30 p.m." should read "4:30:00 p.m."
5. On page 18226, in the first column, in the first full paragraph, in the first line "4:30 p.m." should read "4:30:00 p.m."
6. On the same page, in the same column, in the same paragraph, in the fifteenth line "4:30 p.m." should read "4:30:00 p.m."
7. On the same page, in the second column, in the first and second lines from the bottom "8 a.m. and 4:30 p.m." should read "8:00 a.m. and 4:30:00 p.m."

[FR Doc. C1-2012-7362 Filed 4-26-12; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Applications for New Awards; Investing in Innovation Fund, Development Grants

Correction

In notice document 2012-4357 appearing on pages 11087-11101 in the issue of Friday, February 24, make the following correction:

1. On page 11097, in the first column, in the first bulleted paragraph, in the sixth, twelfth, and twenty-first lines, "4:30" should appear as "4:30:00".
2. On page 11097, in the second column, in the eighth, twenty-second, and thirtieth lines from the bottom of the page, "4:30" should appear as "4:30:00".

3. On page 11098, in the first column, in the twenty-seventh line from the bottom, "4:30" should appear as "4:30:00".

[FR Doc. C1-2012-4357 Filed 4-26-12; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Applications for New Awards; Investing in Innovation Fund, Validation Grants

Correction

In notice document 2012-7365 appearing on pages 18229-18242 in the issue of Tuesday, March 27, 2012 make the following corrections:

1. On page 18238 in the second column, in the second bulleted paragraph, in the sixth line "4:30 p.m." should read "4:30:00 p.m."
2. On page 18238 in the second column, in the second bulleted paragraph, in the twelfth line "4:30 p.m." should read "4:30:00 p.m."
3. On page 18238 in the second column, in the second bulleted paragraph, in the twenty-first line "4:30 p.m." should read "4:30:00 p.m."
4. On page 18238 in the third column, in the sixth paragraph, in the sixth line "4:30 p.m." should read "4:30:00 p.m."
5. On page 18238 in the third column, in the seventh paragraph, in the first line "4:30 p.m." should read "4:30:00 p.m."
6. On page 18239, in the second column, in the fourth paragraph from the bottom of the page, in the third line "4:30 p.m." should read "4:30:00 p.m."

[FR Doc. C1-2012-7365 Filed 4-26-12; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—National Longitudinal Transitions Study—2012

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled "National Longitudinal Transitions Study—2012" (18-13-27). The National Center for Education Evaluation and Regional Assistance at the Department's Institute of Education Sciences (IES) commissioned this study as part of the congressionally mandated national assessment of Individuals with Disability Education Act (IDEA). It will be conducted under a contract that IES awarded in September 2010.

The central research questions that the study will address are: How do the characteristics, courses of study, receipt of services and accommodations, school experiences, and key outcomes for transition-age students with an Individualized Education Plan (IEP) differ from transition-age students with a plan that provides accommodations under Section 504 of the Rehabilitation Act of 1973 (Section 504 Plan) and from transition-age students without a Section 504 Plan or an IEP? How have these facets changed over time for students with IEPs?

The system will contain records from 500 school districts on approximately 15,000 students and their parents, 15,000 teachers, and 2,000 principals.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records referenced in this notice on or before May 29, 2012.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on April 24, 2012. This system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on June 4, 2012, unless OMB waives 10 days of

the 40-day review period for compelling reasons shown by the Department, or (2) May 29, 2012, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about this new system of records to Dr. Audrey Pendleton, Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue NW., room 502D, Washington, DC 20208-0001. Telephone: (202) 208-7078. If you prefer to send comments through the Internet, use the following address: comments@ed.gov.

You must include the term "National Longitudinal Transitions Study—2012" in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice at the U.S. Department of Education in room 502D, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Audrey Pendleton. Telephone: (202) 208-7078. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotope, or compact disc) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy

Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to any record about an individual that is maintained in a system of records from which individually identifying information is retrieved by a unique identifier associated with each individual, such as a name or Social Security number. The information about each individual is called a "record," and the system, whether manual or computer-based, is called a "system of records."

The Privacy Act requires each agency to publish a notice of a system of records in the **Federal Register** and to prepare and send a report to OMB whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs and the Chair of the House Committee on Oversight and Government Reform. These reports are included to permit an evaluation of the probable effect of the proposal on the privacy rights of individuals.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 24, 2012.

John Q. Easton,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education, publishes a notice of a new system of records to read as follows:

SYSTEM NUMBER:

18-13-27.

SYSTEM NAME:

National Longitudinal Transitions Study—2012.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

(1) Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences (IES), U.S. Department of Education, 555 New Jersey Avenue NW., room 502D, Washington, DC 20208-0001.

(2) Mathematica Policy Research, Inc., 600 Alexander Park, Princeton, NJ 08540-6346 (contractor).

(3) Decision Information Resources, Inc., 2600 Southwest Freeway, Suite 900, Houston, TX 77098-4610 (subcontractor).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system will contain records from 500 districts on approximately 15,000 students and their parents, 15,000 teachers, and 2,000 principals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records includes individually identifying information about the students who agree to participate. This information includes name, birth date, and contact information; demographic information such as race, ethnicity, gender, age, and educational background; information on accommodations and services received; information on attendance and disciplinary incidences; information on employment history and postsecondary institution attended; and scores on reading and mathematics achievement tests. The system of records also includes students' school transcripts. It is also our intention to include in this system of records students' Social Security numbers (SSNs). In order to ensure that the information on the students' employment and earnings can be obtained, the students' SSNs are needed because other methods (i.e., self-reporting) have proven to be infeasible. This method will place a low burden on students and be of low cost to the Federal government. The system of records will also include individually identifying information about the parents and teachers of participating students, including name and contact information; demographic information such as race and ethnicity; and teaching experience. The system of records will also include the name and contact information of principals of participating students and information that they provide about the school's programs, policies, and environment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The study is authorized under Part D, Subpart 2, Section 664 of the

Individuals with Disability Education Act (IDEA), 20 U.S.C. 1464.

PURPOSE(S):

The information contained in the records maintained in this system will be used to describe the characteristics of, receipt of services by, and outcomes of transition-age students. The study will address the following research questions:

Describe Transition-Age Students With an Individualized Education Plan (IEP)

What are the personal, family, and school characteristics of this group?

What are their courses of study, services and accommodations received to support learning, and preparation for transition? What barriers and challenges do they encounter?

What are the key academic, social, and economic outcomes in school and after leaving school for youth with disabilities?

How do services received, courses of study, barriers, and outcomes vary for subgroups defined by the nature of the student's disability, age, sex, race/ethnicity, or characteristics of the student's school or community?

How do academic, social, and economic outcomes for students with disabilities vary by their course of study and receipt of services and accommodations, accounting for preexisting youth characteristics?

Compare Current Transition-Age Students With an IEP to Their Peers in Prior Cohorts

How do the receipt of services and accommodations and the outcomes of the current cohort of special education students differ from those of previous cohorts of special education students?

Compare Transition-Age Students With an IEP to Their Peers Who Do Not Have an IEP

What are the characteristics, school and transition experiences, and postsecondary outcomes of students with a plan that provides accommodations under Section 504 of the Rehabilitation Act of 1973 (Section 504 Plan)?

How do characteristics, courses of study, receipt of services and accommodations, and key outcomes for transition-age students with an IEP differ from transition-age students with a Section 504 Plan and from transition-age students with no Section 504 Plan and no IEP?

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department of Education (Department) may disclose information

contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act), under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting, and publication of data by IES.

(1) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(2) *Federal Agency Disclosure.* The Department may disclose records from this system of records to another Federal agency for the purposes of allowing that agency to provide assistance to the Department with the evaluation of a federally supported education program. Under the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g and 34 CFR part 99, the Department will enter into an interagency agreement with the other Federal agency designating that agency as the Department's authorized representative before disclosing any personally identifiable information from any students' education records to that Federal agency. Under the terms of such an interagency agreement, the Federal agency will not be permitted to redisclose any personally identifiable information obtained from students' education records, and will be required to destroy any personally identifiable information from students' education records when no longer needed for the purposes of the evaluation as well as to maintain safeguards to protect the confidentiality of any personally identifiable information disclosed.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintains records on CD-ROM, and the contractor (Mathematica Policy Research, Inc.) and sub-contractor (Decision Information Resources, Inc.) maintain data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed and retrieved by a number assigned to each individual that is cross-referenced by the individual's name on a separate list.

SAFEGUARDS:

All physical access to the Department's site and to the site of the Department's contractor and subcontractor, where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a need-to-know basis, and controls individual users' ability to access and alter records within the system. The contractor and subcontractor will establish a similar set of procedures at its site to ensure confidentiality of data. The contractor's and subcontractor's systems are required to ensure that information identifying individuals is in files physically separated from other research data. The contractor and subcontractor will maintain security of the complete set of all master data files and documentation. Access to individually identifying data will be strictly controlled. All data will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry. Physical security of electronic data will also be maintained. Security features that protect project data include: password-protected accounts that authorize users to use the contractor's system but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; and additional security features that the network administrators will establish for projects as needed. The contractor's and subcontractor's employees who "maintain" (collect, maintain, use, or disseminate) data in this system shall comply with the requirements of the confidentiality

standards in section 183 of the ESRA (20 U.S.C. 9573).

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules (ED/RDS, Part 3, Item 2b and Part 3, Item 5a).

SYSTEM MANAGER AND ADDRESS:

Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue NW., Room 502D, Washington, DC 20208-0001.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

This system contains records on students, their parents, teachers, and principals participating in the National Longitudinal Transitions Study 2012. Data will be obtained through student records maintained by the school districts, assessments administered to students, and surveys of students, their parents, teachers, and principals. Information on principals will be obtained from publicly available information and information that they submit in response to surveys about their schools' programs, policies, and environment

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012-10237 Filed 4-26-12; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

FE Docket Nos. 12-16-NG; 12-19-NG; 12-20-LNG; 12-22-NG; 12-23-NG; 12-31-NG; 12-28-NG]

Atlantic Power Energy Services (US) LLC; White Eagle Trading, LLC; Morgan Stanley Capital Group Inc.; West Texas Gas, Inc.; National Fuel Resources, Inc.; Iberdrola Canada Energy Services, Ltd.; Enserco Energy, LLC; Notice of Orders Granting Authority To Import and Export Natural Gas and Liquefied Natural Gas During March 2012

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during March 2012, it issued Orders granting authority to import and export natural gas and liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at <http://www.fossil.energy.gov/programs/gasregulation/authorizations/Orders-2012.html>. They are also available for inspection and copying in the Office of Fossil Energy, Office of Natural Gas Regulatory Activities, Docket Room 3E-033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 19, 2012.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS ISSUED IN MARCH 2012

Date issued	FE Docket No.	Authorization holder	Description of action
03/06/12	12-16-NG	Atlantic Power Energy Services (US) LLC.	Order granting blanket authority to import/export natural gas from/to Canada and vacating Order No. 2762.
03/06/12	12-19-NG	White Eagle Trading, LLC.	Order granting blanket authority to export natural gas to Mexico.
03/14/12	12-20-LNG	Morgan Stanley Capital Group Inc	Order granting blanket authority to import LNG from various international sources by vessel.
03/14/12	12-22-NG	West Texas Gas, Inc.	Order granting blanket authority to export natural gas to Mexico.
03/14/12	12-23-NG	National Fuel Resources, Inc.	Order granting blanket authority to import/export natural gas from/to Canada.
03/27/12	12-31-NG	Iberdrola Canada Energy Services, Ltd.	Order granting blanket authority to import/export natural gas from/to Canada.
03/30/12	12-28-NG	Enserco Energy, LLC.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico and vacating Order No. 2773.

[FR Doc. 2012-10236 Filed 4-26-12; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

State Energy Advisory Board (STEAB)

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 17, 2012, from 3:30 p.m.–4 p.m. (EST). To receive the call-in number and passcode, please contact the Board's Designated Federal Officer (DFO) at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Gil Sperling, STEAB Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave., SW., Washington, DC 20585. Phone number is (202) 287–1644.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Plan for the upcoming June 26–28, 2012, live Board meeting; update the Board on the activities of the STEAB's Task Forces; review of EECBG recommendations to DOE; and provide an update to the Board on routine business matters and other topics of interest.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gil Sperling at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site, www.steab.org.

Issued at Washington, DC, on April 23, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–10233 Filed 4–26–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–5–000]

Commission Information Collection Activities (FERC–65, FERC–65A, and FERC–65B); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 USC 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collections Notification of Holding Company Status (FERC–65), Exemption Notification of Holding Company Status (FERC–65A), and Waiver Notification of Holding Company Status (FERC–65B) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 8245, 02/14/2012) requesting public comments. FERC received no comments on the FERC–65, FERC–65A or FERC–65B and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by May 29, 2012.

ADDRESSES: Comments filed with OMB (identified by FERC–65, FERC–65A, and/or FERC–65B) should be sent via email to the Office of Information and Regulatory Affairs: oira_submission@omb.gov. Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC12–5–000, by either of the following methods:

- *eFiling at Commission's Web Site:* <http://www.ferc.gov/docs-filing/efiling.asp>.

- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov/help/submission-guide.asp>. For user assistance contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone

at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov/docs-filing/docs-filing.asp>.

FOR FURTHER INFORMATION: Ellen Brown may be reached by email at DataClearance@FERC.gov, by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Titles: Notification of Holding Company Status (FERC–65), Exemption Notification of Holding Company Status (FERC–65A), and Waiver Notification of Holding Company Status (FERC–65B).

OMB Control Nos.: 1902–0218 (FERC–65), 1902–0216 (FERC–65A), and 1902–0217 (FERC–65B).

Type of Request: Three-year extension of the FERC–65, FERC–65A, and FERC–65B information collection requirements with no changes to the current reporting requirements.

Abstract:

FERC–65 (Notification of Holding Company Status)

The FERC–65 is a one-time informational filing outlined in the Commission's regulations at 18 Code of Federal Regulations (CFR) 366.4. The FERC–65 must be submitted within 30 days of becoming a holding company. The Commission does not require the information to be reported in a specific format. The filing consists of the name of the holding company, the name of public utilities, the name of natural gas companies in the holding company system, and the names of service companies. The Commission requires the filing to include the names of special-purpose subsidiaries (which provide non-power goods and services) and the names of all affiliates and subsidiaries (and their corporate interrelationship) to each other. Filings may be submitted in hardcopy or electronically through the Commission's eFiling system.

FERC–65A (Exemption Notification of Holding Company Status)

While noting the previously outlined requirements of the FERC–65, the Commission has allowed for an exemption from the requirement of providing the Commission with a FERC–65 if the books, accounts, memoranda, and other records of any person are not relevant to the jurisdictional rates of a public utility or natural gas company; or if any class of transactions is not relevant to the

jurisdictional rates of a public utility or natural gas company. Companies seeking this exemption file the FERC-65A. Commission regulations within 18 CFR 366.3 describe the criteria in more specificity.

FERC-65B (Waiver Notification of Holding Company Status)

Entities may file a FERC-65B pursuant to the notification procedures contained in 18 CFR 366.4 to obtain a

waiver from the requirement of providing the Commission with a FERC-65 if they meet the requirements in 18 CFR 366.3(c). Specifically, the Commission waives the requirement of providing it with a FERC 65 for any holding company with respect to one or more of the following: (1) Single-state holding company systems; (2) holding companies that own generating facilities that total 100 MW or less in size and are used fundamentally for their own load

or for sales to affiliated end-users; or (3) investors in independent transmission-only companies. Filings may be made in hardcopy or electronically through the Commission's Web site.

Type of Respondents: Holding company, Public utilities, natural gas companies, service companies.

*Estimate of Annual Burden:*¹ The Commission estimates the total Public Reporting Burden for this information collection as:

FERC-65, FERC-65A, AND FERC-65B (IC12-5-000): NOTIFICATION OF HOLDING COMPANY STATUS, EXEMPTION NOTIFICATION, AND WAIVER NOTIFICATION

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (hours) (C) × (D)
FERC-65 Notification of Holding Company Status	8	1	8	3	24
FERC-65A Exemption Notification	1	1	1	1	1
FERC-65B Waiver Notification	0	1	0	1	0
Total	² N/A	² N/A	9	² N/A	25

The total estimated annual cost burden to respondents is \$1,725.35. [25 hours ÷ 2,080³ hours/year = 0.01202 years * \$143,540/year⁴ = \$1,725.35]

The estimated annual cost of filing the FERC-65, FERC-65A, and FERC-65B per response is \$191.71. [\$1,725.35 ÷ 9 responses = \$191.71/response]

Comments: Comments are invited on: (1) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: April 20, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012-10224 Filed 4-26-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12690-005]

Public Utility District No. 1 of Snohomish County, WA; Notice of Application Accepted for Filing, Ready for Environmental Analysis, Soliciting Motions To Intervene and Protests, Soliciting Comments, Recommendations, Terms and Conditions, and Fishway Prescriptions, and Waiving the Timing Requirement for Filing Competing Development Applications

Take notice that the following hydrokinetic pilot project license application has been filed with the Commission and is available for public inspection.

- a. *Type of Application:* Pilot Project License.
- b. *Project No.:* 12690-005.
- c. *Date Filed:* March 1, 2012.
- d. *Applicant:* Public Utility District No. 1 of Snohomish County, Washington (Snohomish PUD).
- e. *Name of Project:* Admiralty Inlet Pilot Tidal Project.
- f. *Location:* On the east side of Admiralty Inlet in Puget Sound, Washington, about 1 kilometer west of Whidbey Island, entirely within Island

County, Washington. The project would not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-828(c).

h. *Applicant Contact:* Steven J. Klein, Public Utility District No. 1 of Snohomish County, Washington, P.O. Box 1107, 2320 California Street, Everett, WA 98206-1107; (425) 783-8473.

i. *FERC Contact:* David Turner (202) 502-6091.

j. *Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions:* 30 days from the issuance of this notice; reply comments are due 60 days from the issuance date of this notice.

Motions to intervene, protests, comments, recommendations, terms and conditions, and fishway prescriptions may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll

¹ Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further

explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

² Not applicable.

³ 2,080 hours = 40 hours/week * 52 weeks (1 year).

⁴ Average annual salary per employee in 2012.

free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis (EA).

l. *The Project Description:* The proposed Admiralty Inlet Pilot Tidal Project would consist of: (1) Two 19.7-foot-diameter Open-Centre turbines, supplied by OpenHydro Group Ltd., mounted on completely submerged gravity foundations; (2) two transmission cables which run from the turbines to the cable termination vault; (3) two transmission cables from the cable termination vault to the proposed cable control building; (4) a cable control building housing the power conditioning and monitoring equipment; (5) a transmission cable bringing power from the cable control building to an existing 12.47-kilovolt transmission line; and (6) appurtenant facilities for operation and maintenance. The estimated average annual generation of the project is 216,000 kilowatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at <http://www.ferc.gov/docs-filing/subscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any one may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR

385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b) except to the extent that this notice establishes deadlines different from those in the regulation. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:*

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Due date
Filing of recommendations, terms and conditions, and fishway prescriptions.	May 23, 2012.
Commission issues Single EA.	July 23, 2012.
Comments on EA	August 22, 2012.

p. Waiver of deadline to file competing applications filed pursuant to a notice of intent (NOI):

Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application or

an NOI to file such an application. Section 4.36(b)(2) of the Commission's regulations, which allows 120 days from the specified intervention deadline date for interested parties to file competing development applications in which timely NOIs have been submitted, is hereby waived. Due to the expedited nature of the pilot project licensing procedures, the submission of a timely NOI will instead allow an interested person to file the competing development application no later than 30 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

An NOI must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. An NOI must be served on the applicant named in this public notice.

Dated: April 23, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-10221 Filed 4-26-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1256-031]

Loup River Public Power District; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 1256-031.

c. *Date Filed:* April 16, 2012.

d. *Applicant:* Loup River Public Power District (Loup Power District).

e. *Name of Project:* Loup River Hydroelectric Project (Loup River Project).

f. *Location:* On the Loup River, Loup Canal (a diversion canal off the Loup River), and Platte River in Nance and Platte counties, Nebraska. The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Neal Suess, President/CEO, Loup Power District, P.O. Box 988, 2404 15th Street,

Columbus, Nebraska 68602, Telephone (866) 869-2087.

i. *FERC Contact*: Lee Emery, (202) 502-8379 or lee.emery@ferc.gov.

j. This application is not ready for environmental analysis at this time.

k. *Project Description*: The project consists of (upstream to downstream): (1) A 1,320-foot-long, 6-foot-high diversion dam on the Loup River; (2) an intake structure composed of eleven 24-foot-long by 5-foot-high steel intake gates located on the north bank of the Loup River immediately upstream of the diversion dam; (3) three 20-foot-long by 6-foot-high steel sluice gates located between the diversion dam and the intake structure; (4) the 35-mile-long Loup Canal; (5) a 2-mile-long settling basin located in the upper portion of the Loup Canal and containing a floating hydraulic dredge and skimming weir; (6) the Monroe Powerhouse containing three Francis-type, turbine-generating units each with a rated capacity of 2.612 megawatts (MW); (7) a 760-acre regulating reservoir, Lake Babcock, with a storage capacity of 2,270 acre-feet at its full pool elevation of 1,531 feet; (8) a 200-acre regulating reservoir, Lake North, with a storage capacity of 2,080 acre-feet at an elevation of 1,531 feet; (9) a concrete control structure in the south dike linking the two reservoirs; (10) a 60-foot-long by 104-foot-wide by 40-foot-high inlet structure with trashracks; (11) three 20-foot-diameter by 385-foot-long steel penstocks connecting the inlet structure with a powerhouse (Columbus Powerhouse); (12) the Columbus Powerhouse containing three Francis-type, turbine-generating units each with a rated capacity of 15.2 MW; and (13) appurtenant facilities. The project has a combined installed capacity of 53.4 MW.

The Monroe Powerhouse operates in a run-of-river mode (i.e., canal inflow to the powerhouse closely approximates outflow from the powerhouse with no storage of canal flow). The maximum hydraulic capacity of the canal at the Monroe Powerhouse is 3,500 cubic feet per second (cfs). The Monroe Powerhouse spans the canal and functions as an energy-producing canal drop structure.

The Columbus Powerhouse operates as a daily peaking facility. The water levels in Lake Babcock and Lake North are generally drawn down about 2 to 3 feet to produce power during times of peak electrical demand. In off-peak hours, when there is less demand for electricity, the turbines are turned down or shut off, which allows Lake Babcock and Lake North to refill, thereby allowing peaking operations to occur the following day. The hydraulic

capacity of the canal at the Columbus Powerhouse is 4,800 cfs.

The minimum leakage rate at the Loup River diversion dam and sluice gate structure is about 50 cfs. During hot weather conditions, Loup Power District operates the diversion in a manner that allows flows of between 50 to 75 cfs (including the leakage flow) to pass into the Loup River downstream of the diversion to prevent high water temperatures that could cause fish mortality.

Loup Power District proposes new and improved recreational amenities at the project; however, there are no proposed changes to the existing project facilities or operations.

Loup Power District proposes to remove three areas of land from the project boundary that it finds are not necessary for project operations or purposes. In addition, Loup Power District proposes to add three parcels of land to the project boundary that it finds are needed for project purposes.

1. *Locations of the Application*: A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule*:

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis.	June 2012.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	August 2012.
Commission issues Draft EA Comments on Draft EA	February 2013. March 2013.
Modified terms and conditions.	May 2013.
Commission issues Final EA	August 2013.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 23, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-10222 Filed 4-26-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12-59-000.

Applicants: Copper Mountain Solar 2, LLC.

Description: Self-Certification of EG or FC of Copper Mountain Solar 2, LLC in EG12-59.

Filed Date: 4/18/12.

Accession Number: 20120418-5245.

Comments Due: 5 p.m. ET 5/9/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-1806-004; ER11-1939-002; ER11-2754-002.

Applicants: AP Gas & Electric (PA), LLC, AP Gas & Electric (TX), LLC, AP Holdings, LLC.

Description: Change-in-Status Report of AP Holdings, LLC, et al.

Filed Date: 4/18/12.

Accession Number: 20120418-5242.

Comments Due: 5 p.m. ET 5/9/12.

Docket Numbers: ER10-3082-002.

Applicants: Motiva Enterprises LLC.

Description: Supplement to Notice of Change in Status of Motiva Enterprises LLC.

Filed Date: 4/18/2012.

Accession Number: 20120418-5260.

Comment Date: 5 p.m. ET 5/9/12.

Docket Numbers: ER12-165-001.

Applicants: Midwest Independent Transmission System Operator, Inc.
Description: G746 Compliance filing to be effective 12/21/2011.

Filed Date: 4/18/12.

Accession Number: 20120418-5163.

Comments Due: 5 p.m. ET 5/9/12.

Docket Numbers: ER12-1552-000.

Applicants: Southwest Power Pool, Inc.

Description: Errata Filing in Docket No. ER12-1552—Implement Balanced Portfolio Transfers to be effective N/A.

Filed Date: 4/18/12.

Accession Number: 20120418-5127.

Comments Due: 5 p.m. ET 5/9/12.
Docket Numbers: ER12-1562-000.
Applicants: Somerset Operating Company, LLC.
Description: MBR Tariff to be effective 4/18/2012.
Filed Date: 4/18/12.
Accession Number: 20120418-5182.
Comments Due: 5 p.m. ET 5/9/12.
Docket Numbers: ER12-1563-000.
Applicants: Cayuga Operating Company, LLC.
Description: MBR Petition to be effective 4/18/2012.
Filed Date: 4/18/12.
Accession Number: 20120418-5184.
Comments Due: 5 p.m. ET 5/9/12.
Docket Numbers: ER12-1564-000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 04-18-12 MVP Methodology Compliance to be effective 6/18/2012.
Filed Date: 4/18/12.
Accession Number: 20120418-5195.
Comments Due: 5 p.m. ET 5/9/12.
Docket Numbers: ER12-1565-000.
Applicants: Fowler Ridge Wind Farm LLC.
Description: Certificate of Concurrence CFA for March 2012 No. 4 to be effective 4/18/2012.
Filed Date: 4/18/12.
Accession Number: 20120418-5209.
Comments Due: 5 p.m. ET 5/9/12.
Docket Numbers: ER12-1566-000.
Applicants: Copper Mountain Solar 2, LLC.
Description: Copper Mountain Solar 2 LLC FERC Electric Tariff No. 1 Market-Based Rates Tariff to be effective 4/18/2012.
Filed Date: 4/18/12.
Accession Number: 20120418-5225.
Comments Due: 5 p.m. ET 5/9/12.
Docket Numbers: ER12-1567-000.
Applicants: Southern California Edison Company.
Description: Letter Agreement with City of Pasadena to be effective 4/20/2012.
Filed Date: 4/19/12.
Accession Number: 20120419-5003.
Comments Due: 5 p.m. ET 5/10/12.
Docket Numbers: ER12-1568-000.
Applicants: Southern California Edison Company.
Description: Amended SGIA SERV AG SCE-TDBU SCE-GPS 13550 Valley Bl Fontana Roof Top Solar Proj to be effective 4/20/2012.
Filed Date: 4/19/12.
Accession Number: 20120419-5004.
Comments Due: 5 p.m. ET 5/10/12.
Docket Numbers: ER12-1569-000.
Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc.'s Notice of Cancellation of Large Generator Interconnection Agreement.
Filed Date: 4/18/12.

Accession Number: 20120418-5251.
Comments Due: 5 p.m. ET 5/9/12.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07-19-008; OA07-43-009; ER07-1171-009.
Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits its annual compliance report on penalty assessments and distributions.
Filed Date: 4/16/12.

Accession Number: 20120416-5299.
Comments Due: 5 p.m. ET 5/7/12.

Docket Numbers: OA07-44-006.
Applicants: El Paso Electric Company.
Description: Report of El Paso Electric Company on Operational Penalty Distributions.

Filed Date: 4/18/12.
Accession Number: 20120418-5257.
Comments Due: 5 p.m. ET 5/9/12.

Docket Numbers: OA08-96-006.
Applicants: Southern Company Services, Inc.

Description: Report of Penalty Assessments and Distributions in accordance with Order Nos. 890 and 890-A and Compliance Report of Southern Company Services, Inc.
Filed Date: 4/17/12.

Accession Number: 20120417-5220.
Comments Due: 5 p.m. ET 5/8/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: April 19, 2012.

Nathaniel J. Davis, Sr.,
 Deputy Secretary.

[FR Doc. 2012-10182 Filed 4-26-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12-611-000.
Applicants: Equitrans, L.P.
Description: Products Extraction Update to be effective 5/17/2012.
Filed Date: 4/17/12.
Accession Number: 20120417-5130.
Comments Due: 5 p.m. ET 4/30/12.
Docket Numbers: RP12-612-000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Annual Adjustment to Rate Schedule SS-2 Storage Gas Balances 2012 to be effective 5/1/2012.
Filed Date: 4/18/12.
Accession Number: 20120418-5043.
Comments Due: 5 p.m. ET 4/30/12.
Docket Numbers: RP12-613-000.
Applicants: Centra Pipelines Minnesota Inc.
Description: Revised Index of Shippers to be effective 6/1/2012.
Filed Date: 4/18/12.
Accession Number: 20120418-5072.
Comments Due: 5 p.m. ET 4/30/12.
Docket Numbers: RP12-614-000.
Applicants: Horizon Pipeline Company, LLC.
Description: Penalty Revenue Crediting Report of Horizon Pipeline Company, LLC.
Filed Date: 4/18/12.
Accession Number: 20120418-5250.
Comments Due: 5 p.m. ET 4/30/12.
Docket Numbers: RP12-615-000.
Applicants: Tuscarora Gas Transmission Company.
Description: Maps 2012 to be effective 5/21/2012.
Filed Date: 4/20/12.
Accession Number: 20120420-5014.
Comments Due: 5 p.m. ET 5/2/12.
Docket Numbers: RP12-616-000.
Applicants: Northern Border Pipeline Company.
Description: Maps 2012 to be effective 5/21/2012.
Filed Date: 4/20/12.
Accession Number: 20120420-5015.
Comments Due: 5 p.m. ET 5/2/12.
Docket Numbers: RP12-617-000.
Applicants: Algonquin Gas Transmission, LLC.
Description: AGT 2012 Map Filing to be effective 5/21/2012.
Filed Date: 4/20/12.
Accession Number: 20120420-5051.

Comments Due: 5 p.m. ET 5/2/12.

Docket Numbers: RP12–618–000.

Applicants: Maritimes & Northeast Pipeline, LLC.

Description: MNUS 2012 Map Filing to be effective 5/21/2012.

Filed Date: 4/20/12.

Accession Number: 20120420–5052.

Comments Due: 5 p.m. ET 5/2/12.

Docket Numbers: RP12–619–000.

Applicants: Big Sandy Pipeline, LLC.

Description: BSP 2012 Map Filing to be effective 5/21/2012.

Filed Date: 4/20/12.

Accession Number: 20120420–5057.

Comments Due: 5 p.m. ET 5/2/12.

Docket Numbers: RP12–620–000.

Applicants: Ozark Gas Transmission, LLC.

Description: OGT 2012 Map Filing to be effective 5/21/2012.

Filed Date: 4/20/12.

Accession Number: 20120420–5074.

Comments Due: 5 p.m. ET 5/2/12.

Docket Numbers: RP12–623–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Update Section 6.10 (ROFR) to be effective 5/24/2012.

Filed Date: 4/23/12.

Accession Number: 20120423–5018.

Comments Due: 5 p.m. ET 5/7/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–313–002.

Applicants: Sea Robin Pipeline Company, LLC.

Description: Hurricane Compliance on 4–19–12 to be effective N/A.

Filed Date: 4/19/12.

Accession Number: 20120419–5115.

Comments Due: 5 p.m. ET 5/1/12.

Docket Numbers: RP12–388–001

Applicants: Columbia Gas Transmission, LLC.

Description: Prearranged Sales of Capacity Compliance Filing to be effective 3/21/2012.

Filed Date: 4/20/12.

Accession Number: 20120420–5119.

Comments Due: 5 p.m. ET 5/2/12.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by

clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–10184 Filed 4–26–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1484–002.

Applicants: Shell Energy North America (US), L.P.

Description: Supplement to Updated Market Power Analysis for the Southeast Region of Shell Energy North America (US), L.P.

Filed Date: 4/18/12.

Accession Number: 20120418–5269.

Comments Due: 5 p.m. ET 5/9/12.

Docket Numbers: ER10–1484–003.

Applicants: Shell Energy North America (US), L.P.

Description: Supplement to Notice of Change in Status of Shell Energy North America (US), L.P.

Filed Date: 4/18/12.

Accession Number: 20120418–5270.

Comments Due: 5 p.m. ET 5/9/12.

Docket Numbers: ER10–1827–001; ER10–1825–001.

Applicants: Cleco Power LLC, Cleco Evangeline LLC.

Description: Responses to Information Request regarding Notice of Change in Status filed by Cleco Power LLC and Cleco Evangeline LLC.

Filed Date: 4/18/12.

Accession Number: 20120418–5267.

Comments Due: 5 p.m. ET 5/9/12.

Docket Numbers: ER11–3280–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 4/19/12 NDEX Compliance to be effective 4/30/2012.

Filed Date: 4/19/12.

Accession Number: 20120419–5159.

Comments Due: 5 p.m. ET 5/10/12.

Docket Numbers: ER12–1437–001.

Applicants: Eagle Point Power Generation LLC.

Description: Correction to Reactive Rate Schedule to be effective 4/1/2012.

Filed Date: 4/19/12.

Accession Number: 20120419–5154.

Comments Due: 5 p.m. ET 5/10/12.

Docket Numbers: ER12–1570–000.

Applicants: Verso Androscoggin LLC.

Description: Verso Androscoggin LLC submits Notice of Cancellation of Interconnection Agreement.

Filed Date: 4/19/12.

Accession Number: 20120419–5092.

Comments Due: 5 p.m. ET 5/10/12.

Docket Numbers: ER12–1571–000.

Applicants: Verso Bucksport LLC.

Description: MBR Application and Baseline Tariff to be effective 6/18/2012.

Filed Date: 4/19/12.

Accession Number: 20120419–5127.

Comments Due: 5 p.m. ET 5/10/12.

Docket Numbers: ER12–1572–000.

Applicants: ITC Midwest LLC.

Description: ITC Midwest Amended and Restated O&M Agreement with SMMPA to be effective 4/20/2012.

Filed Date: 4/19/12.

Accession Number: 20120419–5146.

Comments Due: 5 p.m. ET 5/10/12.

Docket Numbers: ER12–1573–000.

Applicants: The Detroit Edison Company.

Description: Thumb Electric WPS–2 Service Agreement to be effective 1/1/2012.

Filed Date: 4/19/12.

Accession Number: 20120419–5156.

Comments Due: 5 p.m. ET 5/10/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 19, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–10183 Filed 4–26–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. EL12-59-000]

Golden Spread Electric Cooperative, Inc. v. Southwestern Public Service Company; Notice of Complaint

Take notice that on April 20, 2012, pursuant to sections 201, 206, and 306 of the Federal Power Act, 16 U.S.C. 824, 824e and 825e, and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Golden Spread Electric Cooperative, Inc. (Complainant or Golden Spread) filed a formal complaint against Southwestern Public Service Company (Respondent or SPS) alleges that the formula rate of Replacement Power Sales Agreement (RPSA) by and between Golden Spread and SPS and that the formula rate of the Xcel Joint Energy Open Access Tariff applicable to pricing of transmission service over the facilities of SPS contain an unjust and unreasonable return on equity (ROE), contrary section 205 of the Federal Power Act. Golden Spread requests a determination that the appropriate base ROE for both the RPSA and the transmission formula rate should set at 9.15%.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the

Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 10, 2012.

Dated: April 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012-10181 Filed 4-26-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. EL12-58-000]

Astoria Generating Company, L.P. v. New York Independent System Operator, Inc.; Notice of Complaint

April 23, 2012.

Take notice that on April 20, 2012, pursuant to sections 206, and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e, and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Astoria Generating Company, L.P. (Complainant) filed a formal complaint against New York Independent System Operator, Inc. (Respondent or NYISO) alleging that the NYISO violated Attachment H of the NYISO Market Administration and Control Area Services Tariff by refusing to issue Going-Forward Cost determinations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 21, 2012.

Dated: April 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012-10185 Filed 4-26-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. ID-6802-000]

Mahannah, Randy; Notice of Filing

Take notice that on April 19, 2012, Randy Mahannah filed a supplemental application for authorization to hold interlocking positions pursuant to section 305(b) of the Federal Power Act of the regulations of the Federal Energy Regulatory Commission, 18 CFR part 45 (2008).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the

Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 11, 2012.

Dated: April 20, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-10223 Filed 4-26-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14335-000]

Stoughton Water Power Company; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 7, 2011, the Stoughton Water Power Company filed an application for a preliminary permit under section 4(f) of the Federal Power Act proposing to study the feasibility of the proposed Stoughton Dam Water Power Project No. 14335, to be located at the existing Stoughton Dam on the Yahara River, near the City of Stoughton, in Dane County, Wisconsin. The Stoughton Dam is owned by the City of Stoughton.

The proposed project would consist of: (1) The existing Stoughton Dam; (2) an existing 70-foot-long by 38-foot-wide concrete powerhouse; (3) two new or refurbished hydropower turbines and generators having a total combined generating capacity of 192 kilowatts; (4) an existing 200-foot-long by 40-foot-wide headrace; (5) a 25-foot-long, 12-kilovolt transmission line; and (6) appurtenant facilities. The project would have an estimated annual generation of 450,000 kilowatt-hours.

Applicant Contact: Mr. Thomas J. Reiss, Jr., P.O. Box 553, 319 Hart Street, Watertown, WI 53094; (920) 261-2319.

FERC Contact: Tyrone A. Williams, (202) 502-6331.

Deadline for filing comments, motions to intervene, and competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14335-000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 23, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-10219 Filed 4-26-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P-14363-000]

KC Hydro LLC of New Hampshire; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 8, 2012, KC Hydro LLC of New Hampshire, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Milton Mills Hydropower Project

(project) to be located on the Salmon Falls River, near the Town of Milton, Strafford County, New Hampshire. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) The existing 120-foot-long, 17-foot-high, concrete gravity Waumbek Dam; (2) an existing 6-acre impoundment with a normal maximum water surface elevation of 455 feet above mean sea level; (3) an existing 6-foot-diameter discharge conduit that would be modified to include a liner and extended downstream by 1,000 feet; (4) a new powerhouse containing a single turbine generator unit with an installed capacity of 100 kilowatts; (5) a new tailrace; (6) a new 400-foot-long, 34.5-kilovolt transmission line; and (7) appurtenant facilities. The project would have an estimated average annual energy generation of 500 megawatt-hours, which would be sold to Public Service of New Hampshire. The dam and impoundment are owned and operated by the New Hampshire Department of Environmental Services. There are no federal lands associated with the project.

Applicant Contact: Ms. Kelly Sackheim, Principal, KC Hydro LLC of New Hampshire, 5096 Cocoa Palm Way, Fair Oaks, California 95628; phone: (301) 401-5978.

FERC Contact: Michael Watts; phone: (202) 502-6123.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY,

(202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14363-000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: April 23, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-10220 Filed 4-26-12; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM12-4-000]

Revision to Transmission Vegetation Management Reliability Standard; Notice Inviting Comments on Report

The Commission is posting and inviting comment upon a report prepared by the Pacific Northwest National Laboratory (PNNL) on "Applicability of the 'Gallet Equation' to the Vegetation Clearances of NERC Reliability Standard FAC-003-2" (PNNL Report).

The Report was commissioned by the Commission's Office of Electric Reliability, for the purpose of obtaining an independent analysis of certain technical questions raised by the Minimum Vegetation Clearance Distances as proposed in the North American Electric Reliability Corporation's Reliability Standard FAC-003-2 (Transmission Vegetation Management). Specifically, PNNL was commissioned to prepare a report addressing the following:

The overall scope of this project shall include analysis of the mathematics and documentation of the technical justification behind the application of the Gallet equation and the assumptions used in the technical reference paper [Exh. A of NERC's filing]. To put the analysis into perspective, are the assumptions made in the development of the Gallet Equation and their application in NERC-approved Reliability Standard FAC-003-2 reasonable to address the minimum distance requirements needed to avoid sustained vegetation-related outages? What variations in Gallet distance may occur when

comparing the original testing (use of switching impulses and corona free electrodes) against the variety of impulses a line may be subject to and the concentrations of coronal effects when using vegetation instead of corona-free electrodes? Do the equations adequately address the limiting conditions (i.e., the expected extremes in prevailing ambient conditions including temperatures, humidity, conductor position, amplification of any coronal effects and wind speed) that are important to the insulation performance of a line to prevent flashover to nearby vegetation during real-time operating conditions? The limiting conditions will be identified, outlined, and applied in the analysis.

This analysis shall also include a discussion of the appropriateness of using one clearance for all lines with the same operating voltage as opposed to linking the clearance to "as built" and design conditions. Finally, the analysis shall identify if the proposed clearance will provide the minimum clearance needed to avoid a flashover with regard to vegetation. (Footnotes omitted.)

The PNNL Report will be posted on the Commission's Web site at <http://www.ferc.gov>.

Comments on the PNNL Report should be filed with the Commission within 30 days of the issuance of this Notice. The Commission encourages electronic submission of comments in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the comment to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All filings in this docket are accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and will be 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. 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.

Questions regarding this Notice should be directed to: David O'Connor, Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, 202-502-6695, David.OConnor@ferc.gov.

Dated: April 23, 2012.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012-10218 Filed 4-26-12; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-R10-OAR-2010-1914; FRL-9664-7]

Adequacy Status of the Eagle River, Alaska Particulate Matter Limited Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this action, EPA is notifying the public of its finding that the Eagle River, Alaska, Particulate Matter (PM₁₀) Limited Maintenance Plan, submitted by the State of Alaska on September 20, 2011, is adequate for conformity purposes. EPA made this finding pursuant to the adequacy process established at 40 CFR 93.118(f)(1). As a result of our adequacy finding, conformity requirements will be reduced.

DATES: This finding is effective May 14, 2012.

FOR FURTHER INFORMATION CONTACT: The finding will be available at EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>. You may also contact Wayne Elson, U.S. EPA, Region 10 (OAWT-107), 1200 Sixth Ave, Suite 900, Seattle WA 98101; (206) 553-1463 or elson.wayne@epa.gov.

SUPPLEMENTARY INFORMATION: This action provides notice of EPA's adequacy finding regarding the PM₁₀ Limited Maintenance Plan for Eagle River, Alaska. EPA's finding was made pursuant to the adequacy review process for implementation plan submissions delineated at 40 CFR 93.118(f)(1) under which EPA reviews the adequacy of an state implementation plan (SIP) submission prior to EPA's final action on the implementation plan.

On September 20, 2011, Alaska Department of Environmental Conservation submitted a PM₁₀ maintenance plan revision to EPA. Pursuant to 40 CFR 93.118 (f)(1), EPA notified the public of its receipt of this plan that would be reviewed for an adequacy determination on EPA's Web site and requested public comment by no later than February 27, 2012. EPA received no comments on the plan during that comment period. As part of our review, we also reviewed comments submitted to the Alaska Department of Environmental Conservation on the Limited Maintenance Plan during the public hearing process. There were no adverse comments submitted during the State hearing process regarding the new

Plan. EPA Region 10 sent a letter to the Alaska Department of Environmental Conservation on April 2, 2012, subsequent to the close of the comment period stating EPA found the Eagle River PM₁₀ Limited Maintenance Plan to be adequate for use in transportation conformity.

Because limited maintenance plans do not contain budgets, as provided in 40 CFR 93.109(l), the adequacy review period for these maintenance plans serves to allow the public to comment on whether limited maintenance is appropriate for these areas. As a result of this adequacy finding, the Municipality of Anchorage, Alaska Department of Transportation & Public Facilities, and the U.S. Department of Transportation are no longer required to conduct a regional emissions analysis for conformity. However, other conformity requirements still remain such as consultation (40 CFR 93.112), transportation control measures (40 CFR 93.113), and project level analysis (40 CFR 93.116).

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires transportation plans, programs, and projects to conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The minimum criteria by which we determine whether a SIP is adequate for conformity purposes are specified at 40 CFR 93.118(e)(4). EPA's analysis of how the state's submission satisfies these criteria is found in the Technical Support Document. EPA's adequacy review is separate from EPA's SIP completeness review and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find the SIP adequate for conformity purposes, the SIP could later be disapproved.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 16, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2012–10203 Filed 4–26–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9002–7]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements filed 04/16/2012 through 04/20/2012 pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <http://www.epa.gov/compliance/nepa/eisdata.html>.

SUPPLEMENTARY INFORMATION: EPA is seeking agencies to participate in its e-NEPA electronic EIS submission pilot. Participating agencies can fulfill all requirements for EIS filing, eliminating the need to submit paper copies to EPA headquarters, by filing documents online and providing feedback on the process. To participate in the pilot, register at: <https://cdx.epa.gov>.

EIS No. 20120113, Final EIS, BPA, OR, Albany-Eugene 115 kilovolt No. 1 Transmission Line Rebuild Project, Extending from Albany Substation to the Alderwood Tap, Linn and Lane Counties OR, *Review Period Ends:* 05/29/2012, *Contact:* Douglas F. Corkran, 503–230–7646.

EIS No. 20120114, Final Supplement, USN, CA, Hunters Point (Former) Naval Shipyard Disposal and Reuse, Supplement Information on the 2000 FEIS, Implementation, City of San Francisco, San Francisco County, CA, *Review Period Ends:* 05/29/2012, *Contact:* Ronald Bochenek, 619–532–0906.

EIS No. 20120115, Final EIS, USFS, AK, Tonka Timber Sale Project, Proposed Timber Harvesting, Petersburg Ranger District, Tongass National Forest, Petersburg, AK, *Review Period Ends:* 05/29/2012, *Contact:* Jason Anderson, 907–772–3871.

EIS No. 20120116, Final EIS, USFS, SD, Vestal Project, Commercial and Non-commercial Vegetation Treatments and Prescribed Burning to Reduce Mountain Pine Beetle Risk and Fire Hazard, Hell Canyon Ranger District, Black Hills National Forest, Custer County, SD, *Review Period Ends:* 05/29/2012, *Contact:* Lynn Kolund, 605–673–4853.

EIS No. 20120117, Draft EIS, BLM, WY, Lost Creek In Situ Recovery Project,

To Analyze the Site-Specific Impacts Associated with the Plan of Operations, Sweetwater County, WY, *Comment Period Ends:* 06/11/2012, *Contact:* John Russell, 307–328–4252. *EIS No. 20120118, Final EIS, FTA, CA,* California High-Speed Train (HST): Merced to Fresno Section High-Speed Train, Propose to Construct, Operate, and Maintain an Electric-Powered High-Speed Train (HST), Merced, Madera, and Fresno Counties, CA, *Review Period Ends:* 05/29/2012, *Contact:* David Valenstein, 202–493–6381.

EIS No. 20120119, Final EIS, NPS, IN, Indiana Dunes National Lakeshore, White-Tailed Deer Management Plan, Implementation, Lake, Porter, LaPorte Counties, IN, *Review Period Ends:* 05/29/2012, *Contact:* Randy Knutson, 219–395–1550.

EIS No. 20120120, Draft EIS, BLM, CO, Mohave County Wind Farm Project, Application for a Right-of-Way Grant to Construct, Operate, Maintain and Decommission a Wind Powered Electrical Generation Facility, White Hills, Mohave County, CO, *Comment Period Ends:* 06/11/2012, *Contact:* Jerry Crockford, 505–360–0473.

EIS No. 20120121, Final EIS, FHWA, OR, Newberg Dundee Bypass Project, Proposal to Build a Four Lane Expressway and Reduce Congestion on OR 99W, from OR 99W/OR/8 to the top of Rex Hill, USACE 404/ Removal Fill Permits, Funding, Yamhill and Washington Counties, OR, *Review Period Ends:* 05/29/2012, *Contact:* Michelle Eraut, 503–316–2559.

EIS No. 20120122, Draft Supplement, USACE, NM, Rio Grande Floodway Flood Protection Plan, San Acacia to Bosque Del Apache Unit, To Provide Higher Levels of Flood Risk Management to Floodplain Communities from San Acacia Diversion Dam Downstream to Elephant Butte Lake, Socorro County, NM, *Comment Period Ends:* 06/11/2012, *Contact:* Julie A. Alcon, 505–342–3281.

EIS No. 20120123, Final EIS, BLM, NV, Phoenix Copper Leach Project, Construction and Operation of a New Copper Beneficiation Facility, Lander County, NV, *Review Period Ends:* 05/29/2012, *Contact:* Dave Davis, 775–635–4000.

EIS No. 20120124, Final EIS, NPS, SD, South Unit—Badlands National Park, General Management Plan, Implementation, SD, *Review Period Ends:* 05/29/2012, *Contact:* Eric J. Brunnemann, 605–433–5361.

EIS No. 20120125, Final EIS, FTA, CA, Hercules Intermodal Transit Center,

Construction To Improve Access to Public Transit, Funding USACE Section 404 Permit, Contra Costa County, CA, *Review Period Ends:* 05/29/2012, *Contact:* Paul Page, 415-744-2734.

EIS No. 20120126, Draft EIS, USFS, CO, Black Mesa Vegetation Management Project, Implementation, Divide Ranger District, Rio Grande National Forest, Hinsdale and Mineral Counties, CO, Comment Period Ends: 06/11/2012, *Contact:* Thomas Malecek, 719-657-3321.

EIS No. 20120127, Final EIS, USFS, CA, Rubicon Trail Easement and Resource Improvement Project, Construction and Operation, Right-of-Way Grant, Eldorado National Forest, Pacific Ranger District, El Dorado County, CA, Review Period Ends: 05/29/2012, *Contact:* Laura Hierholzer, 530-642-5187.

Amended Notices

EIS No. 20120047, Draft EIS, BIA, WA, West Plains Casino and Mixed-Use Development Project, Approval of Gaming Development and Management, Spokane Tribe of Indians, Spokane County, WA, Comment Period Ends: 05/16/2012, *Contact:* Dr. B.J. Howerton, 503-231-6749. Revision to FR Notice Published 03/02/2012; Lead Agency Re-opening the Comment Period to end 05/16/2012.

EIS No. 20120104, Draft EIS, NOAA, 00, Amendment 5 to the Atlantic Herring Fishery Management Plan, Implementation, Comment Period Ends: 06/04/2012, *Contact:* Daniel S. Morris, 978-281-9250. Revision to FR Notice Published 04/20/2012: Change Agency Contact to Daniel S. Morris, 978-281-9250 and Correction to EIS Title.

Dated: April 24, 2012.

Aimee Hessert,

Deputy Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2012-10200 Filed 4-26-12; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-R01-OW-2012-0201; FRL-9666-5]

EPA—New England Region I; Massachusetts Marine Sanitation Device Standard; Receipt of Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice—Receipt of petition.

SUMMARY: Notice is hereby given that a petition has been received from the

Commonwealth of Massachusetts requesting a determination by the Regional Administrator, U. S. Environmental Protection Agency, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of Nantucket and Vineyard Sounds and the Islands, collectively termed the Southern Cape Cod for the purpose of this notice.

DATES: Comments must be submitted by May 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OW-2012-0201, by one of the following methods: www.regulations.gov. Follow the on-line instructions for submitting comments.

- *Email:* rodney.ann@epa.gov.
- *Fax:* (617) 918-0538.

Mail and hand delivery: U.S.

Environmental Protection Agency—New England Region, Five Post Office Square, Suite 100, OEP06-1, Boston, MA 02109-3912. Deliveries are only accepted during the Regional Office's normal hours of operation (8 a.m.–5 p.m., Monday through Friday, excluding legal holidays), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R01-OW-2012-0201. 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 information that you consider to be CBI or otherwise protected through www.regulations.gov, or email. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the U.S. Environmental Protection Agency—New England Region, Five Post Office Square, Suite 100, OEP06-01, Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office is open from 8 a.m.–5 p.m., Monday through Friday, excluding legal holidays. The telephone number is (617) 918-1538.

FOR FURTHER INFORMATION CONTACT: Ann Rodney, U.S. Environmental Protection Agency—New England Region, Five Post Office Square, Suite 100, OEP06-01, Boston, MA 02109-3912. Telephone: (617) 918-1538, Fax number: (617) 918-0538; email address: rodney.ann@epa.gov.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a petition has been received from the Commonwealth of Massachusetts requesting a determination by the Regional Administrator, U.S. Environmental Protection Agency, pursuant to Section 312(f)(3) of Public Law 92-500 as amended by Public Law 95-217 and Public Law 100-4, that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Southern Cape Cod area.

The Southern Cape Cod No Discharge Area will encompass the coastal waters for the towns of Chilmark, West Tisbury, Tisbury, Oak Bluffs, Edgartown, Gosnold, Falmouth, Mashpee, Barnstable, Yarmouth, Dennis, Harwich, Chatham and Nantucket.

The proposed boundaries of the No Discharge Area for the Southern Cape Cod waters are as follows:

The western-most contiguous area of the NDA is bound by the Buzzards Bay NDA and the Federal/State boundary line:

Waterbody/general area	Latitude	Longitude
West of the Elizabeth Islands	41°24'35.11" N	70°56'54.62" W
West of the Elizabeth Islands	41°22'30.32" N	70°59'51.57" W
West of the Elizabeth Islands	41°24'17.81" N	71°02'06.69" W

The upper-eastern area of the NDA is bound by the Outer Cape NDA:

Waterbody/general area	Latitude	Longitude
South of Monomoy Island	41°32'29.79" N	70°00'36.28" W
South of Monomoy Island	41°29'14.59" N	70°00'10.93" W

The small triangle of Commonwealth waters at the mouth of Buzzards Bay will be bound by the following coordinates along the Federal/State boundary line:

Waterbody/general area	Latitude	Longitude
Mouth of Buzzards Bay	41°24'50.40" N	71°02'48.61" W
Mouth of Buzzards Bay	41°25'25.66" N	71°03'31.78" W
Mouth of Buzzards Bay	41°25'18.57" N	71°04'18.47" W

The two temporarily undesignated areas will be bound by the following coordinates:

Waterbody/general area	Latitude	Longitude
Area 1:		
Vineyard Sound	41°30'33.61" N	70°40'06.67" W
Vineyard Sound	41°30'49.20" N	70°39'19.65" W
Vineyard Sound	41°30'59.29" N	70°39'02.76" W
Vineyard Sound	41°30'03.08" N	70°33'54.78" W
Vineyard Sound	41°28'22.57" N	70°33'27.72" W
Vineyard Sound	41°28'44.74" N	70°35'18.74" W
Vineyard Sound	41°29'08.60" N	70°35'32.38" W
Area 2:		
Nantucket Sound	41°34'27.90" N	70°16'48.99" W
Nantucket Sound	41°34'27.90" N	70°15'00.99" W
Nantucket Sound	41°33'20.36" N	70°14'39.33" W
Nantucket Sound	41°31'41.73" N	70°12'27.06" W
Nantucket Sound	41°31'07.88" N	70°15'32.25" W

The boundaries were chosen to maximize the area designated, give larger vessels a window in which to comply with this proposed regulation, and generally represent all navigational waters.

There are marinas, yacht clubs and public landings/piers in the proposed area with a combination of mooring fields and dock space for the recreational and commercial vessels. Massachusetts has certified that there are 29 pumpout facilities within the proposed area available to the boating public. A list of the facilities, locations, contact information, hours of operation, and water depth is provided at the end of this petition.

Massachusetts has provided documentation indicating that the total vessel population is estimated to be 15,283 in the proposed area. It is estimated that 5,075 of the total vessel population may have a Marine Sanitation Device (MSD) of some type.

The various beaches, marshes, and harbors and their recreational opportunities attract thousands of visitors to Cape Cod and the Islands every year. Within the proposed NDA area, there are 143 bathing beaches covering over 26 miles of coastline.

The area is known for the strong prevailing southwest winds which support sailing, windsurfing, and kite boarding. Numerous wildlife tours,

recreational fishing charters operate within the waters of this proposed NDA, and it is an important and popular destination for boaters due to its natural environmental diversity.

Six species of shellfish are harvested in the area, including soft-shell clams, surf clams, blue mussels, oysters, ocean quahogs, and the state's only commercial bay scallop fishery.

Southern South Cape Cod and Islands NDA encompasses approximately 12,500 acres of shellfish habitat, and supports an estimated 600 commercial shellfishermen. Recreational shellfishing alone was estimated to be worth over \$7 million in 2002 dollars to Cape Cod.

PUMPOUT FACILITIES WITHIN PROPOSED NO DISCHARGE AREA

Name	Location	Contact information	Hours of operation	Depth (ft)
Menemsha Harbor	Chilmark	508-645-2846, VHF 9, 16	8 a.m.-4 p.m.	4
Vineyard Haven Harbor/Tashmoo Pond.	Tisbury	508-696-4249, VHF 9	9 a.m.-4 p.m.	NA
Tisbury Wharf Co	144 Beach Road, P.O. Box 1317, Tisbury.	508-693-9300, VHF 9	9 a.m.-4 p.m.	4
Oak Bluffs Harbor	Oak Bluffs	508-693-4355, VHF 71	9 a.m.-4 p.m.	NA
Oak Bluffs Harbor Marina	Box 1327, Oak Bluffs	508-693-4355, VHF 71	9 a.m.-4 p.m.	6
Edgartown Marina	1 Morse Street Edgartown	508-627-4746, VHF 9, 74	8 a.m.-4 p.m.	6
Edgartown Harbor	1 Morse Street Edgartown	508-627-4746, VHF 9, 74	8 a.m.-4 p.m.	NA
Falmouth Marine, Inner Harbor	278 Scranton Avenue, Falmouth	508-548-4600, VHF 9, 16	9 a.m.-5 p.m.	6
McDougall's Inner Harbor	145 Falmouth Heights Road, Falmouth.	508-548-3146, VHF 9, 16	9 a.m.-5 p.m.	NA
Falmouth Town Dock	Falmouth	508-457-2550, VHF 9, 16	9 a.m.-5 p.m.	6
Green Pond Marina	70 Green Harbor Road, East Falmouth.	508-457-9283, VHF 9, 16	9 a.m.-4 p.m.	3
Bosun's Marine	1209 East Falmouth Highway, Route 28, Falmouth.	508-548-2216, VHF 9, 16	9 a.m.-4 p.m.	3
Waquoit Bay/Inner Harbor	Falmouth	508-457-2550, VHF 9, 16	9 a.m.-5 p.m.	NA
Popponessett Bay	Mashpee	508-539-1450, VHF 9, 16	9 a.m.-4 p.m.	NA
Oyster Harbor Marine	122 Bridge Street, Osterville	508-428-2017, VHF 9, 79	9 a.m.-4 p.m.	6
Crosby Yacht Yard	72 Crosby Circle, Osterville, MA	508-428-6900, VHF 9	9 a.m.-5 p.m.	6
Centerville Harbor/3 Bays	Barnstable	508-790-6273, VHF 9, 16	9 a.m.-4 p.m.	NA
Bismore Park (Hyannis)	180 Ocean Street, Hyannis	508-790-6273, VHF 9, 16	9 a.m.-5 p.m.	6
Hyannis Marine	1 Willow Street, Hyannis	508-790-4000, VHF 9, 72	9 a.m.-5 p.m.	6
Lewis Bay/Hyannis Harbor/Bass River.	Yarmouth	508-760-4800, VHF 66	9 a.m.-4 p.m.	NA
Bass River	Packet Landing, Water Street, Yarmouth.	508-760-4800, VHF 66	9 a.m.-4 p.m.	3
Bass River Marina	140 Main Street, West Dennis	508-394-8341, VHF 71	8 a.m.- 5 p.m.	3
Saquatucket, Allen & Wychmere Harbors (Within existing NDA).	Harwich	508-430-7532, VHF 68	9:30 a.m.-3:30 p.m.	NA
Saquatucket, fuel dock (Within existing NDA).	Harwich	508-430-7532, VHF 68	9 a.m.-5 p.m.	5
Stage Harbor (Within existing NDA).	Chatham	508-945-5185, VHF 16, 66	7 a.m.-6 p.m.	5.5
Madaket Marine (Within Existing NDA).	Nantucket	508-228-1163, VHF 9, 16	9 a.m.-5 p.m.	3
Nantucket Boat Basin (Within Existing NDA).	Nantucket	508-325-1350, VHF 9, 11	9 a.m.-5 p.m.	6
Nantucket Harbor (Within Existing NDA).	Nantucket	508-228-7261, VHF 9, 14	9 a.m.-4 p.m.	6
Nantucket Harbor (Within Existing NDA).	Nantucket	508-228-7261, VHF 9, 14	9 a.m.-4 p.m.	NA

Dated: April 18, 2012.

H. Curtis Spalding,

Regional Administrator, New England Region.

[FR Doc. 2012-10206 Filed 4-26-12; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 77 FR 24201, Monday, April 23, 2012.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Wednesday, April 25, 2012, 9:30 a.m. Eastern Time.

CHANGE IN THE MEETING:

Open Session

Item No 1. Announcement of Notation Votes,

Item No 2. Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964, and

Item No 3. Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act, as amended has been removed from the Agenda.

CONTACT PERSON FOR MORE INFORMATION: Bernadette B. Wilson, Acting Executive Officer on (202) 663-4077.

Dated: April 25, 2012.

Bernadette B. Wilson,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2012-10344 Filed 4-25-12; 4:15 pm]

BILLING CODE 6570-01-P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12-07]

Appraisal Subcommittee (ASC); ASC Rules of Operation; Amended

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of amendment to the ASC Rules of Operation by vote of the ASC at its April 11, 2012 meeting.

SUMMARY: The ASC of the Federal Financial Institutions Examination Council (FFIEC) amended the following sections of the ASC Rules of Operation:

1. Section 3.04.a to provide for selection of a Vice Chairperson by ASC members with the Vice Chairperson's term of office running concurrently with the Chairperson's term;

2. Section 1.02(8) to define "Vice Chairperson" consistent with section 3.04.a; and

3. As a technical correction, Section 1.02(3) to remove the reference to the Office of Thrift Supervision (which became part of the Office of the Comptroller of the Currency July 21, 2011).

4. The definition of "member agency" footnotes the amendment to section 1011 of the Federal Financial Institutions Examination Council Act by the Dodd-Frank Act to include designees of the heads of the Bureau of Consumer Financial Protection and the Federal Housing Finance Agency.

The ASC Rules of Operation serve as corporate bylaws outlining the ASC's purpose, functions, authority, organization and operation.

SUPPLEMENTARY INFORMATION: The ASC was established by Section 1102 (12 U.S.C. 3310) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Title XI). The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 amended numerous provisions in Title XI. The ASC Rules of Operation serve as corporate bylaws outlining the ASC's purpose, functions, authority, organization and operation.

DATES: *Effective Date:* Immediately.

FOR FURTHER INFORMATION CONTACT: James R. Park, Executive Director, at (202) 595-7575, or Alice M. Ritter, General Counsel, at (202) 595-7577, via Internet email at jim@asc.gov and alice@asc.gov, respectively, or by U.S. Mail at Appraisal Subcommittee, 1401 H Street NW., Suite 760, Washington, DC 20005.

* * * * *

By the Appraisal Subcommittee.

Dated: April 23, 2012.

Peter Gillispie,

Chairman.

[FR Doc. 2012-10129 Filed 4-26-12; 8:45 am]

BILLING CODE 6700-01-P

FEDERAL MARITIME COMMISSION

[Docket No. 12-06]

Shipco Transport Inc. v. Jem Logistics, Inc., and Andi Georgescu, an Individual and D/B/A Jem Logistics, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Shipco Transport Inc. (Shipco), hereinafter "Complainant," against Jem Logistics, Inc., and Andi Georgescu, an individual and doing business as Jem Logistics, Inc., hereinafter "Respondents." Complainant asserts that it is a non-vessel-operating common carrier (NVOCC) licensed by the FMC and incorporated in the State of New Jersey. Complainant alleges that Respondent Jem Logistics, Inc. is a corporation incorporated in the State of California and that Respondent Andi Georgescu is a resident of California and principal owner and president of Jem Logistics.

Complainant alleges that Respondent "Jem Logistics misrepresented to Shipco * * * that it was, in fact, an FMC-licensed NVOCC," but that "Jem Logistics was not the NVOCC it purported to be, and is not now nor was it at any time herein mentioned licensed by the Federal Maritime Commission (FMC)." Complainant alleges that Respondents "falsely used the name of a licensed and bonded NVOCC, Aromark Shipping LLC (Aromark)." Complainant also alleges that Respondents failed to pay Complainant for shipment of a vehicle after the cargo was abandoned.

Therefore Complainant alleges that Respondent has violated 46 U.S.C. 40901 and 40902 by its failure to be licensed and bonded and 46 U.S.C. 41102, "by attempting to obtain Shipco shipping services relating to freight charges without paying for demurrage and removal of cargo upon abandonment in the absence of a bond to secure Respondent's payment."

Complainant requests that the Commission order Respondents to "make reparations to Complainant Shipco in the amount of \$15,872.90 for failure to pay demurrage and disposal of the abandoned cargo" as well as attorney's fees and expenses and "six per cent interest on amounts consisting of demurrage and disposal of cargo together with additional interest provided by law." The full text of the complaint can be found in the Commission's Electronic Reading Room at www.fmc.gov.

This proceeding has been assigned to the Office of Administrative Law Judges.

Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by April 23, 2013 and the final decision of the Commission shall be issued by August 21, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2012-10147 Filed 4-26-12; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 24, 2012.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Capital Bank Financial Corp.*, Miami, Florida; to acquire indirectly and then merge with Southern Community Financial Corporation, and thereby acquire its subsidiary, Southern Community Bank & Trust Company, both in Winston-Salem, North Carolina. In connection with this proposal, Applicant proposes to form a subsidiary, Winston 23 Corporation, Miami, Florida, which has applied to become a bank holding company by merging with Southern Community Financial Corporation, and its subsidiary, Southern Community Bank & Trust Company, both in Winston-Salem, North Carolina.

Board of Governors of the Federal Reserve System, April 24, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012-10199 Filed 4-26-12; 8:45 am]

BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget ("OMB") to extend through April 30, 2015, the current Paperwork Reduction Act ("PRA") clearance for the information collection requirements in four consumer financial regulations enforced by the Commission. Those clearances expire on April 30, 2012.

DATES: Comments must be filed by May 29, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Regs BEMZ, PRA Comments, P084812" on your comment and file your comment online at <https://ftcpUBLIC.commentworks.com/ftc/RegsBEMZpra2> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to

the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the proposed information requirements should be addressed to Carole Reynolds or Soyong Cho, Attorneys, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580, (202) 326-3224.

SUPPLEMENTARY INFORMATION: The four regulations covered by this notice are:

(1) Regulations promulgated under The Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* ("ECOA") ("Regulation B") (OMB Control Number: 3084-0087);

(2) Regulations promulgated under The Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* ("EFTA") ("Regulation E") (OMB Control Number: 3084-0085);

(3) Regulations promulgated under The Consumer Leasing Act, 15 U.S.C. 1667 *et seq.* ("CLA") ("Regulation M") (OMB Control Number: 3084-0086); and

(4) Regulations promulgated under The Truth-In-Lending Act, 15 U.S.C. 1601 *et seq.* ("TILA") ("Regulation Z") (OMB Control Number: 3084-0088).

The FTC enforces these statutes as to all businesses engaged in conduct these laws cover unless these businesses (such as federally chartered or insured depository institutions) are subject to the regulatory authority of another federal agency.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Public Law 111-203, 124 Stat. 1376 (2010), almost all rulemaking authority for the ECOA, EFTA, CLA, and TILA transferred from the Board of Governors of the Federal Reserve System (Board) to the Consumer Financial Protection Bureau (CFPB) on July 21, 2011 ("transfer date"). To implement this transferred authority, the CFPB has published for public comment interim final rules for new regulations in 12 CFR part 1002 (Regulation B), 12 CFR part 1005 (Regulation E), 12 CFR part 1013 (Regulation M), and 12 CFR part 1026 (Regulation Z) for those entities under its rulemaking jurisdiction.¹ Although the Dodd-Frank Act transferred most

¹ 12 CFR part 1002 (Reg. B) (76 FR 79442, Dec. 21, 2011); 12 CFR part 1005 (Reg. E) (76 FR 81020, Dec. 27, 2011) (amended, 77 FR 6194, Fed. 7, 2012); 12 CFR part 1013 (Reg. M) (76 FR 78500, Dec. 19, 2011) (corrected, 76 FR 81789, Dec. 29, 2011); 12 CFR part 1026 (Reg. Z) (76 FR 79768, Dec. 22, 2011).

rulemaking authority under ECOA, EFTA, CLA, and TILA to the CFPB, the Board retained rulemaking authority for certain motor vehicle dealers² under all of these statutes and also for certain interchange-related requirements under EFTA.³

As a result of the Dodd-Frank Act, the FTC and the CFPB now share the authority to enforce Regulations B, E, M, and Z for entities for which the FTC had enforcement authority before the Act, except for certain motor vehicle dealers. Because of this shared enforcement jurisdiction, the two agencies have divided the FTC's previously-cleared PRA burden between them,⁴ except that the FTC retained all of the part of that burden associated with certain motor vehicle dealers (for brevity, referred to in the burden summaries below as a "carve-out").⁵ The division of PRA burden hours not attributable to certain motor vehicle dealers is reflected in the CFPB's recent PRA clearance requests to OMB,⁶ as well as in the FTC's burden estimates below.

As a result of the Dodd-Frank Act, the FTC generally has sole authority to enforce Regulations B, E, M, and Z regarding motor vehicle dealers predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.⁷ Because the FTC has exclusive jurisdiction to enforce these rules for such motor vehicle dealers, it is including the entire PRA burden for them in the burden estimates below.

Under the PRA, 44 U.S.C. 3501-3521, Federal agencies must get OMB approval for each collection of

² Generally, these are dealers "predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both." See Dodd-Frank Act, § 1029(a), -(c).

³ See Dodd-Frank Act, § 1075 (these requirements are implemented through Board Regulation II, 12 CFR part 235, rather than EFTA's implementing Regulation E).

⁴ The CFPB also factored into its burden estimates respondents over which it has jurisdiction but the FTC does not.

⁵ These are dealers specified by the Dodd-Frank Act under § 1029 (a), but as limited by subsection (b). Subsection (b) does not preclude CFPB regulatory oversight regarding, among others, businesses that extend retail credit or retail leases for motor vehicles in which the credit or lease offered is provided directly from those businesses, rather than unaffiliated third parties, to consumers. It is not practicable, however, for PRA purposes, to estimate the portion of dealers that engage in one form of financing versus another (and that would or would not be subject to CFPB oversight). Thus, FTC staff's "carve-out" for this PRA burden analysis reflects a general estimated volume of motor vehicle dealers. This attribution does not change actual enforcement authority.

⁶ OMB Control Numbers 3170-0013 (Regulation B), 3170-0014 (Regulation E), 3170-0008 (Regulation M), and 3170-0015 (Regulation Z).

⁷ See Dodd-Frank Act, § 1029(a), -(c).

information they conduct or sponsor. "Collection of information" includes agency requests or requirements to keep records or provide information to a third party. See 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The regulations impose certain recordkeeping and disclosure requirements associated with providing credit or with other financial transactions.

On February 7, 2012, the Commission sought comment on the information collection requirements associated with these four regulations. 77 FR 6114.⁸ The Commission received one comment from the National Automobile Dealers Association ("NADA") pertaining to regulatory burden affecting Regulations B, M, and Z.⁹

NADA stated, as a general matter, that the FTC staff estimates greatly underestimate the recordkeeping, disclosure, and other related compliance requirements for NADA members¹⁰ for the rules at issue, particularly Regulations B, M, and Z. NADA provided two illustrations of this point for Regulations M and Z (discussed and analyzed below under their applicable sub-headings), but did not provide sufficient specific information from which staff could revisit and revise its estimates. Pursuant to the OMB rules, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.*, the FTC is providing this second opportunity for NADA and the general public to comment while the FTC seeks OMB approval to renew the pre-existing clearance for these rules.

Although all four of the regulations require covered entities to keep certain records, FTC staff believes these records are kept in the normal course of business even absent the particular recordkeeping requirements.¹¹ Covered entities, however, may incur some burden associated with ensuring that they do not prematurely dispose of relevant records (i.e., during the time span they must retain records under the applicable regulation).

The regulations also require covered entities to make disclosures to third-

parties. Related compliance involves set-up/monitoring and transaction-specific costs. "Set-up" burden, incurred only by covered new entrants, includes their identifying the applicable required disclosures, determining how best to comply, and designing and developing compliance systems and procedures. "Monitoring" burden, incurred by all covered entities, includes their time and costs to review changes to regulatory requirements, make necessary revisions to compliance systems and procedures, and to monitor the ongoing operation of systems and procedures to ensure continued compliance. "Transaction-related" burden refers to the time and cost associated with providing the various required disclosures in individual transactions. While this burden varies with the number of transactions, the figures shown for transaction-related burden in the tables that follow are estimated averages.

The required disclosures do not impose PRA burden on some covered entities because they make those disclosures in their normal course of activities. For other covered entities that do not, their compliance burden will vary widely depending on the extent to which they have developed effective computer-based or electronic systems and procedures to communicate and document required disclosures.¹²

Calculating the burden associated with the four regulations' disclosure requirements is very difficult because of the highly diverse group of affected entities. The "respondents" included in the following burden calculations consist of, among others, credit and lease advertisers, creditors, owners (such as purchasers and assignees) of credit obligations, financial institutions, service providers, certain government agencies and others involved in delivering electronic fund transfers ("EFTs") of government benefits, and lessors.¹³ The burden estimates represent FTC staff's best assessment, based on its knowledge and expertise relating to the financial services

industry. Staff considered the wide variations in covered entities' (1) Size and location; (2) credit or lease products offered, extended, or advertised, and their particular terms; (3) EFT types used; (4) types and frequency of adverse actions taken; (5) types of appraisal reports utilized; and (6) computer systems and electronic features of compliance operations.

The cost estimates that follow relate solely to labor costs, and they include the time necessary to train employees how to comply with the regulations. Staff calculated labor costs by multiplying appropriate hourly wage rates by the burden hours described above. The hourly rates used were \$49 for managerial oversight, \$30 for skilled technical services, and \$16 for clerical work. These figures are averages drawn from Bureau of Labor Statistics data.¹⁴ Further, the FTC cost estimates assume the following labor category apportionments, except where otherwise indicated below: recordkeeping—10% skilled technical, 90% clerical; disclosure—10% managerial, 90% skilled technical.

The applicable PRA requirements impose minimal capital or other non-labor costs. Affected entities generally already have the necessary equipment for other business purposes. Similarly, FTC staff estimates that compliance with these rules entails minimal printing and copying costs beyond that associated with documenting financial transactions in the ordinary course of business.

1. Regulation B

The ECOA prohibits discrimination in the extension of credit. Regulation B implements the ECOA, establishing disclosure requirements to assist customers in understanding their rights under the ECOA and recordkeeping requirements to assist agencies in enforcement. Regulation B applies to retailers, mortgage lenders, mortgage brokers, finance companies, and others.

Recordkeeping

FTC staff estimates that Regulation B's general recordkeeping requirements affect 530,479 credit firms subject to the Commission's jurisdiction, at an average annual burden of 1.25 hours per firm¹⁵

⁸ The Commission published a follow-up notice in the **Federal Register** on March 5, 2012 (77 FR 13127) to correct certain formatting errors in the Regulation M burden hours table that had initially resulted in misaligned and missing columnar information in that table.

⁹ NADA's comment is available at <http://www.ftc.gov/os/comments/regsbezmzpra/index.shtm>.

¹⁰ NADA states that it represents approximately 16,000 new car and truck dealers, both domestic and import, with over 32,500 separate franchises. *Id.*

¹¹ PRA "burden" does not include effort expended in the ordinary course of business, regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

¹² For example, large companies may use computer-based and/or electronic means to provide required disclosures, including issuing some disclosures en masse, e.g., notices of changes in terms. Smaller companies may have less automated compliance systems but may nonetheless rely on electronic mechanisms for disclosures and recordkeeping. Regardless of size, some entities may utilize compliance systems that are fully integrated into their general business operational system; if so, they may have minimal additional burden. Other entities may have incorporated fewer of these approaches into their systems and thus may have a higher burden.

¹³ The Commission generally does not have jurisdiction over banks, thrifts, and federal credit unions under the applicable regulations.

¹⁴ These inputs are based broadly on mean hourly data found within the National Compensation Survey: Occupational Earnings in the United States, 2010, Bulletin 2753 (May 2011), Table 3 (<http://www.bls.gov/ncs/ocs/sp/nctb1477.pdf>).

¹⁵ This is an increase from past estimates of one hour per respondent in view of more complex transactions and their associated impact on recordkeeping.

for a total of 663,099 hours.¹⁶ Staff also estimates that the requirement that mortgage creditors monitor information about race/national origin, sex, age, and marital status imposes a maximum burden of one minute each (of skilled technical time) for approximately 2.25 million credit applications (based on industry data regarding the approximate number of mortgage purchase and refinance originations), for a total of 37,500 hours.¹⁷ Staff also estimates that recordkeeping of self-testing subject to the regulation would affect 1,375 firms, with an average annual burden of one hour (of skilled technical time) per firm, for a total of 1,375 hours, and that recordkeeping of any corrective action as a result of self-testing would affect 10% of them, i.e., 138 firms, with an average annual burden of four hours (of skilled technical time) per firm, for a total of 552 hours.¹⁸ Keeping records of race/national origin, sex, age, and marital status requires an estimated one

minute of skilled technical time. Recordkeeping for the self-test responsibility and of any corrective actions requires an estimated one hour and four hours, respectively, of skilled technical time.

Disclosure

Regulation B requires that creditors (i.e., entities that regularly participate in the decision whether to extend credit under Regulation B) provide notices whenever they take adverse action, such as denial of a credit application. It requires entities that extend various types of mortgage credit to provide a copy of the appraisal report to applicants or to notify them of their right to a copy of the report (and thereafter provide a copy of the report, upon the applicant's request). Finally, Regulation B also requires that for accounts which spouses may use or for which they are contractually liable, creditors who report credit history must

do so in a manner reflecting both spouses' participation. Further, it requires creditors that collect applicant characteristics for purposes of conducting a self-test to disclose to those applicants that: (1) Providing the information is optional; (2) the creditor will not take the information into account in any aspect of the credit transactions; and (3) if applicable, the information will be noted by visual observation or surname if the applicant chooses not to provide it.¹⁹

Burden Totals

Recordkeeping: 702,526 hours (625,977 + 76,549 carve-out for motor vehicles); \$12,720,734 (\$11,384,370 + \$1,336,364 carve-out for motor vehicles), associated labor costs.

Disclosures: 1,164,458 hours (1,032,206 + 132,252 carve-out for motor vehicles); \$37,146,214 (\$32,927,360 + \$4,218,854 carve-out for motor vehicles), associated labor costs.

REGULATION B: DISCLOSURES—BURDEN HOURS

Disclosures	Setup/Monitoring ¹			Transaction-related ²			
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Credit history reporting	133,000	.25	33,250	66,309,750	.25	276,291	309,541
Adverse action notices	530,000	.75	397,500	106,096,000	.25	442,067	839,567
Appraisal notices	5,000	.5	2,500	1,125,000	.25	4,688	7,188
Appraisal reports	5,000	.5	2,500	1,125,000	.25	4,688	7,188
Self-test disclosures ...	1,375	.5	688	68,750	.25	286	974
Total							1,164,458

¹ The estimates shown reflect a decrease in applicable mortgage entities regarding appraisal notices and appraisal reports. The figures assume that approximately half of mortgage entities (.5 x 10,000, or 5,000 businesses) would not otherwise provide this information and thus would be affected. The figures also assume that all applicable entities would provide notices first and thereafter provide the reports upon request.

² The above figures reflect a decrease in mortgage transactions, compared to prior FTC estimates. They also assume that half of applicable mortgage transactions (.5 x 2,250,000, or 1,125,000) would not otherwise provide the appraisal notices and reports and thus would be affected.

REGULATION B: RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$49/hr.)	Time (hours)	Cost (\$30/hr.)	Time (hours)	Cost (\$16/hr.)	
General recordkeeping	0	0	66,310	1,989,300	596,789	9,548,624	11,537,924
Other recordkeeping	0	0	37,500	1,125,000	0	0	1,125,000
Recordkeeping of test ..	0	0	1,375	41,250	0	0	41,250
Recordkeeping of corrective action	0	0	552	16,560	0	0	16,650
Total Record-keeping							12,720,734

¹⁶ Section 1071 of the Dodd-Frank Act amends the ECOA to require financial institutions to collect and report information concerning credit applications by women- or minority-owned businesses and small businesses, effective on the July 21, 2011 transfer date. Both the CFPB and the Board have exempted affected entities from complying with this requirement until a date set by the prospective final rules these agencies issue to implement the Dodd-Frank Act's requirements. The

Commission will address PRA burden for its enforcement of these requirements after the CFPB and the Board have issued the associated final rules.

¹⁷ Regulation B contains model forms that creditors may use to gather and retain the required information.

¹⁸ In contrast to banks, for example, entities under FTC jurisdiction are not subject to audits for

compliance with Regulation B; rather they may be subject to FTC investigations and enforcement actions. This may impact the level of self-testing (as specifically defined by Regulation B) in a given year, and staff has sought to address such factors in its burden estimates.

¹⁹ The disclosure may be provided orally or in writing. The model form provided by Regulation B assists creditors in providing the written disclosure.

REGULATION B: RECORDKEEPING AND DISCLOSURES—COST—Continued

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$49/hr.)	Time (hours)	Cost (\$30/hr.)	Time (hours)	Cost (\$16/hr.)	
Disclosures:							
Credit history reporting	30,954	1,516,746	278,587	8,357,610	0	0	9,874,356
Adverse action notices	83,957	4,113,893	755,610	22,668,300	0	0	26,782,193
Appraisal notices ..	719	35,231	6,469	194,070	0	0	229,301
Appraisal reports ...	719	35,231	6,469	194,070	0	0	229,301
Self-test disclosure	97	4,753	877	26,310	0	0	31,063
Total Disclosures							37,146,214
Total Record-keeping and Disclosures							49,866,948

2. Regulation E

The EFTA requires that covered entities provide consumers with accurate disclosure of the costs, terms, and rights relating to EFT and certain other services. Regulation E implements the EFTA, establishing disclosure and other requirements to aid consumers and recordkeeping requirements to assist agencies with enforcement. It applies to financial institutions,

retailers, gift card issuers and others that provide gift cards, service providers, various federal and state agencies offering EFTs, remittance transfer providers, etc. Staff estimates that Regulation E's recordkeeping requirements affect 391,120 firms offering EFT services to consumers and that are subject to the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total

of 391,120 hours. This is further detailed below.

Burden Totals

Recordkeeping: 391,120 hours (375,881 + 15,239 carve-out); \$6,805,488 (\$6,540,328 + \$265,160 carve-out), associated labor costs.

Disclosures: 4,019,797 hours (4,002,868 + 16,929 carve-out); \$128,236,961 (\$127,696,924 + \$540,037 carve-out), associated labor costs.

REGULATION E: DISCLOSURES—BURDEN HOURS

Disclosures	Setup/monitoring			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup monitoring burden (hours)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Initial terms	50,000	.5	25,000	500,000	.02	167	25,167
Change in terms	12,500	.5	6,250	16,500,000	.02	5,500	11,750
Periodic statements	50,000	.5	25,000	600,000,000	.02	200,000	225,000
Error resolution	50,000	.5	25,000	500,000	5	41,667	66,667
Transaction receipts	50,000	.5	25,000	2,500,000,000	.02	833,333	858,333
Preauthorized transfers ¹	257,620	.5	128,810	6,440,500	.25	26,835	155,645
Service provider notices	50,000	.25	12,500	500,000	.25	2,083	14,583
Govt. benefit notices	5,000	.5	2,500	50,000,000	.25	208,333	210,833
ATM notices ²	250	.25	63	50,000,000	.25	208,333	208,396
Electronic check conversion ³	57,620	.5	28,810	1,152,400	.02	384	29,194
Payroll cards ⁴	125	.5	63	500,000	3	25,000	25,063
Overdraft services ⁵ ..	50,000	.5	25,000	2,500,000	.02	833	25,833
Gift cards ⁶	50,000	.5	25,000	2,500,000,000	.02	833,333	858,333
Remittance transfers: ⁷							
Disclosures	35,000	1	35,000	18,000,000	1	300,000	335,000
Error resolution	35,000	1	35,000	36,000,000	1	600,000	635,000
Agent compliance	35,000	1	35,000	18,000,000	1	300,000	335,000
Total							4,019,797

¹ Estimated preauthorized transfers have increased from the FTC's previously cleared estimate.

² Estimated ATM transactions have increased from the FTC's previously cleared estimate.

³ Estimated electronic check conversion has decreased from the FTC's previously cleared estimate.

⁴ Payroll card entities and transactions have increased greatly over the years, in large part due to the evolving economy as well as companies seeking ways to cut costs and reduce the amount of paper used in daily operations.

⁵ Regulation E now covers overdraft services.
⁶ Regulation E now, in part, covers gift cards.
⁷ Regulation E now covers remittance transfers.

REGULATION E: RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$49/hr.)	Time (hours)	Cost (\$30/hr.)	Time (hours)	Cost (\$16/hr.)	
Recordkeeping	0	0	39,112	1,173,360	352,008	5,632,128	6,805,488
Disclosures:							
Initial terms	2,517	123,333	22,650	679,500	0	0	802,833
Change in terms ...	1,175	57,575	10,750	322,500	0	0	380,075
Periodic state-ments	22,500	1,102,500	202,500	6,075,000	0	0	7,177,500
Error resolution	6,667	326,883	60,000	1,800,000	0	0	2,126,883
Transaction receipts	85,833	4,205,817	772,500	23,175,000	0	0	27,380,817
Preauthorized transfers	15,565	762,685	140,080	4,202,400	0	0	4,965,085
Service provider notices	1,458	71,442	13,125	393,750	0	0	465,192
Govt. benefit notices	21,083	1,033,067	189,750	5,692,500	0	0	6,725,567
ATM notices	20,840	1,021,160	187,556	5,626,680	0	0	6,647,840
Electronic check conversion	2,919	143,031	26,275	788,250	0	0	931,281
Payroll cards	2,506	122,794	22,557	676,710	0	0	799,504
Overdraft services	2,583	126,567	23,250	697,500	0	0	824,067
Gift cards	85,833	4,205,817	772,500	23,175,000	0	0	27,380,817
Remittance transfers:							
Disclosures	33,500	1,641,500	301,500	9,045,000	0	0	10,686,500
Error resolution	63,500	3,111,500	571,500	17,145,000	0	0	20,256,500
Agent compliance	33,500	1,641,500	301,500	9,045,000	0	0	10,686,500
Total Disclosures							128,236,961
Total Recordkeeping and Disclosures							135,042,449

3. Regulation M

The CLA requires that covered entities provide consumers with accurate disclosure of the costs and terms of leases. Regulation M implements the CLA, establishing disclosure requirements to help consumers comparison shop and understand the terms of leases and recordkeeping requirements. It applies to vehicle lessors (such as auto dealers, independent leasing companies, and manufacturers' captive finance companies), computer lessors (such as computer dealers and other retailers), furniture lessors, various electronic commerce lessors, diverse types of lease advertisers, and others.

Staff estimates that Regulation M's recordkeeping requirements affect approximately 54,442 firms within the FTC's jurisdiction leasing products to consumers at an average annual burden

of one hour per firm, for a total of 54,442 hours.

In its comment NADA observed that preliminary reports from dealers suggest that the FTC estimate for Regulation M advertising compliance, as applied to lease advertisements for motor vehicle dealers, is understated. NADA, however, focused on the FTC estimate of 15 seconds for required disclosures in individual transactions, here, for advertisements. It is "set-up/monitoring" burden, defined above, though, that addresses the time (and associated labor cost) applicable to systems review and monitoring for continued compliance. For lease advertising, estimated setup/monitoring burden is a half-hour.

As noted above, the Commission's jurisdiction covers a highly diverse universe of entities. The population of affected motor vehicle dealers is one

component of a much larger universe of such entities. Thus, the FTC's estimates may understate some entities' actual experience and perhaps overstate others'. On balance, though, FTC staff believes these estimates are a fair reflection for the overall universe affected, and the estimates factor into consideration that PRA "burden" does not include effort expended in the ordinary course of business, independent of regulatory requirements.²⁰

Burden Totals

Recordkeeping: 54,442 hours (40,558 + 13,884 carve-out); \$947,288 (\$705,712 + \$241,576 carve-out), associated labor costs.

Disclosures: 68,403 hours (42,139 + 26,264 carve-out); \$2,182,050 (\$1,344,228 + \$837,822 carve-out), associated labor costs.

²⁰ For example, some entities may advertise leases but may not promote the lease terms covered by

Regulation M; instead, they may make general statements about offering leases, which do not

trigger advertising compliance responsibilities under Regulation M.

REGULATION M: DISCLOSURES—BURDEN HOURS

Disclosures	Setup/monitoring			Transaction-related			
	Respondents	Average burden per respondent (hours)	Total setup/monitoring burden (minutes)	Number of transactions	Average burden per transaction (minutes)	Total transaction burden (hours)	Total burden (hours)
Motor Vehicle Leases ¹	29,442	1	29,442	1,972,614	.50	16,438	45,880
Other Leases ²	25,000	.50	12,500	250,000	.25	1,042	13,542
Advertising	13,471	.50	6,736	538,840	.25	2,245	8,981
Total							68,403

¹ This category focuses on consumer vehicle leases. Vehicle leases are subject to more lease disclosure requirements (pertaining to computation of payment obligations) than other lease transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. 1667(1); 12 CFR 1013.2(e)(1). Leases up to \$50,000 (plus an annual adjustment) are now covered, which increases the breadth of transactions subject to the FTC’s jurisdiction under Regulation M. This increase, however, is more than offset by the FTC now sharing PRA burden with the CFPB, which thus yields a net decrease from past FTC estimates of the number of transactions.

² This category focuses on all types of consumer leases other than vehicle leases. It includes leases for computers, other electronics, small appliances, furniture, and other transactions. (Only consumer leases for more than four months are covered.) See 15 U.S.C. 1667(1); 12 CFR 1013.2(e)(1). The figures shown for respondents and transactions reflect a net decrease from prior FTC estimates, given current market conditions and the new PRA burden sharing with the CFPB while also recognizing that the CLA and Regulation M now cover leases up to \$50,000 (plus an annual adjustment).

REGULATION M: RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$49/hr.)	Time (hours)	Cost (\$30/hr.)	Time (hours)	Cost (\$16/hr.)	
Recordkeeping	0	\$0	5,444	\$163,320	48,998	\$783,968	\$947,288
Disclosures:							
Motor Vehicle Leases	4,588	224,812	41,292	1,238,760	0	0	1,463,572
Other Leases	1,354	66,346	12,188	365,640	0	0	431,986
Advertising	898	44,002	8,083	242,490	0	0	286,492
Total Disclosures							2,182,050
Total Recordkeeping and Disclosures							\$3,129,338

4. Regulation Z

Congress enacted the TILA to foster comparison credit shopping and informed credit decision making by requiring creditors and others to provide accurate disclosures regarding the costs and terms of credit to consumers. Regulation Z implements the TILA, establishing disclosure requirements to assist consumers and recordkeeping requirements to assist agencies with enforcement. These requirements pertain to open-end and closed-end credit and apply to various types of entities, including mortgage companies; finance companies; auto dealerships; private education loan companies; merchants who extend credit for goods or services; credit advertisers; acquirers of mortgages; and others.

In its comment, NADA stated that Regulation Z closed-end credit advertising requires much more than one minute of review for individual dealers to gauge compliance with

disclosure requirements. As with its point about the FTC’s estimate for lease advertising under Regulation M, NADA focused here on the FTC estimate of the time per disclosure in an individual transaction, here, for advertisements, rather than on the time for “set-up/monitoring.” Under the latter category of PRA burden, the FTC estimate is a half-hour.

NADA also stated that the estimated burden total appears to assume an average of two transactions per respondent for advertising, with an average burden per transaction of one minute. NADA stated that automobile dealers advertise hundreds, if not thousands of vehicles per year in print, on television, radio, and on sometimes numerous Web sites and other electronic media, and that many are subject to Regulation Z. Again, we note that PRA “burden” does not include effort expended in the ordinary course of business, independent of regulatory

requirements.²¹ Here, too, as with the other regulations discussed above, we have sought to focus on average incremental PRA burden for the overall—and broad—universe of affected entities.

Commission staff estimates that Regulation Z’s recordkeeping requirements affect approximately 530,479 entities subject to the FTC’s jurisdiction, at an average annual burden of 1.25 hours per entity,²² for a

²¹ Some entities may not promote credit terms covered by Regulation Z. For example, they may offer sale prices for products or make general statements about the availability of credit, which do not trigger advertising compliance responsibilities under Regulation Z. Others may offer specific credit terms but they may be subject to exceptions under Regulation Z, and disclosures would not be required, such as offers that no downpayment or no trade-in is required.

²² This is an increase from past estimates of one hour per respondent in recognition of the breadth of amendments to Regulation Z and their associated

total of 663,099 hours. This is further detailed below along with estimates for disclosures under Regulation Z.

Burden Totals

Recordkeeping: 663,099 hours (586,900 + 76,199 carve-out); \$11,537,924 (\$10,212,060 + \$1,325,864 carve-out), associated labor costs.

Disclosures: 12,000,274 hours

(10,957,621 + 1,042,653 carve-out); \$382,858,568 (\$349,597,924 + \$33,260,644 carve-out), associated labor costs.

REGULATION Z: DISCLOSURES—BURDEN HOURS

Disclosures ¹	Setup/monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent ² (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction ³ (minutes)	Total transaction burden (hours)	
Open-end credit:							
Initial terms	45,000	.75	33,750	20,000,000	.375	125,000	158,750
Rescission notices ⁴	1,875	.5	938	100,000	.25	417	1,355
Subsequent disclosures	10,000	.75	7,500	62,500,000	.188	195,833	203,333
Periodic statements	45,000	.75	33,750	1,750,000,000	.0938	2,735,833	2,769,583
Error resolution ...	45,000	.75	33,750	4,000,000	6	400,000	433,750
Credit and charge card accounts ..	25,000	.75	18,750	12,500,000	.375	78,125	96,875
Settlement of estate debts ⁵	45,000	.75	33,750	1,000,000	.375	6,250	40,000
Special credit card requirements ⁶	25,000	.75	18,750	12,500,000	.375	78,125	96,875
Home equity lines of credit ⁷	1,875	.5	938	875,000	.25	3,646	4,584
College student credit card marketing—ed. institutions ⁸	2,500	.5	1,250	250,000	.25	1,042	2,292
College student credit card marketing—card issuer reports ⁹	300	.75	225	18,000	.75	225	450
Posting and reporting of credit card agreements ¹⁰	25,000	.75	18,750	12,500,000	.375	78,125	96,875
Advertising	100,000	.75	75,000	300,000	.75	3,750	78,750
Sale, transfer, or assignment of mortgages ¹¹	1,875	.5	938	1,750,000	.25	7,292	8,230
Appraiser misconduct reporting ¹²	625,000	.75	468,750	12,500,000	.375	78,125	546,875
Closed-end credit:							
Credit disclosures ¹³	380,480	.75	285,360	163,225,920	2.25	6,120,972	6,406,332
Rescission notices ¹⁴	18,750	.5	9,375	7,500,000	1	125,000	134,375
Redisclosures ¹⁵ ..	200,000	.5	100,000	1,000,000	2.25	37,500	137,500
Variable rate mortgages ¹⁶	17,500	.5	8,750	500,000	1.5	12,500	21,250
High rate/high-fee mortgages and higher priced mortgages ¹⁷	10,000	.5	5,000	125,000	1.5	3,125	8,125
Reverse mortgages ¹⁸	12,500	.5	6,250	43,750	1	729	6,979
Advertising	240,240	.5	120,120	480,480	1	8,008	128,128
Private education loans ¹⁹	100	.5	50	50,000	1.5	1,250	1,300
Sale, transfer, or assignment of mortgages ²⁰	100,000	.5	50,000	5,000,000	.25	20,833	70,833

impact on recordkeeping though increased coverage and more complex transactions.

REGULATION Z: DISCLOSURES—BURDEN HOURS—Continued

Disclosures ¹	Setup/monitoring			Transaction-related			Total burden (hours)
	Respondents	Average burden per respondent ² (hours)	Total setup/monitoring burden (hours)	Number of transactions	Average burden per transaction ³ (minutes)	Total transaction burden (hours)	
Appraiser misconduct reporting ²¹	625,000	.75	468,750	12,500,000	.375	78,125	546,875
Total open-end credit							4,538,577
Total closed-end credit							7,461,697
Total credit							12,000,274

¹ Regulation Z requires disclosures for closed-end and open-end credit. TILA and Regulation Z now cover credit up to \$50,000 plus an annual adjustment (except that real estate credit and private education loans are covered regardless of amount), generally causing an increase in transactions. In some instances noted below, market changes have reduced estimated PRA burden. In other instances noted below, changes to Regulation Z have increased estimated PRA burden. The overall effect of these competing factors, combined with the FTC now sharing with the CFPB estimated PRA burden (for all but certain motor vehicle dealers) yields a net decrease from the FTC's prior reported estimate for open-end credit and a net increase from the FTC's prior burden estimate for closed-end credit.

² Burden per respondent in many categories has increased compared to prior FTC estimates, due to changes in rules.

³ Burden per transaction in many categories has increased compared to prior FTC estimates, due to changes in rules.

⁴ Mortgages have decreased.

⁵ Regulation Z now requires disclosures for timely settlement of estate debts.

⁶ Regulation Z now has special credit card requirements.

⁷ Home equity lines of credit have decreased.

⁸ Regulation Z now requires higher education institutions to disclose credit card marketing agreements.

⁹ Regulation Z now requires card issuers to submit reports on college student credit card marketing.

¹⁰ Regulation Z now requires card issuers to post and report general credit card agreements.

¹¹ Regulation Z now requires certain acquirers of legal title to disclose the sale, transfer, or assignment of mortgages.

¹² Regulation Z now requires reporting of appraiser misconduct.

¹³ Estimated closed-end credit disclosure transactions have increased from the FTC's previously cleared estimate.

¹⁴ Mortgages have decreased.

¹⁵ Regulation Z now has substantial redisclosure requirements. Previously, redisclosures generally were provided in the ordinary course of business. Rule changes since set numerous procedures and circumstances for redisclosures.

¹⁶ Variable rate mortgages have decreased.

¹⁷ Mortgages have decreased.

¹⁸ Reverse mortgages have decreased.

¹⁹ Regulation Z now requires disclosures for private education loans.

²⁰ Regulation Z now requires certain acquirers of legal title to disclose the sale, transfer, or assignment of mortgages.

²¹ Regulation Z now requires reporting of appraiser misconduct.

REGULATION Z: RECORDKEEPING AND DISCLOSURES—COST

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$49/hr.)	Time (hours)	Cost (\$30/hr.)	Time (hours)	Cost (\$16/hr.)	
Recordkeeping	0	\$0	66,310	\$1,989,300	596,789	\$9,548,624	\$11,537,924
Open-end credit Disclosures:							
Initial terms	15,875	777,875	142,875	4,286,250	0	0	5,064,125
Rescission notices	135	6,615	1,220	36,600	0	0	43,215
Subsequent disclosures	20,333	996,317	183,000	5,490,000	0	0	6,486,317
Periodic statements	276,958	13,570,942	2,492,625	74,778,750	0	0	88,349,692
Error resolution	43,375	2,125,375	390,375	11,711,250	0	0	13,836,625
Credit and charge card accounts	9,688	474,712	87,187	2,615,610	0	0	3,090,322
Settlement of estate debts	4,000	196,000	36,000	1,080,000	0	0	1,276,000
Special credit card requirements	9,688	474,712	87,187	2,615,610	0	0	3,090,322
Home equity lines of credit	458	22,442	4,126	123,780	0	0	146,222
College student credit card marketing—ed institutions	229	11,221	2,063	61,890	0	0	73,111

REGULATION Z: RECORDKEEPING AND DISCLOSURES—COST—Continued

Required task	Managerial		Skilled technical		Clerical		Total cost (\$)
	Time (hours)	Cost (\$49/hr.)	Time (hours)	Cost (\$30/hr.)	Time (hours)	Cost (\$16/hr.)	
College student credit card marketing—card issuer reports	45	2,205	405	12,150	0	0	14,355
Posting and reporting of credit card agreements	9,688	474,712	87,187	2,615,610	0	0	3,090,322
Advertising	7,875	385,875	70,875	2,126,250	0	0	2,512,125
Sale, transfer, or assignment of mortgages	823	40,327	7,407	222,210	0	0	262,537
Appraiser misconduct reporting	54,687	2,679,663	492,188	14,765,640	0	0	17,445,303
Total open-end credit							144,780,593
Closed-end credit Disclosures:							
Credit disclosures	640,633	31,391,017	5,765,699	172,970,970	0	0	204,361,987
Rescission notices	13,437	658,413	120,938	3,628,140	0	0	4,286,553
Redisclosures	13,750	673,750	123,750	3,712,500	0	0	4,386,250
Variable rate mortgages	2,125	104,125	19,125	573,750	0	0	677,875
High-rate/high-fee mortgages and higher priced mortgages	969	47,481	8,719	261,570	0	0	309,051
Reverse mortgages	698	34,202	6,281	188,430	0	0	222,632
Advertising	12,813	627,837	115,315	3,459,450	0	0	4,087,287
Private education loans	130	6,370	1,170	35,100	0	0	41,470
Sale, transfer, or assignment of mortgages	7,083	347,067	63,750	1,912,500	0	0	2,259,567
Appraiser misconduct reporting	54,687	2,679,663	492,188	14,765,640	0	0	17,445,303
Total closed-end credit ...							238,077,975
Total Disclosures							382,858,568
Total Record-keeping and Disclosures							394,396,492

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 29, 2012. Write “Regs BEMZ, PRA Comments, P084812” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is obtained

from any person and which is privileged or confidential” as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).²³ Your

²³ In particular, the written request for confidential treatment that accompanies the

comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublish.commentworks.com/ftc/RegsBEMZpra2> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that Web site.

If you file your comment on paper, write "Regs BEMZ, PRA Comments, P084812" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J) 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5167.

Visit the Commission Web site at to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 29, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy

comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), CFR 4.9(c), 16 CFR 4.9(c).

policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Willard K. Tom,
General Counsel.

[FR Doc. 2012-10097 Filed 4-26-12; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Expired Listing for Medkinetics, LLC

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of delisting.

SUMMARY: AHRQ has accepted a notification of expiration from the Medkinetics, LLC of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12 Midnight ET (2400) on January 6, 2012.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: <http://www.PSO.AHRQ.gov/index.html>.

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403-3697; Telephone (local): (301) 427-1111; TTY (toll free): (866) 438-7231; TTY (local): (301) 427-1130; Email: PSO@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act, Public Law 109-41, 42 U.S.C. 299b-21—b-26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety Rule, 42 CFR part 3, authorizes AHRQ, on behalf

of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs. Accordingly, Medkinetics, LLC, PSO number P0036, was delisted effective at 12 Midnight ET (2400) on January 6, 2012.

More information on PSOs can be obtained through AHRQ's PSO Web site at <http://www.PSO.AHRQ.gov/index.html>.

Dated: April 19, 2012.

Carolyn M. Clancy,
Director.

[FR Doc. 2012-10013 Filed 4-26-12; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From Surgical Safety Institute

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of delisting.

SUMMARY: AHRQ has accepted a notification of voluntary relinquishment from the Surgical Safety Institute of its status as a Patient Safety Organization (PSO). The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery. HHS issued the Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12 Midnight ET (2400) on February 21, 2012.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: <http://www.pso.AHRQ.gov/index.html>.

FOR FURTHER INFORMATION CONTACT:

Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403-3697; Telephone (local): (301) 427-1111; TTY (toll free): (866) 438-7231; TTY (local): (301) 427-1130; *Email*: psa@AHRQ.hhs.gov.

SUPPLEMENTARY INFORMATION:**Background**

The Patient Safety Act, Public Law 109-41, 42 U.S.C. 299b-21—b-26, provides for the formation of PSOs, which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety Rule, 42 CFR part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be “delisted” by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs, including when a PSO chooses to voluntarily relinquish its status as a PSO for any reason. Accordingly, Surgical Safety Institute, PSO number P0056, was delisted effective at 12:00 Midnight ET (2400) on February 21, 2012.

More information on PSOs can be obtained through AHRQ’s PSO Web site at <http://www.pso.AHRQ.gov/index.html>.

Dated: April 19, 2012.

Carolyn M. Clancy,
Director.

[FR Doc. 2012-10012 Filed 4-26-12; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****Advisory Committee on Immunization Practices: Notice of Charter Renewal**

This gives notice under the Federal Advisory Committee Act (Pub. L. 92-463) of October 6, 1972, that the Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through April 1, 2014.

For Further Information Contact:
Larry Pickering, M.D., Designated

Federal Officer, Advisory Committee on Immunization Practices, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road NE., Mailstop A27, Atlanta, Georgia 30333, telephone (404) 639-8562 or fax (404) 639-8626.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 23, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012-10214 Filed 4-26-12; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review**

The meeting announced below concerns Conducting Research on Moderate Acute Malnutrition in Humanitarian Emergencies, Funding Opportunity Announcement (FOA) GH12-006, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 12:30 p.m.–4:30 p.m., May 22, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to “Conducting Research on Moderate Acute Malnutrition in Humanitarian Emergencies, FOA GH12-006, initial review.”

Contact Person for More Information: Sheree Williams, Scientific Review Officer, Office of the Associate Director for Science, Office of Science Quality, CDC, 1600 Clifton Road NE., Mailstop D-72, Atlanta, Georgia 30033, Telephone (404) 639-7742.

The Director, Management Analysis and Services Office, has been delegated the

authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 23, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012-10260 Filed 4-26-12; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Centers for Disease Control and Prevention****Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review**

The meeting announced below concerns Evaluation of Dengue Epidemiology, Outcomes, and Prevention in Sentinel Surveillance and Research Sites in Puerto Rico, Funding Opportunity Announcement (FOA), CK12-001, initial review.

Correction: The notice was published in the **Federal Register** on January 26, 2012, Volume 77, Number 17, Page 4048. The meeting has been rescheduled to the following:

Time and Date:

1 p.m.–5 p.m., May 4, 2012 (Closed).

Contact Person for More Information: Gregory Anderson, M.P.H., M.S., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718-8833. The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 23, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012-10213 Filed 4-26-12; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Research Technical Assistance To The Ministry Of Public Health Of Haiti To Support Post Earthquake Reconstruction, Cholera And HIV/AIDS Response, GH12–003, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 11:00 a.m.–2:00 p.m., May 22, 2012 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to “Research Technical Assistance To The Ministry Of Public Health Of Haiti To Support Post Earthquake Reconstruction, Cholera And HIV/AIDS Response, GH12–003”.

Contact Person for More Information: Hylan D. Shoob, Ph.D., M.S.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop D72, Atlanta, Georgia 30333, Telephone: (404) 639–4796.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 23, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–10266 Filed 4–26–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10203 and CMS–10417]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency’s functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved Collection, *Title of Information Collection:* Medicare Health Outcomes Survey (HOS); *Use:* CMS has a responsibility to its Medicare beneficiaries to require that care provided by managed care organizations under contract to CMS is of high quality. One way of ensuring high quality care in Medicare Managed Care Organizations (MCOs), or more commonly referred to as Medicare Advantage Organizations (MAOs), is through the development of standardized, uniform performance measures to enable CMS to gather the data needed to evaluate the care provided to Medicare beneficiaries. The goal of the Medicare Health Outcome Survey (HOS) program is to gather valid, reliable, clinically meaningful health status data in Medicare managed care for use in quality improvement activities, plan accountability, public reporting, and improving health. All managed care plans with Medicare Advantage (MA) contracts must participate. CMS, in collaboration with the National Committee for Quality Assurance (NCQA), launched the Medicare HOS as part of the

Effectiveness of Care component of the former Health Plan Employer Data and Information Set, now known as the Healthcare Effectiveness Data and Information Set (HEDIS®).

The HOS measure was developed under the guidance of a technical expert panel comprised of individuals with specific expertise in the health care industry and outcomes measurement. The measure includes the most recent advances in summarizing physical and mental health outcomes results and appropriate risk adjustment techniques. In addition to health outcomes measures, the HOS is used to collect the Management of Urinary Incontinence in Older Adults, Physical Activity in Older Adults, Fall Risk Management, and Osteoporosis Testing in Older Women HEDIS® measures. The collection of Medicare HOS is necessary to hold Medicare managed care contractors accountable for the quality of care they are delivering. This reporting requirement allows CMS to obtain the information necessary for proper oversight of the Medicare Advantage program.

Since the last collection, the survey instrument has been revised and the burden has changed. There have been some questions added and others deleted. *Form Number:* CMS–10203 (OCN: 0938–0701); *Frequency:* Yearly; *Affected Public:* Individuals and households; *Number of Respondents:* 2,352; *Total Annual Responses:* 666,120; *Total Annual Hours:* 219,820 (For policy questions regarding this collection contact Jason Petroski at 410–786–4681. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Fee-for-Service Prepayment Medical Review; *Use:* The information required under this collection is requested by Medicare contractors to determine proper payment or if there is a suspicion of fraud. Medicare contractors request the information from providers or suppliers submitting claims for payment from the Medicare program when data analysis indicates aberrant billing patterns or other information which may present a vulnerability to the Medicare program. In addition, we are specifically soliciting public comments on the information collection burden that is associated with the currently approved information collection request. *Form Number:* CMS–10417 (OMB 0938–0969); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of*

Respondents: 2,700,000; Total Annual Responses: 2,700,000; Total Annual Hours: 1,360,000. (For policy questions regarding this collection contact Debbie Skinner at 410-786-7480. For all other issues call 410-786-1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by June 26, 2012:

1. *Electronically.* You may submit your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: April 24, 2012.

Martique Jones,

Director, Regulations Development Group, Division B Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012-10231 Filed 4-26-12; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS-10102, CMS-R-263 and CMS-855(O)]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid

Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: National Implementation of Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS); *Use:* The HCAHPS (*Hospital Consumer Assessment of Healthcare Providers and Systems*) survey is the first national, standardized, publicly reported survey of patients' perspectives of hospital care. HCAHPS (pronounced "H-caps"), also known as the CAHPS® Hospital Survey, is a survey instrument and data collection methodology for measuring patients' perceptions of their hospital experience. While many hospitals have collected information on patient satisfaction for their own internal use, until HCAHPS there was no national standard for collecting and publicly reporting information about patient experience of care that allowed valid comparisons to be made across hospitals locally, regionally and nationally.

Three broad goals have shaped HCAHPS. First, the survey is designed to produce data about patients' perspectives of care that allow objective and meaningful comparisons of hospitals on topics that are important to consumers. Second, public reporting of the survey results creates new incentives for hospitals to improve quality of care. Third, public reporting serves to enhance accountability in health care by increasing transparency of the quality of hospital care provided in return for the public investment. With these goals in mind, the Centers for Medicare & Medicaid Services (CMS) has taken substantial steps to assure that the survey is credible, useful, and practical. Hospitals implement HCAHPS under the auspices of the Hospital Quality Alliance (HQA), a private/public partnership that includes major hospital and medical associations,

consumer groups, measurement and accrediting bodies, government, and other groups that share an interest in improving hospital quality. Both the HQA and the National Quality Forum have endorsed HCAHPS.

The enactment of the Deficit Reduction Act of 2005 created an additional incentive for acute care hospitals to participate in HCAHPS. Since July 2007, hospitals subject to the Inpatient Prospective Payment System (IPPS) annual payment update provisions ("subsection (d) hospitals") must collect and submit HCAHPS data in order to receive their full IPPS annual payment update. IPPS hospitals that fail to publicly report the required quality measures, which include the HCAHPS survey, may receive an annual payment update that is reduced by 2.0 percentage points. Non-IPPS hospitals, such as Critical Access Hospitals, may voluntarily participate in HCAHPS.

The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148) includes HCAHPS among the measures to be used to calculate value-based incentive payments in the Hospital Value-Based Purchasing program, beginning with discharges in October 2012.

Currently the HCAHPS survey asks discharged patients 27 questions about their recent hospital stay. The survey contains 18 core questions about critical aspects of patients' hospital experiences (communication with nurses and doctors, the responsiveness of hospital staff, the cleanliness and quietness of the hospital environment, pain management, communication about medicines, discharge information, overall rating of hospital, and would they recommend the hospital). The survey also includes four items to direct patients to relevant questions, three items to adjust for the mix of patients across hospitals, and two items that support Congressionally-mandated reports.

This revision is being submitted in order to add five new items to the survey: three items that comprise a Care Transitions composite; one item that asks whether the patient was admitted through the emergency room; and one item that asks about the patient's overall mental health. This marks the first addition of items to the HCAHPS Survey since its national implementation in 2006. *Form Number:* CMS-10102 (OCN: 0938-0981); *Frequency:* Occasionally; *Affected Public:* Individuals or Households, Private Sector—Business or other for-profits and not-for-profit institutions. *Number of Respondents:* 2,713,812; *Total Annual Responses:* 2,713,812;

Total Annual Hours: 365,136. (For policy questions regarding this collection contact William Lehrman at 410-786-1037. For all other issues call 410-786-1326.)

2. *Type of Information Collection*

Request: Reinstatement with change of a previously approved collection; *Title of Information Collection:* Site Investigation for Durable Medical Equipment (DME) Suppliers; *Use:* CMS is mandated to identify and implement measures to prevent fraud and abuse in the Medicare program. To meet this challenge, CMS has moved forward to improve the quality of the process for enrolling suppliers into the Medicare program by establishing a uniform application for enumerating suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). Implementation of enhanced procedures for verifying the enrollment information has also improved the enrollment process. As part of this process, verification of compliance with supplier standards is necessary. The site investigation form has been used in the past to aid the Medicare contractor (the National Supplier Clearinghouse and/or its subcontractors) in verifying compliance with the required supplier standards found in 42 CFR 424.57(c). The primary function of the site investigation form is to provide a standardized, uniform tool to gather information from a DMEPOS supplier (as found in 42 CFR 424.57(c)) and where it practices or renders its services.

This site investigation form collects the same information as its predecessor, with the exception of one new yes/no question under the "Records and Telephone" section (question 11(a)) used to verify if the DMEPOS supplier maintains physician ordering/referring records for the supplies and/or services it renders to Medicare beneficiaries (if applicable). This information is required by section 1833(g) of the Social Security Act (the Act) which states that all physicians and non-physician practitioners that meet the definitions at section 1861(r) and 1842(b)(18)(C) of the Act, be uniquely identified for all claims for services that are ordered or referred. Other information collected on this site investigation remains unchanged, but has been reformatted for greater functionality. *Form Number:* CMS-R-263 (OCN: 0938-0749); *Frequency:* Once; *Affected Public:* Private Sector—Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 30,000; *Total Annual Responses:* 30,000; *Total Annual Hours:*

15,000. (For policy questions regarding this collection contact Kimberly McPhillips at 410-786-5374. For all other issues call 410-786-1326.)

3. *Type of Information Collection*

Request: Revision of a currently approved collection;

Title of Information Collection: Medicare Registration Application; *Use:* The CMS 855O allows a physician to receive a Medicare identification number (without being approved for billing privileges) for the sole purpose of ordering and referring Medicare beneficiaries to Medicare approved providers and suppliers. This new Medicare registration application form allows physicians who do not provide services to Medicare beneficiaries to be given a Medicare identification number without having to supply all the data required for the submission of Medicare claims. It also allows the Medicare program to identify ordering and referring physicians without having to validate the amount of data necessary to determine claims payment eligibility (such as banking information), while continuing to identify the physician's credentials as valid for ordering and referring purposes. Since the physicians and non-physician practitioners submitting this application are not enrolling in Medicare to submit claims but are only registering with Medicare as eligible to order and refer, CMS believes changing the title from Medicare Enrollment Application to Medicare Registration Application better captures the actual purpose of this form.

Where appropriate, CMS has changed all references to enrollment or enrolling to registration and registering and Medicare billing number to National Provider Identifier. CMS also added a check box to allow physicians and non-physician practitioners to withdraw from the ordering and referring registry. A section to collect information on professional certifications was added for those practitioners who are not professionally licensed. Editorial and formatting corrections were made in response to prior comments received during the approval of the current version of this application. Other minor editorial and formatting corrections were made to better clarify the purpose of this application. *Form Number:* CMS-855(O) (OCN: 0938-1135); *Frequency:* Occasionally; *Affected Public:* Individuals; *Number of Respondents:* 48,500; *Total Annual Responses:* 48,500; *Total Annual Hours:* 24,125. (For policy questions regarding this collection contact Kimberly McPhillips at 410-786-5374. For all other issues call 410-786-1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *May 29, 2012*.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-6974, Email: OIRA_submission@omb.eop.gov.

Dated: April 24, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012-10225 Filed 4-26-12; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-0001]

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 13, 2012, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel telephone number is 301-977-8900.

Contact Person: Jamie Waterhouse, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), and follow the prompts to the desired center or product

area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On June 13, 2012, the committee will discuss, make recommendations and vote on information related to the premarket approval application for the Edwards SAPIEN Transcatheter Heart Valve sponsored by Edwards Lifesciences. The Edwards SAPIEN Transcatheter Heart Valve is indicated for use in patients with symptomatic severe aortic stenosis who have high operative risk.

The Edwards SAPIEN Transcatheter Heart Valve, model 9000TFX, sizes 23mm and 26mm and accessories implant system consists of the following:

- A heterologous (bovine) pericardium leaflet valve sutured within a stainless steel mesh frame, with a polyester skirt. It is offered in two sizes, a 23 mm and a 26 mm.
- The RetroFlex 3 Delivery System is used to advance the bioprosthesis through the RetroFlex sheath over a guidewire and to track the bioprosthesis over the aortic arch and for crossing and positioning in the native valve. The delivery system also comes with a sheath, introducer, loader, dilator, balloon (used to pre-dilate the native annulus) and a crimp.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 5, 2012. On June 13, 2012, oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 29, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 1, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Clark, Conference Management Staff, at James.Clark@fda.hhs.gov or 301-796-5293 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 19, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012-10156 Filed 4-26-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-0001]

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 20, 2012, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center, (Rm. 1503), 10903 New Hampshire Avenue, Silver Spring, MD 20993-0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: <http://www.fda.gov/AdvisoryCommittees/default.htm>; under the heading "Resources for You," click on "Public Meetings at the FDA White Oak Campus." Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Caleb Briggs, Pharm.D., Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., WO31-2417, Silver Spring,

MD 20993-0002, (301) 796-9001, Fax: (301) 847-8533, email: ODAC@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), to find out further information regarding FDA advisory committee information. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the advisory committee information line or visit our Web site at <http://www.fda.gov/AdvisoryCommittees/default.htm> to learn about possible modifications before coming to the meeting.

Agenda: On June 20, 2012, during the morning session, the committee will discuss new drug application (NDA) 203213, with the established name semuloparin sodium injection, application submitted by sanofi-aventis U.S. LLC. The proposed indication (use) for this product is for the prophylaxis of venous thromboembolism (VTE) in patients receiving chemotherapy for locally advanced or metastatic pancreatic or lung cancer or for locally advanced or metastatic solid tumors with a VTE risk score ≥ 3 .

During the afternoon session, the committee will discuss NDA 202714, with the proposed trade name Kyprolis (carfilzomib) for injection, application submitted by Onyx Pharmaceuticals, Inc. The proposed indication (use) for this product is for the treatment of patients with relapsed and refractory (recurring and/or not responsive to other treatments) multiple myeloma who have received at least 2 prior lines of therapy that included a proteasome inhibitor and an immunomodulatory agent.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at <http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm>. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 6, 2012. Oral presentations from the public will be scheduled between approximately 10:30 a.m. to 11 a.m., and 3:30 p.m. to 4 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 29, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA

may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 30, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Caleb Briggs at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at <http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm> for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 19, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012-10154 Filed 4-26-12; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Complementary and Alternative Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: June 1, 2012.

Closed: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Open: 10:15 a.m. to 4 p.m.

Agenda: A report from the Institute Director and other staff.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Martin H. Goldrosen, Ph.D., Director, Division of Extramural Activities, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Ste. 401, Bethesda, MD 20892-5475, (301) 594-2014, goldrosen@mail.nih.gov.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: nccam.nih.gov/about/naccam/, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: April 20, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012-10130 Filed 4-26-12; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2012-0013]

Agency Information Collection Activities: Submission for Review; Information Collection Extension Request for the DHS S&T First Responders Community of Practice Program

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on the data collection form for the DHS Science & Technology (S&T) First Responders Community of Practice (FRCoP): User Registration Page (DHS Form 10059 (9/09)). The FRCoP web based tool collects profile information from first responders and select authorized non-first responder users to facilitate networking and formation of online communities. All users are required to authenticate prior to entering the site. In addition, the tool provides members the capability to create wikis, discussion threads, blogs, documents, etc., allowing them to enter and upload content in accordance with the site's Rules of Behavior. Members are able to participate in threaded discussions and comment on other member's content. The DHS S&T FRCoP Program is responsible for providing a collaborative environment for the first responder community to share information, best practices, and lessons learned. Section 313 of the Homeland Security Act of 2002 (Pub. L. 107-296) established this requirement. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. Chapter 35). This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. Law 104-13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until June 26, 2012.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS-2012-0013, by one of the following methods:

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

- *Email:* Kathy.Higgins@hq.dhs.gov. Please include docket number DHS-2012-0013 in the subject line of the message.

- *Fax:* (202) 254-6171. (Not a toll-free number).

- *Mail:* Science and Technology Directorate, Attn: Chief Information

Officer—Rick Stevens, 1120 Vermont Ave., Mail Stop 0202, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: DHS FRCoP Contact Kathy Higgins (202) 254-2293 (Not a toll free number).

SUPPLEMENTARY INFORMATION: DHS S&T currently has approval to collect information utilizing the User Registration Form until September 30, 2012 with OMB approval number 1640-0016. The User Registration Form will be available on the First Responders Community of Practice Web site found at [<https://communities.firstresponder.gov/>]. The user will complete the form online and submit it through the Web site.

The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(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) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest 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, e.g., permitting electronic submissions of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Renewal of Information Collection.

(2) *Title of the Form/Collection:* First Responders Community of Practice: User Registration Form.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* DHS Science & Technology Directorate, R-Tech (RTD), DHS Form 10059 (09/09).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals; the data will be gathered from individual first responders who wish to participate in the First Responders Community of Practice.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 2000.

b. *An estimate of the time for an average respondent to respond:* 0.5 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 1000 burden hours.

Dated: April 23, 2012.

Rick Stevens,

Chief Information Officer for Science and Technology.

[FR Doc. 2012-10228 Filed 4-26-12; 8:45 am]

BILLING CODE 9110-9F-P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS-2012-0015]

Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security (DHS), Science and Technology, Project 25 Compliance Assessment Program (P25 CAP)

AGENCY: Science and Technology Directorate, DHS.

ACTION: 30-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS) invites the general public to comment on the renewal of existing data collection forms for the DHS Science and Technology Directorate's Project 25 (P25) Compliance Assessment Program (CAP): Supplier's Declaration of Compliance (SDoC) (DHS Form 10044 (6/08)) and Summary Test Report (DHS Form 10056 (9/08)). The attacks of September 11, 2001, and the destruction of Hurricane Katrina made apparent the need for emergency response radio systems that can interoperate, regardless of which organization manufactured the equipment. In response, and per congressional direction, DHS and the National Institute of Standards and Technology (NIST) developed the P25 CAP to improve the emergency response community's confidence in purchasing land mobile radio (LMR) equipment built to P25 LMR standards. The P25 CAP establishes a process for ensuring that equipment complies with P25 standards and is capable of interoperating across manufacturers. The Department of Homeland Security needs to be able to collect essential information from manufacturers on their

products that have met P25 standards as demonstrated through the P25 CAP. Equipment suppliers will provide information to publicly attest to their products' compliance with a specific set of P25 standards. Accompanied by a Summary Test Report that substantiates this declaration, the SDoC constitutes a company's formal, public attestation of compliance with the standards for the equipment. In providing this information, companies will consent to making this information public. In turn, the emergency response community will use this information to identify P25-compliant communications systems. The P25 CAP Program Manager will perform a simple administrative review to ensure the documentation is complete and accurate in accordance with the current P25 CAP processes. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until May 29, 2012

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS-2012-0015, by one of the following methods:

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

- *Email:* Thomas.Chirhart@dhs.gov. Please include docket number DHS-2012-0015 in the subject line of the message.

- *Fax:* (202) 254-6171, Attn: PRA Coordinator (Not a toll-free number).

- *Mail:* Science and Technology Directorate, Attn: Chief Information Officer—PRA Coordinator, 1120 Vermont Ave., Mail Stop 0202, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: DHS P25 CAP Contact Thomas Chirhart (202) 254-6063 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The SDoC and Summary Test Report forms will be posted on the Responder Knowledge Base (RKB) Web site at <http://www.rkb.us>. The forms will be available in Adobe PDF format. The supplier will complete the forms electronically. The completed forms may then be submitted via Internet to the RKB Web site.

The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(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) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest 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, e.g., permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Renewal of information collection.

(2) *Title of the Form/Collection:* Science and Technology, Project 25 (P25) Compliance Assessment Program (CAP).

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Department of Homeland Security, Science & Technology Directorate—(1) Supplier's Declaration of Compliance (SDoC) (DHS Form 10044 (6/08)), (2) Summary Test Report (DHS Form 10056 (9/08)).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Businesses; the data will be gathered from manufacturers of radio systems who wish to declare that their products are compliant with P25 standards for radio systems.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 12.

b. *Estimate of number of responses per respondent:* 6.

c. *An estimate of the time for an average respondent to respond:* 4 burden hours (2 burden hour for each form).

d. *An estimate of the total public burden (in hours) associated with the collection:* 288 burden hours.

Dated: April 23, 2012.

Rick Stevens,

Chief Information Officer for Science and Technology.

[FR Doc. 2012-10235 Filed 4-26-12; 8:45 am]

BILLING CODE 9110-9F-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA-2009-0018]

Extension of Agency Information Collection Activity Under OMB Review: Certified Cargo Screening Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652-0053, abstracted below to OMB for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on February 24, 2012, 77 FR 11146, and TSA received no comments. The collections include: (1) Applications from entities that wish to become Certified Cargo Screening Facilities (CCSFs); (2) personal information to allow TSA to conduct security threat assessments on key individuals employed by the CCSFs; (3) implementation of a standard security program or submission of a proposed modified security program; (4) information on the amount of cargo screened; (5) recordkeeping requirements for CCSFs, and any other requests for information relating to cargo screening required to meet the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) and the Aviation and Transportation Security Act (ATSA) mandates. TSA is seeking the renewal of the ICR for the continuation of the program in order to secure passenger aircraft transporting cargo as required in the 9/11 Act.

DATES: Send your comments by May 29, 2012. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be mailed or delivered to Susan Perkins, PRA Officer, Office of Information Technology, TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011. Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget.

Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to aira_submission@omb.eop.gov or faxed to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Susan Perkins, Office of Information Technology, TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-3398 or email TSAPRA@dhs.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at <http://www.reginfo.gov>. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Certified Cargo Screening Program.

Type of Request: Renewal of one currently approved ICR.

OMB Control Number: 1652-0053.

Forms(s): The forms used for this collection of information include the CCSF Facility Profile Application (TSA Form 419B), CCSF Principal Attestation (TSA Form 419D), Security Profile (TSA Form 419E), Security Threat Assessment Application (TSA Form 419F), Aviation Security Known Shipper Verification (TSA Form 419H), CCSF Indirect Air Carrier Reporting Template, CCSF Shipper Reporting Template, and the CCSF Independent Cargo Screening Facility Reporting Template.

Affected Public: The collections of information that make up this ICR involve entities other than aircraft operators and include facilities upstream

in the air cargo supply chain, such as shippers, manufacturers, warehousing entities, distributors, third party logistics companies, and indirect air carriers located in the United States.

Abstract: TSA is seeking continued approval from OMB for the collections of information contained in the ICR. Congress identified specific requirements for TSA in the area of air cargo security in the ATSA (Pub. L. 107-71, 115 Stat. 597, Nov. 19, 2002): (1) To provide for screening of all property, including U.S. mail, cargo, carry-on and checked baggage, and other articles that will be carried aboard a passenger aircraft; and (2) to establish a system to screen, inspect, report, or otherwise ensure the security of all cargo that is to be transported on passenger aircraft as soon as practicable. In the 9/11 Act (Pub. L. 110-53, 121 Stat. 266, Aug. 3, 2007), Congress requires that 50 percent of cargo transported on passenger aircraft be screened not later than February 2009, and 100 percent of such cargo be screened not later than August 2010. TSA issued an interim final rule on September 16, 2009, 74 FR 47672, amending title 49 of the Code of Federal Regulations (CFR) to implement this statutory requirement. On August 18, 2011, TSA issued the Air Cargo Screening final rule (76 FR 51848) which removed all requirements regarding validators and validation firms in part 1522, and the requirement that aircraft operators become CCSFs to screen cargo off airport.

TSA must proceed with the ICR for this program in order to meet the Congressional mandates, and current and new regulations (49 CFR 1542.209, 1544.205, 1546.205, parts 1548 and 1549) that enable entities involved in air cargo to accept, screen, and transport air cargo. The uninterrupted collection of this information will allow TSA to continue to ensure implementation of these vital security measures for the protection of the traveling public.

TSA will certify qualified facilities as CCSFs. Companies seeking to become CCSFs are required to submit an application to TSA at least 90 days before the intended date of operation. Prior to certification, the CCSF must also submit to an assessment of their facility by TSA. TSA will allow the regulated entity to operate as a CCSF in accordance with a TSA-approved security program. The regulated entities must also collect personal information and submit such information to TSA so that TSA may conduct security threat assessments for individuals with unescorted access to cargo, and who have responsibility for screening cargo

under 49 CFR parts 1544, 1546, 1548, and 1549. CCSFs must provide information on the amount of cargo screened and other cargo screening metrics at an approved facility. CCSFs must also maintain screening, training, and other security-related records of compliance.

Estimated Number of Respondents: 967.

Estimated Annual Burden Hours: 143,768 hours annually.

Dated: Issued in Arlington, Virginia, on April 23, 2012.

Susan Perkins,

Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012-10133 Filed 4-26-12; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA-2005-21866]

Extension of Agency Information Collection Activity Under OMB Review: Enhanced Security Procedures at Ronald Reagan Washington National Airport

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day Notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652-0035, abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on February 29, 2012 (77 FR 12321). TSA requires general aviation (GA) aircraft operators who wish to fly into and/or out of Ronald Reagan Washington National Airport (DCA) to designate a security coordinator and adopt the DCA Access Standard Security Program (DASSP).

DATES: Send your comments by May 29, 2012. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory

Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT:

Susan L. Perkins, TSA PRA Officer, Office of Information Technology (OIT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-3398; email TSAPRA@dhs.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at www.reginfo.gov. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Enhanced Security Procedures at Ronald Reagan Washington National Airport.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652-0035.

Forms(s): N/A.

Affected Public: GA aircraft operators, armed security officers (ASOs), flight crew, gateway airport operators.

Abstract: TSA is hereby requesting an extension of this information collection. In accordance with 49 CFR part 1562, subpart B, TSA requires GA aircraft operators who wish to fly into or out of DCA to designate a security coordinator and adopt the DASSP. Once aircraft operators have complied with the DASSP requirements, they may request a slot reservation from the Federal

Aviation Administration (FAA) and request a flight authorization from TSA to fly into and out of DCA.

Number of Respondents: 4,887.

Estimated Annual Burden Hours: An estimated 5,546.74 hours annually.

Dated: Issued in Arlington, Virginia, on April 24, 2012.

Susan L. Perkins,

Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012-10208 Filed 4-26-12; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Federal Flight Deck Officer Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652-0011, abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on February 28, 2012, 77 FR 12069. The collection requires interested volunteers to fill out an application to determine their suitability for participating in the Federal Flight Deck Officer (FFDO) Program, and deputized FFDOs to submit written reports of certain prescribed incidents.

DATES: Send your comments by May 29, 2012. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, Office of Information

Technology (OIT), TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598-6011; telephone (571) 227-3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at www.reginfo.gov. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Federal Flight Deck Officer Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652-0011.

Form(s): N/A.

Affected Public: Volunteer pilots, flight engineers, and navigators.

Abstract: The Federal Flight Deck Officer (FFDO) Program enables TSA to screen, select, train, deputize, and supervise qualified volunteer pilots, flight engineers, and navigators to defend the flight decks of commercial passenger and all-cargo airliners. Information collected as the result of this proposal would be used to assess the eligibility and suitability of prospective and current FFDOs, to ensure the readiness of every FFDO, to administer the program, and for security purposes.

Number of Respondents: 5,000.

Estimated Annual Burden Hours: An estimated 5,000 hours annually.

Dated: Issued in Arlington, Virginia, on March 23, 2012.

Joanna Johnson,

Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012-10209 Filed 4-26-12; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5601-N-16]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT:

Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the

property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing

sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *COE*: Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP-CR, 441 G Street NW., Washington, DC 20314; (202) 761-5542; *COAST GUARD*: Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593-0001; (202) 475-5609; *GSA*: Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets NW., Washington, DC 20405; (202) 501-0084; *INTERIOR*: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave. NW., 4th Floor, Washington, DC 20006; (202) 208-5399; *NAVY*: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685-9426 (These are not toll-free numbers).

Dated: April 19, 2012.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 04/27/2012

Suitable/Available Properties

Building

California

Bldg. R5
Naval Air Station, North Island
San Diego CA 92135
Landholding Agency: Navy
Property Number: 77201220004
Status: Excess
Comments: Off-site removal only; 720 sf.; current use: training classroom/admin. office; very poor conditions; needs extensive repairs; secured area; transferee will need prior approval to access property

Kentucky

Rough River Lake Project
Various Campgrounds
Falls Rough KY
Landholding Agency: COE
Property Number: 31201220003
Status: Excess
Comments: Off-site removal only; 96 sf. for ea. trash bin

Missouri

W. Hwy Vault Toilet
US Army COE
Smithville MO 64089
Landholding Agency: COE
Property Number: 31201220004
Status: Underutilized
Comments: Available for off-site removal; 100 sf.; current use: toilet; need extensive repairs

Nebraska

Decatur Microwave Repeater
Off County Rd. 31
Decatur NE 68020
Landholding Agency: GSA
Property Number: 54201220001
Status: Surplus
GSA Number: 7-D-NE-0535
Comments: 80 sf. for bldg.; current use (for bldg.): support bldg; 2.41 acres of land; property is fenced w/gate

New Mexico

Two River Project
US Army COE
Roswell NM 88201
Landholding Agency: COE
Property Number: 31201220002
Status: Underutilized
Directions: Vault toilet w/flat roof, two rivers project
Comments: Available for off-site removal; 24' 8"x10'8; current use: restroom; asbestos identified; public need to contact project personnel to gain access; contact agency for more details

Oklahoma

Robert S. Kerr Lake
HC 61 Box 238
Sallisaw OK 74955
Landholding Agency: COE
Property Number: 31201220005
Status: Unutilized
Comments: Off-site removal only; 704 sf.; current use: bathroom; needs repairs

Virginia

B-3247
Marine Corp Base
Quantico VA 22134
Landholding Agency: Navy
Property Number: 77201220003
Status: Unutilized
Comments: Off-site removal only (may be difficult to relocate due to size; 37,560 sf.; current use: prison; asbestos identified; need remediation; contact Navy for more details

Washington

Restroom
Bennington Lake
Walla Walla WA 99362
Landholding Agency: COE
Property Number: 31201220001
Status: Unutilized
Comments: Off-site removal only; >250 sf.; current use: restroom; need repairs

Restroom

Mill Creek Project
Walla Walla WA 99362
Landholding Agency: COE
Property Number: 31201220006
Status: Unutilized
Comments: Off-site removal only; >140 sf.; current use: L restroom; need repairs

Suitable/Available Properties

Land

Idaho

7.73 Acres
Bureau of Reclamation
Hazelton ID 83335
Landholding Agency: Interior
Property Number: 61201220001

Status: Unutilized
 Comments: Parcel was in agricultural production three yrs. ago; now reseeded in native grasses

Illinois

Former Outer Marker Compass
 2651 West 83rd Place
 Chicago IL
 Landholding Agency: GSA
 Property Number: 54201220002

Status: Excess
 GSA Number: 1-U-I-797
 Comments: .22 acres; current use: airport outermaker

Oklahoma

Keystone Lake
 USACE Tract No. 2424
 Keystone OK
 Landholding Agency: COE
 Property Number: 31201220007

Status: Excess
 Comments: .013 acres; current use: civil works land; contact COE for further conditions

Unsuitable Properties

Building

California

5 Bldgs.
 Marine Corps Air Station
 San Diego CA
 Landholding Agency: Navy
 Property Number: 77201220001
 Status: Excess
 Directions: 9404,9527,9528,9529,9530
 Comments: Nat'l security concerns; due to anti-terrorism/force protection, only military personnel; public access denied & no alternative method to gain access w/out comprising security
 Reasons: Secured Area

Bldg. 6014
 Marine Corps Air Station
 San Diego CA
 Landholding Agency: Navy
 Property Number: 77201220002
 Status: Excess

Comments: Nat'l security concerns; due to anti-terrorism/force protection, only military personnel; public access denied & no alternative method to gain access w/out comprising security

Reasons: Secured Area

Florida

St. Peterburg Admin. Bldg.
 600 8th Ave.
 St. Peterburg FL
 Landholding Agency: Coast Guard
 Property Number: 88201220001

Status: Unutilized
 Comments: Nat'l security concerns; due to anti-terrorism/force protection, only military personnel; public access denied & no alternative method to gain access w/out comprising security

Reasons: Secured Area

New Jersey

Blake House/Haney Cabin
 Nat'l Park Service
 Walpack NJ 07881
 Landholding Agency: Interior
 Property Number: 61201220002
 Status: Excess

Directions: 2 buildings
 Comments: Documented deficiencies; Blake: extensive roof damage/foundation weaknesses; Haney: cabin has collapse; unfeasible to relocate either property; any attempt will result in properties crumbling
 Reasons: Extensive deterioration

Hamilton/Minard House
 Nat'l Park Service
 Hardwick NJ 07825
 Landholding Agency: Interior
 Property Number: 61201220003

Status: Excess
 Directions: 2 Building
 Comments: Documented deficiencies; severely weak foundation; unfeasible to relocate; any attempt will result in the complete collapse of properties

Reasons: Extensive deterioration

Becker House
 Nat'l Park Service
 Montague NJ 07827
 Landholding Agency: Interior
 Property Number: 61201220004

Status: Excess
 Comments: Documented deficiencies; severe roof and foundation weaknesses; unfeasible to relocate and any attempt to relocate will result in complete collapse of property

Reasons: Extensive deterioration

Stewart House
 Nat'l Park Service
 Sandyston NJ 07826
 Landholding Agency: Interior
 Property Number: 61201220005

Status: Excess
 Comments: Documented deficiencies; severely weak foundation; unfeasible to relocate; any attempt will result in the complete collapse of properties
 Reasons: Extensive deterioration

[FR Doc. 2012-9856 Filed 4-26-12; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-EA-2012-N100; FF09D00000-FXGO1664091HCC05D-123]

Wildlife and Hunting Heritage Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public teleconference of the Wildlife and Hunting Heritage Conservation Council (Council).

DATES: *Teleconference:* Friday May 11, 2012 from 2-4 p.m. (Eastern daylight time). For deadlines and directions on registering to listen to the teleconference, submitting written material, and giving an oral presentation, please see "Public Input" under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Joshua Winchell, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103-AEA, Arlington, VA 22203; telephone (703) 358-2639; fax (703) 358-2548; or email joshua_winchell@fws.gov.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Wildlife and Hunting Heritage Conservation Council will hold a teleconference.

Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

1. Benefit recreational hunting;
2. Benefit wildlife resources; and
3. Encourage partnership among the public, the sporting conservation community, the shooting and hunting sports industry, wildlife conservation organizations, the States, Native American tribes, and the Federal Government.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Director, National Park Service (NPS); Chief, Forest Service (USFS); Chief, Natural Resources Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

1. Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Increasing public awareness of and support for the Sport Wildlife Trust Fund;
3. Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;
4. Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;
5. Fostering communication and coordination among State, Tribal, and Federal Government; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;
6. Providing appropriate access to Federal lands for recreational shooting and hunting;
7. Providing recommendation to improve implementation of Federal

conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and

8. When requested by the agencies' designated ex officio members or the Designated Federal Officer in consultation with the Council Chairman, performing a variety of assessments or reviews of policies, programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at <http://www.fws.gov/whhcc>.

Meeting Agenda

The Council will hold a teleconference to consider:

- BLM's draft Resource Management Plan for the Sonoran Desert National Monument; and

The final agenda will be posted on the Internet at <http://www.fws.gov/whhcc>.

Public Input

If you wish to	You must contact the Council Coordinator (see FOR FURTHER INFORMATION CONTACT) no later than
Listen to the teleconference.	May 4th, 2012.
Submit written information or questions before the teleconference for the council to consider during the teleconference.	May 4th, 2012.
Give an oral presentation during the teleconference.	May 4th, 2012.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the teleconference. Written statements must be received by the date listed in "Public Input" under **SUPPLEMENTARY INFORMATION**, so that the information may be made available to the Council for their consideration prior to this teleconference. Written statements must be supplied to the Council Coordinator in one of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation during the teleconference will be limited to 2 minutes per speaker, with no more than

a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this teleconference. To ensure an opportunity to speak during the public comment period of the teleconference, members of the public must register with the Council Coordinator. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the teleconference.

Meeting Minutes

Summary minutes of the teleconference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at <http://www.fws.gov/whhcc>.

Gregory E. Siekaniec,
Acting Director.
[FR Doc. 2012-10211 Filed 4-26-12; 8:45 am]
BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2012-N096:
FXIA1671090000P5-123-FF09A30000]

Wild Bird Conservation Act; Receipt of Application for Approval of a Cooperative Breeding Program

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of receipt of application for approval; request for comment.

SUMMARY: The public is invited to comment on the following application for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992 (WBCA).

DATES: Written data, comments, or requests for a copy of this application must be received by May 29, 2012.

ADDRESSES: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: Chief, U.S. Fish and Wildlife Service, Division of

Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax: 703-358-2298.

FOR FURTHER INFORMATION CONTACT: Craig Hoover, Chief, Branch of Operations, Division of Management Authority, at 703-358-2104.

SUPPLEMENTARY INFORMATION: The purpose of the WBCA (16 U.S.C. 4901 et seq.) is to ensure that the market in the United States for exotic bird species does not cause harm to the wild populations of those species. With a few exceptions, the WBCA prohibits the import of bird species included in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Under the WBCA, we, the U.S. Fish and Wildlife Service, issue permits for import of listed birds for scientific research, zoological breeding or display programs, or personal pet purposes, when the applicant meets certain criteria. We also may approve cooperative breeding programs of listed birds, and subsequent import permits under such breeding programs.

The public is invited to comment on the following application for approval to establish a cooperative breeding program under the WBCA. This notice is provided pursuant to the WBCA and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR 15.26. Written data, comments, or requests for copies of this complete application should be submitted to the Chief (address above).

Applicant: Mac Embury, Grants Pass, OR

The applicant wishes to establish a cooperative breeding program for Black Sparrowhawk (*Accipiter melanoleucus*), Steppe Eagle (*Aquila nipalensis*), Eurasian Eagle Owl (*Bubo bubo*), Saker Falcon (*Falco cherrug*), African Fish-eagle (*Haliaeetus vocifer*), and Southern White-faced Owl (*Ptilopsis granti*). The applicant wishes to be an active participant in this program along with three other individuals. If approved, the program will be overseen by the Oregon Falconers Association.

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: April 17, 2012.

Laura Noguchi,

Acting Chief, Branch of Operations, Division of Management Authority.

[FR Doc. 2012-10232 Filed 4-26-12; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX12GB009PAMR00]

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028-0089), Mineral Resources Program's (MRP) Mineral Resource External Research Program (MRERP).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on August 31, 2012.

To submit a proposal for the MRERP a project narrative must be completed and submitted via Grants.gov. Furthermore, for multi-year projects, an annual progress report must be completed, and for all projects, a final technical report is required at the end of the project period. The narrative and report guidance is available at <http://www.usgs.gov/contracts/Minerals/index.html>.

DATES: Submit written comments by June 26, 2012.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648-7199 (fax); or smbaloch@usgs.gov (email). Use Information Collection Number 1028-0089 in the subject line.

FOR FURTHER INFORMATION CONTACT: Jeff L. Doebrich at 703-648-6103.

SUPPLEMENTARY INFORMATION:

Title: Mineral Resource External Research Program (MRERP).

OMB Control Number: 1028-0089.

Form Number: Project narrative and report guidance posted on Grants.gov.

Abstract: Through the MRERP, the MRP of the USGS offers an annual

competitive grant and/or cooperative agreement opportunity to universities, State agencies, Tribal governments or organizations, and industry or other private sector organizations. Applicants must have the ability to conduct research in topics related to nonfuel mineral resources and that meet the goals of the MRP. The MRERP will consider all research-based proposals that address one of the MRP's long-term goals. The long-term goals of the MRP, as described in its strategic plan (http://minerals.usgs.gov/plan/2006-2010/2006-2010_plan.html) are (1) Ensure availability of up-to-date quantitative assessments of potential for undiscovered mineral deposits, (2) ensure availability of up-to-date geoenvironmental assessments of priority Federal lands, (3) ensure availability of reliable geologic, geochemical, geophysical, and mineral locality data for the United States, and (4) ensure availability of long-term data sets describing mineral production and consumption. Furthermore, annual research priorities are provided as guidance for applicants to consider when submitting proposals. Annual research priorities are determined by USGS MRP management. Since its initiation in 2004, the MRERP has awarded more than \$2.8 million to 48 different research projects across the country.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR part 2), and under regulations at 30 CFR 250.197, "Data and information to be made available to the public or for limited inspection." Responses are voluntary. No questions of a "sensitive" nature are asked. We intend to release the project abstracts and primary investigators for awarded/funded projects only.

Frequency: Annually.

Estimated Annual Number and Description of Respondents:

Approximately 500 research scientists from universities, State agencies, Tribal governments or organizations, and industry or other private sector organizations.

Estimated Total Number of Annual Responses: 25.

Estimated Annual burden hours: 1125.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: We estimate the public reporting burden averages 45 hours per response. This includes the time for (1) Project conception and development, proposal writing and reviewing, and submitting project narrative through Grants.gov, (2)

preparation of annual progress report, and (3) preparation of final technical report.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: There are no "non-hour cost" burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Please note that the comments submitted in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated April 13, 2012.

Ione Taylor,

Associate Director, Energy and Minerals, and Environmental Health.

[FR Doc. 2012-10177 Filed 4-26-12; 8:45 am]

BILLING CODE 4311-AM-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD03000
L51100000.GN0000.LVEMK10CW580-WYW-166318]

Notice of Availability of the Draft Environmental Impact Statement for the Lost Creek Uranium In Situ Recovery Project, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Lost Creek Uranium In Situ Recovery (ISR) Project and by this notice is announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Lost Creek ISR Project Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: Comments related to the Lost Creek ISR Project may be submitted by any of the following methods:

- *Email:*

Lost_Crk_Mine_WY@blm.gov. Please reference "Lost Creek ISR Project" in the subject line.

- *Fax:* 307-328-4224.

- *Mail:* Bureau of Land Management, Lost Creek ISR Project, Attention: Dennis Carpenter, Field Manager, 1300 N. Third Street, P.O. Box 2407, Rawlins, Wyoming 82301.

Copies of the Lost Creek ISR Project Draft EIS are available in the BLM Rawlins Field Office, at the address indicated above, the BLM Lander Field Office, 1335 Main Street, Lander, Wyoming 82520; the BLM High Desert District Office, 280 Highway 191 North, Rock Springs, Wyoming 82901; and the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009; and at the following Web site: <http://www.blm.gov/wy/st/en/info/NEPA/documents/rfo/lostcreek.html>.

FOR FURTHER INFORMATION CONTACT:

Dennis Carpenter, Field Manager, at the BLM Rawlins Field Office, telephone: 307-328-4200; address: 1300 N. Third Street, P.O. Box 2407, Rawlins, Wyoming 82301, email:

Lost_Crk_Mine_WY@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above named individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant, Lost Creek ISR, LLC (Lost

Creek), has filed a plan of operations pursuant to the 43 CFR subpart 3809 regulations to construct a uranium ore recovery plant, an access road to the site, and a pipeline system for the flow of oxidizing leach solution to injection wells and return of fluids from recovery wells to the recovery plant site; to drill injection, recovery and monitoring wells; and to construct associated facilities such as parking lots, power lines, etc. Development and recovery of the uranium consists of dissolving underground uranium-bearing minerals into solution and then bringing the solution to the surface facility for concentration. The Lost Creek ISR Project is located about 40 miles northwest of Rawlins, Wyoming, in Sweetwater County. The project is located in the following area.

Sixth Principal Meridian

T. 25 N., R. 92 W.

Secs. 16 to 20, inclusive;

Secs. 29 to 31, inclusive.

T. 25 N., R. 93 W.

Secs. 13, 24, and 25.

The project area boundary includes approximately 4,250 acres, but only about 345 acres would be subjected to actual surface disturbance that would be approved by the BLM. Most of the surface disturbance would be related to construction of pads for wells used to extract uranium in solution from the site.

The plant site would comprise approximately 10 acres, including parking space for about 50-60 employees. Multiple subsurface ore bodies ranging in depth from about 300-700 feet below the surface are found at the site. Each of the three separate production areas containing uranium would be established and mined, one at a time. It is expected that mining operations would last about 8 years. An estimated additional 3 years would be required for startup and closure of the site for a total project length of 11 years. A proposed final reclamation plan for the project area has been submitted. All surface facilities would be removed when the project is completed and the land re-contoured to near predisturbance condition and re-vegetated.

The draft EIS addresses the direct, indirect, and cumulative impacts of the proposed action and three alternatives including the No Action Alternative, the "Not Fencing the Pattern Areas" Alternative, and the "Drying Yellowcake On-Site" Alternative.

The No Action Alternative, as required by NEPA, describes conditions expected to occur if no ISR operations would be conducted within the permit

area, although activities currently ongoing would continue and other activities at the site during the proposed licensing/permitting period would still occur. Under the "Not Fencing the Pattern Areas" Alternative, temporary fencing would be installed only around the drill pits, including those drilled within the mine units, and around the plant and storage ponds, as opposed to the entire well field of the pattern area. Under the "Drying Yellowcake On-Site" Alternative, a yellowcake drying and packing facility would be constructed and operated at the permit area. As with the Proposed Action, yellowcake slurry (30 to 50 percent solids) would be produced; however, the slurry would be filter-pressed to remove additional water, dried, and packaged on-site.

The Notice of Intent to prepare an EIS was published in the **Federal Register** on February 11, 2011 (76 FR 7877). Key issues identified during scoping include, among others, the project impact on public-land access, wild horse use and distribution, greater sage-grouse, air and water resources, livestock grazing operations, and public health and safety.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you may ask the BLM in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Larry Claypool,

Acting State Director.

[FR Doc. 2012-10045 Filed 4-26-12; 8:45 am]

BILLING CODE 4310-22-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**[LLIDC00000.L10100000.JZ0000.241A0;
4500033580]**Notice of Public Meeting, Coeur
d'Alene District Resource Advisory
Council Meeting; Idaho****AGENCY:** Bureau of Land Management,
Interior.**ACTION:** Notice of Public Meeting.**SUMMARY:** In accordance with the
Federal Land Policy and Management
Act (FLPMA) and the Federal Advisory
Committee Act of 1972 (FACA), the U.S.
Department of the Interior, Bureau of
Land Management (BLM) Coeur d'Alene
District Resource Advisory Council
(RAC) will meet as indicated below.**DATES:** May 31, 2012. The meeting will
begin at 10 a.m. and end no later than
3:30 p.m. The public comment period
will be held from 1 p.m. to 1:30 p.m.
The meeting will be held at the Idaho
Department of Health and Welfare
Office, 1350 Troy Road, Moscow, Idaho
83843.**FOR FURTHER INFORMATION CONTACT:**
Suzanne Endsley, RAC Coordinator,
BLM Coeur d'Alene District, 3815
Schreiber Way, Coeur d'Alene, Idaho
83815 or telephone at (208) 769-5004.**SUPPLEMENTARY INFORMATION:** The 15-
member RAC advises the Secretary of
the Interior, through the Bureau of Land
Management, on a variety of planning
and management issues associated with
public land management in Idaho. The
agenda will include the following
topics: The Clearwater and Nez Perce
National Forests will present proposals
to modify recreation fees at national
forest recreation sites for the Recreation
RAC Subcommittee to consider. The
agenda will also include updates from
the Cottonwood Field Office and a
presentation on the proposed Bally
Mountain Hazardous Fuels Reduction
project. Additional agenda topics or
changes to the agenda will be
announced in local press releases. More
information is available at [http://
www.blm.gov/id/st/en/res/
resource_advisory.html](http://www.blm.gov/id/st/en/res/resource_advisory.html).All meetings are open to the public.
The public may present written
comments to the RAC in advance of or
at the meeting. Each formal RAC
meeting will also have time allocated for
receiving public comments. Depending
upon the number of persons wishing to
comment and time available, the time
for individual oral comments may be
limited. Individuals who plan to attend
and need special assistance, such assign language interpretation or other
reasonable accommodations, should
contact the BLM as provided above.

Dated: April 18, 2012.

Gary D. Cooper,*District Manager.*

[FR Doc. 2012-10230 Filed 4-26-12; 8:45 am]

BILLING CODE 4310-GG-P**DEPARTMENT OF THE INTERIOR****National Park Service**[NPS-WASO-NRNHL-0412-10077; 2200-
3200-665]**National Register of Historic Places;
Notification of Pending Nominations
and Related Actions**Nominations for the following
properties being considered for listing
or related actions in the National
Register were received by the National
Park Service before April 7, 2012.
Pursuant to section 60.13 of 36 CFR part
60, written comments are being
accepted concerning the significance of
the nominated properties under the
National Register criteria for evaluation.
Comments may be forwarded by United
States Postal Service, to the National
Register of Historic Places, National
Park Service, 1849 C St. NW., MS 2280,
Washington, DC 20240; by all other
carriers, National Register of Historic
Places, National Park Service, 1201 Eye
St. NW., 8th floor, Washington, DC
20005; or by fax, 202-371-6447. Written
or faxed comments should be submitted
by May 14, 2012. 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.**J. Paul Loether,***Chief, National Register of Historic Places/
National Historic Landmarks Program.***ARKANSAS****Cross County**Memphis to Little Rock Road—Strong's Ferry
Segment, (Cherokee Trail of Tears MPS)
Address Restricted, Jeanette, 12000274**Garland County**Humphrey's Dairy Farm, 1675 Shady Grove
Rd., Hot Springs, 12000275**Jackson County**Campbell Station Cabin No. 2, (World War II
Home Front Efforts in Arkansas, MPS) .5
mi. from jct. of US 67 & Campbell Ln.,
Campbell Station, 12000276**Union County**James, Randolph, House, 1212 N. Madison
Ave., El Dorado, 12000277**Washington County**Mount Sequoyah Cottages, 808 & 810 E.
Skyline Dr., Fayetteville, 12000278
Strengthen the Arm of Liberty Monument,
3215 N. Northhills Blvd., Fayetteville,
12000279**GEORGIA****Chattooga County**Summerville Commercial Historic District,
Centered around Commerce St., Georgia, &
Washington Aves., Summerville, 12000280**DeKalb County**Decatur Downtown Historic District, Roughly
bounded by N. McDonough St., E. Howard
Ave., Hillyer, & Commercial Sts., & E.
Ponce De Leon Ave., Decatur, 12000281**MICHIGAN****Calhoun County**Camp Custer Veterans Administration
Hospital—United States Veterans Hospital
No. 100, (United States Second Generation
Veterans Hospitals MPS), 5500 Armstrong
Rd., Battle Creek, 12000282**MINNESOTA****Rice County**Faribault Woolen Mill Company, 1500 2nd
Ave., NW., Faribault, 12000283**Sherburne County**Elk River Water Tower, Jackson Ave. & 4th
St., NW., Elk River, 12000284**MONTANA****Lewis and Clark County**Unemployment Compensation Commission
Building, 1315 Lockey Ave., Helena,
12000285**NEW YORK****Saratoga County**Saratoga National Historic Park, 648 NY 32,
Stillwater, 12000286**St. Lawrence County**Hepburn Library of Colton, 84 Main St.,
Colton, 12000287**Suffolk County**ELVIRA (sloop), Newey Ln., Brookhaven,
12000288**SOUTH CAROLINA****Oconee County**Tamassee DAR School, 1925 Bumgardner Dr.,
Tamassee, 12000289**TEXAS****Upshur County**Upshur County Courthouse, 100 W. Tyler St.,
Gilmer, 12000290

WYOMING

Carbon County

Muddy Creek Archeological Complex,
Address Restricted, Medicine Bow,
12000291

[FR Doc. 2012-10136 Filed 4-26-12; 8:45 am]

BILLING CODE 4312-51-P

DEPARTMENT OF JUSTICE

[OMB Number 1125-0005]

**Agency Information Collection
Activities: Proposed Collection;
Comments Requested; Notice of Entry
of Appearance as Attorney or
Representative Before the Board of
Immigration Appeals (Form EOIR-27)**

ACTION: 30-Day Notice of Information
Collection Under Review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 35, page 10557, on February 22, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 29, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments also may be submitted to OMB via facsimile to (202) 395-7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the agency's functions, 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.

*Overview of This Information
Collection:*

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR-27. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys or representatives notifying the Board of Immigration Appeals (Board) that they are representing a party in proceedings before the Board. Other: None. Abstract: This information collection is necessary to allow an attorney or representative to notify the Board that he or she is representing a party before the Board.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 28,868 respondents will complete the form annually with an average of six minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2,867 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE., Room 2E-508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012-10172 Filed 4-26-12; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF JUSTICE

[OMB Number 1125-0012]

**Agency Information Collection
Activities: Proposed Collection;
Comments Requested; Request for
Recognition of a Non-Profit Religious,
Charitable, Social Service, or Similar
Organization (Form EOIR-31)**

ACTION: 30-Day notice of information
collection under review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 35, page 10558, on February 11, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 29, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments also may be submitted to OMB via facsimile to (202) 395-7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the 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.

Overview of This Information Collection:

(1) *Type of Information Collection:* Reinstatement with Change.

(2) *Title of the Form/Collection:* Request for Recognition of a Non-profit Religious, Charitable, Social Service, or Similar Organization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR-31. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Non-profit organizations seeking to be recognized as legal service providers by the Board of Immigration Appeals (Board) of the Executive Office for Immigration Review (EOIR). Other: None. Abstract: This information collection is necessary to determine whether the organization meets the regulatory and relevant case law requirements for recognition by the Board as a legal service provider, which then would allow its designated representative or representatives to seek full or partial accreditation to practice before EOIR and/or the Department of Homeland Security.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 105 respondents will complete the form annually with an average of 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 210 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE., Room 2E-808, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012-10175 Filed 4-26-12; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF JUSTICE

[OMB Number 1125-0006]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28)

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 35n, page 10556, on February 22, 2012, year, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 29, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments also may be submitted to OMB via facsimile to (202) 395-7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the agency's functions, 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.

Overview of This Information Collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative before the Immigration Court.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR-28. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys or representatives notifying the Immigration Court that they are representing an alien in immigration proceedings. Other: None. Abstract: This information collection is necessary to allow an attorney or representative to notify the Immigration Court that he or she is representing an alien before the Immigration Court.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 165,614 respondents will complete the form annually with an average of six minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 16,561 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE., Room 2E-508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012-10173 Filed 4-26-12; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125-0007]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Immigration Practitioner Complaint Form

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 35, page 10558, on February 22, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 29, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may also be submitted to OMB via facsimile to (202) 395-7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the 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.

Overview of This Information Collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigration Practitioner Complaint Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR-44, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals who wish to file a complaint against an immigration practitioner authorized to appear before the Board of Immigration Appeals and the immigration courts. Other: None. Abstract: The information on this form will be used to determine whether, assuming the truth of the factual allegations, the Office of the General Counsel of the Executive Office for Immigration Review should conduct a preliminary disciplinary inquiry, request additional information from the complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 200 respondents will complete the form annually with an average of two hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 400 total burden hours associated with this collection annually.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE., Room 2E-508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2012-10174 Filed 4-26-12; 8:45 am]

BILLING CODE 4410-30-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Refuge Alternatives for Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) revision titled, "Refuge Alternatives for Underground Coal Mines," 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 May 29, 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 DOL-MSHA, 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: 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: MSHA regulations mandate each underground coal mine to have an emergency response plan and refuge alternative(s) to protect miners by providing secure spaces with isolated atmospheres that create life-sustaining environments when escape from a mine during a mine

emergency is not possible. See 30 CFR 75.1506(c)(2), 75–1507, and 75–1508(a) and (b). This ICR covers the refuge alternatives portion of emergency response plans and records for training, examination, maintenance, and repair of refuge alternatives and components. This ICR has been classified as a revision under the PRA merely to acknowledge administrative decisions to transfer burden for some information collection requirements to other OMB Control Numbers. The agency has made no changes to the actual requirements.

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. The DOL obtains OMB approval for this information collection under Control Number 1219–0146. The current OMB approval is scheduled to expire on April 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 31, 2012 (77 FR 4834).

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 reference OMB Control Number 1219–0146. 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: DOL–MSHA.

Title of Collection: Refuge Alternatives for Underground Coal Mines.

OMB Control Number: 1219–0146.

Affected Public: Private Sector—Businesses or Other For-Profits.

Total Estimated Number of Respondents: 55.

Total Estimated Number of Responses: 127.

Total Estimated Annual Burden Hours: 951.

Total Estimated Annual Other Costs Burden: \$218.

Dated: April 23, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–10164 Filed 4–26–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *April 9, 2012 through April 13, 2012*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to

the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the

International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
81,206	Stern-Leach, Cookson Precious Metals, Cookson America, Adecco Staffing, Qualified, etc.	Attleboro, MA	February 10, 2011.
81,206A	Hallmark Sweet, Cookson Precious Metals, Cookson America, Adecco Staffing, Qualified, etc.	Attleboro, MA	February 10, 2011.
81,206B	Stern Metals, Cookson Precious Metals, Cookson America, Adecco Staffing, Qualified, etc.	Attleboro, MA	February 10, 2011.
81,283	SolarWorld Industries America LP, ProHire and Kelly Services	Camarillo, CA	February 13, 2010.
81,293	NCO Financial Systems, Inc., Innosource	Canonsburg, PA	February 2, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA-W No.	Subject firm	Location	Impact date
81,274	Aosom LLC, Ningbo MH Industry Co., NW Staffing, Begin Right, Office Team, etc.	Lake Oswego, OR	January 26, 2011.
81,358	Clipper Windpower, LLC, Accounts Payable Department, On-Site Workers of Appleone and Accountemps.	Carpinteria, CA	February 21, 2011.
81,367	Infinite Convergence Solutions, Inc., Messaging Software Division, Infinite Computer Solutions, Inc.	Arlington Heights, IL	February 27, 2011.
81,408	Syngenta Crop Protection LLC, Including On Site Leased Workers of Olsten, Adecco and HR Group.	Greensboro, NC	March 12, 2011.
81,415	Covidien, Medical Devices Sector, Vascular Therapies Division, Kelly Services.	Mansfield, MA	March 13, 2011.
81,417	Nilfisk-Advance Incorporated, On Site: E-Technical, Apple One, Ware Technology Services and Staffing.	Plymouth, MN	October 1, 2011.
81,419	Panduit Corporation, Tinley Park Manufacturing Division, On-Site Workers from Aerotek, Inc.	Tinley Park, IL	November 25, 2011.
81,419A	Panduit Corporation, New Lenox Production Division, Cable Tie Division, Areotek, Inc.	New Lenox, IL	November 25, 2011.
81,425	Becromal of America, Inc., Resource MFG	Clinton, TN	March 15, 2011.
81,430	Vectron International	Hudson, NH	March 19, 2011.
81,435	Albany International, Corrugated Belts Division	Albany, NY	May 22, 2012.
81,440	KRACO Enterprises, LLC, A Subsidiary of Sun Capital Partners, Inc.	Compton, CA	March 21, 2011.

TA-W No.	Subject firm	Location	Impact date
81,446	WellPoint, Inc., NE Enrollment and Billing Division, Aerotek, Kelly and Populus Group.	North Haven, CT	March 22, 2011.
81,456	Siltronic Corporation, FAB1 Plant, Express Temporaries and Aerotek Commercial, etc.	Portland, OR	March 28, 2011.
81,465	Anthem Blue Cross and Blue Shield, Wellpoint, Inc., Service Operations, Blue Cross and Blue Shield in Georgia.	Richmond, VA	April 29, 2011.
81,470	Capewell Horsenails, Inc., Mustad USA, Premiere Staffing, Kelly Staffing, Lauren Staffing, etc.	Bloomfield, CT	March 27, 2011.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility

criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A)

(increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA-W No.	Subject firm	Location	Impact date
81,427	Bremner Food Group Inc	Fort Smith, AR.	
81,433	Afni, Inc., Experis	San Antonio, TX.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and

on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA-W No.	Subject firm	Location	Impact date
81,391	Shape Corporation	Grand Haven, MI.	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed

by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and

therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA-W No.	Subject firm	Location	Impact date
81,371	Flo-Pro, Inc., A Division of Introcan, Motor Parts of America, Inc ..	Bedford, NH.	

The following determinations terminating investigations were issued

because the petitions are the subject of ongoing investigations under petitions

filed earlier covering the same petitioners.

TA-W No.	Subject firm	Location	Impact date
81,485	Convergys Corporation, Microsoft Answer Desk Project	Ogden, UT.	

I hereby certify that the aforementioned determinations were issued during the period of April 9, 2012 through April 13, 2012. These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm*, under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888-365-6822.

Dated: April 18, 2012.
Michael W. Jaffe,
Certifying Officer, Office of Trade Adjustment Assistance.
 [FR Doc. 2012-10165 Filed 4-26-12; 8:45 am]
BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions,

the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 7, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment

Assistance, at the address shown below, not later than May 7, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N-5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 19th day of April 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[9 TAA petitions instituted between 4/9/12 and 4/13/12]

TA-W	Subject firm (petitioners)	Location	Date of institution	Date of petition
81487	ISATEC Technical Center (State/One-Stop)	Garfield Heights, OH	04/09/12	04/06/12
81488	Startek (Workers)	Greeley, CO	04/09/12	04/04/12
81489	Swift Spinning, Inc. CYD Plant (Company)	Columbus, GA	04/10/12	04/06/12
81490	Trumeter Company, Inc. (Company)	Windsor, CT	04/10/12	03/16/12
81491	Lakeland Industries (Workers)	Saint Joseph, MO	04/10/12	04/09/12
81492	Equant (State/One-Stop)	El Segundo, CA	04/12/12	04/04/12
81493	Wynn Oil Company (State/One-Stop)	Asuza, CA	04/12/12	04/10/12
81494	Advanced Micro Devices (State/One-Stop)	Boxborough, MA	04/12/12	04/12/12
81495	XIUS Corporation, formerly named Cellular Express, Inc. (Company).	Woburn, MA	04/12/12	04/11/12

[FR Doc. 2012-10166 Filed 4-26-12; 8:45 am]

BILLING CODE 4510-FN-P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice on Reallotment of Workforce Investment Act (WIA) Title I Formula Allotted Funds for Dislocated Worker Activities for Program Year (PY) 2011

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: Public Law 105-220, the Workforce Investment Act of 1998, requires the Secretary of Labor (Secretary) to conduct reallotment of dislocated worker formula allotted funds based on State financial reports submitted as of the end of the prior program year. This notice publishes the dislocated worker PY 2011 funds for recapture by State and the amount to be reallotted to eligible States.

DATES: This notice is effective April 27, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Amanda Ahlstrand, Acting Administrator, Office of Workforce Investment, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room C-4526, Washington, DC 20210. Telephone (202) 693-3980 (this is not a toll-free number) or fax (202) 693-3981.

SUPPLEMENTARY INFORMATION: WIA Section 132(c) requires the Secretary to conduct reallotment of dislocated worker funds based on financial reports submitted by States as of the end of the prior program year.

The procedures the Secretary uses for recapture and reallotment of funds are described in the WIA regulation at 20 CFR 667.150. Training and Employment Guidance Letter No. 26-10 advised States that reallotment of funds under WIA will occur during PY 2011 based on State obligations made in PY 2010. We will not recapture any PY 2011 funds for Adult and Youth programs

because in no case do PY 2010 unobligated funds exceed the statutory requirement of 20 percent of State allotted funds. There was recapture and reallotment of WIA Dislocated Worker funds in PY 2010.

Excess unobligated State funds in the amount of \$251,529 will be captured from PY 2011 formula allotted funds for the dislocated worker program for one State and distributed by formula to PY 2011 dislocated worker funds for eligible States. The description of the methodology used for the calculation of the recapture/reallotment amounts and the distribution of the changes to PY 2011 formula allotments for dislocated worker activities are included in this notice (see Section III below).

WIA Section 132 (c) requires the governor to prescribe equitable procedures for making funds available from the State and local areas in the event that the State is required to make funds available for reallotment.

I. Attachment A

U.S. DEPARTMENT OF LABOR

[Employment and Training Administration, WIA Dislocated Worker Activities, PY 2011 Reallotment to States]

	Excess unobligated PY 2010 funds for recapture in PY 2011	PY 2010* dislocated worker allotments for eligible states	PY 2011 reallotment amount for eligible states	Total PY 2011 allotments	Total adjustment to PY 2011 (recapture/reallotment)	Revised total PY 2011 allotments
Alabama	\$0	\$17,648,171	\$3,770	\$16,103,978	\$3,770	\$16,107,748
Alaska	0	2,185,129	467	1,801,832	467	1,802,299
Arizona **	0	22,761,022	4,862	21,958,487	4,862	21,963,349
Arkansas	0	6,859,643	1,465	6,525,077	1,465	6,526,542
California	0	192,209,289	41,056	170,043,518	41,056	170,084,574
Colorado	0	14,493,167	3,096	13,947,918	3,096	13,951,014
Connecticut	0	11,838,447	2,529	12,099,340	2,529	12,101,869
Delaware	0	2,775,581	593	2,523,025	593	2,523,618
District of Columbia	0	2,987,462	638	2,588,817	638	2,589,455
Florida	0	82,926,540	17,713	81,146,334	17,713	81,164,047
Georgia	0	40,868,318	8,730	35,448,102	8,730	35,456,832
Hawaii	0	3,264,115	697	2,535,324	697	2,536,021
Idaho	0	4,531,232	968	4,234,037	968	4,235,005
Illinois	0	54,617,380	11,666	52,311,422	11,666	52,323,088
Indiana	0	27,227,011	5,816	22,936,088	5,816	22,941,904
Iowa	0	5,881,598	1,256	6,212,899	1,256	6,214,155
Kansas	0	6,847,260	1,463	5,771,477	1,463	5,772,940
Kentucky	0	18,069,138	3,860	14,962,447	3,860	14,966,307
Louisiana	0	9,801,581	2,094	8,755,097	2,094	8,757,191
Maine	251,529	0	0	3,593,738	(251,529)	3,342,209
Maryland	0	15,524,552	3,316	14,280,338	3,316	14,283,654
Massachusetts	0	22,681,107	4,845	21,033,198	4,845	21,038,043
Michigan	0	64,477,068	13,773	51,206,873	13,773	51,220,646
Minnesota	0	18,001,919	3,845	12,869,603	3,845	12,873,448
Mississippi	0	9,857,567	2,106	10,134,604	2,106	10,136,710
Missouri	0	22,199,883	4,742	19,157,714	4,742	19,162,456
Montana	0	2,172,390	464	2,044,172	464	2,044,636
Nebraska	0	2,425,657	518	2,056,541	518	2,057,059
Nevada	0	14,109,081	3,014	14,310,158	3,014	14,313,172
New Hampshire	0	3,178,188	679	2,760,460	679	2,761,139
New Jersey	0	33,036,397	7,057	32,201,066	7,057	32,208,123
New Mexico **	0	4,088,279	873	5,171,897	873	5,172,770
New York	0	65,461,775	13,983	55,804,488	13,983	55,818,471
North Carolina	0	43,990,709	9,397	35,042,869	9,397	35,052,266
North Dakota	0	689,396	147	499,156	147	499,303
Ohio	0	51,555,231	11,012	44,012,508	11,012	44,023,520
Oklahoma	0	6,897,559	1,473	6,906,804	1,473	6,908,277
Oregon	0	20,144,221	4,303	15,054,272	4,303	15,058,575
Pennsylvania	0	39,519,031	8,441	37,914,512	8,441	37,922,953
Puerto Rico	0	17,040,157	3,640	13,675,088	3,640	13,678,728
Rhode Island	0	6,090,021	1,301	5,096,307	1,301	5,097,608
South Carolina	0	23,064,788	4,927	19,157,131	4,927	19,162,058
South Dakota	0	999,261	213	839,629	213	839,842
Tennessee	0	26,900,645	5,746	22,094,179	5,746	22,099,925
Texas	0	61,307,760	13,096	61,926,140	13,096	61,939,236
Utah **	0	4,620,458	987	6,053,827	987	6,054,814
Vermont	0	1,785,950	381	1,242,041	381	1,242,422
Virginia	0	18,450,205	3,941	18,453,304	3,941	18,457,245
Washington	0	24,243,473	5,178	22,238,858	5,178	22,244,036
West Virginia	0	4,545,822	971	4,552,003	971	4,552,974
Wisconsin	0	19,910,847	4,253	17,319,011	4,253	17,323,264
Wyoming	0	785,065	168	1,199,212	168	1,199,380
State Total	251,529	1,177,546,546	251,529	1,061,806,920	0	1,061,806,920

* Including rescissions based on the statutory formula and prior year recapture/reallotment amounts.

** Includes Navajo Nation.

II. Attachment B

U.S. DEPARTMENT OF LABOR

[Employment and Training Administration, WIA Dislocated Worker Activities, PY 2011 Revised Allotments With Reallotment]

	Total			Available 7/1/11			Available 10/1/11		
	Original	Recapt/ reallot	Revised	Original	R/R	Revised	Original	Recapt/ reallot	Revised
AL	16,103,978	3,700	16,107,748	3,085,372	.....	3,085,372	13,018,606	3,770	13,022,376
AK	1,801,832	467	1,802,299	345,214	.....	345,214	1,456,618	467	1,457,085
AZ	21,958,487	4,862	21,963,349	4,207,042	.....	4,207,042	17,751,445	4,862	17,756,307
AR*	6,525,077	1,465	6,526,542	1,250,144	.....	1,250,144	5,274,933	1,465	5,276,398
CA	170,043,518	41,056	170,084,574	32,578,755	.....	32,578,755	137,464,763	41,056	137,505,819
CO	13,947,918	3,096	13,951,014	2,672,291	.....	2,672,291	11,275,627	3,096	11,278,723
CT	12,099,340	2,529	12,101,869	2,318,121	.....	2,318,121	9,781,219	2,529	9,783,748
DE	2,523,025	593	2,523,618	438,388	.....	438,388	2,039,637	593	2,040,230
DC	2,588,817	638	2,589,455	495,993	.....	495,993	2,092,824	638	2,093,462
FL	81,146,334	17,713	81,164,047	15,546,882	.....	15,546,882	65,599,452	17,713	65,617,165
GA	35,448,102	8,730	35,456,832	6,791,526	.....	6,791,526	28,656,576	8,730	28,665,306
HI	2,535,324	697	2,536,021	485,744	.....	485,744	2,049,580	697	2,050,277
ID	4,234,037	968	4,235,005	811,202	.....	811,202	3,422,835	968	3,423,803
IL	52,311,422	11,666	52,323,088	10,022,382	.....	10,022,382	42,289,040	11,666	42,300,706
IN	22,936,088	5,816	22,941,904	4,394,341	.....	4,394,341	18,541,747	5,816	18,547,563
IA	6,212,899	1,256	6,214,155	1,190,334	.....	1,190,334	5,022,565	1,256	5,023,821
KS	5,771,477	1,463	5,772,940	1,105,761	.....	1,105,761	4,665,716	1,463	4,667,179
KY	14,962,447	3,860	14,966,307	2,866,666	.....	2,866,666	12,095,781	3,860	12,099,641
LA	8,755,097	2,094	8,757,191	1,677,395	.....	1,677,395	7,077,702	2,094	7,079,796
ME	3,593,738	(251,529)	3,342,209	688,527	.....	688,527	2,905,211	(251,529)	2,653,682
MD	14,280,338	3,316	14,283,654	2,735,980	.....	2,735,980	11,544,358	3,316	11,547,674
MA	21,033,198	4,845	21,038,043	4,029,765	.....	4,029,765	17,003,433	4,845	17,008,278
MI	51,206,873	13,773	51,220,646	9,810,760	.....	9,810,760	41,396,113	13,773	41,409,886
MN	12,869,603	3,845	12,873,448	2,465,696	.....	2,465,696	10,403,907	3,845	10,407,752
MS	10,134,604	2,106	10,136,710	1,941,696	.....	1,941,696	8,192,908	2,106	8,195,014
MO	19,157,714	4,742	19,162,456	3,670,440	.....	3,670,440	15,487,274	4,742	15,492,016
MT	2,044,172	464	2,044,636	391,644	.....	391,644	1,652,528	464	1,652,992
NE	2,056,541	518	2,057,059	394,014	.....	394,014	1,662,527	518	1,663,045
NV	14,310,158	3,014	14,313,172	2,741,693	.....	2,741,693	11,568,465	3,014	11,571,479
NH	2,760,460	679	2,761,139	528,879	.....	528,879	2,231,581	679	2,232,260
NJ	32,201,066	7,057	32,208,123	6,169,425	.....	6,169,425	26,031,641	7,057	26,038,698
NM*	5,171,897	873	5,172,770	990,887	.....	990,887	4,181,010	873	4,181,883
NY	55,804,488	13,983	55,818,471	10,691,620	.....	10,691,620	45,112,868	13,983	45,126,851
NC	35,042,869	9,397	35,052,266	6,713,887	.....	6,713,887	28,328,982	9,397	28,338,379
ND	499,156	147	499,303	95,634	.....	95,634	403,522	147	403,669
OH	44,012,508	11,012	44,023,520	8,432,387	.....	8,432,387	35,580,121	11,012	35,591,133
OK	6,906,804	1,473	6,908,277	1,323,279	.....	1,323,279	5,583,525	1,473	5,584,998
OR	15,054,272	4,303	15,058,575	2,884,258	.....	2,884,258	12,170,014	4,303	12,174,317
PA	37,914,512	8,441	37,922,953	7,264,068	.....	7,264,068	30,650,444	8,441	30,658,885
PR	13,675,088	3,640	13,678,728	2,620,020	.....	2,620,020	11,055,068	3,640	11,058,708
RI	5,096,307	1,301	5,097,608	976,405	.....	976,405	4,119,902	1,301	4,121,203
SC	19,157,131	4,927	19,162,058	3,670,328	.....	3,670,328	15,486,803	4,927	15,491,730
SD	839,629	213	839,842	160,865	.....	160,865	678,764	213	678,977
TN	22,094,179	5,746	22,099,925	4,233,039	.....	4,233,039	17,861,140	5,746	17,866,886
TX	61,926,140	13,096	61,939,236	11,864,472	.....	11,864,472	50,061,668	13,096	50,074,764
UT*	6,053,827	987	6,054,814	1,159,857	.....	1,159,857	4,893,970	987	4,894,957
VT	1,242,041	381	1,242,422	237,963	.....	237,963	1,004,078	381	1,004,459
VA	18,453,304	3,941	18,457,245	3,535,481	.....	3,535,481	14,917,823	3,941	14,921,764
WA	22,238,858	5,178	22,244,036	4,260,758	.....	4,260,758	17,978,100	5,178	17,983,278
WV	4,552,003	971	4,552,974	872,121	.....	872,121	3,679,882	971	3,680,853
WI	17,319,011	4,253	17,323,264	3,318,161	.....	3,318,161	14,000,850	4,253	14,005,103
WY	1,199,212	168	1,199,380	229,758	.....	229,758	969,454	168	969,622
Total	1,061,806,920	(0)	1,061,806,920	203,432,320	.....	203,432,320	858,374,600	(0)	858,374,600

* Includes funds allocated to the Navajo Nation.

III. Attachment C—Dislocated Worker State Formula PY 2011 Reallotment Methodology

Reallotment Summary: This year ETA analyzed State WIA Dislocated Worker 9130 financial reports from the June 30, 2011 reporting period for PY 2010 to determine if any State had unobligated funds in excess of 20 percent of their PY 2010 allotment amount. If so, that amount will be recaptured from PY 2011 funds and reallotted among eligible states.

• Source Data: State WIA 9130 financial status reports.

• Programs: State Dislocated Worker. State Rapid Response. Local Dislocated Worker (includes local administration).

• Period: June 30, 2011.
• Years covered: PY 2010 and Fiscal Year (FY) 2011.

Reallotment Calculations:
(1) Each State's total amount of State obligations of PY 2010 (including FY 2011) funds for the Dislocated Worker program is calculated. State obligations are considered to be the total of the Dislocated Worker statewide activities

obligations, Rapid Response obligations, and 100 percent of local Dislocated Worker program authorized (which includes local admin authorized). The Dislocated Worker total unobligated balance is calculated to be the Dislocated Worker 2010 allotment amount (adjusted for recapture/reallotment and statutory formula-based rescissions) less the calculated total Dislocated Worker obligations. (For reallotment purposes, Dislocated Worker allotted funds transferred to the Navajo Nation are added back to Arizona, New

Mexico, and Utah Local Dislocated Worker authorized amounts).

(2) Section 667.150 of the regulations provides that the recapture calculations exclude the reserve for State administration. Data on State administrative authorized and obligated amounts are not normally available on WIA 9130 financial reports. Therefore, additional data on State administrative amounts included in the PY 2010 and FY 2011 statewide activities amounts authorized and obligated as of June 30, 2011 are requested from those States calculated to be potentially liable for recapture.

(3) In the preliminary calculation to determine States potentially liable for recapture, the Dislocated Worker portion of the state administrative amounts authorized and obligated (100 percent of authorized is treated as obligated) is estimated by calculating the five percent maximum amount for State Dislocated Worker administrative costs using the Dislocated Worker state allotment amounts (adjusted for recapture/reallotment and statutory formula-based rescissions). If a State provides actual State Dislocated Worker administrative costs authorized and obligated in the comments section of revised 9130 reports, this data replaces the estimates. Based on the requested additional actual data submitted by potentially liable States on revised reports, the Dislocated Worker total allotment for these States is reduced by the Dislocated Worker portion of the State administrative amount authorized and the Dislocated Worker total obligations for these States are reduced by the Dislocated Worker portion of the State administrative amounts obligated. These calculations are done separately for PY 2010 and FY 2011, with final calculations being added together for the total year amounts.

(4) States (including those adjusted by State administrative data) with unobligated balances for combined PY 2010/FY 2011 exceeding 20 percent of the combined PY 2010/FY 2011 Dislocated Worker allotment (adjusted for recapture/reallotment and statutory formula-based rescissions) will have their PY 2011 Dislocated Worker funding (FY 2012 portion) reduced (recaptured) by the amount of the excess.

(5) As calculated above, states with unobligated balances not exceeding 20 percent will receive in their PY 2011 Dislocated Worker funding (FY 2012 portion) a share of the total recaptured amount based on their share of the total PY 2010/FY 2011 Dislocated Worker allotments amount (adjusted for recapture/reallotment, financial

sanctions, and statutory formula based rescissions) for all such States.

Signed at Washington, DC this 19th day of April, 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012-10217 Filed 4-26-12; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Existing Information Collection; Roof Control Plans for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 75.215, 75.220(a)(1), 75.221(a), 75.222(a), and 75.223(a), (b), and (d). OMB last approved this information collection request on September 28, 2009. The package expires on September 30, 2012.

DATES: All comments must be postmarked or received by midnight Eastern Time on June 26, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with "OMB 1219-0004" and sent to both the Office of Management and Budget (OMB) and the Mine Safety and Health Administration (MSHA). Comments to MSHA may be sent by any of the methods listed below.

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

- *Facsimile:* 202-693-9441, include "OMB 1219-0004" in the subject line of the message.

- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at moxness.greg@dol.gov (email); 202-693-9440 (voice); or 202-693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 302(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act) 30 U.S.C. 846, requires that a roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine be first approved by the Secretary of Labor (Secretary) before implementation by the operator. The plan must show the type of support and spacing approved by the Secretary, and the plan must be reviewed at least every six months by the Secretary.

This information collection addresses the recordkeeping associated with:

75.215—Longwall mining systems

75.220(a)(1)—Roof control plan

75.221(a)—Roof control plan information

75.222(a)—Roof control plan-approval

75.223(a), (b), & (d)—Evaluation and revision of roof control plan

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to this safety standard on roof control plans for underground coal mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

- Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses) to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939. OMB clearance requests are available on MSHA's Web site at <http://www.msha.gov> under "Rules & Regs" on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements*. The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA during inspections to determine compliance with safety and health standards. MSHA has updated the data in respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

Summary

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Roof Control Plans for Underground Coal Mines.

OMB Number: 1219-0004.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 75.215, 75.220, 75.221, 75.222, 75.223.

Total Number of Respondents: 549.

Frequency: Various.

Total Number of Responses: 3,151.

Total Burden Hours: 15,564 hours.

Total Annual Cost Burden: \$8,185.

Comments submitted in response to this notice will be summarized and

included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: April 23, 2012.

George F. Triebisch,

Certifying Officer.

[FR Doc. 2012-10134 Filed 4-26-12; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Existing Information Collection; Underground Retorts

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 57.22401(b). The Office of Management and Budget last approved this information collection request on October 13, 2009.

DATES: All comments must be postmarked or received by midnight Eastern Time on June 26, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with "OMB 1219-0096" and sent to both the Office of Management and Budget (OMB) and Mine Safety and Health Administration (MSHA). Comments to MSHA may be sent by any of the methods listed below.

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

- *Facsimile:* 202-693-9441, include "OMB 1219-0096" in the subject line of the message.

- *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

Comments to OMB may be sent by mail addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer for MSHA.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at moxness.greg@dol.gov (email); 202-693-9440 (voice); or 202-693-9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813, authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Title 30 CFR 57.22401 sets forth the safety requirements for using a retort in underground metal and nonmetal I-A and I-B mines (those that operate within a combustible ore and either liberate methane or have the potential to liberate methane based on the history of the mine or the geological area in which the mine is located). At present, this applies only to underground oil shale mines. The standard requires that prior to ignition of underground retort; mine operators must submit a written ignition and operation plan to the appropriate MSHA District Manager which contains site-specific safeguards and safety procedures for the underground areas of the mine which are affected by the retorts.

This information collection addresses the recordkeeping associated with: 30 CFR 57.22401(b) Underground Retorts (I-A and I-B mines).

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed extension of the information collection related to underground retorts in Metal and Nonmetal I-A and I-B mines. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the

collection of information, including the validity of the methodology and assumptions used;

- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (e.g., permitting electronic submissions of responses) to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209-3939. OMB clearance requests are available on MSHA's Web site at <http://www.msha.gov> under "Rules & Regs" on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements*. The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The request for information contains provisions whereby mine operators can maintain compliance with the regulations and assure the safety of miners where underground retorts are used. MSHA has updated the data in respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

Summary

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Underground Retorts.
OMB Number: 1219-0096.
Affected Public: Business or other for-profit.
Cite/Reference/Form/etc: 30 CFR 57.22401.
Total Number of Respondents: 1.

Frequency: Infrequent.

Total Number of Responses: 1.

Total Burden Hours: 160 hours.

Total Annual Cost Burden: \$ 0.0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: April 23, 2012.

George F. Triebisch,

Certifying Officer.

[FR Doc. 2012-10135 Filed 4-26-12; 8:45 am]

BILLING CODE 4510-43-P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral and Economic Sciences (#1171).

Date/Time: May 17, 2012; 8:30 a.m. to 5:30 p.m.; May 18, 2012; 8:30 a.m. to 1 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford I, Room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Ms. Lisa Jones, Office of the Assistant Director, Directorate for Social, Behavioral and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, Virginia 22230, 703-292-8700.

Summary of Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate programs and activities.

Agenda: Agenda Topics (order of discussion is subject to change).

Updates and discussions on continuing activities:

- Discussion with NSF Director and Deputy Director
- SBE Advisory Committee—Subcommittee activities
- SMA Committee of Visitors (COV) Report
- NSF INSPIRE and I-Corps Initiatives
- Government-wide Big Data Initiative
- SBE data-related initiatives
- Innovation in SBE/NCSES
- NSF Merit Review Criteria
- On the Horizon

Dated: April 24, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012-10150 Filed 4-26-12; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board, 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 meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Wednesday, May 2, 2012 from 9:00 a.m. to 6:00 p.m., Thursday, May 3, 2012 from 8:00 a.m. to 3:30 p.m., and Friday, May 4, 2012 from 8:00 a.m. to 3:00 p.m.

PLACE: These meetings will be held at the National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. 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 meeting and provide name and organizational affiliation. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

UPDATES: Please refer to the National Science Board Web site www.nsf.gov/nsb for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be found at <http://www.nsf.gov/nsb/notices/>.

AGENCY CONTACT: Jennie L. Moehlmann, jmoehlma@nsf.gov, (703) 292-7000.

PUBLIC AFFAIRS CONTACT: Dana Topousis, dtopousi@nsf.gov, (703) 292-7750.

STATUS: Portions open; portions closed.

Open Sessions

May 2, 2012

9:00-11:00 a.m.
 1:30-5:30 p.m.

May 3, 2012

8:00-9:30 a.m.
 11:00-12:00 noon
 1:00-2:00 p.m.
 2:00-3:00 p.m.

May 4, 2012

9:15-10:15 a.m.
 10:15-10:45 a.m.
 10:45-11:45 a.m.
 12:45-3:00 p.m.

Closed Sessions

May 2, 2012

11:00-12:00 noon

5:30–6:00 p.m.

May 3, 2012

9:30–11:00 a.m.

3:00–3:30 p.m.

May 4, 2012

8:00–9:00 a.m.

9:00–9:15 a.m.

MATTERS TO BE DISCUSSED:

Wednesday, May 2, 2012

CSB Subcommittee on Facilities (SCF)

Open Session: 9:00–11:00 a.m.

- Chairman's Remarks
- Approval of minutes from the February 2, 2012 meeting
- Annual Portfolio Review of Facilities
- Chairman's Closing Remarks

Closed Session: 11:00–12:00 noon

- Chairman's Remarks
- Closed continuation of Annual Portfolio Review of Facilities
- Chairman's Closing Remarks

Committee on Programs and Plans (CPP)

Open Session: 1:30–5:30 p.m.

- Approval of minutes from the February 2012 meeting
- Committee Chairman's Remarks
- Information Item: Large Synoptic Survey Telescope (LSST)
- Information Item: National High Magnetic Field Laboratory (NHMFL)
- Information Item: Renewal of Award for Management of the National Center for Atmospheric Research (NCAR)
- Information Item: Operations and Management of *JOIDES Resolution* Scientific Drillship
- Information Item: National Astronomy and Ionosphere Center (Arecibo) Change in Management following Recompetition
- CPP Program Portfolio Planning: Neuroscience
- Task Force on Unsolicited Mid-Scale Research: Discussion of the Draft Final Report

Closed Session: 5:30–6:00 p.m.

- Committee Chairman's Remarks
- Approval of Closed CPP Minutes for February 2012
- Information Item: Advanced Laser Interferometer Gravity Wave Observatory (LIGO)

Thursday, May 3, 2012

Committee on Strategy and Budget (CSB)

Open Session: 8:00–9:30 a.m.

- Committee Chairman's Remarks
- Approval of the February 3, 2012 Open Session minutes

- FY 2012 and 2013 Budget Updates
- Task Force on Data Policies
- Subcommittee on Facilities (SCF)
- Various Strategies of NSF Solicitations
- Options for NSB Committee Organization
- Closing Remarks

Committee on Strategy and Budget (CSB)

Closed Session: 9:30–11:00 a.m.

- Approval of the February 3, 2012 Closed Session Minutes
- Future Fiscal Year Budgetary Policies, Planning and Processes

Plenary Board

Open Session: 11:00–12:00 noon

- Presentations by Honorary Award Recipients—Dr. Scott Aaronson, Alan T. Waterman Award; Dr. Robert Wood, Alan T. Waterman Award

Subcommittee on Polar Issues (SOPI)

Open Session: 1:00–2:00 p.m.

- Chairman's Remarks and Approval of Open Session Minutes, February 2012
- Acting Director's Remarks
- Presentation—Lake El'gygytyn: Early Results from an Unprecedented Arctic Terrestrial Climate Record
- Update on Antarctic Logistics Support

Committee on Audit and Oversight (A&O)

Open Session: 2:00–3:00 p.m.

- Approval of Minutes of the February 2, 2012 Open Session
- Committee Chairman's Opening Remarks
- Inspector General's Update
- Chief Financial Officer's Update
- Human Capital Management Update
- Merit Review Report 2011
- Committee Chairman's Closing Remarks

Committee on Audit and Oversight (A&O)

Closed Session: 3:00–3:30 p.m.

- Approval of Minutes of the February 2, 2012 Closed Session
- Committee Chair's Opening Remarks
- Procurement Activities
- Committee Chair's Closing Remarks

Friday, May 4, 2012

Plenary Board Meeting

Executive Closed Session: 8:00–9:00 a.m.

- Approval of Executive Closed Session Minutes, February 2012
- Board Member Proposals
- Election for NSB Chairman and Vice Chairman

- NSF Personnel
- Strategic Alignment of Budget and Functions

Plenary Board Meeting

Closed Session: 9:00–9:15 a.m.

- Approval of Closed Session Minutes, February 2012
- Closed Committee Reports

Committee on Education and Human Resources (CEH)

Open Session: 9:15–10:15 a.m.

- Approval of February 3, 2012 Committee Meeting Minutes and February 28, 2012 Teleconference Meeting Minutes
- Improving STEM Education: Discussion on Taking Effective Practices to Scale

Committee on Science & Engineering Indicators (SEI)

Open Session: 10:15–10:45 a.m.

- Approval of the February 3, 2012 Meeting Minutes
- Committee Chairman's Remarks
- Discussion of the two Companions to *Science and Engineering Indicators 2012*
- Concluding Remarks

Plenary Open

Open Session: 10:45–11:45 a.m.

- Presentations by Honorary Award Recipients—Dr. Lawrence Krauss, NSB Public Service Award (Individual); Dr. Joe Palca, NPR Science Desk, NSB Public Service Award (Group)

Plenary Open

Open Session: 12:45–3:00 p.m.

- Recognition of the Class of 2012
- Approval of Open Session Minutes, February 2012
- Chairman's Report
- Director's Report
- Open Committee Reports

Meeting Adjourns: 3:00 p.m.

Ann Bushmiller,

Senior Legal Counsel to the National Science Board.

[FR Doc. 2012–10336 Filed 4–25–12; 4:15 pm]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-10047; NRC-2012-0097]

Environmental Assessment and Finding of No Significant Impact for Exemption Request for Franciscan St. Anthony Health—Crown Point, Crown Point, IN**AGENCY:** Nuclear Regulatory Commission.**ACTION:** Notice of availability.**FOR FURTHER INFORMATION CONTACT:**

Cassandra F. Frazier, Senior Licensing Reviewer, Materials Licensing Branch, Division of Nuclear Materials Safety, Region III Office, U.S. Nuclear Regulatory Commission, Lisle, Illinois 60532. Telephone: 630-829-9830; fax number: 630-515-1078; email: Cassandra.Frazier@nrc.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the renewal of Material License No. 13-15933-01 issued to Franciscan St. Anthony Health—Crown Point, Crown Point, Indiana. The license renewal would include an exemption to Title 10 of the *Code of Federal Regulations* (10 CFR) 35.400, and related rules to permit the continued use of brachytherapy sealed sources that do not have an approved Sealed Source and Device Registry (SSDR).

The NRC has determined that the license renewal qualifies for a categorical exclusion under 10 CFR 51.22(c)(14) and therefore does not require an Environmental Assessment (EA). Issuance of an exemption to 10 CFR 35.400 is not covered by a categorical exclusion. Therefore, an EA of the proposed exemption is required under 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The license renewal with the authorization for an exemption to 10 CFR 35.400 and related rules will be issued following the publication of this Notice.

II. Environmental Assessment

The proposed action is the issuance of an exemption to NRC rules at 10 CFR 30.32(g), 35.49 and 35.400 pursuant to 10 CFR 30.11 and 35.19. The purpose of the proposed exemption is to authorize the licensee, Franciscan St. Anthony Health—Crown Point, to continue the use of brachytherapy sealed sources previously authorized by the NRC, but that have not been approved in the

Sealed Source and Device (SSD) Registry.

The licensee was authorized by the NRC on April 8, 1974, to possess and use byproduct materials for medical use at its facility in Crown Point, Indiana. While reviewing the licensee's license renewal application dated October 26, 2010, the NRC staff determined that fourteen sealed brachytherapy sources have been in its possession and use since September 18, 1986 (25 years), including cesium-137 sealed sources, model numbers 1862, 1864 and 1866, manufactured by Radiation Therapy Resources, Inc. The cesium-137 sealed sources are not approved in the SSD Registry as required by the NRC regulations at 10 CFR 35.400(a).

Provisions in 10 CFR 35.400(a) require that sealed sources for manual brachytherapy medical use must be approved in the SSD Registry. The SSD Registry was established in 1989, as a formalized database to be used both by the NRC and the Agreement States in order to serve as a "clearing house" for sources and devices that meet the regulatory requirements. Under NRC rules at 10 CFR 30.32(g), normally an applicant for a specific license to use byproduct material in the form of a sealed source or in a device that contains a sealed source must either identify the source or device by manufacturer and model number as registered in the SSD Registry, or provide the information described in 10 CFR 32.210(c) (*i.e.*, information necessary to enable a review to determine whether the device should be added to the Registry). In this case, however, use of the cesium-137 sources predates the SSD Registry. Current registration is not possible because the manufacturer of the sources, Radiation Therapy Resources, Inc., is no longer in business and the licensee does not have sufficient information to permit the normally-required SSD Registry review.

After telephone discussions with the NRC staff, the licensee, in letters dated May 3, 2011, and June 16, 2011, submitted a request for an exemption to 10 CFR 35.400(a) to possess the cesium-137 sealed sources for therapeutic medical use. The licensee stated that continued use of the cesium-137 sealed sources would be medically beneficial. Specifically, the sealed sources would be used to provide brachytherapy procedures to patients with early stage of gynecological cancer or to give boost dose post external beam therapy without radiating the dose to extra normal tissue. The licensee also stated that the cesium-137 sealed sources have been used for 25 years with no occurrence of a medical event. Quarterly

inventory checks have been conducted and the sources have been accounted for and stored safely and securely between the uses. The licensee conducted six-month leak tests on the sealed sources as required by the license, with no incidence of a leaking source.

The NRC staff reviewed the licensee's exemption request, information pertaining to the structural integrity of the cesium-137 sources, and historical records on the use of the cesium-137 sealed sources. Historical use of the sealed sources, which predates the existence of the SSD Registry, has been conducted safely, without environmental releases, and there are no indications that the structural integrity of the sources would be adversely affected if the current type of use continues.

The NRC staff's review also found that (1) the licensee is qualified by sufficient training and experience and has sufficient facilities and equipment, with appropriate procedures, to safely use and handle the requested quantity of radioactive material in unshielded form, and has the necessary financial assurance; and (2) there is historical evidence extending to over two decades that the licensee has handled this and similar types of sources without incident. Based on its findings, the NRC staff concludes that granting the exemption is authorized by law, will not endanger life, property, or the common defense and security, and is otherwise in the public interest. The NRC plans to renew the license with the exemption provided in a special license condition that states, "Notwithstanding the requirements of 10 CFR 30.32(g), 35.49, and 35.400, the licensee may use Radiation Therapy Resources, Inc., Model Nos. 1862, 1864, and 1866 manual brachytherapy sources for medical uses authorized under the provisions of 10 CFR 35.400."

The staff consulted with the State of Indiana, and the State had no comments on the proposed action.

III. Finding of No Significant Impact

On the basis of the EA, the NRC has concluded that there are no significant environmental impacts from the issuance of the exemption to the NRC rules at 10 CFR 30.32(g), 35.49 and 35.400, and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the proposed exemption request and supporting documentation, are available online in the NRC Library at <http://www.nrc.gov/reading-rm/>

adams.html. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

- (1.) Franciscan St. Anthony Health-Crown Point, Licensee exemption request, May 3, 2011, (ML111230830);
- (2.) Franciscan St. Anthony Health-Crown Point, Licensee exemption request, June 16, 2011, (ML111801256);
- (3.) Franciscan St. Anthony Health-Crown Point, Licensee Background information, (ML111470614); and
- (4.) Franciscan St. Anthony Health-Crown Point, License Number 13-15933-01, (ML120800176).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737 or by email to pdr.resource@nrc.gov.

These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 18th day of April 2012.

For the Nuclear Regulatory Commission.

Patricia J. Pelke,

Chief, Material Licensing Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. 2012-10191 Filed 4-26-12; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30043; 812-13889]

Advisors Series Trust and Orinda Asset Management, LLC; Notice of Application

April 23, 2012.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF THE APPLICATION:

Applicants request an order that would permit them to enter into and materially

amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Advisors Series Trust (the "Trust") and Orinda Asset Management, LLC (the "Advisor").

FILING DATES: The application was filed on April 7, 2011, and amended on August 10, 2011, February 29, 2012, and April 20, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 18, 2012 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants, Advisors Series Trust, 615 East Michigan Street, Milwaukee, WI 53202 and Orinda Asset Management, LLC, 4 Orinda Way, Suite 100B, Orinda, CA 94563.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551-6915, or Jennifer L. Sawin, Branch Chief, at (202) 551-6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust organized as a series investment company, is registered under the Act as an open-end management investment company and currently offers forty series, one of which is advised by the Advisor.¹ The Advisor, a Delaware

limited liability company, is principally owned by Orinda Investment Partners, LLC, a limited liability company organized under Delaware law, and the four managing partners of the Advisor each have a minority interest in the Advisor. The Advisor is, and any future Advisor will be, registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Advisor will serve as investment adviser to the Funds under an investment advisory agreement with the Trust ("Advisory Agreement")² that will have been approved by each respective Fund's initial shareholder and the Trust's Board of Trustees ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of either the Trust or the Advisor ("Independent Trustees") in the manner required by sections 15(a) and (c) of the Act and rule 18f-2 under the Act.

2. Under the terms of the Advisory Agreement, the Advisor, subject to oversight of the Board, and in consultation with the lead subadvisor ("Lead Subadvisor"), if any, furnishes a continuous investment program for each Fund. The Advisor will provide the Funds with overall management services and, in consultation with the Lead Subadvisor, if any, as it deems appropriate, continuously review, supervise and administer each Fund's investment program, subject to the supervision of, and policies established by the Board.³ For the investment

that: (a) is advised by the Advisor or a person controlling, controlled by, or under common control with the Advisor or its successor (each, also an "Advisor"); (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the requested order (any such series, a "Fund" and collectively, the "Funds"). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant and each series that currently intends to be a Fund is identified in the application. For purposes of the requested order, "successor" is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Fund contains the name of a Subadvisor (as defined below), that name will be preceded by the name of the Advisor.

² "Advisory Agreement" includes advisory agreements with an Advisor for future Funds.

³ In performing these functions, the Advisor may consult with a "Lead Subadvisor," which will be registered as an investment adviser under the Advisers Act. The Advisor will enter into an agreement with a Lead Subadvisor, (the "Lead Subadvisory Agreement"), to assist the Advisor in the identification and selection of Subadvisors and in the portfolio construction process. However, the responsibility for the evaluation, selection and recommendation of the Subadvisors to manage all or a portion of the assets of a Fund, as well as the monitoring and review of each Subadvisor,

¹ Applicants request relief with respect to any existing and any future series of the Trust or any other registered open-end management company

management services it will provide to each Fund, the Advisor will receive the fee specified in the Advisory Agreement from such Fund based on the average daily net assets of the Fund. The Advisory Agreement permits the Advisor, subject to the approval of the Board, to delegate certain responsibilities to one or more subadvisors ("Subadvisors"). The Advisor expects to enter into subadvisory agreements with various Subadvisors ("Subadvisory Agreements") to provide investment advisory services to the Funds.⁴ Each Subadvisor is, and any future Subadvisor will be, an investment adviser as defined in section 2(a)(20) of the Act as well as registered with the Commission as an "investment adviser" under the Advisers Act. The Advisor evaluates, allocates assets to and oversees the Subadvisors, and makes recommendations about their hiring, termination and replacement to the Board, at all times subject to the authority of the Board. In performing these functions, the Advisor may consult with a Lead Subadvisor.⁵ The Advisor will compensate the Subadvisors out of the advisory fee paid by a Fund to the Advisor under the Advisory Agreement.

3. Applicants request an order to permit the Advisor, subject to Board approval, to select certain Subadvisors to manage all or a portion of the assets of a Fund or Funds pursuant to a Subadvisory Agreement and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadvisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or of the Advisor, other than by reason of serving as a subadvisor to one or more of the Funds ("Affiliated Subadvisor"). In addition, the requested relief will not extend to any Lead Subadvisor.

4. Applicants also request an order exempting the Funds from certain disclosure provisions described below that may require a Fund to disclose fees paid by the Advisor to each Subadvisor. Applicants seek an order to permit the

ultimately rests with the Advisor. For purposes of the application, no Lead Subadvisor, or future Lead Subadvisor, is an applicant or a "Subadvisor" and relief will not extend to any advisory agreement with a Lead Subadvisor.

⁴ The Advisor expects to initially enter into Subadvisory Agreements with Aria Partners GP, LLC, GRT Capital Partners, LLC, OMT Capital Management, LLC and M.A. Weatherbie & Co., Inc.

⁵ With respect to the first Fund to be managed by the Advisor in the Trust, the Orinda Multi-Manager Hedged Equity Fund, the Advisor has entered into a Lead Subadvisory Agreement with SkyView Investment Advisors, LLC.

Trust to disclose for a Fund (as both a dollar amount and as a percentage of the Fund's net assets): (a) the aggregate fees paid to the Advisor and any Affiliated Subadvisor; and (b) the aggregate fees paid to Subadvisors other than Affiliated Subadvisors (collectively, "Aggregate Fee Disclosure"). Any Fund that employs an Affiliated Subadvisor will provide separate disclosure of any fees paid to the Affiliated Subadvisor. Each Fund will also provide separate disclosure of fees paid to the Lead Subadvisor, if any.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N-1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N-1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a-1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("1934 Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S-X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6-07(2)(a), (b), and (c) of Regulation S-X require a registered investment company to include in its financial statement information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the

Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Advisor subject to the review and approval of the Board, to select the Subadvisors who are best suited to achieve the Fund's investment objectives. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisors is substantially equivalent to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Funds and may preclude the Funds from acting promptly when the Advisor and Board consider it appropriate to hire Subadvisors or amend Subadvisory Agreements. Applicants note that the Advisory Agreements, any Lead Subadvisory Agreement, and Subadvisory Agreements with Affiliated Subadvisors will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f-2 under the Act.

7. If a new Subadvisor is retained in reliance on the requested order, the Funds will inform shareholders of the hiring of a new Subadvisor pursuant to the following procedures ("Modified Notice and Access Procedures"): (a) within 90 days after a new Subadvisor is hired for any Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;⁶ and (b) the Fund will make

⁶ A "Multi-manager Notice" will be modeled on a Notice of Internet Availability as defined in rule 14a-16 under the Exchange Act, and specifically will, among other things: (a) Summarize the relevant information regarding the new Subadvisor; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Funds.

A "Multi-manager Information Statement" will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Subadvisors provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, as indicated above, the applicable Board would comply with the requirements of sections 15(a) and 15(c) of the 1940 Act before entering into or amending Subadvisory Agreements.

8. Applicants assert that the requested disclosure relief would benefit shareholders of the Funds because it would improve the Advisor's ability to negotiate the fees paid to Subadvisors. Applicants state that the Advisor may be able to negotiate rates that are below a Subadvisor's "posted" amounts if the Advisor is not required to disclose the Subadvisors' fees to the public. Applicants submit that the requested relief will also encourage Subadvisors to negotiate lower advisory fees with the Advisor if the lower fees are not required to be made public.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the manager of managers structure described in the application. The prospectus will prominently disclose that the Advisor has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisors and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Subadvisor within 90 days after the hiring of the new

Subadvisor pursuant to the Modified Notice and Access Procedures.

4. The Advisor will not enter into a Subadvisory Agreement with any Affiliated Subadvisor without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination and selection of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a Subadvisor change is proposed for a Fund with an Affiliated Subadvisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Subadvisor derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0-1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

8. The Advisor will provide the Board, no less frequently than quarterly, with information about the profitability of the Advisor on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadvisor during the applicable quarter.

9. Whenever a Subadvisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the profitability of the Advisor.

10. The Advisor will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets and, subject to review and approval of the Board, will (i) Set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisors to manage all or part of a Fund's assets; (iii) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisors; (iv) monitor and evaluate the performance of Subadvisors; and (v) implement procedures reasonably designed to ensure that the Subadvisors comply with each Fund's investment objective, policies and restrictions.

11. No director or officer of the Trust, or of a Fund, or director or officer of the Advisor, will own directly or indirectly

(other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadvisor, except for (a) ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the Advisor; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadvisor or an entity that controls, is controlled by, or is under common control with a Subadvisor.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin O'Neill,
Deputy Secretary.

[FR Doc. 2012-10157 Filed 4-26-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30042; 812-13627]

Praxis Mutual Funds and Everence Community Investments, Inc.; Notice of Application

April 23, 2012.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of an application to amend a prior order pursuant to: (i) Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act") granting an exemption from section 17(a) of the Act and (ii) section 17(d) of the Act and rule 17d-1 under the Act to permit certain transactions.

APPLICANTS: Praxis Mutual Funds ("Trust") and Everence Community Investments, Inc. ("ECI").

SUMMARY OF APPLICATION: Applicants request an order ("Requested Order") to amend a prior order permitting the Trust and its series to invest in certain securities issued by ECI ("Prior Order").¹ Applicants seek to amend the Prior Order to permit the Trust to continue to invest in securities issued

¹ MMA Praxis Mutual Funds, et al., Investment Company Act Release Nos. 25263 (Nov. 14, 2001) (notice) and 25315 (Dec. 11, 2001) (order).

by ECI following the implementation of certain changes in ECI's community development investment program.

FILING DATES: The application was filed on January 27, 2009 and amended on June 29, 2009, September 14, 2010, August 5, 2011, March 19, 2012, and April 20, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 18, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants, Praxis Mutual Funds, 3435 Stelzer Road, Columbus, Ohio 43219 and Everence Community Investments, Inc., 1110 North Main Street, Goshen, Indiana 46528.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551-6819, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Trust is registered under the Act as an open-end management investment company. The Trust currently consists of several separate investment portfolios and may organize additional investment portfolios in the future ("Praxis Funds"). Everence Capital Management, Inc. ("Everence Capital"), an investment adviser registered under the Investment Advisers Act of 1940, serves as the

investment adviser to the Trust.² ECI is a not-for-profit corporation that is exempt from registration as an investment company under section 3(c)(10)(A) of the Act. Everence Capital and ECI are operated under the auspices of MMA Stewardship Agency, the financial services arm of the Mennonite Church.

2. In carrying out its investment program, each of the Praxis Funds seeks to promote human well-being, peace and justice by using the tools of socially responsible investing. As part of this commitment, and consistent with more specific investment criteria set forth in the prospectus relating to each of the Praxis Funds, the Trust's board of trustees (the "Praxis Board") has authorized each of the Praxis Funds to invest a limited portion of its assets in securities that offer a rate of return below the then prevailing market rate but present attractive opportunities for furthering social and economic well-being of disadvantaged individuals and their communities.

3. The Prior Order permits the Praxis Funds to invest a limited portion of their assets in variable rate notes issued in connection with ECI's community development investment program (the "Program"), which is designed to seek out and channel resources to experienced domestic and international community development organizations (each, a "Participating Borrower").³ Such variable rate notes, when issued by an ECI Pool (as defined below) and made available to the Praxis Funds, are referred to as "Program Notes."⁴ Holders of Program Notes issued by an ECI Pool are referred to as

² Applicants also request relief with respect to future portfolios of the Trust and any other registered investment companies that, in the future, are advised by Everence Capital or entities controlling, controlled by or under common control with Everence Capital. All existing investment companies that currently intend to rely on the Requested Order have been named as applicants, and any other existing or future investment companies that subsequently rely on the Requested Order will do so only in accordance with the terms and conditions set forth in the application. Applicants represent that, except as requested or expressly updated in the application, the representations set forth in the application relating to, and the terms and provisions of, the Prior Order remain unchanged.

³ ECI states that it seeks additional funding from institutional investors, as well as charitable foundations and other sources. Possible arrangements include "loan loss reserves" or a "first loss" program funded by investors (including charitable foundations or other organizations) (each, a "Sustaining Investor") willing to subordinate their interests in the Existing Pools (as defined below) or to invest on terms that are less advantageous than those available to the Praxis Funds or other investors. The Trust will not be permitted to become a Sustaining Investor.

⁴ Program Notes include New Notes (as defined below).

"Noteholders." Participating Borrowers, in turn, re-lend money to individuals or specific projects in local communities.

4. In accordance with the Prior Order, each of the Praxis Funds has acquired Program Notes ("Original Notes") issued by two investment pools ("Existing Pools") organized and currently maintained by ECI.⁵ The "below market pool" issued notes with maturities of between one and five years and anticipated average returns of 60% of the rate then available on U.S. Treasury instruments of similar maturities ("Treasury Rate"). The "near market pool" issued notes with maturities ranging between three and five years and expected average returns of 90% of the Treasury Rate. Interest rates payable on the notes are adjusted semi-annually to reflect changes in the Treasury Rate.

5. Until 2004, payments received from Participating Borrowers were fully adequate to meet ECI's obligations to the holders of Original Notes (including the Trust) and to continue to fund further loans to the community of high social impact organizations ECI seeks to serve. In 2004, however, prevailing interest rates increased. This resulted in an increase in the interest payments required to be made to Noteholders and a "mismatch" between the payments ECI was receiving from Participating Borrowers and the payments to which Noteholders were entitled. During the "mismatch" period, ECI continued to honor outstanding notes in accordance with their terms. To avoid jeopardizing the overall Program, however, the Existing Pools effectively ceased issuing notes. Applicants state that ECI determined that certain changes in the Program would be appropriate, including making available to the Praxis Funds notes that include terms that differ from those of the Original Notes ("New Notes"). The increased flexibility of the New Notes is intended to reduce the potential for any such "mismatch" in the future.

6. Applicants propose the following changes in the Program:

(a) Applicants state that New Notes will be subject to a change in the manner in which applicable interest

⁵ ECI may establish similar pools in the future ("Future Pools" and, together with Existing Pools, "ECI Pools") and may make notes issued by such Future Pools available to the Praxis Funds. Except for maturities and returns, any Future Pool, interests in which are made available to the Praxis Funds, would have the same characteristics as the Existing Pools and notes issued by such Future Pools would have the same characteristics as the notes then issued by the Existing Pools. To the extent that notes issued by Future Pools are made available to any Praxis Fund, applicants request that relief granted pursuant to the application with respect to investments in the Existing Pools also apply with respect to investments in Future Pools.

rates are computed. Applicants represent that the interest rate paid on the New Notes will be set with reference to the average Treasury Rate over the preceding three year period ("Average Treasury Rate") rather than the Treasury Rate in effect as of the date on which the interest rate is set or reset. Applicants further represent that the applicable rate for the near market pool will be reduced from 90% of the Treasury Rate to not less than 80% of the Average Treasury Rate, and the applicable rate for the below market pool will be reduced from 60% of the Treasury Rate to 50% of the Average Treasury Rate. Applicants also state that New Notes may be subject to the implementation of an interest rate floor and cap. ECI expects that the proposed cap will be 3% for the below market pool and 4.5% for the near market pool, with a recommended floor of between 1% and 1.5% for both pools. Applicants represent that further changes in the future with respect to computation of interest rates and such floors/caps will be subject to specified notice rights and the right to tender notes back to the issuer at face value (including accrued interest) without penalty.

(b) Applicants acknowledge that each Praxis Fund might be deemed to be participating in a joint transaction with Everence-related Organizations (as defined below) other than ECI ("Co-investors") through its investment in Program Notes. Therefore, applicants seek to clarify that the Co-investors may make loans to Participating Borrowers or purchase Program Notes, provided that any loans made to Participating Borrowers by Co-investors do not disadvantage the Praxis Funds and the terms of the Program Notes acquired by the Praxis Funds are not less advantageous than the terms of the Program Notes acquired by any Co-investor.

(c) Applicants seek to clarify that ECI may participate in certain resource sharing arrangements ("Resource Sharing Arrangements") established by ECI and several other organizations operated under the auspices of MMA Stewardship Agency ("Everence-related Organizations"),⁶ provided that such participation does not affect the value of, or interest paid under the terms of, any Program Notes issued in reliance on the Requested Order.⁷

⁶ Neither the Trust, nor the Praxis Funds, which are operated under the supervision of the Praxis Board, are considered Everence-related Organizations for purposes of the application.

⁷ The various Everence-related Organizations, including ECI, use arrangements similar to the type of "intercompany expense arrangements" often used by corporations and their subsidiary

7. Applicants seek to amend the Prior Order to permit the Praxis Funds to continue to invest in Program Notes following the implementation of these changes in the Program.

Applicants' Legal Analysis

Applicants state that, because both Everence Capital and ECI are operated under the auspices of MMA Stewardship Agency, they may be considered to be affiliated persons within the meaning of the Act, and ECI could be deemed an affiliated person of an affiliated person of the Trust, for purposes of section 17 of the Act. Applicants submit that amending the Prior Order as requested would be consistent with the standards of sections 6(c), 17(b), and 17(d) of the Act and rule 17d-1 under the Act.

Applicants' Conditions

Applicants agree that the Requested Order will be subject to the following conditions:

1. The Praxis Board will be responsible for reviewing the Program not less frequently than annually. The Praxis Funds may continue to participate in the Program through investment in Program Notes only if, at the time of such review, the Praxis Board concludes that (i) continued participation in the Program by the Praxis Funds remains consistent with the investment objectives and policies of each Praxis Fund; (ii) such participation is not on a basis that is less advantageous than that of other Noteholders of the same class including Co-investors; (iii) loans, if any, made to Participating Borrowers by Co-investors do not disadvantage the Praxis Funds; and (iv) the terms of Program Notes acquired by the Praxis Funds are not less advantageous than the terms of Program Notes acquired by any Co-investor.

2. Each of the Praxis Funds may commit no more than 3% of its total assets to community development investments (including the acquisition of Program Notes), provided that the Praxis Funds will not be permitted to acquire Program Notes to an extent greater than that which is permitted under the terms of their prospectus and limits approved by those members of the Praxis Board who are not "interested

companies. Expenses that are appropriate for inclusion in such intercompany expense accounting arrangements are expenses that are related to the proper share of, for example, salaries and related employee expenses, office space, equipment, and ordinary office services, such as telephones and utilities. The Resource Sharing Arrangements have been reviewed and approved by the ECI's board of directors.

persons" as defined by section 2(a)(19) of the Act.

3. Neither Everence Capital or any other Everence-related Organization will receive any compensation for Praxis Funds' investment in Program Notes or for services provided to ECI in connection with the Praxis Funds' investment in Program Notes, provided that: (i) The market value of Program Notes in which the Praxis Funds may, from time to time, invest will be included in the calculation of any investment advisory fee payable by any Praxis Fund to any Everence-related Organization pursuant to the terms of an investment advisory contract that satisfies the requirements of section 15(a) of the Act and subject to section 36 of the Act, where such fee is calculated based on a percentage of the average daily net assets of any such Praxis Fund; and (ii) ECI may participate in the Resource Sharing Arrangements, provided that ECI's participation in the Resource Sharing Arrangements does not affect the value of, or interest paid under the terms of, any variable rate note issued in reliance on the Requested Order.

4. All Noteholders will participate in the income (losses) generated by the assets underlying Program Notes in proportion to their respective investments provided that a Sustaining Investor may agree to absorb more than its proportionate share of any losses and further provided that the Praxis Funds will not be permitted to become Sustaining Investors.

5. With respect to New Notes issued by either the near market pool or below market pool, ECI may adjust: (i) The percentage of the Average Treasury Rate with reference to which the applicable interest rate is computed and/or (ii) the applicable interest rate floor and cap no more than once each year as described in the application, provided that: (a) ECI notifies the holders of any New Notes affected by such change at least 30 days in advance of such change; and (b) each such holder is subsequently entitled to tender the New Notes to which the change is to be applied to ECI at face value (including accrued interest) without penalty or discount.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-10180 Filed 4-26-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66847; File No. SR-CME-2012-12]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules Regarding Clearing Member Anti-Money Laundering Programs

April 23, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder² notice is hereby given that on April 9, 2012, Chicago Mercantile Exchange Inc. (“CME”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II and III below, which items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(1)⁴ thereunder so that the proposed rule change was effective upon filing with the Commission.

I. Self-Regulatory Organization’s Statement of Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is below. Italicized text indicates additions; bracketed text indicates deletions.

* * * * *

CHICAGO MERCANTILE EXCHANGE INC. RULEBOOK

Rule 100-980—No Change.

* * * * *

Chapter 9. Clearing Members

Rule 981. ANTI-MONEY LAUNDERING AND ECONOMIC SANCTIONS COMPLIANCE

Each clearing member shall develop and implement a written [anti-money laundering] *compliance* program approved in writing by senior management reasonably designed to achieve and monitor the clearing member’s compliance with [the] *all* applicable requirements of the Bank Secrecy Act (31 U.S.C. § 5311 et[.] seq.), *the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.) (“IEEPA”), the Trading with the Enemy Act (50 U.S.C. App. § 1 et seq.) (“TWEA”), and the Executive Orders* and [the implementing] regulations *issued pursuant thereto, including the*

regulations issued [promulgated thereunder] by the U.S. Department of the Treasury and, as applicable, the Commodity Futures Trading Commission. That [anti-money laundering] compliance program shall, at a minimum,

1. Establish and implement policies, procedures and internal controls reasonably designed to assure compliance with [the] *all* applicable provisions of the Bank Secrecy Act, *IEEPA, TWEA, and all applicable Executive Orders and regulations issued pursuant thereto* [the implementing regulations thereunder];

2. Provide for independent testing for compliance to be conducted by clearing member personnel or by a qualified outside party;

3. Designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program; and

4. Provide ongoing training for appropriate personnel.

Clearing members must also supervise and ensure that their guaranteed introducing brokers are in compliance with the [anti-money laundering] provisions contained in this Rule.

* * * * *
Rule 981—End—No change
* * * * *

II. Self-Regulatory Organization’s Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

CME proposes to adopt certain rule changes to CME Rule 981, which deals with CME clearing member anti-money laundering (“AML”) compliance programs. At present, CME Rule 981 requires clearing members to develop and implement a written AML program reasonably designed to achieve compliance with applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*). CME proposes to revise Rule 981 to further require clearing members to have a written AML compliance program reasonably

designed to achieve compliance with the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*), the Trading with the Enemy Act (50 U.S.C. App. 1, *et seq.*), and Executive Orders and regulations issued thereunder.

These amendments would therefore expand Rule 981 to encompass all applicable Office of Foreign Asset Control (OFAC) sanctions programs. OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction. OFAC sanctions are broad and extraterritorial in scope and all investments and transactions in the U.S., or involving U.S. persons or corporations, must comply.

The proposed rule change that is the subject of this filing will become immediately effective upon filing. CME notes that it has also certified the proposed rule change that is the subject of this filing to its primary regulator, the Commodity Futures Trading Commission. The text of the CME proposed rule amendment is listed above with additions italicized and deletions in brackets.

The proposed CME rule amendment is designed to ensure that CME has in place appropriate eligibility standards by ensuring that clearing members have AML compliance programs that address all applicable requirements. The amendment simply expands existing CME Rule 981 to encompass all applicable OFAC sanctions programs. As such, the proposed amendments constitute a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing CME rule. Therefore, the proposed rule change is therefore properly filed under Section 19(b)(3)(A) and Rule 19b-4(f)(1) thereunder of the Act.

B. Self-Regulatory Organization’s Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact or impose any burden on competition.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited and does not intend to solicit comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change was filed pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b-4 thereunder and therefore became effective on filing. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>), or send an email to rule-comments@sec.gov. Please include File No. SR-CME-2012-12 on the subject line.

- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CME-2012-12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME and on CME's Web site at http://www.cmegroup.com/market-regulation/files/SEC_19b-4_12-12.pdf. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-CME-2012-12 and should be submitted on or before May 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012-10159 Filed 4-26-12; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66848; File No. SR-NASDAQ-2012-052]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to SQF and BONO Port Fees and Account Fees

April 23, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 18, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Chapter XV, Options Pricing, Section 3, as well as to add an account fee ("Account Fee") via Section 9, of the Options Rules portion of the NASDAQ

Rulebook governing pricing for NASDAQ members using The NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to recoup some of the costs associated with SQF and BONO ports, as well as to assess a new fee to recoup some of the monthly billing and processing costs associated with participant accounts.

With respect to the proposed SQF port fee ("SQF Port Fee"), initially for which there was no charge,³ the Exchange believes that it is now reasonable to assess the proposed fee because the Exchange is no longer seeking to specifically incentivize market makers to connect to NOM 2.0. Additionally, the proposed SQF Port Fee is less than the range of port fees that are assessed today by NOM,⁴ as well as within the range of Port Fees currently charged by NASDAQ OMX PHLX LLC ("PHLX").⁵

³ See Securities Exchange Act Release No. 65180 (August 22, 2011), 76 FR 53521 (August 26, 2011) (SR-NASDAQ-2011-111).

⁴ See Chapter XV, Options Pricing, Section 3(b) of the Options Rules portion of the NASDAQ Rulebook.

⁵ See NASDAQ OMX PHLX LLC Pricing Schedule, Section VII B (Port Fees).

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

With respect to the BONO⁶ port fee (“BONO Port Fee”), initially for which there was no charge, this port fee is priced identically to the fee currently being charged for the NASDAQ ITCH to Trade Options (“ITTO”)⁷ port, which is the other market data port. The increase will assist the Exchange in recouping costs associated with maintaining the BONO port.

The Exchange also proposes to assess a monthly \$50 Account Fee for each member account, which would allow the Exchange to recoup costs associated with monthly billing and processing. The Account Fee would cover any month, or any part of a month, during which an account is maintained by a member. The proposed rule change would also encourage members to discontinue holding trading accounts, which the Exchange believes should, in turn, eliminate the need to expend resources to create additional account fields. As a result, the staff time allocated to maintaining account records would be reduced, which would allow for a more efficient use of staff resources. The proposed Account Fee is substantially similar to the monthly account fee that the PHLX currently charges.⁸

Members currently have the option to request an unlimited number of trading accounts through the Exchange’s Membership Department. In many instances, multiple accounts are assigned at the member’s request to allow them to track their own activity using the Exchange’s account numbers.⁹ Often, however, accounts are not released back to the Exchange when they are no longer required by the member or when a member may have requested more accounts than needed. This practice limits the number of available accounts and adds to increased staff time to maintain accurate records of active accounts and the retiring of inactive accounts.

While fee changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on May 1, 2012.

⁶ BONO is an option feed designed to provide the NASDAQ Best Bid and Offer and last sale information directly to NOM participant firms.

⁷ ITTO is designed to provide full quote and order depth using the standard ITCH format. ITTO uses a series of messages to track the life of a quote or order through the NOM. ITTO supports NOM last sale data as well as Net Order Imbalance data for the opening auction.

⁸ See PHLX Pricing Schedule, Section VI A (Membership Fees).

⁹ The proposed rule change does not limit the number of accounts a member organization may request.

2. Statutory Basis

NASDAQ believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act¹⁰ in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using any facility or system which NASDAQ operates or controls.

The Exchange believes that the new SQF and BONO Port Fees (collectively, the “Port Fees”) are reasonable because each will assist in recouping costs incurred by the Exchange for connectivity to NOM. Additionally, the proposed SQF Port Fee is reasonable because the fee is lower than the range of port fees that are assessed today by NOM, as well as within the range of port fees currently charged by PHLX.¹² The BONO Port Fee is reasonable because it is the same as the fee currently being charged for ITTO, which is the other market data port. The Exchange believes that the Port Fees, for which the Exchange will assess NOM participants as of May 1, 2012, are equitable and not unfairly discriminatory because they are uniformly applied to all NOM participants that utilize these ports.

The Exchange also believes that the Account Fee is reasonable because it seeks to recoup costs incurred by the Exchange. Further, the Exchange is seeking to incentivize members to discontinue such inactive trading accounts. The Exchange also believes that the proposed Account Fee is equitable and not unfairly discriminatory because it would be uniformly applied to all members.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section

19(b)(3)(A)(ii) of the Act¹³ and paragraph (f)(2) of Rule 19b-4¹⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2012-052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2012-052. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(4).

¹² *Supra* note 4.

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 240.19b-4(f)(2).

be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–052 and should be submitted on or before May 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–10160 Filed 4–26–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66846; File No. SR–NYSEArca–2012–34]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade the Huntington US Equity Rotation Strategy ETF and Huntington EcoLogical Strategy ETF Under NYSE Arca Equities Rule 8.600

April 23, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)¹ and Rule 19b–4 thereunder,² notice is hereby given that, on April 12, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): Huntington US Equity Rotation Strategy ETF and Huntington EcoLogical Strategy ETF. The text of the proposed rule change is available at the Exchange, www.nyse.com, and the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares:³ Huntington US Equity Rotation Strategy ETF and Huntington EcoLogical Strategy ETF (each, a “Fund” and collectively, “Funds”).⁴ The Funds will be actively managed exchange-traded funds (“ETFs”). The Shares of each Fund will be offered by Huntington Strategy Shares (“Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.⁵

³ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

⁴ The Commission has approved listing and trading on the Exchange of a number of actively managed funds under NYSE Arca Equities Rule 8.600. *See, e.g.*, Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively managed funds of the WisdomTree Trust); 65468 (October 3, 2011), 76 FR 62873 (October 11, 2011) (SR–NYSEArca–2011–51) (order approving listing and trading of TrimTabs Float Shrink ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing of Cambria Global Tactical ETF).

⁵ The Trust is registered under the 1940 Act. On April 6, 2012, the Trust filed with the Commission an amendment to the Trust’s Registration Statement on Form N–1A under the Securities Act of 1933 (15

Huntington Asset Advisors, Inc. (“Adviser”) is the investment adviser of each Fund and manages the investment portfolios of the Funds. SEI Investments Distribution Co. (“Distributor”) is the principal underwriter and distributor of the Funds’ Shares. Citibank, N.A. is the custodian (“Custodian”) for the Funds.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund’s portfolio.⁶ Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in

U.S.C. 77a) and under the 1940 Act relating to the Funds (File Nos. 333–170750 and 811–22497) (“Registration Statement”). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. As of the date of this filing, the Trust has also filed an Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–13785), dated April 3, 2012 (“Exemptive Application”). *See* Investment Company Act Release No. 30032 (April 10, 2012). The Shares will not be listed on the Exchange until an order (“Exemptive Order”) under the 1940 Act has been issued by the Commission with respect to the Exemptive Application. Investments made by the Funds will comply with the conditions set forth in the Exemptive Order.

⁶ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (“Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

¹⁵ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is affiliated with two broker-dealers and has implemented a fire wall with respect to each affiliated broker-dealer regarding access to information concerning the composition and/or changes to a Fund portfolio. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Huntington US Equity Rotation Strategy ETF

According to the Registration Statement, the Fund’s investment objective is to seek capital appreciation. Under normal conditions,⁷ the Fund will invest at least 80% of its net assets in the exchange-listed common stocks of select companies organized in the U.S. and included in the S&P Composite 1500® (“Companies”). The Registration Statement states that the S&P Composite 1500 is a combination of the following indices: the S&P 500®; the S&P MidCap 400®; and the S&P SmallCap 600®.⁸

⁷ The term “under normal conditions” includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

⁸ The adjusted statistics for the S&P Composite 1500, the S&P 500, the S&P MidCap 400, and the S&P SmallCap 600 are as follows (figures are as of April 4, 2012):

- For the S&P Composite 1500, the adjusted average market capitalization of companies in the index was approximately \$9.55 billion, and the adjusted median market capitalization was approximately \$2.24 billion. The adjusted market capitalization range for the companies included in the S&P Composite 1500 was approximately \$10 million to \$582.09 billion.

- For the S&P 500, the adjusted average market capitalization of companies in the index was approximately \$25.28 billion, and the adjusted median market capitalization was approximately \$11.65 billion. The adjusted market capitalization range for the companies included in the S&P 500 was approximately \$1.08 billion to \$582.09 billion.

- For the S&P MidCap 400, the adjusted average market capitalization of companies in the index was approximately \$2.94 billion, and the adjusted median market capitalization was approximately \$2.60 billion. The adjusted market capitalization range for the companies included in the S&P

The Fund will invest in Companies within each of the large-cap, mid-cap, and small-cap U.S. equity market segments (each a “Market Segment”). The large-cap segment is represented by companies comprising the S&P 500, the mid-cap segment is represented by companies comprising the S&P MidCap 400, and the small-cap segment is represented by the companies comprising the S&P SmallCap 600.

The Fund will also invest in Companies operating in each of the ten (10) sectors represented in the S&P Composite 1500. A sector is a large grouping of companies operating within the market that share similar characteristics. The ten (10) sectors comprising the S&P Composite 1500 are: Utilities, consumer staples, information technology, healthcare, financials, energy, consumer discretionary, materials, industrials, and telecommunication services (“Sectors”).

As market conditions change, the Fund intends to rotate the investment focus of the Fund so as to overweight its portfolio in Companies comprising those Market Segments and Sectors that the Adviser believes offer the greatest potential for capital appreciation in the given market environment and underweight its portfolio in those Market Segments and Sectors that the Adviser believes offer the least potential for capital appreciation in that same market environment (as described in more detail below). If the Fund’s portfolio allocation to a particular Market Segment or Sector exceeds that Market Segment’s or Sector’s current weighting in the S&P Composite 1500, the Fund will be “overweighting” that Market Segment or Sector. Similarly, if the Fund’s portfolio allocation to a specific Market Segment or Sector is less than that Market Segment’s or Sector’s current weighting in the S&P Composite 1500, then the Fund will be “underweighting” that Market Segment or Sector. The Adviser believes that these adjustments, collectively, will position the Fund for continued capital appreciation in the new market environment.

The Adviser retains a broad mandate and discretion to invest in Companies consistent with its evaluation of the capital appreciation potential of the

MidCap 400 was approximately \$520 million to \$9.47 billion.

- For the S&P SmallCap 600, the adjusted average market capitalization of companies in the index was approximately \$830 million, and the adjusted median market capitalization was approximately \$700 million. The adjusted market capitalization range for the companies included in the S&P SmallCap 600 was approximately \$10 million to \$3.17 billion.

Market Segments and Sectors. The strategy of overweighting and underweighting Sectors to maximize opportunities for capital appreciation may result in the Fund investing greater than 25% of its total assets in the equity securities of Companies operating in one or more Sectors. Sectors are comprised of multiple individual industries, and the Fund will not invest more than 25% of its total assets in an individual industry.

According to the Registration Statement, the Adviser will invest in Companies consistent with its assessment of the capital appreciation opportunities of each Market Segment and Sector. To determine the percentage of the Fund’s portfolio to invest in each Market Segment and Sector, the Adviser will use “top-down” analysis (analyzing the impact of economic trends before considering the performance of individual stocks) to evaluate broad economic trends. These trends are used to anticipate shifts in the business cycle. The Adviser also will analyze each Market Segment and Sector to determine which Market Segment(s) and Sector(s) may benefit the most from these trends and business shifts over the next 12 months. Factors considered in assessing each Market Segment and Sector include: (1) The relationship between each Market Segment or Sector and the current business cycle; (2) valuation levels; (3) earnings growth potential; and (4) analyses of the Companies included in the respective Market Segments and Sectors.

The Adviser will monitor the market environment, Market Segments, and Sectors and may rotate the Fund’s investment focus by adjusting the Fund’s Market Segments and/or Sector weightings consistent with its ongoing assessment of the capital appreciation potential of each Market Segment and Sector. The Adviser may also rely, in part, on technical analysis (such as analyzing and examining past price movements to anticipate or forecast future price movements) to determine the timing of any changes to the Market Segment and/or Sector weightings.

The Fund will invest in those Companies within the Market Segments and Sectors that offer the best potential for capital appreciation based on the Adviser’s evaluation of company fundamentals (including historic earnings, revenue, cash flow, and valuation (such as price-earnings ratio and book value)).

Huntington EcoLogical Strategy ETF

According to the Registration Statement, the Fund’s investment objective is to seek capital appreciation.

Under normal conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of ecologically-focused companies. The Fund will primarily (at least 65% of total assets) invest in the U.S. exchange-listed common stock of ecologically-focused companies organized in the U.S. ("U.S. Companies"). The Fund, however, may also invest up to 35% of total assets in the exchange-listed common stock (or the equivalent thereof) and sponsored American Depositary Receipts ("ADRs")⁹ of ecologically-focused companies organized outside the U.S. ("Foreign Companies").¹⁰ The Fund may invest in companies of all sizes.

The Adviser will apply the following ecologically-focused criteria to identify the equity securities of U.S. and Foreign Companies. "Ecologically-focused companies" are companies that have positioned their business to respond to increased environmental legislation, cultural shifts towards environmentally conscious consumption, and capital investments in environmentally oriented projects. These companies include, but are not limited to, all U.S. and Foreign Companies that are components of one or more well-recognized environmentally focused indices (such as the Dow Jones Sustainability Indexes and the DB NASDAQ OMX Clean Tech Index).

The Fund will also invest in ecologically-focused companies which are not included in a well-recognized environmentally-focused index, but generate at least 1/3 of their revenues from activities aligned with one or more of the following environmental themes ("Environmental Themes"):

- Alternative renewable power such as solar, wind, geothermal, hydro, or biomass;
- Alternative renewable fuel such as biofuel, biomass, or hydrogen;
- Alternative engines such as electric, flywheel, or micro turbines;
- Energy efficiency such as energy efficient building materials, power, lighting, heating, or fuel;
- Resource conservation/healthier use of resources such as recycling or renewable materials; and

⁹ ADRs are securities issued by a U.S. bank or trust company evidencing ownership of underlying securities issued by a foreign company. ADRs are designed for use in U.S. securities markets.

¹⁰ The foreign equity securities, including any depositary receipts, in which the Funds may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG"), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. See notes 16 and 23, *infra*.

- Healthy lifestyle, such as pollution control or organic foods.

A company that is not included in an environmentally-focused index or does not generate 1/3 of its revenue from activities aligned with one or more Environmental Themes shall also be considered an ecologically-focused company if the Adviser believes that environmentally conscious trends such as a stronger demand for chemical-free cleaning and farming, recycling, alternative fuel and energy, energy efficiency, pollution control, or environmental cleanup/restoration will positively impact that company's future revenue ("Environmentally Conscious Companies"). Ecologically-focused companies also include those companies that the Adviser believes demonstrate sustainable environmental practices ("Other Environmental Companies"). Sustainable environmental practices include, but are not limited to, demonstrated progress in:

- Improving energy and resource efficiency;
- Reducing emissions from business operations;
- Financial and operational support of renewable materials and less pollutive energy sources; or
- Using or promoting the use of efficient buildings (measured by such labels as LEED or Energy Star).

The Fund's investment in the securities of Environmentally Conscious Companies and Other Environmental Companies will be limited to 10% of the Fund's total assets.

The strategy of investing in ecologically-focused companies may result in the Fund investing greater than 25% of its total assets in one or more market sectors. A sector is a large grouping of companies operating within the market that share similar characteristics. The ten most commonly recognized market sectors are: Utilities, consumer staples, information technology, healthcare, financials, energy, consumer discretionary, materials, industrials, and telecommunication services. Sectors are comprised of multiple individual industries, and the Fund will not invest more than 25% of its total assets in an individual industry.

According to the Registration Statement, the Adviser will review company fundamentals and the composition of recognized environmentally-focused indices to identify a universe of ecologically-focused companies. Company fundamentals include factors reflective of a company's financial condition, including balance sheets and income

statements, asset history, product or service development, and management productivity. The Adviser also will examine annual sustainability reports from companies, as well as supplemental disclosures regarding environmental practices within corporate investor relations materials.

The Adviser will focus on ecologically-focused companies that it believes have better than average potential for growth in sales and profits. Historical financial statements (income, balance sheet, cash flow) will serve as quantitative guides in the selection process. Qualitative reviews of a company's competitive position and target market potential also will influence portfolio decisions. The Fund will, under most market conditions, include a blend of growth or cyclical stocks held for price appreciation potential and dividend growth stocks held for their potential to deliver a growing stream of income.¹¹ Factors regarding valuation such as price to sales ratios, price to earnings ratios, and price to book ratios will influence the size of the Fund's position in each company.

Other Permitted Investments, Investment Limitations, and Additional Information

Each Fund, to a lesser extent, may attempt to pursue its investment objective by employing other investment strategies and by investing in additional types of securities that are not otherwise part of its principal investment strategies as described above. To the extent a Fund's principal investment policies are satisfied, including but not limited to its 80% investment policy, such Fund may also invest up to 20% of its total assets in the securities described below. However, each Fund will also be subject to certain additional investment limitations including those set forth below.

A Fund may only purchase securities of any issuer only when consistent with the maintenance of such Fund's status as a diversified company under the 1940 Act, the rules or regulations thereunder, as such statute, rules, or regulations may be amended from time to time, or any applicable exemptive relief.¹²

¹¹ Growth stocks are shares in a company whose earnings are expected to grow at an above-average rate relative to the market. Cyclical stocks are shares in a company that rise quickly when economic growth is strong and fall rapidly when growth is slowing down.

¹² Under Section 5(b)(1) of the 1940 Act, a fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5%

A Fund may not concentrate investments in a particular industry or group of industries as concentration is defined under the 1940 Act, the rules or regulations thereunder, as such statute, rules, or regulations may be amended from time to time, or any applicable exemptive relief.¹³

A Fund may not hold in the aggregate more than 15% of its net assets in illiquid investments, including Rule 144A securities and loan participations.¹⁴ Further, in accordance with the Exemptive Application, the Funds will not invest in options, futures, or swaps. The Funds' investments will be consistent with the Funds' investment objective and will not be used to enhance leverage.

According to the Registration Statement, each Fund will elect to be treated, and intends to qualify each year, as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code.¹⁵

of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer. For purposes of determining a Fund's compliance with Section 5(b)(1), the issuer of the underlying security will be deemed to be the issuer of any respective depositary receipt.

¹³ See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975). The Commission has also taken the position that concentration of investment in an industry or group of industries is not applicable to investments in tax-exempt securities issued by governments or political subdivisions of governments since such issuers are not members of any industry. See, e.g., Investment Company Act Release No. 9785 (May 31, 1977). For purposes of determining a Fund's compliance with its concentration policy, the issuer of the underlying security will be deemed to be the issuer of any respective depositary receipt.

¹⁴ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14617 (March 18, 2008), footnote 34. See also Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

¹⁵ 26 U.S.C. 851. Qualification as a RIC requires, among other things, that a Fund: (i) Derive in each taxable year at least 90% of its gross income from: (a) Dividends, interest, payments with respect to certain securities loans, and gains from the sales or other disposition of stock, securities or foreign currencies, or other income (including but not

Finally, each Fund may also invest up to 20% of total assets in fixed income securities issued by companies organized in the U.S., including convertible securities that may be exchanged for or converted into common stock, corporate debt securities, U.S. Government securities, money market instruments, and zero coupon bonds. Each Fund may invest in other investment company securities, including mutual funds, consistent with the 1940 Act, the rules thereunder or relief from the Commission, as well as repurchase and reverse repurchase agreements. The Funds may also participate in foreign currency transactions and purchase securities on a when-issued or delayed delivery basis.

Permitted Investments and Investment Limitations Applicable to Huntington US Equity Rotation Strategy ETF

The Fund may invest up to 20% of total assets in equity securities, other than common stock of Companies, including preferred stocks, exchange-traded funds, interests in other business organizations, real estate investment trusts, and other domestic equity securities which the Adviser believes have equity characteristics ("Other Domestic Equities").

The Fund may invest up to 20% of its total assets in the following foreign securities which are issued by companies located outside of the U.S. and principally traded in foreign markets: (i) Equity securities and fixed income securities of foreign entities; (ii) obligations of foreign branches of U.S. banks and foreign or domestic branches of foreign banks including European Certificates of Deposit, European Time Deposits, Canadian Time Deposits,

limited to gain from options, futures and forward contracts) derived with respect to its business of investing in such stock, securities or foreign currencies; and (b) net income derived from interests in certain publicly traded partnerships that are treated as partnerships for U.S. federal income tax purposes and that derive less than 90% of their gross income from the items described in (a) above (each a "Qualified Publicly Traded Partnership"); and (ii) diversify its holdings so that, at the end of each quarter of each taxable year: (a) At least 50% of the value of a Fund's total assets is represented by (I) cash and cash items, U.S. government securities, the securities of other regulated investment companies and (II) other securities, with such other securities limited, in respect of any one issuer, to an amount not greater than 5% of the value of a Fund's total assets and not more than 10% of the outstanding voting securities of such issuer and (b) not more than 25% of the value of a Fund's total assets is invested in the securities (other than U.S. government securities and the securities of other regulated investment companies) of (I) any one issuer, (II) any two or more issuers that a Fund controls and that are determined to be engaged in the same or similar trades or businesses or related trades or businesses or (III) any one or more Qualified Publicly Traded Partnerships.

Canadian Yankee Bonds, Canadian Certificates of Deposit, and investments in Canadian commercial paper and europaper; (iii) depositary receipts including ADRs, European Depositary Receipts ("EDRs"), which are also known as Continental Depositary Receipts ("CDRs"), and Global Depositary Receipts ("GDRs");¹⁶ (iv) securities issued or guaranteed by foreign corporations or foreign governments, their political subdivisions, agencies, and instrumentalities (e.g., fixed income securities supported by national, state, or provincial governments, or similar political subdivisions); (v) debt obligations of supranational entities, including international organizations designed or supported by governmental entities to promote economic reconstruction or development, international banking institutions, and related government agencies such as the International Bank for Reconstruction and Development (World Bank), the Asian Development Bank, the European Investment Bank, and the Inter-American Development Bank; and (vi) fixed income securities of quasi-governmental agencies that are either issued by entities owned by a national, state, or equivalent government, or are obligations of a political unit that are not backed by the national government's full faith and credit (collectively, "Foreign Securities").¹⁷

Permitted Investments and Investment Limitations Specific to Huntington EcoLogical Strategy ETF

The Fund may invest up to 20% of its total assets in Other Domestic Equities and Foreign Securities other than those issued by Foreign Companies permitted as part of the Fund's principal investment strategies.¹⁸

Creations and Redemptions

Creations and redemptions of Shares will occur in large specified blocks of Shares, referred to as "Creation Units." A Creation Unit of a Fund is currently comprised of 25,000 Shares of that Fund. The number of Shares comprising a Creation Unit may change over time. According to the Registration Statement, to purchase or redeem Creation Units directly from a Fund, an investor must

¹⁶ According to the Registration Statement, EDRs/CDRs are securities typically issued by a non-U.S. financial institution and evidence ownership interests in a security or a pool of securities issued by either a U.S. or foreign issuer. GDRs are issued globally and evidence a similar ownership arrangement. EDRs are designed for trading in European securities markets, and GDRs are designed for trading in non-U.S. securities markets.

¹⁷ See note 10, *supra*, and note 23, *infra*.

¹⁸ See *id.*

be an Authorized Participant, or an investor must purchase the Shares through a financial institution that is an Authorized Participant. An "Authorized Participant" is a participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC") or the Depository Trust Company that has executed a participant agreement with the Distributor that has been accepted by the Trust's Custodian. Authorized Participants may purchase Creation Units of a Fund and sell individual Shares on the NYSE Arca. Similarly, Shares can only be redeemed in Creation Units. The prices at which creations and redemptions occur are based on the next calculation of net asset value ("NAV") after an order in proper form is received by the Distributor on any day that a Fund is open for business.

Generally, a Creation Unit will be purchased or redeemed from a Fund for a designated portfolio of securities along with a cash payment ("Deposit Securities," in the case of purchases, and "Redemption Securities," in the case of redemptions). Generally, the Deposit Securities and the Redemption Securities will correspond *pro rata* to the portfolio securities of the applicable Fund. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in-kind, under circumstances set forth in the Registration Statement.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Exchange Act,¹⁹ as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), will be made available to all market participants at the same time.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Funds that are referred to, but not defined in, this proposed rule

change are defined in the Registration Statement.

Net Asset Value

According to the Registration Statement, the NAV per Share of a Fund will be computed by dividing the value of the net assets of the Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding. The NAV per Share for a Fund will be calculated by the Trust's fund accountant and determined as of the close of the regular trading session on the NYSE Arca (ordinarily 4 p.m., Eastern Time) on each day that the Exchange is open.

Availability of Information

The Funds' Web site (www.huntingtonstrategyshares.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior business day's reported closing price, NAV, and a calculation of the premium and discount of the closing price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day.²⁰ On a daily basis, the Adviser will disclose on the Funds' Web site for each portfolio security or other financial instrument of the Funds the following information: ticker symbol (if applicable) and name of security and financial instrument, the number of shares or dollar value of each security and financial instrument held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together

²⁰ Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

with estimated cash components, will be publicly disseminated daily prior to the opening of the Core Trading Session of the Exchange via the NSCC. The basket represents one Creation Unit of a Fund. Investors can also obtain the Trust's Statement of Additional Information ("SAI"), each Fund's Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's Web site at www.sec.gov. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.²¹ The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Funds on a daily basis and to provide a close estimate of that value throughout the trading day. The intra-day, closing, and settlement prices of the portfolio securities are also readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.²² Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in

²¹ Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

²² See NYSE Arca Equities Rule 7.12, Commentary .04.

¹⁹ 17 CFR 240.10A-3.

the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²³ All of

the primary equity investments to be held by each Fund, as well as the non-U.S.-listed equity securities, including any depositary receipts, held by each Fund will trade in markets that are ISG members or are parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)²⁴ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and

open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Under normal conditions, the Huntington US Equity Rotation Strategy ETF will invest at least 80% of its net assets in the exchange-listed common stocks of select companies organized in the U.S. and included in the S&P Composite 1500, and the Huntington EcoLogical Strategy ETF will invest at least 80% of its net assets in the exchange-listed equity securities of ecologically-focused companies. While each Fund may hold non-U.S. equity securities, the foreign equity securities, including any depositary receipts, in which the Funds may invest will be limited to securities that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Funds will not hold more than 15% of net assets in illiquid investments, including Rule 144A securities and loan participations. Each Fund's investments will be consistent with its Fund's investment objective and will not be used to enhance leverage. The Funds will not invest in options contracts, futures contracts, or swap agreements. The Adviser is affiliated with two broker-dealers and has implemented a fire wall with respect to each affiliated broker-dealer regarding access to information concerning the composition and/or changes to a Fund portfolio.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency.

²³ For a list of the current members of ISG, see <http://www.isgportal.org>. The Exchange notes that not all components of the Disclosed Portfolio for the Funds may trade on markets that are members of

ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

²⁴ 15 U.S.C. 78f(b)(5).

Moreover, the Portfolio Indicative Value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information will be available via the CTA high-speed line. The Web site for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Portfolio Indicative Value,

the Disclosed Portfolio, and quotation and last-sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2012-34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2012-34. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will

post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at www.nyse.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2012-34 and should be submitted on or before May 18, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Kevin M. O'Neill,
Deputy Secretary.

[FR Doc. 2012-10158 Filed 4-26-12; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13044 and #13045]

West Virginia Disaster Number WV-00023

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of West Virginia (FEMA-4059-DR), dated 03/16/2012.

Incident: Severe Storms, Tornadoes, Flooding, Mudslides, and Landslides.
Incident Period: 02/29/2012 through 03/05/2012.

Effective Date: 04/18/2012.

Physical Loan Application Deadline Date: 05/15/2012.

EIDL Loan Application Deadline Date: 12/17/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business

²⁵ 17 CFR 200.30-3(a)(12).

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 Presidential disaster declaration for the State of WEST VIRGINIA, dated 03/16/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans) Harrison, Preston, Taylor.

Contiguous Counties: (Economic Injury Loans Only)

West Virginia: Barbour, Doddridge, Grant, Lewis, Tucker, Upshur.

Maryland: Garrett.

Pennsylvania: Fayette.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012-10116 Filed 4-26-12; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13054 and # 13055]

West Virginia Disaster Number WV-00027

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of West Virginia (FEMA-4061-DR), dated 03/22/2012.

Incident: Severe storms, flooding, mudslides and landslides.

Incident Period: 03/15/2012 through 03/31/2012.

Effective Date: 04/20/2012.

Physical Loan Application Deadline Date: 05/21/2012.

EIDL Loan Application Deadline Date: 12/24/2012.

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 Presidential disaster declaration for the State of West Virginia, dated 03/22/2012 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Lincoln, Mingo.

Contiguous Counties: (Economic Injury Loans Only):

Kentucky: Martin, Pike.

Virginia: Buchanan.

West Virginia: Cabell, Kanawha, Mcdowell, Putnam, Wayne.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012-10118 Filed 4-26-12; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice 7859]

60-Day Notice of Proposed Information Collection: DS 7655, Iraqi Citizens and Nationals Employed by Federal Contractors and Grantees

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Iraqi Citizens and Nationals Employed by Federal Contractors, Grantees and Cooperative Agreement Partners.

- *OMB Control Number:* 1405-0184.

- *Type of Request:* Extension of an Approved Collection.

- *Originating Office:* PRM/A.

- *Form Number:* DS 7655.

- *Respondents:* Federal Contractors, grantees, and cooperative agreement partners of the Department of State.

- *Estimated Number of Respondents:* 50.

- *Estimated Number of Responses:* 200.

- *Average Hours per Response:* .5.

- *Total Estimated Burden:* 100 hours.

- *Frequency:* On occasion.

- *Obligation to Respond:* Mandatory.

DATES: The Department will accept comments from the public up to 60 days from April 27, 2012.

ADDRESSES: You may submit comments by any of the following methods:

- *Web:* Persons with access to the Internet may view and comment on this notice by going to the Federal regulations Web site at www.regulations.gov. You can search for the document by: selecting "Notice" under Document Type, entering the Public Notice number as the "Keyword or ID", checking the "Open for Comment" box, and then click "Search". If necessary, use the "Narrow by Agency" option on the Results page.

- *Email:* HawleyCV@state.gov.

- *Mail* (paper, or CD submissions): DOS/PRM, Office of Admissions 2025 E Street NW., Washington, DC 20522-0908.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT:

Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Charles Hawley, who may be reached on 202-453-9249 or at HawleyCV@state.gov.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.

- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The National Defense Authorization Act (NDAA) of 2008 became Public Law 110-181 on 28 January 2008. Section 1248(c)—"Report on Iraqi Citizens and Nationals Employed by the United States Government or Federal Contractors in Iraq"—of this Act requires the Secretary of State to request from each prime contractor or grantee that has performed work in Iraq for the Department of State since March 20, 2003, under a contract, grant, or cooperative agreement with their

respective agencies that is valued in excess of \$25,000, information that can be used to verify the employment of Iraqi nationals by such contractor or grantee. To the extent possible, biographical information, to include employee name, date(s) of employment, biometric, and other data must be collected and used to verify employment for the processing and adjudication of refugee, asylum, special immigrant visa, and other immigration claims and applications.

Methodology

The Department of State will collect the information via electronic submission.

Additional Information

This information collection will be used to fulfill the requirements under Section 1248 of the National Defense Authorization Act of 2008 (Pub. L. 108-181).

Dated: April 23, 2012.

Amy B. Nelson,

Acting Office Director, Office of Refugee Admissions, Bureau of Populations, Refugees, and Migration, Department of State.

[FR Doc. 2012-10247 Filed 4-26-12; 8:45 am]

BILLING CODE 4710-33-P

DEPARTMENT OF STATE

[Public Notice 7860]

Culturally Significant Object Imported for Exhibition Determinations: "The Wealth of a Nation: British Silver From the Museum's Collection"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition "The Wealth of a Nation: British Silver from the Museum's Collection," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, New York, New York, from on or about May 15, 2012, until on or about October 28, 2012, and at

possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**. **FOR FURTHER INFORMATION CONTACT:** For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6469). The mailing address is U.S. Department of State, SA-5, L/DP, Fifth Floor (Suite 5H03), Washington, DC 20522-0505.

Dated: April 18, 2012.

J. Adam Erel,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012-10251 Filed 4-26-12; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 7858]

Culturally Significant Objects Imported for Exhibition Determinations: "1812: A Nation Emerges"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236-3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "1812: A Nation Emerges," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The National Portrait Gallery, Washington, DC from on or about June 15, 2012, until on or about January 27, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6473). The mailing

address is U.S. Department of State, SA-5, L/DP, Fifth Floor (Suite 5H03), Washington, DC 20522-0505.

Dated: April 19, 2012.

J. Adam Erel,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012-10249 Filed 4-26-12; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA-2012-0102]

Proposed Recommendations on Obstructive Sleep Apnea

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

ACTION: Withdrawal of Notice.

SUMMARY: FMCSA is withdrawing its proposed regulatory guidance for obstructive sleep apnea (OSA) and request for comment as published on April 20, 2012. The Agency is still in the process of carefully reviewing the recommendations submitted by the Motor Carrier Safety Advisory Committee and Medical Review Board. The initial publication was a clerical error. We anticipate requesting public comment on the recommendations later this year.

DATES: This withdrawal is effective April 27, 2012.

FOR FURTHER INFORMATION CONTACT: Angela Ward, Nurse Consultant Medical Programs, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

A notice was published in the **Federal Register** on April 20, 2012 (77 FR 23794) announcing proposed regulatory guidance on OSA and the medical certification of commercial motor vehicle drivers based on joint recommendations from the Agency's Motor Carrier Safety Advisory Committee and the Medical Review Board. Because there are a number of initiatives and programs for which the Agency is currently seeking public engagement and comment, however, the Agency defers until later this year, a request for public comment on the

regulatory guidance on OSA. This will enable interested parties a better opportunity to focus on and provide comments on this important safety issue.

Issued on: April 20, 2012.

William Bronrott,

Deputy Administrator.

[FR Doc. 2012-10176 Filed 4-26-12; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA-2011-0383]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt seventeen individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective April 27, 2012. The exemptions expire on April 28, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Room W64-224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: <http://www.regulations.gov>.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> and/or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing

the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

Background

On March 7, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from seventeen individuals and requested comments from the public (77 FR 13686). The public comment period closed on April 6, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the seventeen applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These seventeen applicants have had ITDM over a range of 1 to 16 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function

that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the March 7, 2012, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comment

FMCSA received one comment in this proceeding. The Pennsylvania Department of Transportation stated that it has reviewed the driving history for William F. Watkins, Jr. and is in favor of granting him a Federal Diabetes exemption.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage

diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the seventeen exemption applications, FMCSA exempts, Alvin Acevedo (NJ), Jerry D. Baughn (KS), Bobby D. Bennett (GA), Mark S. Clemence (KS), Larry G. Foley (WV), Elwood F. Gorom (WA), Larry A. Grizzel (IN), Mike W. Holland (IL), Steven M. Lewis, Sr. (NC), Dan M. McAllister (WI), Meredith M. McCabe (GA), Paul F. Rivers (MN), Marcus V. Romo (ID), Gary L. Siverson (ND), Wayne L. Snyder (OH), William F. Watkins, Jr. (PA) and Justin K. Zimmerschied (KS) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: April 16, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012-10170 Filed 4-26-12; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2012-0031]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated March 14, 2012, the City of Sacramento, CA (City), has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 222. FRA assigned the petition Docket Number FRA-2012-0031.

The City is seeking a waiver from the provisions of 49 CFR 222.9, the definition of a non-traversable curb, so that an existing public crossing, Power Inn Road (DOT #752887F), can be deemed an acceptable supplementary safety measure (SSM). The Power Inn Road crossing is equipped with flashing lights, gates, and medians that comply with all of the requirements necessary to be an SSM with non-traversable curbs; except for the fact that the posted highway speed limit is 45 mph instead of 40 mph, as required in the definition.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- **Web site:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.

- **Hand Delivery:** 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 11, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or online at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on April 23, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012-10234 Filed 4-26-12; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2012-0030]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated March 1, 2012, the City of Sacramento, CA (City), has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 222. FRA assigned the petition Docket Number FRA-2012-0030.

The City is seeking a waiver from the provisions of 49 CFR 222.9, the definition of a non-traversable curb, so that an existing public crossing, Elkhorn Boulevard (DOT #833694G), can be deemed an acceptable supplementary safety measure (SSM). The Elkhorn Boulevard crossing is equipped with flashing lights, gates, and medians that comply with all of the requirements necessary to be an SSM with non-traversable curbs; except for the fact that the posted highway speed limit is 45 mph instead of 40 mph, as required in the definition.

The City is also seeking approval of an engineering alternative safety

measure (ASM) at West El Camino Avenue (DOT #833688D). This request for approval of an ASM is dismissed without prejudice, as 49 CFR 222.39(b) provides the process by which ASMs are approved.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- **Web site:** <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.
- **Hand Delivery:** 1200 New Jersey Avenue SE., Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by June 11, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or online at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on April 23, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012-10204 Filed 4-26-12; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 585 (Sub-No. 5X)]

Dallas, Garland & Northeastern Railroad Company—Discontinuance of Trackage Rights Exemption—in Dallas County, TX

Dallas, Garland & Northeastern Railroad Company (DGNO) has filed a verified notice of exemption under 49 CFR, pt. 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue trackage rights over an approximately 6.04-mile line of railroad known as the Elam Branch between approximately milepost 308.80, near Elam, and approximately milepost 314.84, near Briggs, in Dallas County, Tex. (the Line).¹ The Line traverses United States Postal Service Zip Codes 75210, 75227, and 75217.

DGNO has certified that: (1) No local traffic has moved over the Line for at least 2 years; (2) any overhead traffic on the Line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (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

¹The Line is owned by Dallas Area Rapid Transit (DART). DGNO acquired by assignment from Union Pacific Railroad Company exclusive trackage rights over the Line. See *Dallas, Garland & Northeastern Railroad, Inc.—Trackage Rights Exemption—Dallas Area Rapid Transit*, FD 34248 (STB served Sept. 12, 2002). In 2003, Regional Rail Right of Way Company (RRROW), a Class III rail carrier and Texas corporation created by DART, acquired an exclusive, perpetual freight rail operating easement and all attendant freight rail common carrier obligations over the Line. See *Regional Rail Right of Way Co.—Acquisition & Operation Exemption—Lines of Dallas Area Rapid Transit*, FD 34347 (STB served June 3, 2003). DGNO continued to serve the Line under its trackage rights agreement with DART and UP. Upon discontinuance of service by DGNO over the Line, RRROW will continue to be a common carrier authorized to operate on the Line.

discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 29, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)² must be filed by May 7, 2012.³ Petitions to reopen must be filed by May 17, 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 DGNO's representative: Melanie B. Yasbin, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at "www.stb.dot.gov."

Decided: April 23, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Raina S. White,
Clearance Clerk.

[FR Doc. 2012-10149 Filed 4-26-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35614]

Adams—Warnock Railway, Inc.—Lease and Operation Exemption—Norfolk Southern Railway Company

Adams—Warnock Railway, Inc. (AWRY), a noncarrier, has filed a verified notice of exemption under

²Because this is a discontinuance and not an abandonment, only OFAs to subsidize continued rail service are permitted. Each OFA must be accompanied by the filing fee, which currently is set at \$1,500. See 49 CFR 1002.2(f)(25).

³Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required here under 49 CFR 1105.6(c) and 49 CFR 1105.8(b), respectively.

49 CFR 1150.31 to lease from Norfolk Southern Railway Company (NSR), and to operate, a line of railroad referred to as the Brampton Lead, beginning just beyond the northernmost turnout switch at NSR milepost FL 5.5 and extending approximately 5,684 feet in a (generally) northeasterly direction to the end of the track adjacent to the Savannah River in Garden City, Ga.

According to AWRY, there are no official mileposts on the line. AWRY notes that all turnouts on the line east of the NSR milepost FL 5.5 junction and all side and storage tracks that are connected to the line will be included in the lease agreement that is expected to be completed prior to the effective date of the exemption. AWRY points out that it will interchange traffic with NSR at Garden City. AWRY states that the agreement or agreements that will be executed by the parties will not contain any interchange commitments.

The parties intend to consummate the proposed transaction on or after May 11, 2012, the effective date of the exemption (30 days after the exemption was filed).

AWRY certifies that its projected annual revenues as a result of this transaction will not result in its becoming a Class I or Class II rail carrier. AWRY further certifies that its projected annual revenues as a result of this transaction will not exceed \$5 million.

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. Stay petitions must be filed no later than May 4, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35614, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Robert A. Wimbish, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

Board decisions and notices are available on our Web site at "www.stb.dot.gov."

Decided: April 23, 2012.

By the Board, Rachel D. Campbell,
Director, Office of Proceedings.

Derrick A. Gardner,
Clearance Clerk.

[FR Doc. 2012-10216 Filed 4-26-12; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 24, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the date of publication of this notice.

DATES: Comments should be received on or before May 29, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at OIRA_Submission@OMB.EOP.GOV and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or on-line at www.PRAComment.gov.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927-5331, email at PRA@treasury.gov, or the entire information collection request maybe found at www.reginfo.gov.

Internal Revenue Service (IRS)

OMB Number: 1545-1146.

Type of Review: Extension without change of a currently approved collection.

Title: TD 8444—Applicable Conventions Under the Accelerated Cost Recovery System PS-54-89.

Abstract: The regulations describe the time and manner of making the notation required to be made on Form 4562 under certain circumstances when the taxpayer transfer property in certain non-recognition transactions. The information is necessary to monitor compliance with the section 168 rules.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 70.

OMB Number: 1545-1959.

Type of Review: Extension without change of a currently approved collection.

Title: Contributions of Motor Vehicles, Boats, and Airplanes.

Form: 1098-C.

Abstract: Section 884 of the American Jobs Creation Act of 1004 (Pub. L. 108-357) added paragraph 12 to section

170(f) for contributions of used motor vehicles, boats, and airplanes. Section 170(f)(12) requires that a donee organization provide an acknowledgement to the donor of this type of property and is required to file the same information to the Internal Revenue Service. Form 1098-C may be used as the acknowledgement and it, or an acceptable substitute, must be filed with the IRS.

Affected Public: Private Sector: Not-for-profits institutions.

Estimated Total Burden Hours: 6,500.

OMB Number: 1545-1966.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9263—Income Attributable to Domestic Production Activities.

Abstract: This document contains final regulations concerning the deduction for income attributable to domestic production activities under section 199 of the Internal Revenue Code. Section 199 was enacted as part of the American Jobs Creation Act of 2004 (Act). The regulations will affect taxpayers engaged in certain domestic production activities.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 9,000.

OMB Number: 1545-1992.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9324—Designated Roth Contributions Under Section 402A.

Abstract: The regulations set forth the rules for taxation of distributions from Designated Roth Accounts which are a part of a 401(k) plan or 403(b) plan.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 828,000.

OMB Number: 1545-2120.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2008-60: Election Involving the Repeal of the Bonding Requirement under § 42(j)(6).

Abstract: This revenue procedure affects taxpayers who are maintaining a surety bond or a Treasury Direct Account (TDA) to satisfy the low-income housing tax credit recapture exception in § 42(j)(6) of the Internal Revenue Code, as in effect on or before July 30, 2008. This revenue procedure provides the procedures for taxpayers to follow when making the election under section 3004(i)(2)(B)(ii) of the Housing Assistance Tax Act of 2008 (Pub. L. 110-289) to no longer maintain a surety bond or a TDA to avoid recapture.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 7,810.

OMB Number: 1545–2144.

Type of Review: Extension without change of a currently approved collection.

Title: Validating Your TIN and Reasonable Cause.

Form: 13997.

Abstract: Under the provisions of Internal Revenue Code Section (IRC §) 6039E, Information Concerning Resident Status, individuals are required to provide certain information (see IRC § 6039E(b)) with their application for a U.S. passport or with their application for permanent U.S. residence. This form is an attachment to Letter 4318 to inform the individual about the IRC provisions, the penalty, and to request them to complete this form and return it to the IRS.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 2,000.

OMB Number: 1545–2203.

Type of Review: Extension without change of a currently approved collection.

Title: Form 8939, Allocation of Increase in Basis for Property Acquired From a Decedent.

Form: 8939 and Schedules.

Abstract: Section 6018 of the Internal Revenue Code requires this return to be filed by an executor the fair market value of all property (other than cash) acquired from the decedent is more than \$1.3 million; in the case of a decedent who was a nonresident not a citizen of the United States, the fair market value of tangible property situated in the United States and other property acquired from the decedent by a United States person is greater than \$60,000; or appreciated property is acquired from the decedent that the decedent acquired by gift within three years of death and a gift tax return was required to be filed on the transfer to the decedent. Section 6018(e) also requires executors who must file Form 8939 to provide the same information to recipients of the property as the executor must provide to the IRS.

Affected Public: Individuals or Households.

Estimated Total Burden Hours: 2,482,080.

OMB Number: 1545–2218.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2011–83, Pennsylvania Low-Income Housing Credit Disaster Relief.

Abstract: The Internal Revenue Service is suspending certain

requirements under § 42 of the Internal Revenue Code for low-income housing credit projects to provide emergency housing relief needed as a result of the devastation caused by Hurricane Irene in Pennsylvania during the period of August 26, 2011 to August 30, 2011, and Tropical Storm Lee beginning on September 3, 2011.

Affected Public: Individual or Households.

Estimated Total Burden Hours: 150.

OMB Number: 1545–2219.

Type of Review: Extension without change of a currently approved collection.

Title: Reporting Abusive Tax Promotions or Preparers.

Form: 14242.

Abstract: The form is used to report an abusive tax avoidance scheme and tax return preparers who promote such schemes. The information is collected to combat abusive tax promoters. Respondents can be individuals, businesses and tax return preparers.

Affected Public: Individual or Households; Private Sector: Businesses or other for-profit, not-for-profit institutions.

Estimated Total Burden Hours: 3,600.

OMB Number: 1545–2220.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2011–87, New York Low-Income Housing Credit Disaster Relief.

Abstract: The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects to provide emergency housing relief needed as a result of the devastation in New York caused by either Hurricane Irene during the period of August 26, 2011 to September 5, 2011, or the remnants of Tropical Storm Lee during the period of September 7, 2011 to September 11, 2011.

Affected Public: Individual or Households.

Estimated Total Burden Hours: 300.

OMB Number: 1545–2221.

Type of Review: Extension without change of a currently approved collection.

Title: Mortgage Assistance Payments.

Form: 1098–MA.

Abstract: Information is needed to identify taxpayers who may not be taking a correct mortgage interest deduction, since mortgage servicers processing mortgage payments may not be able to segregate payments received from government funds versus payments made by individual mortgagees. Respondents include the Department of Housing and Urban

Development and State Housing Finance Agencies from the 50 states and the District of Columbia.

Affected Public: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 170,400.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–10163 Filed 4–26–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Submission for OMB Review

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, “Bank Activities and Operations.” The OCC is also giving notice that it has sent this collection to OMB for review.

DATES: You should submit written comments by May 29, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0204, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer,

1557-0204, by mail to U.S. Office of Management and Budget, 725, 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Bank Activities and Operations—12 CFR 7.

OMB Control No.: 1557-0204.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements ensure that national banks conduct their operations in a safe and sound manner and in accordance with applicable Federal banking statutes and regulations. The information is necessary for regulatory and examination purposes.

The information collection requirements in part 7 are as follows:

- 12 CFR 7.1000(d)(1) (National bank ownership of property—Lease financing of public facilities): National bank lease agreements must provide that the lessee will become the owner of the building or facility upon the expiration of the lease.

- 12 CFR 7.1014 (Sale of money orders at nonbanking outlets): A national bank may designate bonded agents to sell the bank's money orders at nonbanking outlets. The responsibility of both the bank and its agent should be defined in a written agreement setting forth the duties of both parties and providing for remuneration of the agent.

- 12 CFR 7.2000(b) (Corporate governance procedures—Other sources of guidance): A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.

- 12 CFR 7.2004 (Honorary directors or advisory boards): Any listing of a national bank's honorary or advisory directors must distinguish between them and the bank's board of directors or indicate their advisory status.

- 12 CFR 7.2014(b) (Indemnification of institution-affiliated parties—Administrative proceeding or civil

actions not initiated by a Federal agency): A national bank shall designate in its bylaws the body of law selected for making indemnification payments.

- 12 CFR 7.2024(a) Staggered terms for national bank directors—Any national bank may adopt bylaws that provide for the staggering the terms of its directors. National banks shall provide the OCC with copies of any bylaws so amended.

- 12 CFR 7.2024(c) Size of bank board—A national bank seeking to increase the number of its directors must notify the OCC any time the proposed size would exceed 25 directors.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,300.

Estimated Total Annual Responses: 1,300.

Estimated Total Annual Burden: 418 hours.

Frequency of Response: On occasion.

The OCC issued a 60-day **Federal Register** Notice on February 6, 2012 (77 FR 5876). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 19, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012-10139 Filed 4-26-12; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Submission for OMB Review

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Investment Securities." The OCC is also giving notice that the collection has been submitted to OMB for review.

DATES: You should submit written comments by May 29, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2-3, Attention: 1557-0205, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874-5274, or by electronic mail to regs.comments@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874-4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557-0205, by mail to U.S. Office of Management and Budget, 725, 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874-6055 or (202) 874-5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Investment Securities.

OMB Control No.: 1557-0205.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 1 are as follows:

Under 12 CFR 1.3(h)(2), a national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment Company Act of 1940¹ if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC uses the information contained in the request as a basis for determining that the bank's investment is consistent with its investment authority under applicable law and does not pose unacceptable risk.

Under 12 CFR 1.7(b), a national bank may request OCC approval to extend the five-year holding period of securities held in satisfaction of debts previously contracted (DPC) for up to an additional five years. The bank must provide a clearly convincing demonstration of why any additional holding period is needed. The OCC uses the information in the request to ensure, on a case-by-case basis, that the bank's purpose in retaining the securities is not speculative and that the bank's reasons for requesting the extension are adequate, and to evaluate the risks to the bank of extending the holding period, including potential effects on bank safety and soundness.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Responses: 25.

Estimated Total Annual Burden: 460 hours.

Frequency of Response: On occasion. The OCC issued a 60-Day **Federal Register** Notice on February 6, 2012 (77 FR 5877). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the

OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 19, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012-10142 Filed 4-26-12; 8:45 am]

BILLING CODE 4810-33-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Supplemental Identification Information for One Entity Designated Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is publishing supplemental information for one entity whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism."

DATES: The publishing of updated identification information by the Director of OFAC of the one entity in this notice, pursuant to Executive Order 13224, is effective on April 19, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (www.treas.gov/ofac) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701-1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of,

¹ 15 U.S.C. 80a-3(c)(1).

such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On April 19, 2012 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, supplemented the identification information for the one entity whose property and interests in property are blocked pursuant to Executive Order 13224.

The supplementation identification information for the entity is as follows:

Entity

1. TAJCO (a.k.a. GRAND STORES (THE GAMBIA LOCATION ONLY); a.k.a. TAJCO COMPANY; a.k.a. TAJCO COMPANY LLC; a.k.a. TAJCO LTD; a.k.a. TAJCO SARL; a.k.a. TRADEX CO), 62 Buckle Street Banjul, The Gambia; 1 Picton Street Banjul, The Gambia; Dohat Building 1st Floor, Liberation Avenue Banjul, The Gambia; Tajco Building, Main Street Hannawiyah, Tyre, Lebanon; Tajco Building, Hanouay, Sour (Tyre), Lebanon; 30 Sani Abacha Street Freetown, Sierra Leone; Web site www.tajco-ltd.com; alt. Web site www.tajcogambia.com; (Tradex Co. is a subsidiary of Tajco Company and operates from the same business address in Freetown, Sierra Leone as Tajco Company.) [SDGT].

Dated: April 19, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012-10108 Filed 4-26-12; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of One Individual Specially Designated Global Terrorist Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control ("OFAC") is removing the name of one individual, whose property and interests in property have been blocked pursuant to Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With

Persons Who Commit, Threaten To Commit, or Support Terrorism, from the list of Specially Designated Nationals and Blocked Persons ("SDN List").

DATES: The removal of this individual from the SDN List is effective as of April 19, 2012.

FOR FURTHER INFORMATION CONTACT:

Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622-2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC are available from OFAC's Web site (www.treasury.gov/ofac). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622-0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the "Order") pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701-1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c, imposing economic sanctions on persons who commit, threaten to commit, or support acts of terrorism. The President identified in the Annex to the Order various individuals and entities as subject to the economic sanctions. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and (pursuant to Executive Order 13284) the Secretary of the Department of Homeland Security, to designate additional persons or entities determined to meet certain criteria set forth in Executive Order 13224.

The Department of the Treasury's Office of Foreign Assets Control has determined that this individual should be removed from the SDN List.

The following designation is removed from the SDN List:

Individual

1. CHARAABI, Tarek (a.k.a. AL-CHARAABI, Tarek Ben Al-Bechir Ben Amara; a.k.a. SHARAABI, Tarek), Viale Bligny n.42, Milano, Italy; DOB 31 Mar 1970; POB Tunisia; nationality Tunisia; Italian Fiscal Code CHRTRK70C31Z352U; Passport L 579603 issued 19 Nov 1997 expires 18 Nov 2002 (individual) [SDGT]

The removal of this individual name from the SDN List is effective as of April 19, 2012. All property and interests in

property of the individual that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: April 19, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012-10105 Filed 4-26-12; 8:45 am]

BILLING CODE 4810-AL-P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Rehabilitation will be held on May 8-9, 2012, in Room 1046 at the Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC. The sessions will begin at 8 a.m. each day and adjourn at 5 p.m. on May 8 and at noon on May 9. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary on the rehabilitation needs of Veterans with disabilities and on the administration of VA's rehabilitation programs.

During the meeting, the Committee will receive briefing updates on various VA programs designed to enhance the rehabilitative potential of recently-discharged Veterans. Members will also begin consideration of potential recommendations to be included in the Committee's next annual report.

No time will be allocated at this meeting for oral presentations from the public. Interested parties should provide written comments for review by the Committee to Mrs. Teri Nguyen, Designated Federal Officer, VA, Veterans Benefits Administration (28), 810 Vermont Avenue NW., Washington, DC 20420, or via email at Teri.Nguyen1@va.gov. In the communication with the Committee, writers must identify themselves and state the organization, association or person(s) they represent. Individuals who wish to attend the meeting should contact Ms. Nguyen at (202) 461-9634.

Dated: April 24, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012-10171 Filed 4-26-12; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Parts 9 and 721

Significant New Use Rules on Certain Chemical Substances; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA-HQ-OPPT-2011-0577; FRL-9343-4]

RIN 2070-AB27

Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 119 chemical substances which were the subject of premanufacture notices (PMNs). Four of these chemical substances are subject to TSCA consent orders issued by EPA. This action requires persons who intend to manufacture, import, or process any of these 119 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective on June 26, 2012. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on May 11, 2012.

Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before May 29, 2012 (see Unit VI. of the **SUPPLEMENTARY INFORMATION**).

For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2011-0577, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2011-0577. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries

are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2011-0577. EPA's policy is that all comments received will be included in the docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. 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 docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Docket visitors are required to show photographic identification,

pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

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

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers

of chemicals subject to these SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see § 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What action is the agency taking?

EPA is promulgating these SNURs using direct final procedures. These SNURs will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of a chemical substance for any activity designated by these SNURs as a significant new use. Receipt of such notices allows EPA to assess risks that may be presented by the intended uses and, if appropriate, to regulate the proposed use before it occurs. Additional rationale and background to these rules are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376) (April 24, 1990 SNUR). Consult that preamble for further information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

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

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

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to these SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take

regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

III. Significant New Use Determination

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

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

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

To determine what would constitute a significant new use for the 119 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, likely human exposures and environmental releases associated with possible uses, taking into consideration the four bulleted TSCA section 5(a)(2) factors listed in this unit.

IV. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for 119 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) number (if assigned for non-confidential chemical identities).
- Basis for the TSCA section 5(e) consent order or, for non-section 5(e) SNURs, the basis for the SNUR (i.e., SNURs without TSCA section 5(e) consent orders).
- Tests recommended by EPA to provide sufficient information to evaluate the chemical substance (see Unit VIII. for more information).
- CFR citation assigned in the regulatory text section of this rule.

The regulatory text section of this rule specifies the activities designated as significant new uses. Certain new uses, including production volume limits (i.e., limits on manufacture and importation volume) and other uses designated in this rule, may be claimed as CBI. Unit IX. discusses a procedure companies may use to ascertain whether a proposed use constitutes a significant new use.

This rule includes four PMN substances (P-10-470, P-10-471, P-10-472, and P-11-217) for which EPA determined, pursuant to TSCA section 5(e), that uncontrolled manufacture, import, processing, distribution in commerce, use, and disposal may present an unreasonable risk of injury to human health and the environment. Accordingly, these substances are subject to "risk-based" consent orders under TSCA section 5(e)(1)(A)(ii)(I). Those consent orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The so-called "5(e) SNURs" on these PMN substances are promulgated pursuant to § 721.160, and are based on and consistent with the provisions in the underlying consent orders. The 5(e) SNURs designate as a "significant new use" the absence of the protective measures required in the corresponding consent orders.

This rule also includes SNURs on 115 PMN substances that are not subject to consent orders under TSCA section 5(e). In these cases, for a variety of reasons, EPA did not find that the use scenario described in the PMN triggered the determinations set forth under TSCA section 5(e). However, EPA does believe that certain changes from the use scenario described in the PMN could result in increased exposures, thereby constituting a "significant new use." These so-called "non-5(e) SNURs" are promulgated pursuant to § 721.170. EPA has determined that every activity designated as a "significant new use" in all non-5(e) SNURs issued under § 721.170 satisfies the two requirements stipulated in § 721.170(c)(2), i.e., these significant new use activities, "(i) are different from those described in the premanufacture notice for the substance, including any amendments, deletions, and additions of activities to the premanufacture notice, and (ii) may be accompanied by changes in exposure or release levels that are significant in relation to the health or environmental concerns identified" for the PMN substance.

Where EPA determined that the PMN substance may present an unreasonable risk of injury to human health via inhalation exposure, the SNUR usually

requires, among other things, that potentially exposed employees wear specified respirators unless actual measurements of the workplace air show that air-borne concentrations of the PMN substance are below a New Chemical Exposure Limit (NCEL) that is established by EPA to provide adequate protection to human health. In addition to the actual NCEL concentration, the comprehensive NCELS provisions, which are modeled after Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits (PELs) provisions, include requirements addressing performance criteria for sampling and analytical methods, periodic monitoring, respiratory protection, and recordkeeping. However, no comparable NCEL provisions currently exist in 40 CFR part 721, subpart B, for SNURs. Therefore, for these cases, the individual SNURs in 40 CFR part 721, subpart E, will state that persons subject to the SNUR who wish to pursue NCELS as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30.

PMN Numbers P-00-2, P-00-5, and P-00-6

Chemical names: Polymeric MDI based polyurethanes (generic).

CAS numbers: Not available.

Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be as internal mold release. Based on ecological structure-activity relationship (EcoSAR) analysis of test data on analogous nonionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 part per billion (ppb) of the PMN substances in surface waters. As described in the PMNs, the substances are not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would

help characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.10299.

PMN Number P-00-85

Chemical name: Benzeneacetic acid, .alpha.-chloro-.alpha.-phenyl-, ethyl ester.

CAS number: 52460-86-3.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a reaction aid in polymer synthesis. Based on EcoSAR analysis of test data on analogous benzyl halides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10300.

PMN Number P-00-317

Chemical name: Reaction products of fatty alcohols, (aminoethylaminopropyl) dialkoxymethylsilane, glycidol, and hydroxy-terminated polydimethylsiloxane (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a silicone textile treatment. Based on EcoSAR analysis of test data on analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 40 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 40 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding

40 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10301.

PMN Number P-00-442

Chemical name: Zinc ammonium phosphate (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a fertilizer. Based on EcoSAR analysis of test data on analogous zinc salts and inorganic phosphates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10302.

PMN Number P-00-833

Chemical name: Polyether modified polysiloxane, acrylated (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a non-dispersive additive. Based on test data on the PMN substance, and EcoSAR analysis of test data on analogous acrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed

4 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 4 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 4 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10303.

PMN Number P-00-1099

Chemical name: Functionalized polymethine (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an infra red absorber. Based on EcoSAR analysis of test data on analogous cationic dyes, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10304.

PMN Number P-00-1108

Chemical name: Modified cyclohexane esters (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a plasticizer. Based on EcoSAR analysis of test data on analogous epoxides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10305.

PMN Number P-01-114

Chemical name: Substituted phenylepoxyde (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a destructive use (i.e., destroyed during process of manufacturing) electric devices. Based on test data on the PMN substance and EcoSAR analysis of test data on analogous epoxides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 6 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 6 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10306.

PMN Number P-01-343

Chemical name: Acrylate resin (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an adhesive coating. Based on EcoSAR analysis of test data on analogous acrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10307.

PMN Numbers P-01-384, P-01-385, P-01-386, P-01-387, and P-01-388

Chemical names: (P-01-384) Ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate, dialkylethanolamine salt (generic); (P-01-385) Ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate (generic); (P-01-386) Ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate, ammonium salt (generic); (P-01-387) Ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate, sodium salt (generic); and (P-01-388) Ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate, ethanolamine salt (generic).

CAS numbers: Not available.

Basis for action: The consolidated PMN states that the generic (non-confidential) use of the substances will be as colorants for aqueous ink applications. Based on EcoSAR analysis

of test data on analogous amphoteric dyes, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 70 ppb of the PMN substances in surface waters. As described in the PMNs, the substances are not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances resulting in surface water concentrations exceeding 70 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help to characterize the environmental effects of the PMN substances.

CFR citations: 40 CFR 721.10308 (P-01-384); 40 CFR 721.10309 (P-01-385); 40 CFR 721.10310 (P-01-386); 40 CFR 721.10311 (P-01-387); and 40 CFR 721.10312 (P-01-388).

PMN Number P-02-249

Chemical name: Fatty acids, C16-18 and C18-unsatd., Me esters, epoxidized.

CAS number: 158318-67-3.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a raw material for production of polyols. Based on EcoSAR analysis of test data on analogous polyepoxides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 8 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 8 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to

characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10313.

PMN Numbers P-02-778, P-02-779, and P-02-780

Chemical names: Dialkyl dithiocarbamate esters (generic).

CAS numbers: Not available.

Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be used as petroleum additives. EPA identified environmental concerns because the PMN substances may be persistent, bio-accumulative, and toxic (PBT) chemicals, based on physical/chemical properties of the PMN substances, as described in the New Chemicals Program's PBT category (64 FR 60194, November 4, 1999) (FRL-6097-7). EPA estimates that the PMN substances will persist in the environment for more than two months and estimates a bioaccumulation factor of greater than or equal to 1,000. Also, based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substances in surface waters. As described in the PMNs, the substances are not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any purposeful or predictable release containing the PMN substances into the waters of the United States may cause significant adverse environmental effects since the PMN substances have been characterized by EPA as PBTs. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii) and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT category would help characterize the PBT attributes of the PMN substances.

CFR citation: 40 CFR 721.10314.

PMN Number P-02-833

Chemical name: 1,5-Dioxa-9-azaspiro[5.5]undecane, 3,3,8,8,10,10-hexamethyl-9-[1-[4-(2-oxiranylethoxy)phenyl]ethoxy]-.

CAS number: 434898-80-3.

Basis for action: The PMN states that the substance will be used as a polymerization initiator for thermoplastics and elastomers. EPA identified environmental concerns because the substance may be a PBT chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemicals

Program's PBT category. EPA estimates that the PMN substance will persist in the environment more than two months and estimates a bioaccumulation factor of greater than or equal to 1,000. Also, based on EcoSAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any purposeful or predictable release containing the PMN substance into the waters of the United States may cause significant adverse environmental effects since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii) and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT category would help to characterize the PBT attributes of the PMN substance.

CFR citation: 40 CFR 721.10315.

PMN Number P-02-872

Chemical name: Dicyclopentadiene polymer with maleic anhydride and alkyl alcohols (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an open-dispersive use in molding operations. Based on EcoSAR analysis of test data on analogous acrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 3 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a determination of the partition coefficient (n-octanol/water) by shake flask method (OPPTS Test Guideline 830.7550), generator column method (OPPTS Test Guideline 830.7560), or estimation by liquid chromatography

(OPPTS Test Guideline 830.7570); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10316.

PMN Number P-02-1040

Chemical name: Alkyl phosphate derivative (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a processing aid. Based on EcoSAR analysis of test data on analogous soluble complexes of zinc, such as zinc-phosphate salts, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10317.

PMN Numbers P-02-1078 and P-02-1080

Chemical names: Mannich bases (generic).

CAS numbers: Not available.

Basis for action: The PMNs state that the substances will be used as curatives for epoxy resin to improve chemical resistance. Based on EcoSAR analysis of test data on analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 40 ppb of the PMN substances in surface waters. As described in the PMNs, the substances are not released to surface waters. Therefore, EPA had not determined that

the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances resulting in surface water concentrations exceeding 40 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a porous pot test (OPPTS Test Guideline 835.3220); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); a fish acute toxicity mitigated by humic acid (OPPTS Test Guideline 850.1085); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.10318.

PMN Number P-03-42

Chemical name: Alkylamides, ethoxylated (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a surfactant. Based on EcoSAR analysis of test data on analogous nonionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 4 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10319.

PMN Number P-03-186

Chemical name: Fatty acid amide (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a lubricant additive. Based on EcoSAR analysis of test data on analogous nonionic surfactants and neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 8 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 8 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10320.

PMN Number P-03-194

Chemical name: Bis[phenyl, 2H-1,3-benzoxazine]derivative (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a resin for electronic laminates, adhesive resins, encapsulant resins, and composite resins. EPA has identified environmental concerns because the substance may be a PBT chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemicals Program's PBT category. Also, based on EcoSAR analysis of test data on analogous neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any purposeful or predictable release containing the substance into the waters of the United States may cause significant adverse environmental effects since the PMN substance has

been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii) and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT category would help characterize the PBT attributes of the PMN substance. In addition, EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10321.

PMN Number P-03-196

Chemical name: Metallic diol (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an additive for coatings, inks, adhesives, and composites. Based on EcoSAR analysis of test data on analogous zinc compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 6 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not expected to be released to surface waters in concentrations that exceed 6 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in releases to surface waters exceeding 6 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10322.

PMN Number P-03-248

Chemical name: Glycerol fatty acid ester (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a plastic film

additive. Based on EcoSAR analysis of test data on analogous nonionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 6 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 6 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early life stage toxicity study (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity study (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10323.

PMN Number P-03-362

Chemical name: Thionocarbamate derivative (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a sulfide mineral processing reagent. Based on test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 50 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not expected to be released to surface waters in concentrations that exceed 50 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 50 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).

Recommended testing: EPA has determined that the results of a porous pot test (OPPTS Test Guideline 835.3220) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10324.

PMN Number P-03-442

Chemical name: Cyclosilazanes, di-Me, Me hydrogen, polymers with di-Me,

Me hydrogen silazanes, reaction products with 3-(triethoxysilyl)-1-propanamine.

CAS number: 475645–84–2.

Basis for action: The PMN states that the substance will be used as a coating material. Based on EcoSAR analysis of test data on analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters.

Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075), an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010), and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10325.

PMN Number P–03–458

Chemical name: 2-Propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, ethyl 2-propenoate, zinc 2-methyl-2-propenoate (1:2) and zinc 2-propenoate (1:2), 2,2'-(1,2-diazenediyl)bis[2-methylbutanenitrile]- and 2,2'-(1,2-diazenediyl)bis[2-methylpropanenitrile]-initiated.

CAS number: 460739–39–3.

Basis for action: The PMN states that the substance will be used as a binder polymer in paints. Based on EcoSAR analysis of test data on analogous soluble complexes of zinc, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface water. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10326.

PMN Numbers P–03–529, P–03–530, and P–03–531

Chemical names: (P–03–529) Salt of mixed fatty amidoamines and polyethylenepolyamines (generic); (P–03–530) Salt of polyalkylenepolyamine derivative (generic); and (P–03–531) Salt of mixed fatty amidoamines (generic).

CAS numbers: Not available.

Basis for action: The consolidated PMN states that the generic (non-confidential) use of the substances will be as processing aids. Based on EcoSAR analysis of test data on analogous cationic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 ppb of the PMN substances in surface waters. As described in the PMNs, the substances are not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances resulting in surface water concentrations exceeding 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a porous pot test (OPPTS Test Guideline 835.3220) would help to characterize the environmental fate of the PMN substances.

CFR citations: 40 CFR 721.10327 (P–03–529); 40 CFR 721.10328 (P–03–530); and 40 CFR 721.10329 (P–03–531).

PMN Number P–03–722

Chemical name: Pyrazolone derivative (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a dye for use in thermal transfer printing systems. EPA has identified environmental concerns because the substance may be a PBT chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemicals Program's PBT category. Also, based on

test data on the PMN substance and EcoSAR analysis of test data on analogous hydrazines, EPA predicts toxicity to aquatic organisms at surface water concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in release to surface waters may cause significant adverse environmental effects since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(i), (b)(4)(ii), and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT category would help characterize the PBT attributes of the PMN substance. In addition, EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10330.

PMN Number P–03–767

Chemical name: Aromatic isocyanate methacrylate blocked (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a component in composite formulations. Based on EcoSAR analysis of test data on analogous methacrylates and esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic

toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10331.

PMN Number P-03-824

Chemical name: Lithium metal phosphate (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an electrode material. Based on EcoSAR analysis of test data on analogous inorganic phosphates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters.

Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 4 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10332.

PMN Number P-03-840

Chemical name: Substituted benzamine thio-ether (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a raw material. Based on EcoSAR analysis of test data on analogous anilines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters.

Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the PMN substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse

environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10333.

PMN Number P-03-861

Chemical name: Ethanol, 2,2'-[(3-[(2-ethylhexyl)oxy]pentyl)imino]bis-

CAS number: 284477-82-3.

Basis for action: The PMN states that the substance will be used as an intermediate, emulsifier for industrial textile softening, and an industrial dye additive. Based on EcoSAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 20 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters.

Therefore, EPA has not determined that the proposed manufacturing, processing or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 20 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10334.

PMN Number P-03-862

Chemical name: 1-Pentanamine, 3-[(2-ethylhexyl)oxy]-.

CAS number: 174615-16-8.

Basis for action: The PMN states that the substance will be used as a surfactant intermediate. Based on EcoSAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms

may occur at concentrations that exceed 7 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 7 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 7 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10335.

PMN Number P-04-1

Chemical name: Poly(oxy-1,2-ethanediyl), .alpha.-(1-oxo-2-propen-1-yl)-.omega.-[[1,1'-biphenyl]-2-yloxy]-.

CAS number: 72009-86-0.

Basis for action: The PMN states that the substance will be used as an ultra violet (UV)-curable additive for optical lens. Based on EcoSAR analysis of test data on analogous acrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 3 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would

help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10336.

PMN Number P-04-6

Chemical name: Copper, iodotris(triphenylphosphine)-, (T-4).
CAS number: 15709-82-7.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an additive. EPA has identified environmental concerns because the substance may be a PBT chemical, based on physical/chemical properties of the PMN substance, as described in the New Chemicals Program's PBT category. EPA estimates that the PMN substance will persist in the environment for more than six months and estimates a bioaccumulation factor of greater than or equal to 1,000. In addition, based on test data on the PMN substance and EcoSAR analysis of analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 60 ppb of the PMN substance in surface water. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any purposeful or predictable release containing the PMN substance into the waters of the United States may cause serious significant adverse environmental effects since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(i), (b)(4)(ii), and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT category would help characterize the PBT attributes of the PMN substance.

CFR citation: 40 CFR 721.10337.

PMN Number P-04-53

Chemical name: 2-Propenoic acid, 1,1'-(1,9-nonanediyl) ester.

CAS number: 107481-28-7.

Basis for action: The PMN states that the substance will be used as a UV-curable monomer for optical lens. Based on EcoSAR analysis of test data on analogous acrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing,

processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results a fish acute toxicity study (OPPTS Test Guideline 850.1075); a daphnid acute toxicity study (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10338.

PMN Number P-04-113

Chemical name: Adipic acid, substituted propane, alkyldiol, acrylate (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an open non-dispersive acrylate resin. Based on EcoSAR analysis of test data on analogous acrylates and esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10339.

PMN Number P-04-146

Chemical name: Potassium zinc fluoride (KZnF₃).

CAS number: 13827-02-6.

Basis for action: The PMN states that the substance will be used as a flux for brazing aluminum. Based on EcoSAR analysis of test data on analogous zinc

compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that results of a porous pot test (OPPTS Test Guideline 835.3220); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10340.

PMN Number P-04-338

Chemical name: Amino alkyl organoborane (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a polymerization catalyst/initiator for thermosetting acrylic adhesive. Based on EcoSAR analysis of test data on analogous aminoborane, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 7 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 7 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10341.

PMN Number P-04-516

Chemical name: Quaternary ammonium compounds, fatty alkyl dialkyl hydroxide (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a fuel additive. Based on EcoSAR analysis of test data on analogous cationic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 4 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); a fish acute toxicity mitigated by humic acid (OPPTS Test Guideline 850.1085); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10342.

PMN Number P-04-563

Chemical name: Alkylated aryloxyaniline thiourea (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a pesticide intermediate. EPA identified environmental concerns because the PMN substance may be a PBT chemical based on physical/chemical properties of the PMN substance as described in the New Chemicals Program's PBT category. EPA estimates that the PMN substance will persist in the environment for more than two months and estimates a bioaccumulation factor of greater than or equal to 5,000. Also, based on EcoSAR analysis of test data on analogous neutral organics and isocyanates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the substance in surface waters. According to the scenario described in the PMN, the substance is not released to surface

waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any purposeful or predictable release containing the substance into the waters of the United States may cause significant environmental effects since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii) and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT category would help characterize the PBT attributes of the PMN substance.

CFR citation: 40 CFR 721.10343.

PMN Number P-04-810

Chemical name: Alkylated aromatic isothiocyanate (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as an insecticide intermediate. EPA identified environmental concerns because the PMN substance may be a PBT chemical based on physical/chemical properties of the PMN substance, as described in the New Chemicals Program's PBT category. EPA estimates that the PMN substance will persist in the environment for more than two months and estimates a bioaccumulation factor of greater than or equal to 5,000. Also, based on EcoSAR analysis of test data on analogous neutral organics and isocyanates, EPA predicts toxicity to aquatic organisms at concentrations that exceed 1,000 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any purposeful or predictable release containing the substance into the waters of the United States may cause significant environmental effects since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii) and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT category would help characterize the PBT attributes of the PMN substance.

CFR citation: 40 CFR 721.10344.

PMN Number P-05-110

Chemical name: 1,2-Benzenedicarboxylic acid, 1,2-bis(methylcyclohexyl) ester.

CAS number: 27987-25-3.

Basis for action: The PMN states that the substance will be used as a plastic softener. Based on EcoSAR analysis of test data on analogous esters, EPA predicts that toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10345.

PMN Number P-05-599

Chemical name: 3H-Indolium, 2-[2-[2-chloro-3-[2-(1,3-dihydro-3,3-dimethyl-1-propyl-2H-indol-2-ylidene)ethylidene]-1-cyclohexen-1-yl]ethenyl]-3,3-dimethyl-1-propyl-, iodide (1:1).

CAS number: 207399-07-3.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an additive for coating compositions. Based on EcoSAR analysis of test data on analogous cationic dyes, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance will present an unreasonable risk. EPA has determined; however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA had determined that the results of a Zahn-Wellens/EMPA test (OPPTS Test Guideline 835.3200); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075), an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010), and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10346.

PMN Number P-06-268

Chemical name:

Bicyclo[2.2.1]heptanedimethanamine, N,N'-bis(1,2-dimethylpropylidene)-.

CAS number: 664980-30-7.

Basis for action: The PMN states that the substance will be used as a curing agent for epoxides and urethanes. Based on EcoSAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10347.

PMN Numbers P-06-623 and P-06-624

Chemical names: Aspartic acid, N,N'-(iminodi-alkanediyl)bis, tetraalkane esters (generic).

CAS numbers: Not available.

Basis for action: The consolidated PMN states that the generic (non-confidential) use of the substances will be as components of industrial coatings. Based on EcoSAR analysis of test data on analogous aliphatic amines and esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb of the PMN substances in surface waters. As described in the PMN, the substances are not released to surface waters.

Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances resulting in surface water concentrations exceeding 3 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradation test (OPPTS Test Guideline 835.3100); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075), an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010), and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substances.

CFR citation: 40 CFR 721.10348.

PMN Number P-06-731

Chemical name: 1,4-Benzenediamine, N'-(alkyl)-N-[4-[(alkyl)amino]phenyl]-N-phenyl- (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be used as an open, non-dispersive resin. Based on EcoSAR analysis of test data on analogous cationic dyes, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters.

Therefore, EPA has not determined that the proposed manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help to characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10349.

PMN Number P-06-742

Chemical name: Amines, C11-14-branched and linear alkyl.

CAS number: 863766-30-7.

Basis for action: The PMN states that the substance will be used as a raw material. EPA identified environmental concerns because the PMN substance may be a PBT chemical based on physical/chemical properties of the PMN substance as described in the New Chemicals Program's PBT category. EPA estimates that the PMN substance will persist in the environment for more than two months and estimates a bioaccumulation factor of greater than or equal to 1,000. Also, based on EcoSAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any purposeful or predictable release containing the PMN substance into the waters of the United States may cause significant adverse environmental effects since the PMN substance has been characterized by EPA as a PBT. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(ii) and (b)(4)(iii).

Recommended testing: EPA has determined that the results of the tiered testing described in the New Chemicals Program's PBT category would help characterize the PBT attributes of the PMN substance.

CFR citation: 40 CFR 721.10350.

PMN Number P-07-351

Chemical name: Carbomonocycle, bis[(4-methylphenoxy)methyl]- (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a component of a manufactured consumer article. Based on EcoSAR analysis of test data on analogous neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that manufacturing, processing, and use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information the PMN substance meets

the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10351.

PMN Number P-08-93

Chemical name: Dimethyl terephthalate, polymer with alkyl diol and substituted benzoates (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a binder in foundry applications. Based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 60 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 60 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 60 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a porous pot test (Organisation for Economic Co-operation and Development (OECD) Test Guideline 303A); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10352.

PMN Number P-08-510

Chemical name: Organosulfide (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a co-stabilizer for plastics. Based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb in surface waters. As described in the PMN, releases of the PMN substance

are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early life-stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10353.

PMN Number P-08-623

Chemical name: 1,1'-Biphenyl, 3,3',4,4'-tetramethyl-

CAS number: 4920-95-0.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a raw material for production of biphenyl dianhydride. Based on EcoSAR analysis of test data on analogous neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10354.

PMN Number P-08-722

Chemical name: Poly(oxy-1,2-ethanediyl), .alpha.-(1-oxododecyl)-.omega.-[3-triethoxysilyl]propoxy]-.

CAS number: 1041420-54-5.

Basis for action: The PMN states that the substance will be used as a pigment treatment and surface treatment agent. Based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance will not be released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a hydrolysis test (OPPTS Test Guideline 835.2120); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10355.

PMN Number P-09-98

Chemical name: Zinc, bis[3-(acetyl-.kappa.O)-6-methyl-2H-pyran-2,4(3H)-dionato-.kappa.O4]diaqua-

CAS number: 171884-15-4.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a polymer additive. Based on EcoSAR analysis of test data on analogous zinc compounds and allyl/vinyl esters, with molecular weight adjustments, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 4 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an

aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10356.

PMN Number P-09-382

Chemical name: Iron, citrate phosphate potassium complexes.

CAS number: 120579-31-9.

Basis for action: The PMN states that the substance will be used as a nutrient for agriculture, and as an intermediate used to manufacture agricultural soil amendments. Based on EcoSAR analysis of test data on analogous inorganic phosphates, EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substance to surface water, from uses other than as described in the PMN, exceed releases from the use described in the PMN. For the described use in the PMN, where the substance will only be transported in drums with a maximum capacity of 20 gallons, or in bottom-loading totes, significant environmental releases are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN could result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10357.

PMN Number P-09-546

Chemical name: Formaldehyde reaction products with aryl amine (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate. Based on EcoSAR analysis of test data on analogous anilines, EPA predicts toxicity to aquatic organisms may occur if releases of the PMN substance to surface water, from uses other than as described in the PMN, exceed the

releases expected from the use described in the PMN. For the intermediate use described in the PMN, significant environmental releases are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use other than as an intermediate that has been manufactured using the process described in the premanufacture notice may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10358.

PMN Number P-09-613

Chemical name: Cardanol-based alkyl phosphate (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a site-limited polymer modifier for non-consumer products. Based on EcoSAR analysis of test data on analogous anionic surfactants and organic phosphates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 18 ppb of the PMN substance in surface waters. For the use described in the PMN, general population exposure is limited and the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 18 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii). EPA has also determined, however, in accordance with TSCA section 5(a)(2)(A) and 5(a)(2)(C) and with § 721.170(a), that uses other than as described in the PMN may result in significant human exposures.

Recommended testing: EPA has determined that the results of an acute oral toxicity study (OPPTS Test Guideline 870.1100) or an acute oral

toxicity up-and-down procedure (OECD Test Guideline 425); a bacterial reverse mutation test (OPPTS Test Guideline 870.5100); a mammalian erythrocyte micronucleus test via the intraperitoneal route (OPPTS Test Guideline 870.5395); a repeated dose 28-day oral toxicity test in rodents (OPPTS Test Guideline 870.3050 or OECD Test Guideline 407) with a neurotoxicity functional observational screening battery (OPPTS Test Guideline 870.6200) for all test doses; a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the human health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10359.

PMN Number P-09-628

Chemical name: 1-Substituted propane, 3-(triethoxysilyl)-, reaction products with polyethylene glycol mono-(branched tridecyl) ether (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a cross-linking, coupling agent. Based on test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 4 ppb of the PMN substance in surface waters. As described in the PMN, the substance will not be released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 4 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10360.

PMN Number P-10-15

Chemical name: Anthraquinonedicarboximide, diamino-N-alkyl- (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a fuel additive.

Based on EcoSAR analysis of test data on analogous imides and anilines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) with sheepshead minnows; a mysid chronic toxicity test (OPPTS Test Guideline 850.1350); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) with diatom *Skeletonema costatum* would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10361.

PMN Number P-10-44

Chemical name: Oils, callitropsis nootkatensis.

CAS number: 1069136-34-0.

Basis for action: The PMN states that the substance will be used as a fragrance ingredient. Based on EcoSAR analysis of test data on analogous neutral organic compounds (hydrocarbons), EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would

help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10362.

PMN Number P-10-47

Chemical name: Alkenoic acid, 2-methyl-, 2-oxiranylmethyl ester, reaction products with 4,4'-methylenebis (cyclohexanamine) (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance is as a curing agent for epoxy resin in protective coatings. Based on EcoSAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 44 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any release of manufacturing or processing streams containing the PMN substance resulting in surface water concentrations exceeding 44 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10363.

PMN Number P-10-53

Chemical name: Halogenated aromatic amine (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a reactant for the manufacture of a pesticide. Based on EcoSAR analysis of test data on analogous aromatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that

any use of the substance resulting in surface water concentrations exceeding 2 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a porous pot test (OPPTS Test Guideline 835.3220); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10364.

PMN Number P-10-56

Chemical name: Butanoic acid, 3-mercapto-2-methyl-, ethyl ester.

CAS number: 888021-82-7.

Basis for action: The PMN states that the substance will be used as an ingredient in fragrance compounds. Based on EcoSAR analysis of test data on analogous esters and thiols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 8 ppb of the PMN substance in surface waters. At the maximum annual manufacturing and importation production levels described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 8 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 8 ppb, or exceedance of the annual maximum manufacturing and importation limit of 100 kilograms may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10365.

PMN Number P-10-76

Chemical name: Benzene, 4-bromo-1,2-dimethyl-

CAS number: 583-71-1.

Basis for action: The PMN states that the substance will be used as a raw material used for production of 1,1-biphenyl,3,3',4,4'-tetramethyl. Based on EcoSAR analysis of test data on analogous neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 30 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 30 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 30 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a simulation test to assess the biodegradability of chemicals discharged in wastewater (OECD Test Guideline 314); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10366.

PMN Number P-10-83

Chemical name: Hydroxy-aryl, polymer with substituted benzene, cyanate (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a resin component. Based on EcoSAR analysis of test data on analogous neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 3 ppb.

Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of

the substance resulting in surface water concentrations exceeding 3 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a water solubility test (OECD Test Guideline 105); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10367.

PMN Number P-10-84

Chemical name: Triphenodioxazine derivatives (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a dispersion additive for printing ink. Based on EcoSAR analysis of test data on analogous aliphatic amines and diamines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10368.

PMN Number P-10-88

Chemical name: Carbonic acid, diphenyl ester, polymer with diphenyl P-methylphosphonate and 4,4'-(1-methylethylidene)bis[phenol].

CAS number: 77226-90-5.

Basis for action: The PMN states that the substance will be used as a flame retardant and flame retardant additive where the particle size is greater than 10 microns. Based on analysis of test data on analogous respirable, poorly soluble particulates, EPA identified concerns for

lung overload from inhalation exposures of the PMN substance. For the uses described in the PMN, significant worker and general population exposure is unlikely, as exposure to respirable particles is not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as a flame retardant and flame retardant additive where the particle size is greater than 10 microns, may result in significant human exposures to the respirable form of the PMN substance. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) with a 60-day holding period would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10369.

PMN Number P-10-99

Chemical name: Phosphonic acid, p-octyl-, lanthanum (3+) salt (2:1).

CAS number: 1186211-38-0.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a modifier for polymers. Based on EcoSAR analysis of test data on analogous lanthanum salts, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 8 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 8 ppb.

Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 8 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a simulated biodegradability test (OECD Test Guideline 314); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10370.

PMN Number P-10-136

Chemical names: (P-10-136, Chemical A) Butanoic acid, 3-mercapto-,1,1'-[2,2-bis[(substituted-1-oxoalkoxy)methyl]-1,3-propanediyl] ester (generic) and (P-10-136, Chemical B) Butanoic acid, 3-mercapto-,1,1'-[2-(hydroxymethyl)-2-(substituted-1-oxoalkoxy)methyl]-1,3-propanediyl] ester (generic).

CAS numbers: Not available.

Basis for action: The PMN states that the substance will be used as a monomer for acryl-based UV-curing coatings, inks, and adhesives. Based on test data on the PMN substance, EPA identified concerns for systemic toxicity, mutagenic effects, dermal sensitization and neurotoxicity from dermal and inhalation exposures to the PMN substance. Further, based on test data on the PMN substance, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. For the uses described in the PMN, significant worker exposure is unlikely, as dermal and inhalation exposures are low, and the substance is not released to surface waters. Therefore, EPA has not determined that the proposed processing or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture, use other than as described in the PMN, or any use of the substance resulting in surface water concentrations exceeding 2 ppb may cause serious health effects and significant environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i) and (b)(4)(i).

Recommended testing: EPA has determined that the results of a mammalian bone marrow chromosomal aberration test (OPPTS Test Guideline 870.5385) by the intraperitoneal route; a reproduction/developmental toxicity screening test (OECD Test Guideline 421); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the human health and environmental effects of the PMN substance.

CFR citations: 40 CFR 721.10371 (P-10-136, Chemical A) and 40 CFR 721.10372 (P-10-136, Chemical B).

PMN Number P-10-153

Chemical name: 1H-Imidazole, 1-(1-methylethyl)-.

CAS number: 4532-96-1.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical

intermediate. Based on test data on the PMN substance, and EcoSAR analysis of test data on analogous imidazoles, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 70 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as a chemical intermediate, or any use of the substance resulting in surface water concentrations exceeding 70 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test—CO₂ in sealed vessels (OPPTS Test Guideline 835.3140 or OECD Test Guideline 310); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10373.

PMN Number P-10-163

Chemical name: Silane, (3-chloropropoxy)dimethyl(l-methylethyl)-.

CAS number: 1191036-21-1.

Basis for action: The PMN states that the substance will be used as an isolated intermediate in the preparation of a lithium reagent. Based on the expected alkylating agent potential of the PMN substance, and analysis of test data on analogous substances, EPA identified concerns for oncogenicity, mutagenicity, developmental toxicity, liver toxicity, irritation, and possible corrosion to all tissues to workers exposed to the PMN substance. Further, based on EcoSAR analysis of test data on analogous neutral organic chemicals, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 2 ppb of the PMN substance in surface waters. As described in the PMN, worker inhalation and dermal exposures are not expected due to the use of organic vapor respirators, impervious gloves and goggles, and environmental releases to surface waters are not expected.

Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has

determined, however, that any use of the substance without the use of impervious gloves, goggles, and organic vapor respirators, where there is a potential of dermal or inhalation exposure; or any use of the substance resulting in surface water concentrations exceeding 2 ppb, may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a bacterial reverse mutation test (OPPTS Test Guideline 870.5100); a mammalian erythrocyte micronucleus test (OPPTS Test Guideline 870.5395) via the intraperitoneal route; an acute dermal irritation test (OPPTS Test Guideline 870.2500); a skin sensitization test (OPPTS Test Guideline 870.2600); a repeated dose 28-day oral toxicity test (OPPTS Test Guideline 870.3050) in rodents; a fish acute toxicity test (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the human health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10374.

PMN Number P-10-200

Chemical name: Hydroxypropyl methacrylate, reaction products with propylene oxide and ethylene oxide, copolymer with N-vinyl caprolactam (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an oilfield polymer. Based on test data on the PMN substance, and EcoSAR analysis of test data on analogous nonionic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 155 ppb of the PMN substance in surface waters. As described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 155 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 155 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets

the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400) and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10375.

PMN Number P-10-222

Chemical name: Alkyltin halide (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an alkylating agent. Based on test data on a structurally similar substance, EPA identified concerns for immunotoxicity, asthma, and sensitization from exposure to the PMN substance via the inhalation and dermal route. Further, based on EcoSAR analysis of test data on analogous tin compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 22 ppb of the PMN substance in surface waters. For the use described in the PMN, worker inhalation and dermal exposures are expected to be minimal and releases of the PMN substance to surface waters are not expected to result in surface water concentrations that exceed 22 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as described in the PMN, or any release of the substance resulting in surface water concentrations exceeding 22 ppb, may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110); a fish acute toxicity test (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the human health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10376.

PMN Number P-10-247

Chemical names: (P-10-247, Chemical A) 1,2-

Cyclohexanedicarboxylic acid, benzyl C8-10-isoalkyl esters, C9-rich and (P-10-247, Chemical B) 1,2-Cyclohexanedicarboxylic acid, benzyl nonyl ester, branched and linear.

CAS numbers: (P-10-247, Chemical A) 1190265-49-6 and (P-10-247, Chemical B) 1190264-82-4.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an additive for polymers. Based on test data on the PMN substance, EPA identified concerns for skin and eye irritation via the dermal route. In addition, based on test data on a structurally similar compound, EPA identified concerns for systemic health effects. Further, based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, worker exposure to the substance is expected to be minimal due to the use of impervious gloves, and releases of the substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without the use of impervious gloves where there is a potential for dermal exposure, or any use of the substance resulting in surface water concentrations exceeding 1 ppb, may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i), (b)(3)(ii), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110); a porous pot test (OPPTS Test Guideline 835.3220); a combined chronic toxicity/carcinogenicity test (OPPTS Test Guideline 870.4300); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the human health and environmental effects of the PMN substance.

CFR citations: 40 CFR 721.10377 (P-10-247, Chemical A) and 40 CFR 721.10378 (P-10-247, Chemical B).

PMN Number P-10-266

Chemical name: Propanoic acid, 3-(dodecylthio)-, 2-(1,1-dimethylethyl)-4-[[5-(1,1-dimethylethyl)-4-hydroxy-2-

methylphenyl]thio]-5-methylphenyl ester.

CAS number: 69075-62-3.

Basis for action: The PMN states that the substance will be used as an antioxidant for plastic articles. Based on test data on the PMN substance, EPA identified health concerns to workers from exposure to the PMN substance via inhalation, which include long-term effects to the liver, heart, blood, and possible immunotoxicity. As described in the PMN, and at the production level stated in the PMN, worker inhalation exposure will be minimal. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that if the production volume increases substantially, the potential for exposure could change correspondingly, and may result in serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).

Recommended testing: EPA has determined that the results of a reproductive/developmental toxicity screening test, via the oral route (OPPTS Test Guideline 870.3550 or OECD Test Guideline 421) would help characterize the human health effects of the PMN substance.

CFR citation: 40 CFR 721.10379.

PMN Number P-10-285

Chemical name: Benzoic acid, 3-amino-2-mercapto-

CAS number: 71807-60-8.

Basis for action: The PMN states that the substance will be used as an intermediate. Based on EcoSAR analysis of test data on analogous thiols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 33 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 33 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test

Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10380.

PMN Number P-10-290

Chemical name: Cyclic carboxylic acid, polymer with dihydroxy dialkyl ether, hydroxy substituted alkane and carboxylic acid anhydride, methacrylate terminated polyester (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance is a base resin for gel coat compounds. Based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 8 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 8 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10381.

PMN Number P-10-313

Chemical name: Diphosphoric acid, calcium salt (1:1).

CAS number: 14866-19-4.

Basis for action: The PMN states that the substance will be used as an opacifying agent for ceramic whiteware. Based on test data on analogous respirable, poorly soluble particulates, EPA identified concerns for lung effects if respirable particles are inhaled. Further, based on EcoSAR analysis of test data on analogous inorganic phosphates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 60 ppb of the PMN substance in surface waters. For the use described in the PMN, no significant inhalation exposures are expected and the substance is not released to surface waters. Therefore,

EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than as an opacifying pigment for ceramic whiteware, or any use resulting in releases to surface waters that produce surface water concentrations that exceed 60 ppb, may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a water solubility test, shake flask method (OPPTS Test Guideline 830.7840) using mass spectrometry as the analytical method; a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the human health and environmental effect of the PMN substance. Depending on the results of the water solubility test, a 90-day inhalation toxicity test (OPPTS Test Guideline 870.3465) with a 60-day holding period may be necessary.

CFR citation: 40 CFR 721.10382.

PMN Number P-10-324

Chemical name: Urea, N, N'-(methyl-1,3-phenylene)bis[N', N'-bis[3-polyalkyleneamino]-, compd. with formaldehyde polymer with phenol (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a curing agent or accelerator for epoxy resin. Based on EcoSAR analysis of test data on analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 43 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 43 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute

toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10383.

PMN Number P-10-332

Chemical name: Substituted alkanolamine phenol (generic).

CAS number: Not available.

Basis for action: The PMN states that the substance will be used as a polyol for rigid foam. Based on EcoSAR analysis of test data on analogous aliphatic amines, phenols, and phenolamines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a water solubility test: Column elution method; shake flask method (OPPTS Test Guideline 830.7840); either a simulation test— aerobic sewage treatment: Activated sludge units (OECD Test Guideline 303A) or an aerobic aquatic biodegradation test (OPPTS Test Guideline 835.3100); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10384.

PMN Number P-10-344

Chemical name: Phenoxy alkyl ether (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a plasticizing component of a two part coating containing a flexibilizer at a maximum concentration of 10 percent. Based on test data on the hydrolysis product of the PMN substance, EPA identified concerns for blood effects, developmental effects, and reproductive

effects to workers exposed to the PMN substance. For the use described in the PMN, significant worker exposure is unlikely, as the substance is imported, and significant dermal and inhalation exposures are not expected. Therefore, EPA has not determined that the proposed processing or use of the substance may present an unreasonable risk. EPA has determined, however, that domestic manufacture, or use of the substance other than as a plasticizing component of a two part coating containing a flexibilizer at a maximum PMN concentration of 10 percent, may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(iii).

Recommended testing: Based on the test data available to EPA on the hydrolysis product of the PMN substance, EPA does not recommend additional testing at this time.

CFR citation: 40 CFR 721.10385.

PMN Number P-10-361

Chemical name: Substituted phenol (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance will be as an organic intermediate in substituted bisphenol manufacturing. Based on EcoSAR analysis of test data on analogous phenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10386.

PMN Number P-10-362

Chemical name: Substituted bisphenol (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance will be as an organic intermediate in bis-phosphite synthesis. Based on EcoSAR analysis of test data on analogous polyphenols, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10387.

PMN Number P-10-364

Chemical name: Bisphospite nickel cyanoalkyl complex (generic).

CAS number: Not available.

Basis for action: The PMN states that the use of the substance will be as a soluble metal catalyst for organic synthesis. Based on EcoSAR analysis of test data on analogous inorganic nickel compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 5 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 5 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 5 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish

acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10388.

PMN Number P-10-401

Chemical name: Styrene, copolymer with acrylic acid, salt with alkoxyated alkenylamine (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a non-dispersive additive. Based on EcoSAR analysis of test data on analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 27 ppb of the PMN substance in surface waters. Based on the wastewater treatment processes described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 27 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 27 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10389.

PMN Number P-10-403

Chemical name: Acetoacetanilide reaction product with multifunctional acrylate (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a polymer composite. Based on EcoSAR analysis of test data on analogous acrylates, esters, and amides, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is

not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10390.

PMN Number P-10-424

Chemical name: Copper gallium indium selenide.

CAS number: 144972-86-1.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a copper indium metal selenide deposited on a substrate as a part of manufacturing copper indium metal selenide solar panel. Based on analysis of test data on analogous respirable, poorly soluble particulates (subcategory titanium dioxide), EPA identified concerns for lung effects and lung tumors to workers exposed to the PMN substance. As described in the PMN, worker exposure will be minimal due to the use of adequate respiratory protection and adequate hazard communication warnings in the Material Safety Data Sheet (MSDS). Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance without a National Institute for Occupational Safety and Health (NIOSH)-certified respirator with an Assigned Protection Factor (APF) of at least 10, or the equivalent NCEL of 1.5 mg/m³ as an 8-hour time weighted average, where there is a potential for inhalation exposure, may cause serious health effects. EPA has also determined that any use of the substance without adequate hazard communication may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(1)(i)(C) and (b)(3)(ii).

Recommended testing: EPA has determined that the results of a 90-day inhalation toxicity test (OPPTS Test

Guideline 870.3465) in rats would help characterize the human health effects of the PMN substance. Testing should include a 60-day recovery.

CFR citation: 40 CFR 721.10391.

PMN Number P-10-426

Chemical name: Halo substituted sulfamidylbenzyluracil (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate. Based on test data on structurally similar chemicals, EPA identified concerns for developmental toxicity via the inhalation route. Further, based on test data for a close structural analog of the PMN substance and EcoSAR analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, worker inhalation exposures are expected to be minimal due to manufacturing in an enclosed system and use as a chemical intermediate, and releases to surface waters are not expected. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any manufacture of the substance in a non-enclosed system, use of the substance other than as a chemical intermediate, or use of the substance resulting in surface water concentrations exceeding 1 ppb, may cause serious health effects and significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(ii), (b)(4)(i), and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a prenatal developmental toxicity test (OPPTS Test Guideline 870.3700); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the human health and environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10392.

PMN Number P-10-433

Chemical name: Sodium bromide MDA complex (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical

intermediate for manufacturing polyurethane rubber elastomer for tires, wheels, rolls, screens, belts, and other specialty urethane articles. Based on EcoSAR analysis of test data on analogous anilines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 3 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 3 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a ready biodegradability test (OPPTS Test Guideline 835.3110); a dissociation constant in water test (OECD Test Guideline 112); a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10393.

PMN Number P-10-436

Chemical name: Copolymer of anhydride, a diol and a disubstituted diol (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a resin additive. Based on EcoSAR analysis of test data on analogous acrylates, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 55 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 55 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 55 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish

acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10394.

PMN Number P-10-458

Chemical name: Fatty acids, C14-18 and C16-18 unsatd., polymers with adipic acid and triethanolamine, di-Me sulfate-quaternized.

CAS number: 1211825-32-9.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as an adjuvant in the production of paper. Based on test data on the PMN substance and EcoSAR analysis of test data on analogous polycationic polymers, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 5 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 5 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 5 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170 (b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075) and an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10395.

PMN Number P-10-470

Chemical name: Dimethyl siloxy-polyfluoro methyl siloxy-poly(oxyalkylenediyl) methyl siloxy copolymer (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: April 20, 2011.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the PMN substance will be as an open, non-dispersive carpet treatment. EPA has concerns for potential incineration or other decomposition products of the PMN substance. These perfluorinated

products may be released to the environment from incomplete incineration of the PMN substance at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers that suggests that, under some conditions, the PMN substance could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could bioaccumulate or biomagnify, and could be toxic to people, wild mammals, and birds. These concerns are based on data on analog chemicals, including perfluorooctanoic acid (PFOA) and other perfluorinated alkyls, which include the presumed environmental degradant of the PMN substance. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation product in humans and wildlife. The order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that this substance may present an unreasonable risk of injury to the environment and human health, the substance may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substance and its potential degradation products. To protect against these risks, the consent order requires: No manufacture of the substance beyond an annual aggregate manufacture and importation volume; recording and reporting of certain fluorinated impurities in the starting raw material; and manufacture of the PMN substance not to exceed the maximum established impurity levels of certain fluorinated impurities. The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain fate and physical/chemical property testing identified in the TSCA 5(e) consent order would help characterize possible effects of the substance and its degradation products. The order does not require submission of the testing at any specified time or production volume. However, the order's restrictions on manufacture, import, processing, distribution in commerce,

use and disposal of the PMN will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10396.

PMN Numbers P-10-471 and P-10-472

Chemical names: Alkyl acrylate-polyfluoro methacrylate-poly(oxyalkylenediyl)-methacrylates (generic).

CAS numbers: Not available.

Effective date of TSCA section 5(e) consent order: April 20, 2011.

Basis for TSCA section 5(e) consent order: The consolidated PMN states that the generic (non-confidential) use of the PMN substances will be as open, non-dispersive additives. EPA has concerns for potential incineration or other decomposition products of the PMN substances. These perfluorinated products may be released to the environment from incomplete incineration of the PMN substances at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers that suggests that, under some conditions, the PMN substances could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could be PBT chemicals, based on data on analog chemicals, including PFOA and other perfluorinated alkyls, which include the presumed environmental degradant of the PMN substances. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation product in humans and wildlife. The order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that these substances may present an unreasonable risk of injury to the environment and human health, the substances may be produced in substantial quantities and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substances and their potential degradation products. To protect against these risks, the consent order requires: No manufacture of the substances beyond an annual aggregate manufacture and importation volume; recording and reporting of certain

fluorinated impurities in the starting raw materials; and manufacture of the PMN substances not to exceed the maximum established impurity levels of certain fluorinated impurities. The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain fate and physical/chemical property testing identified in the TSCA 5(e) consent order would help characterize possible effects of the substances and their degradation products. The order does not require submission of the testing at any specified time or production volume. However, the order's restrictions on manufacture, import, processing, distribution in commerce, use, and disposal of the PMNs will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10397.

PMN Number P-10-495

Chemical name: Poly(oxy-1,2-ethanediy),.alpha.,-monoalkyl ethers-.omega.-mono (hydrogen maleate)-(generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a coating additive. Based on test data submitted with the PMN, EPA identified concerns for dermal sensitization to workers and consumers exposed to the PMN substance. For the industrial uses described in the PMN, significant worker exposures will be minimal due to the use of protective equipment. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance other than for industrial applications may result in consumer exposures which may cause serious health effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(3)(i).

Recommended testing: EPA has determined that the results of a dermal sensitization test (OPPTS Test Guideline 870.2600) at varying concentrations or different formulations would help characterize human health effects of the PMN substance.

CFR citation: 40 CFR 721.10398.

PMN Number P-10-501

Chemical name: Benzoic acid azo-substituted pyridine (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as site-limited intermediate. Based on EcoSAR analysis of test data on analogous vinyl/allyl nitriles, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the PMN substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10399.

PMN Numbers P-10-517 and P-10-518

Chemical names: (P-10-517) Oxirane, 2-ethyl-, polymer with oxirane, mono-C12-14-sec-alkyl ethers and (P-10-518) Oxirane, 2-ethyl-, polymer with oxirane, mono-C11-15-sec-alkyl ethers.

CAS numbers: (P-10-517) 1013910-41-2 and (P-10-518) 1022990-65-3.

Basis for action: The consolidated PMN states that the substances will be used as surfactants for architectural coatings and industrial metal cleaning solutions. Based on test data on the PMN substances, and EcoSAR analysis of test data on analogous nonionic surfactants, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 14 ppb of the PMN substance P-10-517, and 20 ppb of the PMN substance P-10-518, in surface waters. As described in the consolidated PMN notice, releases to surface waters are not expected to exceed 14 ppb or 20 ppb, respectively, due to pretreatment of wastes prior to release. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of the substances resulting in surface water concentrations exceeding 14 ppb of P-10-517, or 20 ppb of P-10-518, may cause significant adverse environmental effects. Based on this

information, the PMN substances meet the concern criteria at § 721.170(b)(4)(i) and (b)(4)(ii).

Recommended testing: EPA has determined that the results of an activated sludge simulation study (OECD Test Guideline 303A); a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); and a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300) would help characterize the environmental effects of the PMN substances.

CFR citations: 40 CFR 721.10400 (P-10-517) and 40 CFR 721.10401 (P-10-518).

PMN Number: P-10-548

Chemical name: Vegetable oil, modified products (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate. Based on EcoSAR analysis of test data on analogous neutral organic compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 10 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters.

Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 10 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citations: 40 CFR 721.10402.

PMN Number P-10-550

Chemical name: Vegetable oil, modified products, esters (generic).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate. Based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 8 ppb of the PMN substance in surface waters. As described in the PMN,

releases of the substance are not expected to result in surface water concentrations that exceed 8 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of any of the substance resulting in surface water concentrations exceeding 8 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citations: 40 CFR 721.10403.

PMN Numbers P-10-551 and P-10-552

Chemical names: Olefins (generic) (P-10-551 and P-10-552).

CAS numbers: Not available.

Basis for action: The PMNs state that the generic (non-confidential) use of the substances will be as chemical intermediates. Based on EcoSAR analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 6 ppb of the PMN substances in surface waters. As described in the PMNs, releases of the substances are not expected to result in surface water concentrations that exceed 6 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substances may present an unreasonable risk. EPA has determined, however, that any use of any of the substances resulting in surface water concentrations exceeding 6 ppb may cause significant adverse environmental effects. Based on this information, the PMN substances meet the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substances.

CFR citations: 40 CFR 721.10404.

PMN Number P-10-553

Chemical name: Olefins (generic) (P-10-553).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a lubricant additive. Based on EcoSAR analysis of test data on analogous neutral organic compounds, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. For the specific use and production limit described in the PMN, releases of the PMN substance are not expected to result in surface water concentrations that exceed 1 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that use of the substance other than as described in the PMN, any use of the substance resulting in surface water concentrations exceeding 1 ppb, or use beyond the annual aggregate production limit may result in exposures which may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results a fish early-life stage toxicity test (OPPTS Test Guideline 850.1400); a daphnid chronic toxicity test (OPPTS Test Guideline 850.1300); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10405.

PMN Number P-10-554

Chemical name: Fatty acid methyl esters (generic) (P-10-554).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate. Based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 8 ppb of the PMN substance in surface waters. As described in the PMN, releases of the substance are not expected to result in surface water concentrations that exceed 8 ppb. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of any of the substance resulting in surface water concentrations exceeding 8 ppb

may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citations: 40 CFR 721.10406.

PMN Number: P-10-555

Chemical name: Fatty acid methyl esters (generic) (P-10-555).

CAS number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a chemical intermediate. Based on EcoSAR analysis of test data on analogous esters, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citations: 40 CFR 721.10407.

PMN Number P-10-556

Chemical name: Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-[2-[[2,2-dimethyl-3-[[1-oxododecyl]oxy]propylidene]amino]methyl ethyl]-.omega.-[2-[[2,2-dimethyl-3-[[1-oxododecyl]oxy]propylidene]amino]methyl ethoxy]-.

CAS number: 613246-75-6.

Basis for action: The PMN states that the generic (non-confidential) use of the substance will be as a latent curing

agent in polyurethane adhesives. Based on EcoSAR analysis of test data on analogous aliphatic amines, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 1 ppb of the PMN substance in surface waters. As described in the PMN, the substance is not released to surface waters. Therefore, EPA has not determined that the proposed manufacturing, processing, or use of the substance may present an unreasonable risk. EPA has determined, however, that any use of the substance resulting in surface water concentrations exceeding 1 ppb may cause significant adverse environmental effects. Based on this information, the PMN substance meets the concern criteria at § 721.170(b)(4)(ii).

Recommended testing: EPA has determined that the results of a fish acute toxicity test, freshwater and marine (OPPTS Test Guideline 850.1075); an aquatic invertebrate acute toxicity test, freshwater daphnids (OPPTS Test Guideline 850.1010); and an algal toxicity test, tiers I and II (OPPTS Test Guideline 850.5400) would help characterize the environmental effects of the PMN substance.

CFR citation: 40 CFR 721.10408.

PMN Number P-11-217

Chemical name:

Poly(oxyalkylenediyl), .alpha.-[[[methyl-3-[[[(polyfluoroalkyl)oxy]carbonyl]amino]phenyl]amino]carbonyl]-.omega.-methoxy-(generic).

CAS number: Not available.

Effective date of TSCA section 5(e) consent order: June 24, 2011.

Basis for TSCA section 5(e) consent order: The PMN states that the generic (non-confidential) use of the PMN substance will be as an open, non-dispersive carpet treatment. EPA has concerns for potential incineration or other decomposition products of the PMN substance. These perfluorinated products may be released to the environment from incomplete incineration of the PMN substance at low temperatures. EPA has preliminary evidence, including data on some fluorinated polymers that suggests that, under some conditions, the PMN substance could degrade in the environment. EPA has concerns that these degradation products will persist in the environment, could be PBT chemicals, based on data on analog chemicals, including PFOA and other perfluorinated alkyls, which include the presumed environmental degradant. There is pharmacokinetic and toxicological data in animals on PFOA, as well as epidemiological and blood monitoring data in humans. Toxicity

studies on PFOA indicate developmental, reproductive, and systemic toxicity in various species, as well as cancer. These factors, taken together, raise concerns for potential adverse chronic effects from the presumed degradation product in humans and wildlife. The order was issued under TSCA sections 5(e)(1)(A)(i), 5(e)(1)(A)(ii)(I), and 5(e)(1)(A)(ii)(II), based on a finding that this substance may present an unreasonable risk of injury to the environment and human health, the substance may be produced in substantial quantities, and may reasonably be anticipated to enter the environment in substantial quantities, and there may be significant (or substantial) human exposure to the substance and its potential degradation products. To protect against these risks, the consent order requires: No manufacture of the substance beyond an annual aggregate manufacture and importation volume; recording and reporting of certain fluorinated impurities in the starting raw material; and manufacture of the PMN substance not to exceed the maximum established impurity levels of certain fluorinated impurities. The SNUR designates as a "significant new use" the absence of these protective measures.

Recommended testing: EPA has determined that the results of certain fate and physical/chemical property testing identified in the TSCA 5(e) consent order would help characterize possible effects of the substance and its degradation products. The order does not require submission of the testing at any specified time or production volume. However, the order's restrictions on manufacture, import, processing, distribution in commerce, use and disposal of the PMN will remain in effect until the order is modified or revoked by EPA based on submission of that or other relevant information.

CFR citation: 40 CFR 721.10409.

V. Rationale and Objectives of the Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these SNURs, EPA concluded that for four of the 119 chemical substances, regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) consent orders requiring the use of appropriate

exposure controls were negotiated with the PMN submitters. The SNUR provisions for these chemical substances are consistent with the provisions of the TSCA section 5(e) consent orders. These SNURs are promulgated pursuant to § 721.160.

In the other 117 cases, where the uses are not regulated under a TSCA section 5(e) consent order, EPA determined that one or more of the criteria of concern established at § 721.170 were met, as discussed in Unit IV.

B. Objectives

EPA is issuing these SNURs for specific chemical substances which have undergone premanufacture review because the Agency wants to achieve the following objectives with regard to the significant new uses designated in this rule:

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

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

VI. Direct Final Procedures

EPA is issuing these SNURs as a direct final rule, as described in § 721.160(c)(3) and § 721.170(d)(4). In accordance with § 721.160(c)(3)(ii) and § 721.170(d)(4)(i)(B), the effective date of this rule is June 26, 2012 without further notice, unless EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments before May 29, 2012.

If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before May 29, 2012, EPA will withdraw the relevant sections of this direct final rule before its effective date. EPA will then issue a proposed SNUR for the chemical substance(s) on which adverse or critical comments were received, providing a 30-day period for public comment.

This rule establishes SNURs for a number of chemical substances. Any person who submits adverse or critical comments, or notice of intent to submit adverse or critical comments, must identify the chemical substance and the new use to which it applies. EPA will not withdraw a SNUR for a chemical substance not identified in the comment.

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Rule

Significant new use designations for a chemical substance are legally established as of the date of publication of this direct final rule April 27, 2012.

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. TSCA section 5(e) consent orders have been issued for four chemical substances and the PMN submitters are prohibited by the TSCA section 5(e) consent orders from undertaking activities which EPA is designating as significant new uses. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no other person may commence such activities without first submitting a PMN. For chemical substances for which an NOC has not been submitted at this time, EPA concludes that the uses are not ongoing. However, EPA recognizes that prior to the effective date of the rule, when chemical substances identified in this SNUR are added to the TSCA Inventory, other persons may engage in a significant new use as defined in this rule before the effective date of the rule. However, 83 of the 119 chemical substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN *bona fide* submissions (per §§ 720.25 and 721.11), the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

As discussed in the April 24, 1990 SNUR, EPA has decided that the intent

of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of this direct final rule rather than as of the effective date of the rule. If uses begun after publication were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements because a person could defeat the SNUR by initiating the significant new use before the rule became effective, and then argue that the use was ongoing before the effective date of the rule. Persons who begin commercial manufacture, import, or processing of the chemical substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including any extensions expires.

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

VIII. Test Data and Other Information

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

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

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

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (see § 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. In cases where EPA issued a TSCA section 5(e) consent order that requires or recommends certain testing, Unit IV. describes those tests. Unit IV. also lists recommended testing for non-5(e) SNURs. Descriptions of tests are provided for informational purposes. EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection and test reporting. To access the harmonized test guidelines referenced in this document

electronically, please go to <http://www.epa.gov/ocspp> and select "Test Methods and Guidelines." The Organisation for Economic Co-operation and Development (OECD) test guidelines are available from the OECD Bookshop at <http://www.oecdbookshop.org> or SourceOECD at <http://www.sourceoecd.org>.

In the TSCA section 5(e) consent orders for four of the chemical substances regulated under this rule, EPA has established restrictions in view of the lack of data on the potential health and environmental risks that may be posed by the significant new uses or increased exposure to the chemical substances. These restrictions will not be removed until EPA determines that the unrestricted use will not present an unreasonable risk of injury, or result in significant or substantial exposure or environmental release. This determination is usually made based on the results of the required or recommended toxicity tests.

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

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

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

IX. Procedural Determinations

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1).

Under these procedures a manufacturer, importer, or processor may request that EPA determine whether a proposed use would be a significant new use under the rule. The manufacturer, importer, or processor must show that it has a *bona fide* intent to manufacture, import, or process the chemical substance and must identify the specific use for which it intends to manufacture, import, or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture, import, or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers, importers, and processors can combine the *bona fide* submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, i.e., the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture, import, or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the aggregate annual production volume does not exceed that identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

X. SNUN Submissions

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

electronically at <http://www.epa.gov/opptintr/newchems>.

XI. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers, importers, and processors of the chemical substances subject to this rule. EPA's complete Economic Analysis is available in the docket under docket ID number EPA–HQ–OPPT–2011–0577.

XII. Statutory and Executive Order Reviews

A. Executive Order 12866

This rule establishes SNURs for several new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable. EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this rule. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. This Information Collection Request (ICR) was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), to amend this table without further notice and comment.

The information collection requirements related to this action have

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

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

C. Regulatory Flexibility Act

On February 18, 2012, EPA certified pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that promulgation of a SNUR does not have a significant economic impact on a substantial number of small entities where the following are true: (1) A significant number of SNUNs would not be submitted by small entities in response to the SNUR, and (2) the SNUN submitted by any small entity would not cost significantly more than \$8,300. A copy of that certification is available in the docket for this rule.

This rule is within the scope of the February 18, 2012 certification. Based on the Economic Analysis discussed in Unit XI and EPA's experience promulgating SNURs (discussed in the certification), EPA believes that the following are true: (1) A significant number of SNUNs would not be submitted by small entities in response to the SNUR and (2) submission of the SNUN would not cost any small entity significantly more than \$8,300. Therefore, the promulgation of the SNUR would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

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

E. Executive Order 13132

This action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Executive Order 13175

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

G. Executive Order 13045

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

H. Executive Order 13211

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

I. National Technology Transfer and Advancement Act

In addition, since this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898

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

XIII. Congressional Review Act

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

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

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

Dated: April 12, 2012.

Ward Penberthy,

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

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

PART 9—[AMENDED]

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

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

6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

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

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *				
40 CFR citation			OMB control No.	
* * * * *				
Significant New Uses of Chemical Substances				
* * * * *				
721.10299	.....		2070-0012	
721.10300	.....		2070-0012	
721.10301	.....		2070-0012	
721.10302	.....		2070-0012	
721.10303	.....		2070-0012	
721.10304	.....		2070-0012	
721.10305	.....		2070-0012	
721.10306	.....		2070-0012	
721.10307	.....		2070-0012	
721.10308	.....		2070-0012	
721.10309	.....		2070-0012	
721.10310	.....		2070-0012	
721.10311	.....		2070-0012	
721.10312	.....		2070-0012	
721.10313		2070-0012	
721.10314		2070-0012	
721.10315		2070-0012	
721.10316		2070-0012	
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721.10319		2070-0012	
721.10320		2070-0012	
721.10321		2070-0012	
721.10322		2070-0012	
721.10323	.....		2070-0012	
721.10324	.....		2070-0012	
721.10325	.....		2070-0012	
721.10326	.....		2070-0012	
721.10327	.....		2070-0012	
721.10328	.....		2070-0012	
721.10329	.....		2070-0012	
721.10330	.....		2070-0012	
721.10331		2070-0012	
721.10332		2070-0012	
721.10333		2070-0012	
721.10334		2070-0012	
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721.10340		2070-0012	
721.10341		2070-0012	
721.10342		2070-0012	
721.10343		2070-0012	
721.10344	.....		2070-0012	
721.10345	.....		2070-0012	
721.10346	.....		2070-0012	
721.10347	.....		2070-0012	
721.10348	.....		2070-0012	
721.10349	.....		2070-0012	
721.10350	.....		2070-0012	

40 CFR citation	OMB control No.
721.10351	2070-0012
721.10352	2070-0012
721.10353	2070-0012
721.10354	2070-0012
721.10355	2070-0012
721.10356	2070-0012
721.10357	2070-0012
721.10358	2070-0012
721.10359	2070-0012
721.10360	2070-0012
721.10361	2070-0012
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721.10400	2070-0012
721.10401	2070-0012
721.10402	2070-0012
721.10403	2070-0012
721.10404	2070-0012
721.10405	2070-0012
721.10406	2070-0012
721.10407	2070-0012
721.10408	2070-0012
721.10409	2070-0012

* * * * *

PART 721—[AMENDED]

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

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

■ 4. Add § 721.10299 to subpart E to read as follows:

§ 721.10299 Polymeric MDI based polyurethanes (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified generically as polymeric MDI based polyurethanes (PMNs P-00-2, P-00-5, and P-00-6) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 5. Add § 721.10300 to subpart E to read as follows:

§ 721.10300 Benzeneacetic acid, .alpha.-chloro-.alpha.-phenyl-, ethyl ester.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as benzeneacetic acid, .alpha.-chloro-.alpha.-phenyl-, ethyl ester (PMN P-00-85; CAS No. 52460-86-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 6. Add § 721.10301 to subpart E to read as follows:

§ 721.10301 Reaction products of fatty alcohols, (aminoethylaminopropyl) dialkoxymethylsilane, glycidol, and hydroxy-terminated polydimethylsiloxane (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as reaction products of fatty alcohols, (aminoethylaminopropyl) dialkoxymethylsilane, glycidol, and hydroxy-terminated polydimethylsiloxane (PMN P-00-317) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=40).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 7. Add § 721.10302 to subpart E to read as follows:

§ 721.10302 Zinc ammonium phosphate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as zinc ammonium phosphate (PMN P-00-442) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 8. Add § 721.10303 to subpart E to read as follows:

§ 721.10303 Polyether modified polysiloxane, acrylated (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as polyether modified polysiloxane, acrylated (PMN P-00-833) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=4).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 9. Add § 721.10304 to subpart E to read as follows:

§ 721.10304 Functionalized polymethine (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as functionalized polymethine (PMN P-00-1099) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 10. Add § 721.10305 to subpart E to read as follows:

§ 721.10305 Modified cyclohexane esters (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as modified cyclohexane

esters (PMN P-00-1108) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 11. Add § 721.10306 to subpart E to read as follows:

§ 721.10306 Substituted phenylepoxyde (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as substituted phenylepoxyde (PMN P-01-114) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=6).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 12. Add § 721.10307 to subpart E to read as follows:

§ 721.10307 Acrylate resin (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as acrylate resin (PMN P-01-343) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 13. Add § 721.10308 to subpart E to read as follows:

§ 721.10308 Ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate, dialkylethanolamine salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate, dialkylethanolamine salt (PMN P-01-384) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=70).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 14. Add § 721.10309 to subpart E to read as follows:

§ 721.10309 Ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate (PMN P-01-385) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=70).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 15. Add § 721.10310 to subpart E to read as follows:

§ 721.10310 Ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate, ammonium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate, ammonium salt as (PMN P-01-386) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=70).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 16. Add § 721.10311 to subpart E to read as follows:

§ 721.10311 Ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate, sodium salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate, sodium salt (PMN P-01-387) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=70).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 17. Add § 721.10312 to subpart E to read as follows:

§ 721.10312 Ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate, ethanolamine salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as ethoxylated, propoxylated diamine diaryl substituted phenylmethane ester with alkenylsuccinate, ethanolamine salt (PMN P-01-388) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=70).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 18. Add § 721.10313 to subpart E to read as follows:

§ 721.10313 Fatty acids, C16-18 and C18-unsatd., Me esters, epoxidized.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as fatty acids, C16-18 and C18-unsatd., Me esters, epoxidized (PMN P-02-249; CAS No. 158318-67-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=8).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 19. Add § 721.10314 to subpart E to read as follows:

§ 721.10314 Dialkyl dithiocarbamate esters (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified generically as dialkyl dithiocarbamate esters (PMNs P-02-778, P-02-779, and P-02-780) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 20. Add § 721.10315 to subpart E to read as follows:

§ 721.10315 1,5-Dioxa-9-azaspiro[5.5]undecane, 3,3,8,8,10,10-hexamethyl-9-[1-[4-(2-oxiranylmethoxy)phenyl]ethoxy]-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1,5-dioxa-9-azaspiro[5.5]undecane, 3,3,8,8,10,10-hexamethyl-9-[1-[4-(2-oxiranylmethoxy)phenyl]ethoxy]- (PMN P-02-833; CAS No. 434898-80-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 21. Add § 721.10316 to subpart E to read as follows:

§ 721.10316 Dicyclopentadiene polymer with maleic anhydride and alkyl alcohols (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as dicyclopentadiene polymer with maleic anhydride and alkyl alcohols (PMN P-02-872) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=3).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 22. Add § 721.10317 to subpart E to read as follows:

§ 721.10317 Alkyl phosphate derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkyl phosphate derivative (PMN P-02-1040) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 23. Add § 721.10318 to subpart E to read as follows:

§ 721.10318 Mannich bases (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified generically as mannich bases (PMNs P-02-1078 and P-02-1080) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=40).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 24. Add § 721.10319 to subpart E to read as follows:

§ 721.10319 Alkylamides, ethoxylated (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as alkylamides, ethoxylated (PMN P-03-42) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=4).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 25. Add § 721.10320 to subpart E to read as follows:

§ 721.10320 Fatty acid amide (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as fatty acid amide (PMN P-03-186) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=8).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 26. Add § 721.10321 to subpart E to read as follows:

§ 721.10321 Bis[phenyl, 2H-1,3-benzoxazine]derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as bis[phenyl, 2H-1,3-benzoxazine]derivative (PMN P-03-194) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 27. Add § 721.10322 to subpart E to read as follows:

§ 721.10322 Metallic diol (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified

generically as metallic diol (PMN P-03-196) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=6).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 28. Add § 721.10323 to subpart E to read as follows:

§ 721.10323 Glycerol fatty acid ester (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as glycerol fatty acid ester (PMN P-03-248) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=6).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 29. Add § 721.10324 to subpart E to read as follows:

§ 721.10324 Thionocarbamate derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as thionocarbamate derivative (PMN P-03-362) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=50).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 30. Add § 721.10325 to subpart E to read as follows:

§ 721.10325 Cyclosilazanes, di-Me, Me hydrogen, polymers with di-Me, Me hydrogen silazanes, reaction products with 3-(triethoxysilyl)-1-propanamine.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as cyclosilazanes, di-Me, Me hydrogen, polymers with di-Me, Me hydrogen silazanes, reaction products with 3-(triethoxysilyl)-1-propanamine (PMN P-03-442; CAS No. 475645-84-2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 31. Add § 721.10326 to subpart E to read as follows:

§ 721.10326 2-Propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, ethyl 2-propenoate, zinc 2-methyl-2-propenoate (1:2) and zinc 2-propenoate (1:2), 2,2'-(1,2-diazenediyl)bis[2-methylbutanenitrile]- and 2,2'-(1,2-diazenediyl)bis[2-methylpropanenitrile]-initiated.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as 2-propenoic acid, 2-methyl-, methyl ester, polymer with butyl 2-propenoate, ethyl 2-propenoate, zinc 2-methyl-2-

propenoate (1:2) and zinc 2-propenoate (1:2), 2,2'-(1,2-diazenediyl)bis[2-methylbutanenitrile]- and 2,2'-(1,2-diazenediyl)bis[2-methylpropanenitrile]-initiated (PMN P-03-458; CAS No. 460739-39-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 32. Add § 721.10327 to subpart E to read as follows:

§ 721.10327 Salt of mixed fatty amidoamines and polyethylenepolyamines (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as salt of mixed fatty amidoamines and polyethylenepolyamines (PMN P-03-529) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 33. Add § 721.10328 to subpart E to read as follows:

§ 721.10328 Salt of polyalkylenepolyamine derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified

generically as salt of polyalkylenepolyamine derivative (PMN P-03-530) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 34. Add § 721.10329 to subpart E to read as follows:

§ 721.10329 Salt of mixed fatty amidoamines (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as salt of mixed fatty amidoamines (PMN P-03-531) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 35. Add § 721.10330 to subpart E to read as follows:

§ 721.10330 Pyrazolone derivative (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as pyrazolone derivative (PMN P-03-722) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 36. Add § 721.10331 to subpart E to read as follows:

§ 721.10331 Aromatic isocyanate methacrylate blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as aromatic isocyanate methacrylate blocked (PMN P-03-767) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 37. Add § 721.10332 to subpart E to read as follows:

§ 721.10332 Lithium metal phosphate (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as lithium metal phosphate (PMN P-03-824) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=4).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 38. Add § 721.10333 to subpart E to read as follows:

§ 721.10333 Substituted benzamine thio-ether (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as substituted benzamine thio-ether (PMN P-03-840) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 39. Add § 721.10334 to subpart E to read as follows:

§ 721.10334 Ethanol, 2,2'-[(3-[(2-ethylhexyl)oxy]pentyl)imino]bis-.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as ethanol, 2,2'-[(3-[(2-ethylhexyl)oxy]pentyl)imino]bis- (PMN P-03-861; CAS No. 284477-82-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=20).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The

provisions of § 721.185 apply to this section.

■ 40. Add § 721.10335 to subpart E to read as follows:

§ 721.10335 1-Pentanamine, 3-[(2-ethylhexyl)oxy]-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1-pentanamine, 3-[(2-ethylhexyl)oxy]- (PMN P-03-862; CAS No. 174615-16-8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=7).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 41. Add § 721.10336 to subpart E to read as follows:

§ 721.10336 Poly(oxy-1,2-ethanediyl), .alpha.-(1-oxo-2-propen-1-yl)-.omega.-([1,1'-biphenyl]-2-yloxy)-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as poly(oxy-1,2-ethanediyl), .alpha.-(1-oxo-2-propen-1-yl)-.omega.-([1,1'-biphenyl]-2-yloxy)- (PMN P-04-1; CAS No. 72009-86-0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=3).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 42. Add § 721.10337 to subpart E to read as follows:

§ 721.10337 Copper, iodotris(triphenylphosphine)-, (T-4)-.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as copper, iodotris(triphenylphosphine)-, (T-4)- (PMN P-04-6; CAS No. 15709-82-7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 43. Add § 721.10338 to subpart E to read as follows:

§ 721.10338 2-Propenoic acid, 1,1'-(1,9-nonanediyl) ester.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 2-propenoic acid, 1,1'-(1,9-nonanediyl) ester (PMN P-04-53; CAS No. 107481-28-7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 44. Add § 721.10339 to subpart E to read as follows:

§ 721.10339 Adipic acid, substituted propane, alkyldiol, acrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified

generically as adipic acid, substituted propane, alkyldiol, acrylate (PMN P-04-113) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 45. Add § 721.10340 to subpart E to read as follows:

§ 721.10340 Potassium zinc fluoride (KZnF₃).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as potassium zinc fluoride (KZnF₃) (PMN P-04-146; CAS No. 13827-02-6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 46. Add § 721.10341 to subpart E to read as follows:

§ 721.10341 Amino alkyl organoborane (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as amino alkyl organoborane (PMN P-04-338) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=7).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 47. Add § 721.10342 to subpart E to read as follows:

§ 721.10342 Quaternary ammonium compounds, fatty alkyl dialkyl hydroxide (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as quaternary ammonium compounds, fatty alkyl dialkyl hydroxide (PMN P-04-516) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=4).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 48. Add § 721.10343 to subpart E to read as follows:

§ 721.10343 Alkylated aryloxyaniline thiourea (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as alkylated aryloxyaniline thiourea (PMN P-04-563) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 49. Add § 721.10344 to subpart E to read as follows:

§ 721.10344 Alkylated aromatic isothiocyanate (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as alkylated aromatic isothiocyanate (PMN P-04-810) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 50. Add § 721.10345 to subpart E to read as follows:

§ 721.10345 1,2-Benzenedicarboxylic acid, 1,2-bis(methylcyclohexyl) ester.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as 1,2-benzenedicarboxylic acid, 1,2-bis(methylcyclohexyl) ester (PMN P-05-110; CAS No. 27987-25-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 51. Add § 721.10346 to subpart E to read as follows:

§ 721.10346 3H-Indolium, 2-[2-[2-chloro-3-[2-(1,3-dihydro-3,3-dimethyl-1-propyl-2H-indol-2-ylidene)ethylidene]-1-cyclohexen-1-yl]ethenyl]-3,3-dimethyl-1-propyl-, iodide (1:1).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as 3H-indolium, 2-[2-[2-chloro-3-[2-(1,3-dihydro-3,3-dimethyl-1-propyl-2H-indol-2-ylidene)ethylidene]-1-cyclohexen-1-yl]ethenyl]-3,3-dimethyl-1-propyl-, iodide (1:1) (PMN P-05-599; CAS No. 207399-07-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 52. Add § 721.10347 to subpart E to read as follows:

§ 721.10347 Bicyclo[2.2.1]heptanedimethanamine, N,N'-bis(1,2-dimethylpropylidene)-.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as bicyclo[2.2.1]heptanedimethanamine, N,N'-bis(1,2-dimethylpropylidene)- (PMN P-06-268; CAS No. 664980-30-7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are

applicable to manufacturers, importers, and processors of this substance.

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

■ 53. Add § 721.10348 to subpart E to read as follows:

§ 721.10348 Aspartic acid, N,N'-(iminodi-alkanediyl)bis, tetraalkane esters (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as aspartic acid, N,N'-(iminodi-alkanediyl)bis, tetraalkane esters (PMNs P-06-623 and P-06-624) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=3).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 54. Add § 721.10349 to subpart E to read as follows:

§ 721.10349 1,4-Benzenediamine, N'-(alkyl)-N-[4-[(alkyl)amino]phenyl]-N-phenyl (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as 1,4-benzenediamine, N'-(alkyl)-N-[4-[(alkyl)amino]phenyl]-N-phenyl (PMN P-06-731) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The

provisions of § 721.185 apply to this section.

■ 55. Add § 721.10350 to subpart E to read as follows:

§ 721.10350 Amines, C11-14-branched and linear alkyl.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as amines, C11-14-branched and linear alkyl (PMN P-06-742; CAS No. 863766-30-7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 56. Add § 721.10351 to subpart E to read as follows:

§ 721.10351 Carbomonocycle, bis[(4-methylphenoxy)methyl]- (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as carbomonocycle, bis[(4-methylphenoxy)methyl]- (PMN P-07-351) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 57. Add § 721.10352 to subpart E to read as follows:

§ 721.10352 Dimethyl terephthalate, polymer with alkyl diol and substituted benzoates (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as dimethyl terephthalate, polymer with alkyl diol and substituted benzoates (PMN P-08-93) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=60).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 58. Add § 721.10353 to subpart E to read as follows:

§ 721.10353 Organosulfide (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as organosulfide (PMN P-08-510) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 59. Add § 721.10354 to subpart E to read as follows:

§ 721.10354 1,1'-Biphenyl, 3,3',4,4'-tetramethyl-

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1,1'-biphenyl, 3,3',4,4'-tetramethyl-

(PMN P-08-623; CAS No. 4920-95-0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 60. Add § 721.10355 to subpart E to read as follows:

§ 721.10355 Poly[oxy-1,2-ethanediyl), .alpha.-(1-oxododecyl)-.omega.-[3-triethoxysilyl]propoxy]-.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as poly[oxy-1,2-ethanediyl), .alpha.-(1-oxododecyl)-.omega.-[3-triethoxysilyl]propoxy]- (PMN P-08-722; CAS No. 1041420-54-5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 61. Add § 721.10356 to subpart E to read as follows:

§ 721.10356 Zinc, bis[3-(acetyl-.kappa.O)-6-methyl-2H-pyran-2,4(3H)-dionato-.kappa.O4]diaqua-.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as zinc, bis[3-(acetyl-.kappa.O)-6-methyl-2H-pyran-2,4(3H)-dionato-.kappa.O4]diaqua- (PMN P-09-98; CAS No. 171884-15-4) is subject to reporting

under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=4).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 62. Add § 721.10357 to subpart E to read as follows:

§ 721.10357 Iron, citrate phosphate potassium complexes.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as iron, citrate phosphate potassium complexes (PMN P-09-382; CAS No. 120579-31-9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j) (micronutrient in fertilizer or soil amendment which will only be transported in containers with a maximum capacity of 20 gallons or in bottom-loading totes).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

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

■ 63. Add § 721.10358 to subpart E to read as follows:

§ 721.10358 Formaldehyde reaction products with aryl amine (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as formaldehyde reaction products with aryl amine (PMN P-09-546) is subject to reporting under this section for the significant new uses

described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g) and (j) (use other than as an intermediate that has been manufactured using the process described in the premanufacture notice).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

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

■ 64. Add § 721.10359 to subpart E to read as follows:

§ 721.10359 Cardanol-based alkyl phosphate (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as cardanol-based alkyl phosphate (PMN P-09-613) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j) (site-limited polymer modifier in non-consumer products).

(ii) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=18).

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 65. Add § 721.10360 to subpart E to read as follows:

§ 721.10360 1-Substituted propane, 3-(triethoxysilyl)-, reaction products with polyethylene glycol mono-(branched tridecyl) ether (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as 1-substituted propane, 3-

(triethoxysilyl)-, reaction products with polyethylene glycol mono-(branched tridecyl) ether (PMN P-09-628) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=4).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 66. Add § 721.10361 to subpart E to read as follows:

§ 721.10361 Anthraquinonedicarboximide, diamino-N-alkyl- (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as anthraquinonedicarboximide, diamino-N-alkyl- (PMN P-10-15) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 67. Add § 721.10362 to subpart E to read as follows:

§ 721.10362 Oils, callitropsis nootkatensis.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as oils, callitropsis nootkatensis (PMN P-10-44; CAS No. 1069136-34-0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 68. Add § 721.10363 to subpart E to read as follows:

§ 721.10363 Alkenoic acid, 2-methyl-, 2-oxiranylmethyl ester, reaction products with 4,4'-methylenebis (cyclohexanamine) (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as alkenoic acid, 2-methyl-, 2-oxiranylmethyl ester, reaction products with 4,4'-methylenebis (cyclohexanamine) (PMN P-10-47) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4) and (b)(4) (N=44).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 69. Add § 721.10364 to subpart E to read as follows:

§ 21.10364 Halogenated aromatic amine (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as halogenated aromatic amine (PMN P-10-53) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 70. Add § 721.10365 to subpart E to read as follows:

§ 721.10365 Butanoic acid, 3-mercapto-2-methyl-, ethyl ester.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as butanoic acid, 3-mercapto-2-methyl-, ethyl ester (PMN P-10-56; CAS No. 888021-82-7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(s) (100 kilograms).

(ii) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=8).

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 71. Add § 721.10366 to subpart E to read as follows:

§ 721.10366 Benzene, 4-bromo-1,2-dimethyl-

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as benzene, 4-bromo-1,2-dimethyl- (PMN P-10-76; CAS No. 583-71-1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=30).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 72. Add § 721.10367 to subpart E to read as follows:

§ 721.10367 Hydroxy-aryl, polymer with substituted benzene, cyanate (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as hydroxy-aryl, polymer with substituted benzene, cyanate (PMN P-10-83) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=3).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 73. Add § 721.10368 to subpart E to read as follows:

§ 721.10368 Triphenodioxazine derivatives (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as triphenodioxazine derivatives (PMN P-10-84) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The

provisions of § 721.185 apply to this section.

■ 74. Add § 721.10369 to subpart E to read as follows:

§ 721.10369 Carbonic acid, diphenyl ester, polymer with diphenyl P-methylphosphonate and 4,4'-(1-methylethylidene) bis[phenol].

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as carbonic acid, diphenyl ester, polymer with diphenyl P-methylphosphonate and 4,4'-(1-methylethylidene) bis[phenol] (PMN P-10-88; CAS No. 77226-90-5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j) (flame retardant and flame retardant additive, where the particle size is greater than 10 microns).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

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

■ 75. Add § 721.10370 to subpart E to read as follows:

§ 721.10370 Phosphonic acid, p-octyl-, lanthanum (3+) salt (2:1).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as phosphonic acid, p-octyl-, lanthanum (3+) salt (2:1) (PMN P-10-99; CAS No. 1186211-38-0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=8).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements*. The

provisions of § 721.185 apply to this section.

■ 76. Add § 721.10371 to subpart E to read as follows:

§ 721.10371 Butanoic acid, 3-mercapto-, 1,1'-[2-(hydroxymethyl)-2-(substituted-1-oxoalkoxy)methyl]-1,3-propanediyl] ester (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as butanoic acid, 3-mercapto-, 1,1'-[2-(hydroxymethyl)-2-(substituted-1-oxoalkoxy)methyl]-1,3-propanediyl] ester (PMN P-10-136, Chemical A) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f) and (j) (monomer for acryl-based ultra-violet (UV)-curing coatings, inks, and adhesives).

(ii) *Release to water*. Requirements as specified in § 721.90(b)(4) and (c)(4) (N=2).

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 77. Add § 721.10372 to subpart E to read as follows:

§ 721.10372 Butanoic acid, 3-mercapto-, 1,1'-[2,2-bis[(substituted-1-oxoalkoxy)methyl]-1,3-propanediyl] ester (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as butanoic acid, 3-mercapto-, 1,1'-[2,2-bis[(substituted-1-oxoalkoxy)methyl]-1,3-propanediyl] ester (PMN P-10-136, Chemical B) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(f) and (j) (monomer for acryl-based UV-curing coatings, inks, and adhesives).

(ii) *Release to water*. Requirements as specified in § 721.90(b)(4) and (c)(4) (N=2).

(b) *Specific requirements*. The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 78. Add § 721.10373 to subpart E to read as follows:

§ 721.10373 1H-imidazole, 1-(1-methylethyl)-.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as 1H-imidazole, 1-(1-methylethyl)- (PMN P-10-153; CAS No. 4532-96-1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(g).

(ii) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=70).

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 79. Add § 721.10374 to subpart E to read as follows:

§ 721.10374 Silane, (3-chloropropoxy)dimethyl(1-methylethyl)-.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as silane, (3-chloropropoxy)dimethyl(1-methylethyl)- (PMN P-10-163; CAS No. 1191036-21-1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii) (gloves and goggles), (a)(3), (a)(4). The following National Institute for Occupational Safety and Health (NIOSH)-certified respirator with an assigned protection factor (APF) of at least 10 meets the minimum requirements for § 721.63(a)(4): NIOSH-certified organic vapor respirator.

(ii) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=2).

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 80. Add § 721.10375 to subpart E to read as follows:

§ 721.10375 Hydroxypropyl methacrylate, reaction products with propylene oxide and ethylene oxide, copolymer with N-vinyl caprolactam (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as hydroxypropyl methacrylate, reaction products with propylene oxide and ethylene oxide, copolymer with N-vinyl caprolactam (PMN P-10-200) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=155).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 81. Add § 721.10376 to subpart E to read as follows:

§ 721.10376 Alkyltin halide (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as alkyltin halide (PMN P-10-222) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j).

(ii) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=22).

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 82. Add § 721.10377 to subpart E to read as follows:

§ 721.10377 1,2-Cyclohexanedicarboxylic acid, benzyl C8-10-isoalkyl esters, C9-rich.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as 1,2-cyclohexanedicarboxylic acid, benzyl C8-10-isoalkyl esters, C9-rich (PMN P-10-247, Chemical A; CAS No. 1190265-49-6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*.

Requirements as specified in § 721.63(a)(1), (a)(2)(i), and (a)(3).

(ii) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 83. Add § 721.10378 to subpart E to read as follows:

§ 721.10378 1,2-Cyclohexanedicarboxylic acid, benzyl nonyl ester, branched and linear.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as 1,2-cyclohexanedicarboxylic acid, benzyl nonyl ester, branched and linear (PMN P-10-247, Chemical B; CAS No. 1190264-82-4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in

§ 721.63(a)(1), (a)(2)(i), and (a)(3).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (e), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 84. Add § 721.10379 to subpart E to read as follows:

§ 721.10379 Propanoic acid, 3-(dodecylthio)-, 2-(1,1-dimethylethyl)-4-[[5-(1,1-dimethylethyl)-4-hydroxy-2-methylphenyl]thio]-5-methylphenyl ester.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as propanoic acid, 3-(dodecylthio)-, 2-(1,1-dimethylethyl)-4-[[5-(1,1-dimethylethyl)-4-hydroxy-2-methylphenyl]thio]-5-methylphenyl ester (PMN P-10-266; CAS No. 69075-62-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(s) (10,000 kilograms).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

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

■ 85. Add § 721.10380 to subpart E to read as follows:

§ 721.10380 Benzoic acid, 3-amino-2-mercapto-

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as benzoic acid, 3-amino-2-mercapto- (PMN P-10-285; CAS No. 71807-60-8) is subject to reporting under this section

for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=33).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 86. Add § 721.10381 to subpart E to read as follows:

§ 721.10381 Cyclic carboxylic acid, polymer with dihydroxy dialkyl ether, hydroxy substituted alkane and carboxylic acid anhydride, methacrylate terminated polyester (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as cyclic carboxylic acid, polymer with dihydroxy dialkyl ether, hydroxy substituted alkane and carboxylic acid anhydride, methacrylate terminated polyester (PMN P-10-290) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=8).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 87. Add § 721.10382 to subpart E to read as follows:

§ 721.10382 Diphosphoric acid, calcium salt (1:1).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as diphosphoric acid, calcium salt (1:1) (PMN P-10-313; CAS No. 14866-19-4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) (opacifying agent for ceramic whiteware).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=60).

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 88. Add § 721.10383 to subpart E to read as follows:

§ 721.10383 Urea, N,N'-(methyl-1,3-phenylene)bis[N,N'-bis[3-polyalkyleneamino]-, compd. with formaldehyde polymer with phenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as urea, N,N'-(methyl-1,3-phenylene)bis[N,N'-bis[3-polyalkyleneamino]-, compd. with formaldehyde polymer with phenol (PMN P-10-324) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=43).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 89. Add § 721.10384 to subpart E to read as follows:

§ 721.10384 Substituted alkanolamine phenol (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as substituted alkanolamine phenol (PMN P-10-332) is subject to reporting under this section for the

significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 90. Add § 721.10385 to subpart E to read as follows:

§ 721.10385 Phenoxy alkyl ether (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as phenoxy alkyl ether (PMN P-10-344) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80 (f) and (j).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

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

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 91. Add § 721.10386 to subpart E to read as follows:

§ 721.10386 Substituted phenol (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as substituted phenol (PMN P-10-361) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 92. Add § 721.10387 to subpart E to read as follows:

§ 721.10387 Substituted bis-phenol (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as substituted bis-phenol (PMN P-10-362) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 93. Add § 721.10388 to subpart E to read as follows:

§ 721.10388 Bisphospite nickel cyanoalkyl complex (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as bisphospite nickel cyanoalkyl complex (PMN P-10-364) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=5).

(ii) [Reserved]

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

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

§ 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 94. Add § 721.10389 to subpart E to read as follows:

§ 721.10389 Styrene, copolymer with acrylic acid, salt with alkoxyalkylated alkenylamine (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as styrene, copolymer with acrylic acid, salt with alkoxyalkylated alkenylamine (PMN P-10-401) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=27). Where primary, secondary, and tertiary waste treatment will occur, or treatment in a lined self-contained solar evaporation pond where UV light will degrade the substance, the number of kilograms per day per site is calculated after wastewater treatment.

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 95. Add § 721.10390 to subpart E to read as follows:

§ 721.10390 Acetoacetanilide reaction product with multifunctional acrylate (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as acetoacetanilide reaction product with multifunctional acrylate (PMN P-10-403) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 96. Add § 721.10391 to subpart E to read as follows:

§ 721.10391 Copper gallium indium selenide.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as copper gallium indium selenide (PMN P-10-424; CAS No. 144972-86-1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace*. Requirements as specified in § 721.63(a)(4), (a)(6)(i), (b) (concentration set at 0.1 percent), and (c). The following NIOSH-certified respirators with an assigned protection factor (APF) of at least 10 meet the minimum requirements for § 721.63(a)(4):

(A) NIOSH-certified air-purifying, tight-fitting half-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters;

(B) NIOSH-certified air-purifying, tight-fitting full-face respirator equipped with N100 (if oil aerosols absent), R100, or P100 filters;

(C) NIOSH-certified powered air-purifying respirator equipped with a loose-fitting hood or helmet and high efficiency particulate air (HEPA) filters;

(D) NIOSH-certified powered air-purifying respirator equipped with a tight-fitting facepiece (either half-face or full-face) and HEPA filters; or

(E) NIOSH-certified supplied-air respirator operated in pressure demand or continuous flow mode and equipped with a hood or helmet, or tight-fitting facepiece (either half-face or full-face).

(1) As an alternative to the respiratory requirements listed in paragraph (a)(2)(i), a manufacturer, importer, or processor may choose to follow the new chemical exposure limit (NCEL) of 1.5 mg/m³ as an 8-hour time-weighted-average. Persons who wish to pursue NCELs as an alternative to the § 721.63 respirator requirements may request to do so under § 721.30.

(2) [Reserved]

(ii) *Hazard communication program*. Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(ii), (g)(2)(ii), (g)(2)(iv) (use

respiratory protection or maintain workplace airborne concentrations at or below an 8-hour time-weighted average of 1.5 mg/m³), and (g)(5).

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (d), (f), (g), and (h) are applicable to manufacturers, importers, and processors of this substance.

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

■ 97. Add § 721.10392 to subpart E to read as follows:

§ 721.10392 Halo substituted sulfamidylbenzyluracil (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as halo substituted sulfamidylbenzyluracil (PMN P-10-426) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(b) and (g).

(ii) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 98. Add § 721.10393 to subpart E to read as follows:

§ 721.10393 Sodium bromide MDA complex (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as sodium bromide MDA complex (PMN P-10-433) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=3).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 99. Add § 721.10394 to subpart E to read as follows:

§ 721.10394 Copolymer of anhydride, a diol and a disubstituted diol (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as copolymer of anhydride, a diol and a disubstituted diol (PMN P-10-436) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=55).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 100. Add § 721.10395 to subpart E to read as follows:

§ 721.10395 Fatty acids, C14-18 and C16-18 unsat., polymers with adipic acid and triethanolamine, di-Me sulfate-quaternized.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as fatty acids, C14-18 and C16-18 unsat., polymers with adipic acid and triethanolamine, di-Me sulfate-quaternized (PMN P-10-458; CAS No. 1211825-32-9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=5).

(ii) [Reserved]

(b) *Specific requirements*. The provisions of subpart A of this part

apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 101. Add § 721.10396 to subpart E to read as follows:

§ 721.10396 Dimethyl siloxy-polyfluoro methyl siloxy-poly(oxyalkylenediyl) methyl siloxy copolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as dimethyl siloxy-polyfluoro methyl siloxy-poly(oxyalkylenediyl) methyl siloxy copolymer (PMN P-10-470) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (recording and reporting of certain fluorinated impurities in the starting raw material, and manufacture of the PMN substance not to exceed the maximum established impurity levels of certain fluorinated impurities) and (t).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

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

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 102. Add § 721.10397 to subpart E to read as follows:

§ 721.10397 Alkyl acrylate-polyfluoro methacrylate-poly(oxyalkylenediyl)-methacrylates (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substances identified generically as alkyl acrylate-polyfluoro methacrylate-poly(oxyalkylenediyl)-methacrylates (PMNs P-10-471 and P-10-472) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) (recording and reporting of certain fluorinated impurities in the starting raw material, and manufacture of the PMN substances not to exceed the maximum established impurity levels of certain fluorinated impurities) and (t).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

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

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

■ 103. Add § 721.10398 to subpart E to read as follows:

§ 721.10398 Poly(oxy-1,2-ethanediyl), .alpha., -monoalkyl ethers-.omega.-mono (hydrogen maleate)- (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as poly(oxy-1,2-ethanediyl), .alpha., -monoalkyl ethers-.omega.-mono (hydrogen maleate)- (PMN P-10-495) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

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

■ 104. Add § 721.10399 to subpart E to read as follows:

§ 721.10399 Benzoic acid azo-substituted pyridine (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified

generically as benzoic acid azo-substituted pyridine (PMN P-10-501) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 105. Add § 721.10400 to subpart E to read as follows:

§ 721.10400 Oxirane, 2-ethyl-, polymer with oxirane, mono-C12-14-sec-alkyl ethers.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as oxirane, 2-ethyl-, polymer with oxirane, mono-C12-14-sec-alkyl ethers (PMN P-10-517; CAS No. 1013910-41-2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=14), where the amount of substance reasonably likely to be removed during waste pretreatment prior to release may be subtracted in calculating the number of kilograms released.

(ii) [Reserved]

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

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 106. Add § 721.10401 to subpart E to read as follows:

§ 721.10401 Oxirane, 2-ethyl-, polymer with oxirane, mono-C11-15-sec-alkyl ethers.

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as oxirane, 2-ethyl-, polymer with oxirane,

mono C11-15-sec-alkyl ethers (PMN P-10-518; CAS No. 1022990-65-3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=20), where the amount of substance reasonably likely to be removed during waste pretreatment prior to release may be subtracted in calculating the number of kilograms released.

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 107. Add § 721.10402 to subpart E to read as follows:

§ 721.10402 Vegetable oil, modified products (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as vegetable oil, modified products (PMN P-10-548) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=10).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 108. Add § 721.10403 to subpart E to read as follows:

§ 721.10403 Vegetable oil, modified products, esters (generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as vegetable oil, modified products, esters (PMN P-10-550) is

subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=8).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 109. Add § 721.10404 to subpart E to read as follows:

§ 721.10404 Olefins (generic) (P-10-551 and P-10-552).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substances identified generically as olefins (PMNs P-10-551 and P-10-552) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=6).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 110. Add § 721.10405 to subpart E to read as follows:

§ 721.10405 Olefins (generic) (P-10-553).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as olefins (PMN P-10-553) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(j) and (s).

(ii) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

■ 111. Add § 721.10406 to subpart E to read as follows:

§ 721.10406 Fatty acid methyl esters (generic) (P-10-554).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as fatty acid methyl esters (PMN P-10-554) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=8).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 112. Add § 721.10407 to subpart E to read as follows:

§ 721.10407 Fatty acid methyl esters (generic) (P-10-555).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as fatty acid methyl esters (PMN P-10-555) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 113. Add § 721.10408 to subpart E to read as follows:

§ 721.10408 Poly[oxy(methyl-1,2-ethanediyl)], .alpha.-[2-[[2,2-dimethyl-3-[(1-oxododecyl)oxy]propylidene] amino] methylethyl]-.omega.-[2-[[2,2-dimethyl-3-[(1-oxododecyl)oxy]propylidene] amino]methyl ethoxy]-.

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified as poly[oxy(methyl-1,2-ethanediyl)], .alpha.-[2-[[2,2-dimethyl-3-[(1-oxododecyl)oxy]propylidene] amino] methylethyl]-.omega.-[2-[[2,2-dimethyl-3-[(1-oxododecyl)oxy]propylidene]amino] methylethoxy]- (PMN P-10-556; CAS No. 613246-75-6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water*. Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (N=1).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (k) are applicable to manufacturers, importers, and processors of this substance.

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

■ 114. Add § 721.10409 to subpart E to read as follows:

§ 721.10409 Poly(oxyalkylenediyl), .alpha.-[[[methyl-3-[[[(polyfluoroalkyl)oxy] carbonyl]amino]phenyl]amino]carbonyl]-.omega.-methoxy-(generic).

(a) *Chemical substance and significant new uses subject to reporting*.

(1) The chemical substance identified generically as poly(oxyalkylenediyl), .alpha.-[[[methyl-3-[[[(polyfluoroalkyl)oxy]carbonyl]amino]phenyl]amino] carbonyl]-.omega.-methoxy- (PMN P-11-217) is subject to reporting under this section for the significant new uses

described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities*. Requirements as specified in § 721.80(k) (recording and reporting of certain fluorinated impurities in the starting raw material, and manufacture of the PMN substance not to exceed the maximum established impurity levels of certain fluorinated impurities) and (t).

(ii) [Reserved]

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

(1) *Recordkeeping*. Recordkeeping requirements as specified in § 721.125(a), (b), (c), and (i) are applicable to manufacturers, importers, and processors of this substance.

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

(3) *Determining whether a specific use is subject to this section*. The provisions of § 721.1725(b)(1) apply to this section.

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 424 and 431

Medicare and Medicaid Programs; Changes in Provider and Supplier Enrollment, Ordering and Referring, and Documentation Requirements; and Changes in Provider Agreements

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 424 and 431

[CMS–6010–F]

RIN 0938–AQ01

Medicare and Medicaid Programs; Changes in Provider and Supplier Enrollment, Ordering and Referring, and Documentation Requirements; and Changes in Provider Agreements

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule finalizes several provisions of the Affordable Care Act implemented in the May 5, 2010 interim final rule with comment period. It requires all providers of medical or other items or services and suppliers that qualify for a National Provider Identifier (NPI) to include their NPI on all applications to enroll in the Medicare and Medicaid programs and on all claims for payment submitted under the Medicare and Medicaid programs. In addition, it requires physicians and other professionals who are permitted to order and certify covered items and services for Medicare beneficiaries to be enrolled in Medicare. Finally, it mandates document retention and provision requirements on providers and supplier that order and certify items and services for Medicare beneficiaries.

DATES: Effective June 26, 2012 the interim final rule amending 42 CFR parts 424 and 431 that published on May 5, 2010 (75 FR 24437) is confirmed as final with changes.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

The Medicare program, title XVIII of the Social Security Act (the Act), is the primary payer of health care for approximately 50 million beneficiaries. Under section 1802 of the Act, a beneficiary may obtain health services from an individual or organization qualified to participate in the Medicare program.

Providers and suppliers furnishing services must comply with the Medicare requirements stipulated in the Act and in implementing regulations. These

requirements are meant to promote the furnishing of quality care, while protecting the integrity of the program. As Medicare program expenditures have grown, the Centers for Medicare & Medicaid Services (CMS) has increased its efforts to ensure that only qualified individuals or organizations are allowed to enroll in Medicare and maintain Medicare billing privileges.

The Medicaid program, established under title XIX of the Act pays for medical benefits to tens of millions of people. Medicaid is a joint Federal and State health care program for eligible low-income individuals. The Medicaid program works within a broad Federal framework and States have considerable flexibility in how the program is administered.

The Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively known as the Affordable Care Act) makes many changes to the Medicare and Medicaid programs, some of which involve strengthening tools for quality and integrity. To maintain program integrity and ensure quality, we must make certain that only qualified providers and suppliers participate in the programs and that they bill accurately for their services. With respect to Medicaid, our regulations provide States with considerable flexibility. However, the Federal framework includes some key requirements to ensure program integrity while providing quality care. For example, Medicaid providers must generally meet all State licensing and scope-of-practice requirements, and may be subject to additional Federal and State quality standards. Additionally, the Medicare and Medicaid regulations require timely filing of claims by providers.

In the May 5, 2010 **Federal Register** (75 FR 24437), we published an interim final rule with comment period (IFC) that implemented several provisions of the Affordable Care Act regarding provider and supplier enrollment, ordering and referring; documentation requirements, and changes in provider agreements.

II. Provisions of the Interim Final Rule With Comment Period and Summary of Responses to Comments

In this section of the final rule, we provide the following for each of the provisions of the May 5, 2010 IFC:

- Background.
- Statutory changes based on the Affordable Care Act.
- The provisions of the IFC.

- Summary of the comments and responses to the public comments received on the IFC. We received approximately 224 timely comments on the May 5, 2010 IFC.

With regard to the Medicare provisions, we also note that the term “provider,” as used throughout the IFC and in this final rule, has the meaning specified in § 400.202.

For Medicaid, the term “provider,” as used throughout the IFC and in this final rule, has the meaning specified in § 400.203. That is, for purposes of this rule provider means any individual or entity furnishing Medicaid services under an agreement with the Medicaid agency.

We also note that the use of the term “supplier,” in the IFC and in this final rule, as defined at § 400.202, with regard to the Medicare provisions, is “a physician or other practitioner, or an entity other than a provider that furnishes health care services under Medicare.” In portions of this final rule, the commenters and CMS may only use the term “provider(s)” or “supplier(s).” However, the reader should consider these terms as relating to both providers and suppliers, unless explicitly stated otherwise. The regulatory text, however, uses precise language.

Finally, throughout this final rule, we have attempted to remain consistent with our terminology regarding the term “resident.” We draw the reader’s attention to § 413.75(b) where a resident is defined as “* * * an intern, resident, or fellow who participates in an approved medical residency program, including programs in osteopathy, dentistry, and podiatry, as required in order to become certified by the appropriate specialty board.” We want to be explicit in stating that the term “resident” incorporates interns, residents, and fellows and we will use this term to refer to all three professionals throughout this final rule.

A. Inclusion of the National Provider Identifier (NPI) on All Medicare and Medicaid Enrollment Applications and Claims

1. Background

Historically, we have identified vulnerabilities in Medicare enrollment procedures that have permitted the enrollment of providers and suppliers whose qualifications for meeting all of our enrollment standards were sometimes questionable. This raised concerns that certain providers and suppliers in our program may be under-qualified or even fraudulent and has led us to increase our efforts to establish more stringent controls on provider and

supplier entry into the Medicare program. These efforts include the publication of the following rules:

- A final rule with comment titled, “Additional Supplier Standards” (October 11, 2000, 65 FR 60366).
- A final rule titled, “Requirements for Providers and Suppliers to Establish and Maintain Medicare Enrollment” (April 21, 2006, 71 FR 20754).
- A final rule titled, “Medicare Program; Revisions to Payment Policies, Five-Year Review of Work Relative Value Units, Changes to the Practice Expense Methodology Under the Physician Fee Schedule, and Other Changes to Payment Under Part B; Revisions to the Payment Policies of Ambulance Services Under the Fee Schedule for Ambulance Services; and Ambulance Inflation Factor Update for CY 2007” (December 1, 2006, 71 FR 69624).
- A final rule titled, “Competitive Acquisition for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)” (April 10, 2007, 72 FR 17992).
- A final rule titled, “Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule, and Other Part B Payment Policies for CY 2008; Revisions to the Payment Policies of Ambulance Services Under the Ambulance Fee Schedule for CY 2008; and the Amendment of the E- Prescribing Exemption for Computer Generated Facsimile Transmissions; Final Rule” (72 FR 66222).
- A final rule titled, “Appeals of CMS or CMS Contractor Determinations When a Provider or Supplier Fails to Meet the Requirements for Medicare Billing Privileges” (June 27, 2008, 73 FR 36448).
- A final rule with comment titled, “Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2009; E-Prescribing Exemption for Computer Generated Facsimile Transmissions; and Payment for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)” (November 19, 2008, 73 FR 69726).
- A final rule titled, “Medicare Program; Surety Bond Requirement for Suppliers of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); Final Rule” (January 2, 2009, 74 FR 166).
- A final rule titled, “The National Provider Identifier Rule” (January 23, 2004, 69 FR 3434).
- A final rule titled “Medicare, Medicaid, and Children’s Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria,

Payment Suspensions and Compliance Plans for Providers and Suppliers” (February 2, 2011, 76 FR 5862).

The NPI provisions of this final rule are an extension of the aforementioned program integrity initiatives, consistent with the direction of the Affordable Care Act as described later in this section, designed to ensure that only legitimate providers and suppliers that meet and maintain our standards can be enrolled and/or paid by the Medicare program.

Similarly, consistent with the NPI final rule and subsequent guidance from the Secretary, beginning May 23, 2008, Medicaid providers have also been required to report their NPIs on their Medicaid claims.

2. Provisions of the Affordable Care Act

Section 6402(a) of the Affordable Care Act added a new section 1128J of the Act, titled “Medicare and Medicaid Program Integrity Provisions.” Section 1128J(e) of the Act requires the Secretary to promulgate a regulation that requires, not later than January 1, 2011, all providers of medical or other items or services and suppliers under the programs under titles XVIII and XIX that qualify for an NPI to include their NPI on all applications to enroll in such programs and on all claims for payment submitted under such programs. In Medicaid, there is no Federally required “enrollment application,” although all Medicaid providers are required to enter into a provider agreement with the State as a condition of participating in the program under section 1902(a)(27) of the Act. Therefore, in the Medicaid context we are including the submission of an NPI to the State agency as a requirement under the provider agreement. The NPI requirements in this final rule are thus applicable to the reporting of NPIs—(1) pursuant to Medicaid provider agreements; (2) for inclusion in Medicare enrollment records; and (3) on Medicare and Medicaid claims.

3. Requirements Established by the IFC

a. NPI and the Medicare Program

(1) NPI and the Medicare Program Requirements Established by IFC

For the Medicare program, we established the following:

- At § 424.506(a), the definition of “eligible professional” refers to any of the professionals specified in section 1848(k)(3)(b) of the Act.
- At § 424.506(b), requirements that a provider or supplier who is eligible for an NPI must report the NPI on the Medicare enrollment application; and, if the provider or supplier enrolled in Medicare prior to obtaining an NPI and

the NPI is not in the provider’s or supplier’s enrollment record, the provider or supplier must report the NPI to Medicare in an enrollment application so that the NPI will be added to the provider’s or supplier’s enrollment record in PECOS.

- At § 424.506(c)(1), a requirement that a provider or supplier who is enrolled in fee-for-service (FFS) Medicare report its NPI, as well as the NPI of any other provider or supplier who is required to be identified in those claims, on any electronic or paper claims that the provider or supplier submits to Medicare.

- At § 424.506(c)(2) that a claim submitted by a Medicare beneficiary contain the legal name and, if the beneficiary knows the NPI, the NPI of any provider or supplier who is required to be identified in that claim. If a Medicare beneficiary does not know the NPI of a provider or supplier who is required to be identified in the claim that he or she is submitting, the beneficiary may submit the claim without the NPI(s) as long as the claim contains the legal name(s) of the health care provider(s). If a beneficiary so desires, he or she can obtain a provider’s or a supplier’s NPI by requesting it directly from the provider or supplier or from a member of his or her office staff, or by looking it up in the NPI Registry at <https://nppes.cms.gov/NPPES/NPIRegistryHome.do>.

- At § 424.506(c)(3), a Medicare claim from a provider or a supplier will be rejected if it does not contain the required NPI(s).

(2) Summary of and Responses to the IFC Comments Regarding the NPI and the Medicare Program

(a) Effective/Implementation Date

Comment: A commenter noted that the preamble states that the NPI requirements set forth in the IFC, referencing section 6402(a) of the Affordable Care Act, requires the Secretary to promulgate a regulation to implement the NPI requirement no later than January 2011. Therefore, there is confusion as to why July 6, 2010 is the effective date for NPI requirements.

Response: Section 6402(a) of the Affordable Care Act requires the Secretary to promulgate rules implementing the NPI requirement no later than January 2011. However, we have had existing regulations since 2008, as mentioned in the IFC, requiring the use of NPIs on all enrollment applications and claims forms, if NPIs were assigned to the provider. The NPI requirements set forth in the IFC are necessary to implement the data

reporting requirements in section 1128J(e) of the Act, as added by section 6402(a) of the Affordable Care Act, which require that the Secretary promulgate a regulation to implement this requirement no later than January 2011. Moreover these NPI requirements are needed to implement the Medicare ordering and certifying requirements specified in section 6405 of the Affordable Care Act (discussed in section II.B.2. of this final rule) that are effective July 1, 2010. Section 6406 of the Affordable Care Act (discussed in section II.B.4.a. of this final rule) was effective January 1, 2010. It was imperative that the NPI regulatory provisions be set forth as soon as possible to deliver the guidance necessary to enact the document retention provisions. For this reason, the NPI requirement was included in the IFC published on May 5, 2010, with an effective date of July 6, 2010.

(b) Deactivation

Comment: A commenter suggested that CMS permit the use of Electronic File Interface (EFI), which is used for submitting NPI applications to the National Plan and Provider Enumeration System (NPPES), to reactivate Medicare Provider Transaction Access Numbers (PTANs) that have been deactivated for non-billing for 12 consecutive months. This would reduce the burden on physicians and other providers and suppliers who must submit enrollment applications to re-enroll in Medicare if they have been deactivated due to non-billing.

Response: We appreciate the commenter's concerns and desire to use a fully electronic mechanism for reenrollment after deactivation. Currently, all enrollees must sign their paper enrollment application or the Certification Statement for their Internet-based PECOS application. We continue to work with our Medicare contractors to reduce the delays in the enrollment process. We believe these measures will alleviate the concerns of the commenter.

After review of the public comments received, we are retaining the provisions regarding the NPI for the Medicare program with the modification specified in this section and in section III. of this final rule.

To clarify, it is not necessary for the providers and suppliers to fill out an entire enrollment application simply to provide an NPI, we have revised the language in existing § 424.506(b)(2), which has been redesignated as § 424.506(b)(1)(ii), to specify that providers and suppliers that are eligible for an NPI must update their enrollment

records with this information. NPIs must be provided to the Medicare contractors by using a CMS-855 paper form or through Internet-based PECOS.

After consideration of the comments, we are finalizing our policy as it relates to the NPI and the Medicare definitions, enrollment, and claims reporting with a few modifications. We made some technical changes to the language by redesignating and revising language, specifically in § 424.506(b). Section 424.506(b)(3) was redesignated as § 424.506(b)(2) and revised to clarify that opt-out physicians and nonphysician practitioners will not be required to submit an enrollment application for any reason, including to order and certify. We also revised § 424.506(c)(1) to specifically address and clarify the NPIs that were required on the claims.

b. NPI and the Medicaid Program

(1) NPI Requirements for the Medicaid Program Established by IFC

Consistent with the requirements of section 6402(a) of the Affordable Care Act, we added a new (b)(5)(i) and (ii) to § 431.107 to require that the provider agreement between a State agency and each provider delivering services under the State plan include a requirement that the provider furnish to the State agency its NPI (if eligible for an NPI); and include its NPI on all claims submitted under the Medicaid program. In Medicaid, under section 1902(a)(77) of the Act, States are required to comply with the provider screening, oversight, and reporting requirements outlined in section 1902(kk) of the Act including the process for screening providers established under section 1866(j) of the Act. In addition, there are new Federal regulatory requirements for provider enrollment and screening, published in the February 2, 2011 **Federal Register** (76 FR 5862). The requirements under section 1902(a)(77) of the Act and under these new Federal regulatory requirements for provider enrollment and screening provide guidance for certain aspects of provider enrollment but do not provide Federal requirements for the entire process. However, providers are required to enter into a provider agreement with the State as a condition of participating in the program under section 1902(a)(27) of the Act. For purposes of the IFC, we interpreted the Affordable Care Act's reference to "applications to enroll" to refer to provider agreements in the Medicaid context. Additionally, we required that the NPI be submitted on all claims for payment to the Medicaid program on and after July 6, 2010.

(2) Summary of and Responses to the Public Comments Related to the NPI and the Medicaid Program

Comment: A commenter requested clarification regarding NPIs on pharmacy claims specifically when a pharmacy submits a prescriber Drug Enforcement Administration (DEA) number or State license number in lieu of the NPI. Is it expected that the pharmacy and physician NPIs are submitted on the claim for payment? Should the claims processor reject the claim if one or both provider identification numbers are not NPIs?

Response: The statute and this regulation require that NPIs be included on all claims for payment for Medicaid, including pharmacy claims. The requirement for an NPI does not replace the function of the DEA number, which must appear on all prescriptions for scheduled drugs, or the State license number, which is issued by an applicable State licensing authority; however, these numbers have different purposes and are not to be used to identify the prescriber when billing a claim at point of sale. The NPI was adopted to identify a health care provider as a health care provider in standard transactions adopted under the HIPAA. Effective July 6, 2010, NPI numbers are required on pharmacy claims.

Comment: A commenter stated that if pharmacy claims must include the NPI of the prescriber, the July 6, 2010 date will be impossible to meet due to the systems changes that would need to be made. The commenter believed that the date of January 1, 2011, which is the date in the Affordable Care Act, would be a more realistic compliance date.

Response: We believe the commenter is inquiring about the requirement that the NPI of the ordering or referring provider be included on all Medicaid claims for payment. This requirement was finalized in a February 2, 2011 final rule (76 FR 5862) and was effective March 25, 2011. Thus, this comment is outside the scope of this final rule, which, for purposes of Medicaid, only requires that the NPI of the provider furnishing the services/submitted the claim (for example, the pharmacy) be included on the claim.

Comment: A commenter requested clarification on the process for physician assistants (PAs) under different State Medicaid programs. PAs qualify for NPIs and are providers of medical services in some State Medicaid programs. However, not all States enroll PAs and in some States, the PA's NPI is not included on the claim form. Will this rule mean a change in policy and

procedure and that all States will now be required to include the PA's NPI on claims?

Response: If a PA is independently licensed to practice in a State and that State has included PAs as a provider type under the Medicaid State plan, the NPI number for that PA is required to be included on all claims for payment and pursuant to the PA's provider agreement. If the PA is not independently licensed within the State but rather is under the supervision of the physician, and/or is not described as a provider type that bills for Medicaid services under the State Plan, the NPI of the PA is irrelevant since the PA is not directly billing Medicaid; however, the supervising physician must have an NPI on submitted claims for payment and pursuant to the provider agreement.

Comment: Commenters expressed concern that adding and using NPI numbers on claims could result in burdensome investigations or liability for dentists in cases where their NPI numbers could be used fraudulently or criminally. These commenters requested procedures to protect practitioners from any unreasonable additional compliance burden that may be incident to the misuse of their NPIs by others.

Other commenters acknowledged that the NPI registry permits anyone with a computer and internet access to look up a provider's NPI by name. The commenters inquired how CMS is able to determine whether the NPI that is on a claim was put there by a physician who meant to order the test, or by someone who simply downloaded the NPI from the open file, thereby identifying attempts at theft and fraud?

Response: Under Medicaid, a claim submitted for payment that does not include the provider's NPI will be denied. In cases where claims submitted for payment do include an NPI number, the State's Medicaid Management Information System will match NPI numbers for providers with other data included in the State's provider enrollment file to ensure the provider's identity. This cross-checking with other data within the State ensures that the NPI number is valid and that it matches with all data in the provider enrollment file in an effort to verify each provider's identity. Additionally, this cross-checking is done at the State level and does not impose any additional compliance burdens on providers.

Comment: A commenter requested clarification regarding whether States need only to collect NPIs through the usual annual agreements and no additional actions for physicians will be required this year to report NPIs.

Response: NPIs must be added pursuant to provider agreements for new providers effective July 6, 2010. Existing providers must submit their NPIs pursuant to their provider agreements at the time in which they are revalidated or at the time in which changes are made to existing provider agreements. The NPI for all providers in Medicaid must be included on all claims submitted for payment effective July 6, 2010. We wish to note that since provider NPIs must be submitted on all claims for payment under Medicaid effective July 6, 2010, it may make sense for all providers (new and existing) to consider adding NPIs pursuant to provider agreements at the time in which they also submit a claim for payment.

Comment: A commenter questioned patient access and home health agencies' requests for payments for dual Medicaid/Medicare patients in the following scenario—a patient has been admitted to Medicaid Home Health after meeting the Medicaid homebound criteria, but not Medicare homebound criteria at the level of receiving skilled nursing care (for example wound care). The patient regresses, and now meets Medicare homebound criteria. A new Medicare Start of Care begins, and claims can be submitted to Medicare. What would the process be if this patient's physician is not enrolled in PECOS?

Response: Under the Medicaid program, the provider is required to include an NPI number on all claims for payment and pursuant to the provider agreement with the State. If the home health agency submits a claim to Medicare for home health services and the certifying physician is not enrolled in Medicare or has not validly opted-out, as required by the provisions of this rule, the claim will be denied by Medicare once the automated edits are activated.

After consideration of the comments, we are finalizing our policy as it relates to the NPI and Medicaid claims; that is, the effective date for the inclusion of the NPI on all Medicaid claims for payment remains July 6, 2010. The effective date for submission of NPIs pursuant to provider agreements for new providers also remains July 6, 2010. However, we are revising our policy as it relates to the NPI pursuant to provider agreements for existing providers; that is, the effective date for inclusion of the submission of NPIs pursuant to provider agreements for existing providers will be upon the next date that a change must be made to the provider agreement or upon the date of revalidation. This policy revision does not impact the regulatory

text (§ 431.107(b)(5)) as specified in the IFC (75 FR 24437). Therefore, we are not amending the regulatory text in this final rule.

B. Ordering and Referring Covered Items and Services for Medicare Beneficiaries

1. Background

Section 1833(q) of the Act requires that claims for items or services for which payment may be made under Part B and for which there was a referral by a referring physician shall include the name and the unique identification number of the referring physician. Physicians are doctors of medicine and osteopathy, optometry, podiatry, dental medicine, dental surgery, and chiropractic.

In the past, prior to the Medicare implementation of the NPI on May 23, 2008, physicians and eligible professionals were identified in claims as ordering or referring suppliers by their Unique Physician Identification Numbers (UPINs). Further discussion on Medicare's use of UPINs can be found in the IFC (75 FR 24441 and 24442). Physicians and eligible professionals applied for and were assigned UPINs as part of the process of enrolling in the Medicare program; therefore, physicians and eligible professionals were expected to be identified in claims as ordering or referring suppliers by their UPINs.

Analysis of Medicare claims data prior to 2008 (UPINs were not permitted to be used in Medicare claims after May 23, 2008) revealed that unauthorized and incorrect use of UPINs was widespread and, as a result, we had reason to believe that many physicians and eligible professionals were unaware of the requirement that their assigned UPINs were intended to uniquely identify them as ordering or referring suppliers and, more importantly, that they needed to apply for UPINs. As a result, Medicare may have paid claims for covered ordered and referred items and services that may have been ordered or referred by professionals who were not of a profession eligible to order and refer; by physicians or eligible professionals who were not enrolled in the Medicare program; or by physicians or eligible professionals who were not in an approved Medicare enrollment status (for example, they were sanctioned, their licenses were suspended or revoked, their billing privileges were terminated, or they were deceased).

With the Medicare implementation of the NPI in May 2008, Medicare discontinued the assignment of UPINs and no longer allowed UPINs to be used in Medicare claims. Because physicians

and non physician practitioners are eligible for NPIs, only the NPI may be used in Medicare claims to identify ordering and referring suppliers. To ensure the unique identification of ordering and referring suppliers and that they were qualified to order and refer, Medicare implemented claims edits in 2009 that require the ordering and referring suppliers identified in Part B claims for items of DMEPOS and services of laboratories, imaging suppliers, and specialists be identified by their legal names and their NPIs and that they have enrollment records in PECOS. The claims edits implemented in 2009 do not result in nonpayment. However, claims edits are under development to ensure that claims for Part B covered items and services (specifically DMEPOS, imaging and clinical laboratory services) and Part A and Part B home health services covered under this final rule identify the physicians and eligible professionals who ordered the item or services by their legal names and their NPIs and that those physicians and eligible professionals have enrollment records in Medicare.

2. Provisions of the Affordable Care Act

Section 6405(a) of the Affordable Care Act amended section 1834(a)(11)(B) of the Act to specify, with respect to suppliers of durable medical equipment, that payment may be made under that subsection only if the written order for the item has been communicated to the DMEPOS supplier by a physician who is enrolled under section 1866(j) of the Act or an eligible professional under section 1848(k)(3)(B) who is enrolled under section 1866(j) before delivery of the item. Section 1128J(e) of the Act requires that he or she be identified by his or her NPI in claims for those services. Medicare requires the ordering supplier (the physician or the eligible professional) to be identified by legal name and NPI in the claim submitted by the supplier of DMEPOS.

Section 6405(b) of the Affordable Care Act, as amended by section 10604 of the Affordable Care Act, amended the Act, and establishes new requirements for home health services. These provisions amended: (1) Section 1814(a)(2) of the Act and specifies, with respect to home health services under Part A, that payment may be made to providers of services if they are eligible and only if a physician enrolled under section 1866(j) of the Act certifies (and recertifies, as required) that the services are or were required in accordance with section 1814(a)(1)(C) of the Act; and (2) section 1835(a)(2) of the Act specifies, with respect to home health services

under Part B, that payments may be made to providers of services if they are eligible and only if a physician enrolled under section 1866(j) of the Act certifies (and recertifies, as required) that the services are or were medically required in accordance with section 1835(a)(1)(B) of the Act. Section 1128J(e) of the Act requires that the physician be identified by his or her NPI in claims for those services. Medicare requires the ordering supplier (the physician) to be identified by legal name and NPI in the claim submitted by the provider of home health services.

In addition, section 6405(c) of the Affordable Care Act gives the Secretary the authority to extend the requirements made by subsections (a) and (b) to all other categories of items or services under title XVIII of the Social Security Act, including covered Part D drugs as defined in section 1860D-2(e) of the Act, that are ordered, prescribed, or referred by a physician enrolled under section 1866(j) of the Act or an eligible professional under section 1848(k)(3)(B) of the Act. Section 1128J(e) of the Act requires that he or she be identified by his or her NPI in claims for those services. Medicare requires the ordering or referring supplier (the physician or the eligible professional) to be identified by legal name and NPI in the claims submitted by the suppliers of laboratory, imaging, and specialist services. These amendments are effective on or after July 1, 2010.

3. IFC Requirements Regarding Ordering and Referring of Covered Items and Services for Medicare Beneficiaries

a. Claims From Providers and Suppliers for Ordered/Referred Part B DMEPOS, Imaging, Laboratory, Specialist Items/Services (§ 424.507(a)(1))

The IFC required that claims from Part B providers and suppliers for covered ordered or referred items or services (excluding home health services and Part B drugs) meet the following requirements:

- The Part B items and services must have been ordered or referred by a physician or, when permitted by regulation or law, by an eligible professional.
- The claim from the Part B provider or supplier must contain the legal name and the NPI of the physician or the eligible professional who ordered or referred the item or service.
- The physician or the eligible professional who ordered the Part B item or service must have an approved enrollment record or a valid opt-out record in PECOS.

The IFC also required that if the Part B items or services were ordered or

referred by a resident or an intern, the claim must identify the teaching physician as the ordering or referring supplier, and the teaching physician must be identified in the claim by his or her legal name and NPI, and he or she must have an approved enrollment record or a valid opt-out record in PECOS.

b. Claims From Medicare Beneficiaries for Ordered/Referred Part B DMEPOS, Imaging, Laboratory, Specialist Items/Services (§ 424.507(a)(2))

The IFC stated that claims from Medicare beneficiaries for ordered or referred covered Part B items and services (excluding home health services and Part B drugs) must meet the following requirements:

- The Part B items and services must have been ordered or referred by a physician or, when permitted by regulation or law, an eligible professional.
- The claim must contain the legal name of the physician or the eligible professional who ordered or referred the item or service.
- The physician or the eligible professional who ordered or referred the item or service must have an approved enrollment record or a valid opt-out record in PECOS.

The IFC stated that if the Part B items or services were ordered or referred by a resident or an intern, the claim must identify the teaching physician as the ordering or referring supplier, and the teaching physician must be identified in the claim by his or her legal name, and he or she must have an approved enrollment record or a valid opt-out record in PECOS.

c. Claims From Providers for Ordered Part A and Part B Home Health Services (§ 424.507(b)(1))

The IFC stated that claims from home health agencies for covered Part A or Part B home health services must meet these requirements:

- The Part A or Part B home health services must have been ordered by a physician.
- The claim must contain the legal name and the NPI of the physician who ordered the service.
- The physician who ordered the service must have an approved enrollment record or a valid opt-out record in PECOS.

The IFC stated that if the Part A or Part B home health services are ordered by a resident or an intern, the claim must identify the teaching physician as the ordering or referring supplier. The teaching physician must be identified in the claim by his or her legal name and

NPI, and he or she must have an approved enrollment record or a valid opt-out record in PECOS.

d. Claims From Beneficiaries for Ordered Part A and Part B Home Health Services (§ 424.507(b)(2))

The IFC required that claims from Medicare beneficiaries for ordered covered Part A or Part B home health services must meet the following requirements:

- The Part A or Part B home health services must have been ordered by a physician.
- The claim must contain the legal name of the physician who ordered the services.
- The physician who ordered the services must have an approved enrollment record or a valid opt-out record in PECOS.

The IFC stated that if the Part A or Part B home health services are ordered by a resident or an intern, the claim must identify the teaching physician as the ordering or referring supplier, and the teaching physician must be identified in the claim by his or her legal name, and he or she must have an approved enrollment record or a valid opt-out record in PECOS.

e. Rejecting Claims From a Provider or Supplier That Do Not Meet the Requirements (§ 424.507(a)(1) or § 424.507(b)(1) Through § 424.507(c))

The IFC provided that a Medicare contractor will reject a claim from a provider or a supplier for covered ordered or referred items and services described in § 424.507(a) and (b) if the claim does not meet the requirements of § 424.507(a)(1) (for Part B items and services except Part B home health services and Part B drugs) and § 424.507(b)(1) (for Part A and Part B home health services).

f. Denying Claims From Medicare Beneficiaries That Do Not Meet the Ordering/Referring Supplier Requirements (§ 424.507(d))

The IFC stated that a Medicare contractor may deny a claim from a Medicare beneficiary for covered ordered or referred items and services described in § 424.507(a) and (b) if the claim does not meet the requirements of § 424.507(a)(2) (for Part B items and services except Part B home health services and Part B drugs) and § 424.507(b)(2) (for Part A and Part B home health services).

4. Summary of and Responses to Public Comments Regarding Ordering and Referring of Covered Items and Services for Medicare Beneficiaries

As a point of clarification, we use the term “ordering/referring provider” in this preamble because that is the terminology used in the implementation specifications for the standard Part B claim format and in the Part B paper claim to denote the individual (the person) who ordered, referred, or certified an item or service reported in that claim. The term “ordering/referring provider” is used in several contexts in this final rule. The term “order” for instance, refers to a provider who orders non physician items or services for the beneficiary, such as DMEPOS, clinical laboratory services, or imaging services. A “certifying” provider generally means a person who orders/certifies home health services for a beneficiary.

The terms “ordered,” “referred,” “certified,” and “ordering or referring” and “ordered or referred” are often used interchangeably within the health care industry and were used interchangeably by parties that commented on the IFC. Generally, we have used the terms applicable to this final rule, which are “ordered” when referring to items of DMEPOS, imaging and clinical laboratory services, and “certified” when referring to home health services. However, to be technically correct in every instance of the use of these terms in this preamble would require that we qualify every use in each instance. We believe that would be cumbersome and unnecessary and, therefore, did not do so. However, the regulatory text uses the technically correct terms.

a. Technical, Administrative, and Procedural Modifications and Corrections

Comment: Several commenters suggested that the agency did not provide a valid rationale for avoiding the procedural safeguards specified in sections 1871(a)(2) and (b)(1) of the Act, which address rulemaking. Moreover, they stated that the statute (at section 6405(a) of the Affordable Care Act) merely authorized the Secretary to require a PECOS enrollment date of July 1, 2010 but did not require it.

Response: Section 6405 of the Affordable Care Act requires physicians or eligible professionals who order or refer DMEPOS or home health services be enrolled in Medicare under section 1866(j) of the Act, and authorizes the Secretary to extend those requirements to other Medicare services. Section 6405(d) of the Affordable Care Act states that the amendments made by section

6405 of the Affordable Care Act “shall apply to written orders and certifications made on or after July 1, 2010.” We find section 6405(d) of the Affordable Care Act to be a clear statutory imperative.

Section 6406 of the Affordable Care Act requires physicians to retain necessary documentation and provide access to records for orders, referrals, and certifications for home health services, DMEPOS, and other items and services as designated by the Secretary, upon request. Section 6406(d) of the Affordable Care Act states “the amendments made by this section shall apply to orders, certifications, and referrals made on or after January 1, 2010.”

These two provisions fall within the exception to section 1871 of the Act that generally requires us to issue a notice of proposed rulemaking prior to issuing a final rule under the Medicare program.

Section 1871(b)(1)(b) of the Act provides that the Secretary is not required to issue a notice of proposed rulemaking before issuing a final rule if “a statute establishes a specific deadline and the deadline is less than 150 days after the date of enactment of the statute in which the deadline is contained.” Section 6405 of the Affordable Care Act establishes an effective date of July 1, 2010, 100 days after March 23, 2010, and section 6406 of the Affordable Care Act established an effective date of January 1, 2010 that passed before the Affordable Care Act was enacted. Additionally, implementing section 6402(a) of the Affordable Care Act, which adds section 1128J(e) to the Act and requires the use of the NPI on all enrollment applications and claims, does not add significant new burdens because the Medicare and Medicaid programs had already required the NPI on claims, applications, and agreements. The Affordable Care Act instructed the Secretary to promulgate a rule that adds this requirement no later than January 1, 2011, and the IFC executed that authority. Finally, a delay in implementing these provisions would be contrary to the public interest and to our efforts to reduce and eliminate fraud and abuse in the Medicare and Medicaid programs. For these reasons, we found good cause to waive the notice of proposed rulemaking and to issue these provisions on an interim final basis.

Additionally, the IFC carried a 60-day public comment period, to be followed by the publication of a final rule, as would a proposed rule. As a result, the public was afforded an opportunity to comment.

Comment: A commenter stated that the Affordable Care Act names DMEPOS and home health services as the only ordered or referred items or services to which the statutory requirements apply. While the law allows CMS to expand the scope, which CMS did by including laboratory services, there is no compelling reason for CMS to have done so.

Response: As stated by the commenter, section 6405(c) of the Affordable Care Act permits the Secretary to extend the requirement to all other categories of items or services under title XVIII of the Act, including covered Part D drugs as defined in section 1866(j) of Act. As noted in the regulation text at § 424.507(a), this regulation has extended the requirements to both laboratories and imaging services. We believe that in the past, some laboratories have abused the reporting of the ordering or referring provider by reporting surrogate UPINs for the ordering or referring providers in all of their claims, when UPINs were permitted to be used in Medicare claims, instead of reporting UPINs that had been assigned to specific physicians or other eligible professionals. These laboratories have also used a single (the same) NPI to identify the ordering or referring providers in all of their claims, having had earlier claims paid when using that NPI. Later, many laboratories used their own NPIs as the NPI of the ordering or referring providers even though the NPI Registry and the NPPES downloadable file were readily available for determining the NPI of the ordering or referring provider. We believe that these are compelling reasons to impose ordering or referring provider edits on clinical laboratory service claims.

Additional efforts to ensure accuracy of claims has also led us to impose NPI requirements on Part D sponsors through the final rule with comment period titled, “Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Program for Contract Year 2013” published in the April 12, 2012 **Federal Register**. This rule requires Part D plan sponsors to submit an active and valid individual prescriber NPI on all prescription drug event (PDE) records submitted to CMS. This rule does not require all physician prescribers to enroll in Medicare. Rather, it mandates that PDE records include active and valid individual prescriber identifiers effective for January 1, 2013 dates of service and later.

Comment: A commenter noted that laboratory services were not subject to the provisions of the Affordable Care Act; therefore, if CMS exercises its

statutorily-given discretion and determines that they must meet the requirements of the IFC, CMS should give laboratories until January 3, 2011 to be in compliance and must allow laboratories to continue to use their own NPI as the ordering or referring provider’s NPI until that date.

Response: As stated previously, section 6405(c) of the Affordable Care Act permits the Secretary to extend the requirement to all other categories of items or services, including laboratories. The NPI is the primary metric for us to verify Medicare enrollment and for that reason the two requirements are being implemented simultaneously, as described in the preamble of this final rule. We have been validating the ordering or referring providers reported in clinical laboratory claims since October 2009 to ensure they are properly identified in the claims and have enrollment records in PECOS or in a Medicare legacy system as of the claim receipt date. Such claims have not been denied or rejected due to the lack of the ordering or referring provider’s enrollment record. However, our revalidation of the enrollment records in PECOS or a Medicare legacy system has allowed us to alert these providers that they do not have an enrollment record. Clinical laboratories have information available to them that will indicate the NPI of the physicians and other eligible professionals who order services from them. Therefore, we will not permit clinical laboratories to report their own NPIs as the NPIs of the ordering or referring providers. We have not modified the compliance date.

Comment: A commenter stated that the Affordable Care Act does not give the Secretary the authority to determine who may order or refer items or services that are not covered and for which payment will not be made under a Federal insurance plan. The commenter stated that State medical practice acts determine the scope of practice of professionals, and that this regulation is creating a Federalism issue.

Response: We agree with the commenter in so far as this rule does not establish who may order or refer items or services that are not covered and for which payment will not be made under a Federal insurance plan. Although this rule finalizes conditions of payment for ordered items and services, it does not address broader payment policy questions. Rather, this rule implements the statutory requirement that individuals who order and certify particular Medicare-covered services be enrolled in the Medicare program. The Medicaid provisions relating to ordering

and referring were finalized in a February 2, 2011 final rule (76 FR 5862).

Comment: Several commenters noted that the word “must” was omitted from the regulatory text at § 424.506(c), there was a typographical error in another word in § 424.506(c), and noted the omission of the word “claim” in the regulatory text at § 424.507(a)(1).

Response: We have corrected these errors.

Comment: Several commenters indicated that the preamble discussed requirements for those who order DMEPOS, laboratory, imaging, and specialist services, whereas the text at § 424.507 indicates that the requirements apply to “Part B items and services (excluding home health services and Part B drugs),” which is broader in scope than what was discussed in the preamble.

Response: We have revised the regulatory text in this final rule at § 424.507 to be consistent with the language in the preamble with respect to clinical laboratory and imaging services. Further, specialist services are discussed in greater detail later in this final rule.

b. Terminology

Comment: A commenter stated that under Federal law, claims for which payment may be made under Part B and for which there was a referral by a physician must include the name and the UPIN of the referring physician. The commenter stated that this provision incorporates the Stark law definition of “referral,” and the preamble suggests the term “referral” should be interpreted in that manner.

Response: Based upon review of the public comments received, we have decided to remove specialist services from the requirements of this rule. The covered items and services for this final rule include imaging and clinical laboratory services, DMEPOS, and home health. The terms “ordered” and “certified” more accurately reflect these covered items and services. Therefore, we have removed reference to “referrals” in our regulatory text, due to the exclusion of specialist services from this final rule.

Comment: Several commenters requested that CMS define “specialist services,” as there is no requirement that a Medicare beneficiary obtain a referral from a physician to receive services from another physician, particularly since Medicare no longer pays for consultations. Another commenter stated that, because patients can determine for themselves the need to see a specialist, it will be difficult for Medicare claims contractors to

determine that a referring physician should have been reported on a claim. Also, the commenters questioned how a contractor would know that the visit to the specialist was not based on the patient's own decision and not that of another physician.

Response: We agree with the commenters that there are a number of operational issues associated with a requirement that services of a specialist be ordered or referred. We have removed such requirements from this rule.

Comment: Several commenters questioned what is meant by "imaging services" and "imaging suppliers." Commenters questioned if the term applies only to the technical component of imaging services (or global services) or if it also applies to the professional component. They also requested clarification on whether claims for imaging services provided in the hospital outpatient setting would be affected, if independent diagnostic testing facilities (IDTFs) and portable x-ray suppliers are considered "imaging suppliers", and if "services" apply to claims for routine x-rays performed in a physician's own office.

Response: The IFC and this final rule specifically refer to the technical components of imaging services that are: (1) Ordered by physicians and, where permitted, other eligible professionals; (2) furnished by IDTFs, mammography centers, portable X-ray facilities, and radiation therapy centers that are enrolled in Medicare via the CMS-855B; and (3) billed by these Part B suppliers to the Part B claims system (MCS) on an X12N 837P or a paper form CMS-1500.

Comment: A commenter stated that dentists order few clinical laboratory tests but frequently submit orders to dental laboratories, and the items and services provided by dental laboratories are unlikely to be covered by Medicare; thus, such orders and services would pose little risk of waste and abuse of Medicare funds. The commenter urged CMS to define "laboratory" as to exclude dental laboratories in order to clarify dentists' compliance requirements and to relieve dentists of an unnecessary compliance burden.

Response: We do not believe that dental laboratories should be excluded from the requirements of this final rule. We decline to define laboratories in this final rule; however, dental laboratories are, in fact, laboratories. These laboratories, from time to time, provide covered services under the limited circumstances in which dental services are covered by Medicare.

c. Beneficiary Submissions

Comment: Several commenters noted that the IFC contains requirements for beneficiary-submitted claims for home health services. These commenters stated that Medicare home health payments may only be made to Medicare certified home health agencies under assignment, not to beneficiaries.

Response: The commenter is correct in that beneficiaries do not submit claims to Medicare for home health services. This is because home health agencies are obligated by their institutional provider agreement to do all of the billing for services that may potentially be covered by Medicare. Therefore, we are removing the requirement that was added at § 424.507(b)(2) of the IFC and have revised the language in other sections of this rule in accordance with this change.

Comment: A commenter stated that there is no mechanism for ordered or referred items and services to be billed to a beneficiary when the beneficiary requests that the provider or supplier submit a claim to Medicare (which providers and suppliers are required to do under Medicare rules) in situations where the provider or supplier is aware that the ordering or referring provider does not have an approved enrollment record or a valid opt-out record in PECOS.

Response: We adhere to a longstanding position that if a beneficiary receives services that are certified by a physician who is not enrolled in Medicare and if that certifying physician refuses to enroll so that a proper claim can be submitted on the beneficiary's behalf, then the beneficiary cannot be charged for those services. A provider or supplier may be able to avoid the circumstances described in the comment if they ask the ordering or certifying provider if they are enrolled in Medicare before the ordered or certified services have been provided.

d. Effective/Implementation Dates

Comment: A commenter pointed out that the preamble stated that CMS expects that most, if not all, enrolled physicians and other eligible professionals who do not have enrollment records in PECOS, would have submitted enrollment applications by the end of 2010. Therefore, having an effective date of July 6, 2010 for claims to be rejected if they do not have records in PECOS is very confusing.

Response: The statement in the preamble was meant to convey the historical transition and progression of program enrollment requirements that

occurred prior to the passage of the Affordable Care Act, and that physicians and eligible professionals had been complying with the previously stated deadline of January 3, 2011. However, it does not preempt the effective date stated in the IFC. The effective date for the provisions contained in sections 6405 and 6406 of the Affordable Care Act, remains July 6, 2010. Because this rule was issued as an interim final rule with comment period, the provisions that implemented the statutory provisions became effective 2 months after the publication in the **Federal Register**. That interim final rule remains in effect until modified and finalized by this final rule.

Comment: A commenter stated that the Affordable Care Act gives CMS the authority and discretion to maintain the original published deadline of January 3, 2011 and urged CMS to adhere to that previously announced deadline.

Response: As stated in an earlier response, section 6405(d) of the Affordable Care Act states that the amendments made by section 6405 "shall apply to written orders and certifications made on or after July 1, 2010." We find section 6405(d) of the Affordable Care Act to be a clear statutory imperative.

Comment: Multiple commenters expressed concern that the July 1, 2010 date provided 6 months less time to implement these requirements than previously stated by CMS. Commenters believed that the date leaves inadequate time for CMS to notify the affected physicians (especially those who order home health services) and eligible professionals of the requirement to establish an enrollment record in PECOS if one does not already exist. These commenters believed the July 6, 2010 date created an undue burden on many providers, especially large medical groups, because many of their physicians and other professionals are affected by this requirement, creating an enormous workload on them, as well as the CMS contractors. Other commenters believe that the Medicare enrollment application for physicians is lengthy and complex and takes a great deal of time to complete, and requires details and supporting documents that only the physician would be able to provide. The commenters also stated that there are postal delays when mailing applications, and that physicians and their staff schedule vacations around that time of year.

Response: The commenters have referenced an announcement during an open door forum in February of 2010 wherein we noted a delay of in the enforcement of the requirement to enroll

in PECOS to January 2011. However, this delay was preempted by the new statutory effective date in the Affordable Care Act, passed on March 23, 2010. The Affordable Care Act includes amendments to the Act that apply to written orders and certifications made on or after July 1, 2010. Because we must follow the statutory effective date, we have instituted these regulations accordingly.

To provide the physician and eligible professional communities with the opportunity to comply with this regulation, we have made some modifications to the final rule which we believe will assist in that effort. The Affordable Care Act mandated that physicians and eligible professionals who order and refer must be enrolled in Medicare, the program. This final rule mandates the same, mirroring the statutory language. The IFC required an enrollment in PECOS, our data repository system for storing enrollment records. The Medicare legacy systems predate the PECOS system. However, those systems are being phased out and in the near future will no longer be used. At this time, the only way to enroll in Medicare is to establish an enrollment record in PECOS. We have been working towards fully populating PECOS and transferring those providers and suppliers in the legacy systems over to PECOS. This is being done by requiring that providers and suppliers revalidate their enrollment records, which we have separate and established authority to do. By revalidating, providers and suppliers will then have an enrollment record in PECOS. Those physicians and eligible professionals who only have an enrollment record in a local legacy system have been asked to revalidate first, so that they may be included on the Ordering Referring Report (explained in subsequent responses). We have made it clear to the physician and eligible professional communities that we would not turn on the automated edits that would cause a claim not to be paid until all physicians and eligible professionals have been asked to revalidate and have been given the opportunity to complete that process through their respective Medicare Administrative Contractors (MACs). In this final rule, although we have expanded our requirement from requiring enrollment in PECOS to one requiring enrollment in Medicare, which includes enrollment in PECOS or the local legacy systems, our requirements have not practically changed.

We believe that the aforementioned modification of the IFC will not create an additional burden because

information will be gathered through the normal revalidation process. To address the commenters' concerns regarding the lengthy enrollment forms, we have modified the enrollment process for those enrolling only to order and certify. The CMS-855O form is available now for use and is significantly shorter than the original enrollment forms. Additionally, although those physicians and eligible professionals who wish to enroll in Medicare to order and certify, but do not wish to bill the Medicare program, will need to provide information to us via the CMS-855O form, they will not be required to submit financial information, including filling out a CMS-588 Electronic Funds Transfer (EFT) form. We believe that these modifications have addressed the concerns raised by these commenters.

Comment: A commenter suggested that CMS should delay implementation of these requirements until 5 percent or fewer physicians and other eligible professionals lack approved enrollment records or valid opt-out records in PECOS.

Response: The Affordable Care Act requires that physicians who order certain items or services must be enrolled in Medicare. As previously stated, we have changed the enrollment requirement from one mandating enrollment in PECOS to one requiring enrollment in Medicare—including PECOS or other legacy Medicare enrollment systems. In addition, as we have indicated in this final rule and in open door forums, we have not yet activated the automated edits that would cause claims for services or supplies not to be paid for lack of an approved enrollment record in Medicare. We will provide advance notice of activation of the automated edits. We believe these changes alleviate the concerns of the commenter.

Comment: A commenter suggested that if the July 6, 2010 date remains in effect, consideration should be given to processing and paying claims if the ordering or referring provider has an enrollment application in process at a CMS contractor.

Response: We have changed the enrollment requirement from one requiring enrollment in PECOS to one requiring enrollment in Medicare—including PECOS or other legacy Medicare enrollment systems. However, physicians and eligible professionals must have an approved enrollment record in Medicare, not a pending record in Medicare to order and certify services for Medicare beneficiaries.

Comment: Several commenters questioned whether the practice of

providers billing for services after July 6, 2010 and the ordering or referring provider's failure to have a record in PECOS at that time, could trigger liability under the False Claim Act.

Response: The False Claims Act (FCA), 31 U.S.C. 3729 through 3733, imposes civil liability for the knowing submission of a false or fraudulent claim for payment and the Department of Justice investigates and litigates alleged FCA violations. Therefore, any question related to FCA liability is beyond the scope of this rule.

Comment: Another commenter asked if providers that submitted claims between July 2010 and December 2010 that fail the edits because the ordering or referring provider or eligible professional did not have an enrollment record in PECOS may eventually be held liable for non-compliance and could face rejected claims and recoupment by Zone Program Integrity Contractors (ZPICs), Contractor Error Rate Testing (CERT), Durable Medical Equipment Medicare Administrative Contractors (DME MACs), and Recovery Audit Contractors (RACs), and other contractors at any point after July 1, 2010, noting that a tremendous number of claims would have failed those edits during that timeframe.

Response: We have delayed the implementation of automated edits that would cause a claim not to be paid due to the lack of an approved enrollment record in Medicare for the ordering or certifying physician or eligible professional. This final rule does not in any way provide relief to providers whose claims would be subject to recoupment by any CMS contractor, including ZPICs, RACs, and MACs, as well as any law enforcement partner, due to improper payments resulting from any other reason unrelated to the ordering or certifying requirements. We always retain the right to pursue fraud and recoup money for claims that did not meet the requirements of the IFC. However, for operational reasons, we do not believe it would be a prudent use of resources to pursue large-scale recoveries against claims with dates of service from July 2010 until such time as we activate prepayment edits that identify claims that do not have proper documentation of enrolled ordering and/or certifying suppliers.

Comment: Commenters stated that claims for home health services are reimbursed on a 60-day episode basis, and claims submitted on or after July 6, 2010 would be for services provided in April, May, and June. The commenters stated that because the IFC was published on May 5, 2010, it may apply to home health services ordered before

May 5, and would not be fair to require retroactive compliance with a new regulation.

Response: We will provide advance notice to providers and suppliers of the date we plan to activate the automated edits that would cause a claim not to be paid for the lack of an enrollment record in Medicare. No part of this final rule will require retroactive compliance for periods of time before July 6, 2010. Further, the edits will apply to only those claims with a date of service on or after the date the edits are activated.

Comment: Commenters argued that the July 6, 2010 date should apply only to orders and referrals for DMEPOS and home health services, as those are the only ordered or referred items or services specifically named in the Affordable Care Act, and that those who order or refer imaging, laboratory and specialist services (which are not named in the law but CMS names in the IFC) should have been given until January 3, 2011 to enroll/re-enroll. Similarly, another commenter stated that laboratory services were not subject to the provisions of the Affordable Care Act; therefore, if CMS exercises its statutorily-given discretion and determines that they must meet the requirements of the IFC, CMS should have given laboratories until January 3, 2011 to be in compliance.

Response: Extending the ordering and referring enrollment requirements to other providers and suppliers is permitted by statutory provisions in 6405(c) of the Affordable Care Act, including laboratory and imaging services. However, as noted in the responses to comments, we have eliminated from the final rule the requirements related to referrals to physician specialists. The statutory effective date is binding for all applicable provisions of this rule, including those specifically mandated in the Affordable Care Act provisions, as well as those added at the discretion of the Secretary. Therefore, we are not able to make the suggested change.

Comment: Several commenters stated that CMS should flag claims with a date of service after July 6, 2010 that have been rejected due to the ordering or referring provider not having an enrollment record in PECOS and that CMS should then communicate this information to the billing provider and CMS should use this information to target outreach to non-PECOS ordering or referring providers. Some commenters stated that physicians do not understand why other providers/suppliers, instead of CMS, are notifying them of the need to have records in PECOS.

Response: As stated previously, Medicare contractors have communicated in writing with enrolled physicians and nonphysician practitioners who do not have enrollment records in PECOS and have urged them to establish those records through revalidation. Suppliers who have submitted claims for items and services ordered and referred by non-enrolled physicians have been receiving informational messages that these claims are not in compliance with the enrollment requirements but are not being denied at this time. We are aware that some suppliers have been communicating with those individuals who ordered and referred items and services about the requirement to enroll in Medicare and we encourage all suppliers to do so. We believe that our outreach documents and messages provided at our provider open door forums are clear, comprehensive, and continue to stress the importance of having an enrollment record in PECOS. We will continue our direct outreach with these communities as we implement this final rule.

Comment: Due to the short timeframe for complying with the new provisions, several commenters questioned that we allow the effective date for ordering home health services by newly enrolling physicians be the date the physician mails the signed CMS-855 Certification Statement to the Medicare contractor.

Response: The statute requires that enrollment must be valid based on the date of the order or referral. As noted in the preamble of this final rule, the final rule requires enrollment based on the date of service, not the mailing date of the CMS-855 Certification Statement. In order for a physician or non physician practitioner to be enrolled in Medicare, the Medicare contractor must process the enrollment application to a final approved status. This process could take approximately 45 days or more, depending upon various factors. To allow physicians and eligible professionals sufficient time to enroll to order and certify, we will provide ample notice of our plans to activate the automated edits that will cause a claim not to be paid due to the lack of an approved enrollment record in Medicare to order and certify.

Comment: A commenter stated that because CMS recently implemented the Outcome and Assessment Information Set (Oasis C) for home health agencies, making the effective date of July 6, 2010 in the IFC would be even more onerous and difficult to implement due to such short notice.

Response: The effective date for the enrollment requirements for physicians

and eligible professionals who order and certify covered items and services was mandated by statute. Consequently, we are not able to change the effective date.

e. Enrollment Records, PECOS, FISS, NPPES, and the Ordering Referring Report

Comment: A few commenters questioned why CMS needs PECOS when there is already an NPI database.

Response: PECOS is a Medicare enrollment repository and the "NPI database" (NPPES) is the repository of information about health care providers who have been assigned NPIs and their assigned NPIs. Any health care provider who has an NPI has a record in NPPES. Not all health care providers in NPPES are in PECOS, because not all health care providers with NPIs are enrolled in the Medicare program. Please see the CMS NPI Web page for more information about NPIs and NPPES www.cms.gov/NationalProviderStand/.

Comment: A commenter did not understand why an ordering physician had to have an enrollment record in PECOS when the physician already has an NPI.

Response: Having an NPI does not mean that a physician is enrolled in the Medicare program or that the physician has an enrollment record in PECOS or in Medicare. The Affordable Care Act requires that physicians who order certain items or services must be enrolled in Medicare. We have changed the enrollment requirement language from one requiring enrollment in PECOS to one requiring enrollment in Medicare—including PECOS or other legacy Medicare enrollment systems. This final rule requires that physicians report an NPI on new enrollment records and on submitted claims for payment. We will use our existing authority to revalidate enrolled providers, which will require the reporting of the NPI on an enrollment application.

Comment: A commenter recommended that CMS consider a bi-directional interface between PECOS and NPPES to permit both systems to contain the information necessary for a provider to verify that the ordering or referring physician is a qualified provider of Medicare services.

Response: While we appreciate the commenter's point of view, NPPES is an entirely separate entity from Medicare and PECOS. NPPES simply assigns NPIs and collects the corresponding information for those numbers. NPPES does not collect Medicare enrollment information. PECOS collects Medicare enrollment information, as do CMS's

legacy systems. Medicare verifies the credentials of its enrolling providers and suppliers as part of the provider and supplier enrollment process that occurs when Medicare contractors process Medicare enrollment applications. This verification does not occur when health care providers apply for and are assigned NPIs by NPPES.

Comment: A commenter stated that providers and suppliers, including practitioners, may not know whether they have NPIs in their enrollment records in PECOS, or what they need to do in order to comply with the NPI requirement to submit the NPIs to CMS by July 6, 2010.

Response: We have established a number of ways for providers and suppliers to inquire about their status with Medicare.

- Providers and suppliers may start by referring to the NPI Registry online to search for their NPI. Those eligible for an NPI, who are enrolled in Medicare, must establish an NPI and update their enrollment records with Medicare.

- Providers and suppliers may also refer to the Ordering Referring Report to verify their enrollment records. The Ordering Referring Report is a report published by CMS that reflects the approval status of all physician and non physician practitioners who have applied to order and refer. The report will show all practitioners who have an approved record in PECOS to order and refer and practitioners who have an application that has been received and is pending approval. The report is available via the following link: http://www.cms.gov/MedicareProviderSupEnroll/06_MedicareOrderingandReferring.asp#TopOfPage.

- Providers and suppliers may also use Internet-based PECOS to view their enrollment records. This will also enable the user to determine whether their NPI is included in their enrollment record in PECOS.

Comment: Several commenters, noting that not all Medicare providers and suppliers who have enrollment records in PECOS have NPIs in those records, believed that the requirement for such providers and suppliers to submit, by July 6, 2010, enrollment applications that contain the NPI would overwhelm the Medicare contractors, as this would be an additional burden on the contractors that already have backlogs of enrollment applications to process. They recommended that CMS issue guidance to its contractors for establishing a process for those who need to establish enrollment records in PECOS, as well as those who need to add their NPIs to their enrollment records, and to hold such providers and

suppliers harmless for failure to submit the required enrollment applications or add their NPIs to their enrollment records prior to having been notified to do so by their designated Medicare contractors.

Response: The Medicare provider/supplier enrollment Web site assists providers and suppliers in determining whether they have enrollment records in PECOS and also provides information on how to enroll. We will continue to convey these messages, as appropriate, via our provider/supplier open door forums, in CMS provider listserv messages, in Medicare Learning Network products, and in our conversations and discussions with national provider and supplier organizations.

As stated previously, we will provide ample notice of our plans to activate the automated edits that will cause a claim not to be paid due to the lack of an approved enrollment record in Medicare to order and certify. Therefore, there is no reason for us to hold providers harmless for failing to be compliant with this requirement.

Comment: Many commenters stated that physicians' practices do not understand the PECOS system and that CMS help is difficult to obtain. The commenter stated that the help number is only available 4 hours per day and providers cannot get through. Another commenter believed the PECOS process to be quite difficult and time consuming.

Response: We have provided PECOS instructional guides for physicians, nonphysicians and DMEPOS suppliers available at: http://www.cms.gov/MedicareProviderSupEnroll/04_InternetbasedPECOS.asp.

The CMS End User Services (EUS) Help Desk operates under our direction and is equipped to respond to operational systems issues related to Internet-based PECOS that are reported by providers and suppliers. Examples of issues that should be reported to the CMS EUS Help Desk include access problems (for example, user ID and password do not work, forgotten User ID or password, help in setting set up User ID or password), difficulty in understanding how to follow the screens in the application process, error messages, and system performance issues. The telephone number of the CMS EUS Help Desk is 1-866-484-8049 (TTY/TDD 1-866-523-4759); the email address is EUSSupport@cgi.com. The CMS EUS Help Desk days and hours of operation are Monday through Friday, 7 a.m. to 7 p.m. Eastern Time. The CMS EUS Help Desk is unable to answer enrollment policy questions; those

questions must be directed to the Medicare contractors. Medicare provider enrollment contact information for each State can be found in the download section of <http://www.cms.gov/MedicareProviderSupEnroll/>. We will investigate all reports of slowness or similar systems problems that Internet-based PECOS users may experience and report to the CMS EUS Help Desk.

Providers and suppliers with questions regarding the use of PECOS for the enrollment process should contact their jurisdiction's MAC. Although each MAC's hours of operation may vary, their normal business hours are generally established at 8 hours daily. Each MAC is required to comply with certain training exercises; therefore, there may be times when the hours of operation are shortened to 4 hours. The MACs may also be closed on Federal holidays. We do not believe that these limited interruptions significantly impact the MAC's ability to provide assistance related to PECOS due to these limited periods of interruption.

Comment: A commenter stated that CMS has confused physicians unnecessarily by referring to PECOS interchangeably as both an enrollment repository and as a Web site. They think that when they "sign up" to use the Web site, they have enrolled, only to find out that they still need to submit an application, a much more cumbersome process.

Response: Internet-based PECOS is a secure Web site providers can log into and then submit an application to enroll. In order to use Internet-based PECOS, a provider or supplier must log in by entering his or her User ID and password or register to obtain log in information in the PECOS Identity and Access (I&A) System. Logging on or registering is not enrolling or updating an enrollment record. After access to Internet-based PECOS is granted, the user must complete and then submit the enrollment application electronically; then the user must print the Certification Statement and have it signed and dated by the appropriate individual, gather any required supporting paper documentation, and send this material to the designated Medicare contractor. After the designated contractor receives the signed and dated Certification Statement and any additional paper documentation, it begins to process the enrollment application to an approved (approved or opt-out) or disapproved status. Once the application is approved, the provider or supplier will have an approved enrollment record or

a valid opt-out record in PECOS. We have revised some of the material on the Medicare provider/supplier enrollment Web site in an attempt to clarify requirements and processes to address the concerns expressed by the commenter. PECOS can be accessed here: <https://pecos.cms.hhs.gov/pecos/login.do>.

We offer additional information on internet-based PECOS on our Web site. This information includes several Medicare Learning Network (MLN) articles that provide providers and suppliers with in-depth information to assist them in navigating the enrollment process.

Comment: A commenter stated that the “find a doctor” link on the *Medicare.gov* Web site does not inform beneficiaries of the PECOS requirements or indicate whether the physicians it suggests to patients are PECOS enrolled. Another commenter noted that it will be difficult for Medicare beneficiaries to know if their physician has an enrollment record in PECOS. The commenter also stated that if the physician does not have an approved record in PECOS, and he/she orders or refers, and the provider or supplier refuses to furnish the item or service, the beneficiary will develop further health problems, causing more problems for the beneficiary as well as the taxpayer and the provider. Another commenter stated that beneficiaries should be made aware of the impact of these requirements on their ability to access subsequent care.

Response: We use a number of communication vehicles to communicate with beneficiaries about Medicare including the annual *Medicare and You Handbook* describing the program, which refers to the requirements that physicians and eligible professionals, were applicable, who order and certify Medicare services for beneficiaries must be enrolled in Medicare. The *Medicare.gov* Web site uses PECOS as the source of the information it displays about physicians. We are continually updating the information in PECOS to be sure that it is complete and accurate. The Affordable Care Act requires that physicians who order certain items or services must be enrolled in Medicare. We recognize that this requirement may pose issues for beneficiaries who need care and who are unsure whether their physician is enrolled in Medicare. As mentioned earlier in this preamble, there are a number of ways a beneficiary can determine whether a physician is actually enrolled in Medicare, including to ask the physician whether he or she is enrolled. In addition, for ease of

access, we have created the Ordering Referring Report that provides the public, including beneficiaries, information on who is enrolled in Medicare to order and certify (available at http://www.cms.gov/MedicareProviderSupEnroll/06_MedicareOrderingandReferring.asp). To ensure that Medicare beneficiaries are aware of the need for the providers and suppliers from whom they receive items and services to be enrolled in Medicare (even if only to order and certify, when permitted) or to have validly opted-out of Medicare, we will continue to share information with senior citizens’ organizations and create special messages for Medicare beneficiaries about these issues and processes. We believe all of these changes reduce the risk that beneficiaries will be disadvantaged by implementation of the statutory requirements.

Comment: Many commenters stated that the Affordable Care Act requires physicians who order or refer DMEPOS and home health services to be enrolled in Medicare but does not require them to have enrollment records in PECOS, whereas the IFC requires the latter. The commenters suggested that CMS should focus on ensuring that those who order and refer DMEPOS and home health services and who have never enrolled in Medicare, must enroll in Medicare, and CMS should have let those who are enrolled and not yet in PECOS have until January 2011 to get their enrollment information into PECOS. This could help reduce the strain on the enrollment contractors.

Response: The Affordable Care Act requires that physicians who order certain items or services must be enrolled in Medicare. In response to comments, we have changed the enrollment requirement language from one requiring enrollment in PECOS to one requiring enrollment in Medicare—including PECOS or other legacy Medicare enrollment systems. However, as we explained in this preamble, we will be transitioning all legacy system enrollees to PECOS via our revalidation process and will delay the activation of the automated edits. Once implemented, these edits will cause a claim, for the lack of an approved enrollment record in Medicare for the ordering or certifying physician or other eligible professional, not to be paid. These edits will not be activated until the revalidation process is completed for the relevant supplier groups that order and certify. The Affordable Care Act does not authorize the Secretary to arbitrarily implement this rule for certain providers and suppliers who

enroll to order and certify. We believe that the delay of the automated edits alleviates the commenters’ concerns. We require that providers and suppliers be enrolled in the Medicare program or that they have validly opted out of the Medicare program as of the date of service, beginning with dates of service of July 6, 2010. However, as already stated, we will provide advance notice of the activation of the automated edits that pertain to these claims.

Comment: A commenter stated that physicians who have attempted to enroll in order to get their enrollment data into PECOS have had their applications returned to them with instructions that there is no need for their applications to be updated at this time.

Response: We understand that there has been some confusion in the past and have instructed our Medicare contractors to process these applications. Our instructions to the enrollment contractors also state specifically that physicians who are currently enrolled in PECOS and have an NPI in their records need not resubmit an application to enroll to meet the statutory requirements addressed in this final rule. Our enrollment contractors receive on-going training to address these types of issues and we do not expect any confusion in the future.

Comment: Several commenters stated that physicians have used Internet-based PECOS to enroll but their names are not in the Ordering Referring Report available on the CMS Web site at www.cms.gov/MedicareProviderSupEnroll.

Response: We are evaluating the reasons why physicians or other eligible professionals do not appear on the Ordering Referring Report. If a physician or other eligible professional believes that he or she has been omitted from this report in error, we encourage them to contact their respective Medicare contractor for assistance.

Comment: A commenter asked CMS to define what is meant by an “approved enrollment record in PECOS.” Further, the commenter thought that Medicare contractors should retroactively approve each enrollment application found in PECOS to the date the application was initially submitted to CMS. The commenter believed this would be consistent with the effective date of enrollment in Medicare for physicians, non physician practitioners, and physician and non physician practitioner organizations, which is defined at § 424.520(d) as the latter of the first date the individual began furnishing services at a new

practice location or the date of filing of the application that is subsequently approved.

Response: For purposes of this final rule, an ordering or certifying provider must be enrolled in Medicare in an approved or a valid opt-out status as of the date of service on the claim. As the commenter stated, under § 424.520(d), the effective date of Medicare billing privileges for physicians and practitioners is the date of filing of a Medicare enrollment application that is subsequently approved or the date an enrolled physician or non physician practitioner first began furnishing services at a new location, whichever is later. The provider may begin ordering or certifying items and services as of the effective date of his/her Medicare billing privileges.

Comment: Some commenters suggested that CMS provide more information about the Medicare legacy claims system and how providers can access it, as the legacy claims system is another way that ordering or referring providers can be in compliance with existing ordering or referring provider requirements.

Response: Providers are not permitted to access the Medicare legacy claims systems and there is no need for them to do so. In earlier responses, we have explained numerous ways for providers to access the records that provide the information sought by the commenters.

Comment: Several commenters noted that the Ordering Referring Report that is available on the CMS provider/supplier enrollment Web page is difficult to use effectively.

Response: We revised this report so that it is more user-friendly. The Ordering Referring Report is now available on the Medicare provider/supplier enrollment Web site in two formats: PDF and CSV. The PDF format enables a person to search for a particular physician or other eligible professional, either by NPI or by name. We believe these changes have alleviated the problems associated with conducting searches and we will continue working to improve the quality of search capabilities.

Comment: Some commenters requested that the report be made available more frequently, such as daily.

Response: The Ordering Referring Report is replaced at a minimum of once per week. We do not believe that more frequent availability (daily, real-time) is necessary or practical. As mentioned in a previous response, a report of physicians and other eligible professionals whose enrollment applications are in process is also available on the same Web site.

Comment: A commenter stated it has no way of knowing when an enrolled physician establishes an enrollment record in PECOS in order to resubmit a claim that had been submitted but had failed the ordering or referring provider edit.

Response: The Ordering Referring Report is updated at a minimum of once per week and is available in two formats, as noted earlier. By comparing information in a provider's or supplier's previously submitted claims to the information in this file, it is possible to determine if the ordering or certifying providers identified in previously submitted claims are enrolled in Medicare in an approved status or have validly opted-out.

Comment: A commenter stated that PECOS must be updated daily or patients will be incorrectly denied services.

Response: PECOS, the national Medicare FFS provider and supplier enrollment system, is updated daily, and an extract of PECOS enrollment data is transmitted electronically each night to the Medicare claims systems.

Comment: A commenter stated that a physician who received an enrollment letter from CMS could not be found on the Ordering Referring Report.

Response: There were some errors in the generation of the Ordering Referring Reports that were produced in the late spring of 2010 that resulted in the omission of some physicians and other eligible professionals from the Ordering Referring Report. We have corrected the errors.

Comment: Several commenters stated that home health agencies should be given the capability to access the Fiscal Intermediary Standard System (FISS) to research the enrollment status of enrolled and opt-out physicians, as FISS is updated daily.

Response: As stated in an earlier response, providers and suppliers may not access the claims systems. Information regarding a provider or supplier's enrollment status is available by checking the files we post on the Medicare provider/supplier enrollment Web site, or by inquiring with the ordering or certifying providers.

f. Enrollment Applications and Processing

Comment: Commenters stated that Medicare enrollment contractors are not processing enrollment applications in a timely manner, are not providing accurate information to inquiring physicians and others, are not responding timely to questions, and that this made it impossible for those physicians and other practitioners to

have enrollment records in PECOS by July 6, 2010. A commenter asserted that it has taken a total of 90 days or more for contractors to process enrollment applications and for CMS to include the physician in the Ordering Referring Report, making the July 6, 2010 date unacceptable. The commenter also suggested that the new future deadline will put even more of a strain on the Medicare enrollment contractors, who are already behind in processing enrollment applications.

Response: Additional resources have been allocated to Medicare contractors to enable the processing of increased numbers of enrollment applications. Furthermore, we have undertaken many activities to streamline the process and assist the provider and supplier communities in complying with this rule. These include: (1) Modifying the enrollment requirement language from one requiring enrollment in PECOS to one requiring enrollment in Medicare—including PECOS or other Medicare enrollment systems; (2) not immediately activating the automated edits that would cause claims for items or services not to be paid for lack of an approved enrollment record in Medicare; and (3) providing a streamlined application for those providers and suppliers who wish to enroll to order and certify (CMS-855O). We have worked with the provider and supplier community to be responsive to application processing concerns and are continuously working to make the enrollment process faster and easier for the provider and supplier communities.

Comment: Many commenters suggested that CMS increase resources to contractors to ensure that customer service lines are answered promptly including the Internet-based PECOS call center and the NPI Enumerator call center. The commenter also noted that customer service training should be improved, and that information submitted by physicians should not be lost.

Response: We agree with the commenter. We have taken a number of steps to address the commenter's first concern. The CMS EUS Help Desk (the Internet-based PECOS call center) is hiring more staff and is more thoroughly educating its employees on how to properly handle issues and problems related to Internet-based PECOS. We have made improvements in the language used on the screens in Internet-based PECOS to help eliminate confusion. We have also taken steps to ensure the system operates more smoothly and consistently. The NPI Enumerator call center remains fully staffed and funded to assist those

physicians and other eligible professionals who need to obtain or establish NPIs, as well as those who have lost or forgotten their NPPES User IDs and passwords to enable them to use Internet-based PECOS. In addition, we are continuing to make major revisions to the enrollment process that will significantly reduce delays and other problems associated with PECOS enrollment.

Comment: A commenter stated that a Medicare contractor requires physicians to submit multiple CMS-855I and 855R forms, one for each Medicare-assigned Provider Transaction Access Number (PTAN). The commenter was concerned that this is resource-intensive on the physician and the contractor.

Response: We do not require physicians or other eligible professionals to submit multiple enrollment applications (CMS-855I forms) in situations where they have more than one PTAN unless the PTANs represent practice locations that exist in more than one Medicare contractor jurisdiction. In that situation, a physician or other eligible professional would need to submit an enrollment application to each Medicare contractor; a Medicare contractor has access only to the PECOS enrollment records with practice locations within that contractor's jurisdiction. The 855R form is not an enrollment application, as such. This form is used to reassign benefits to another provider or supplier, such as a physician group practice. This has a very different function than the standard enrollment forms. Additionally, in an effort to streamline our enrollment for this final rule, we have developed the new CMS-855O form. This form will be available to those physician and nonphysician practitioners who wish to submit an enrollment application just for the purposes of ordering and certifying.

Comment: A commenter stated that the enrollment processing time should be more reasonable, such as 7 to 14 days.

Response: Many of the applications submitted to the Medicare contractors are processed in as little as 14 days. However, Medicare contractors must verify information reported in the Web-based and paper enrollment applications, and sometimes need to obtain additional information or clarification from enrolling providers and suppliers. Providers and suppliers are not always timely in furnishing the requested clarifications or additional information, which may add substantially to the processing time and, if the requested information is not furnished within the timeframe required

by the Medicare contractor, it may cause an enrollment application to be rejected. Paper enrollment applications take longer to arrive at the Medicare contractors and take longer to process than those submitted via Internet-based PECOS for several possible reasons related to paper applications that may be missing required data; may contain illogical dates or incorrect, incomplete, missing addresses or telephone numbers; or may be missing required supporting documentation. The increased volume of enrollment applications has resulted in slightly longer processing times. However, since we changed the enrollment requirement from one requiring enrollment in PECOS to one requiring enrollment in Medicare—including PECOS or other Medicare enrollment systems, we believe we have eliminated some of those possible problems and delays in processing during the revalidation process. This change has ensured that claims of existing approved Medicare providers have not been disrupted.

Comment: A commenter stated that CMS should make available data regarding enrollment applications submitted due to these new requirements and detail the success of the Medicare contractors in processing the applications within the required timeframes.

Response: We make available on the Medicare provider/supplier enrollment Web site a report showing the legal names and NPIs of physicians and other eligible professionals who have enrollment applications being processed by the Medicare contractors. For purposes of this final rule, we do not believe it appropriate to include the enrollment application processing times of the Medicare contractors. Many factors influence the time it takes to process an enrollment application, including the method (Web or paper) by which the enrollment application was submitted and the completeness of the application. Medicare contractors have several methods available to them for managing their workloads successfully. However, we do monitor application processing activities for timeliness and other performance variables.

Comment: A commenter stated that the IFC expanded the scope of the statute by including radiology and pathology services as ordered or referred items and services. The commenter asserted that many more physicians order these services than order DMEPOS, and that CMS has not permitted adequate time for physicians to become aware of this expansion and, if necessary, establish enrollment records in PECOS. The commenter

asked that CMS determine the number of physicians who must establish enrollment records in PECOS and then establish manageable timeframes for processing the revalidations. The commenter suggested that CMS also consider having the Medicare contractors create special processing units to process only voluntary revalidation applications.

Response: Section 6405(c) of the Affordable Care Act permits the Secretary to extend the requirement to all other categories of items or services, including imaging services and clinical laboratory services. We have a general sense of the pool of affected physicians and other eligible professionals who must establish enrollment records in Medicare and have established manageable timeframes for processing the revalidations. Additionally, we have engaged in outreach efforts with the impacted medical communities. As a result, those who order imaging services and clinical laboratory services should be fully aware that they need to be enrolled in Medicare or have validly opted-out of Medicare to continue to order those services. We do not believe there is a need to provide additional time for those who order imaging services and clinical laboratory services to enroll in Medicare.

By "voluntary revalidation applications," we believe the commenter is referring to enrollment applications submitted by enrolled physicians and other eligible professionals absent the receipt of a revalidation letter from a Medicare contractor. Revalidation requests are generated by Medicare contractors, and providers and suppliers are given a specific period of time in which to submit their enrollment applications. Medicare contractors give priority to processing all initial enrollment applications and to those who are enrolling just to order and certify. We do not accept voluntary revalidation applications and we do not intend to in the future.

g. CMS Outreach Activities and Education

Comment: Commenters stated that home health agencies, who learned of these requirements when reading the IFC, need time to educate physician and hospital communities on the dual issues of the physician status in PECOS and potential adverse impact on access to post-acute care services for their patients. A commenter requested that if the July 6, 2010 date for the ordering or referring supplier requirement for physicians is not moved to January 3, 2011, CMS should—(1) Fund

enrollment contractors for physician outreach and enrollment application processing; (2) direct contractors to set up dedicated lines to expedite inquiries and resolve problems related to enrollment and PECOS; and (3) send out messages through electronic means, set up open door meetings, and utilize other DHHS communications tools to ensure physicians are aware of the accelerated deadline and have the ability to meet it.

Response: We agree that provider communication and information is central to the success of the requirements mandated by this final rule. We have implemented a communications plan for the requirements. Furthermore, the delay in the activation of the automated edits and the changes made in this final rule will assist the provider and supplier communities in complying with this rule. We will continue to convey these messages via open door forums, Medicare Learning Network articles, and other venues.

Comment: Many commenters stated that CMS should develop an aggressive outreach enrollment campaign for physicians, as they may be unaware of the need to establish enrollment records in PECOS if they are enrolled and do not have records in PECOS, and they may be unaware of the requirement to report their NPI on a Medicare enrollment application if they were enrolled and later obtained their NPI and have not yet reported it to Medicare on a Medicare enrollment application.

Response: As previously stated, we have changed the enrollment requirements on mandating enrollment in PECOS to one requiring enrollment in Medicare—including PECOS or other legacy Medicare enrollment systems. We have pursued an aggressive outreach initiative to educate the provider and supplier communities on the ordering and referring requirements even before the IFC was published on May 5, 2010. Upon publication of this final rule, we plan to disseminate guidance on specific provisions of the final rule by producing a Medicare Learning Network product, placing additional or revised information on the Medicare provider/supplier enrollment Web site, making announcements at CMS provider/supplier open door forums, and releasing messages via CMS provider/supplier listservs and to national senior citizens' organizations.

Comment: A commenter stated that CMS should engage in special outreach efforts to hospital clinics that may not understand that the physician, as well as the clinic, must have an enrollment record in PECOS.

Response: Enrollment has been a longstanding requirement. However, we will be sure to address this in an upcoming update of the applicable informational documents that are available on the Medicare provider/supplier enrollment Web site and we will also continue our outreach efforts to educate the provider and supplier communities.

Comment: A commenter suggested that CMS prepare a model letter and make it available to the supplier community so that the suppliers can forward the letter to those who order items and services who do not have approved enrollment records or valid opt-out records in PECOS.

Response: We have and will continue to reach out to the provider and supplier community by providing educational material using a number of different media. On June 28, 2010, we announced through a Medicare Learning Network article that Medicare contractors would be mailing letters to physicians and non-physician practitioners who are enrolled in Medicare but who do not have enrollment records in PECOS. Our numerous announcements at our provider/supplier open door forums continue to remind physicians and other eligible professionals of our goal of ultimately having all FFS providers and suppliers in PECOS. We believe that these, and other outreach efforts, make it unnecessary to generate a model letter at this time.

Comment: Many commenters suggested that CMS work collaboratively with the medical community to ensure physicians clearly understand their enrollment responsibilities.

Response: We have frequent communications with national medical associations and other groups and organizations. We also deliver provider/supplier enrollment information and messages at the regularly scheduled CMS provider/supplier open door forums. In addition, we have sponsored several open door forums dedicated to Medicare provider/supplier enrollment and will continue to do so as the need arises. We have created, and continue to create, special documents to inform the provider/supplier community of the Medicare enrollment requirements and to assist them in complying with those requirements.

h. Patient Care Implications and Access

Comment: A commenter suggested that the new deadline could potentially cause serious disruption in payments and claim resolution and could adversely affect millions of patients across the United States. Another

commenter stated that CMS is placing an enrollment requirement above the interests of Medicare beneficiaries, and the effective date should remain January 2011.

Response: We have taken action to address the commenter's concern by not activating the automated edits that would cause a claim to not be paid due to the lack of an approved enrollment record in Medicare. In addition, we have made other changes in this final rule to reduce the risk that Medicare beneficiaries will not have access to quality care. Also, our enrollment requirements are an essential program integrity function that permits us to screen providers and suppliers to ensure that beneficiaries are receiving care from licensed, legitimate providers and suppliers. The effective date is mandated by the Affordable Care Act.

i. Impact on Individual Medical Communities

Comment: Commenters suggested that with the July 6, 2010 date, suppliers will be compelled to either furnish the ordered or referred items and services at their own cost or that of the beneficiary or to hold their claims until the ordering or referring supplier has an approved enrollment record or valid opt-out record in PECOS. Both scenarios are unfair to suppliers and beneficiaries because neither have control over physician enrollments in PECOS.

Response: In response to public comment, we changed the enrollment requirement language from one requiring enrollment in PECOS to one requiring enrollment in Medicare, including PECOS or other legacy Medicare enrollment systems, so that those suppliers enrolled in a legacy system can continue to order and certify during the revalidation process. This will alleviate much of the commenters' concern. In addition, we will provide notice well in advance of activation of the automated edits that would cause claims for services or supplies not to be paid for lack of an approved enrollment record in Medicare. At the time we activate the edits, all eligible suppliers will have been given the opportunity to enroll or revalidate enrollment for the purpose of meeting the ordering and certifying requirement. Billing providers and suppliers should continue to assess their business practices of taking orders and certifications from non-Medicare enrolled providers and proceed accordingly. In addition, as stated earlier in this preamble, we have provided alternative approaches for providers and suppliers to verify the enrollment status of individuals who order and certify Medicare services. We

will continue with our extensive outreach efforts so that physicians and eligible professionals have the opportunity to educate themselves on these requirements.

Comment: Several commenters noted that there is no direct incentive to have an enrollment record in PECOS because those who are enrolled, but who do not have records in PECOS, continue to be paid. Some commenters stated that some enrolled physicians told them they will take no action to establish enrollment records in PECOS.

Commenters complained that the burden lies on the billing provider or supplier who furnished the ordered or referred items and services to confirm the ordering or referring provider's PECOS status and educate them if they do not have enrollment records in PECOS. Many commenters added that DMEPOS suppliers ultimately have no control over what referring physicians do, yet the DMEPOS suppliers find their livelihoods and businesses, not those of the physicians, to be at risk by this IFC. Another commenter stated that CMS should, in a first phase, only reject the claims from physicians who do not have enrollment records in PECOS and then, once they establish their records in PECOS, in a second phase, reject claims from providers who furnish ordered or referred items or services whose claims identify ordering or referring providers who do not have enrollment records in PECOS.

Response: Section 6405 of the Affordable Care Act, which this final rule implements, does not address payment or nonpayment of claims from physicians or eligible professionals who are not enrolled in Medicare. However, we understand the concerns that the commenters raised about physicians being enrolled only in PECOS. Consequently, we modified the PECOS requirement and now will permit enrollment in Medicare. We believe that the modification of the PECOS requirement will reduce the likelihood that providers and suppliers will have claims denied that were ordered or certified by a physician without a valid record in PECOS. Generally, physicians who are not enrolled in Medicare would not have their claims paid. However, this final rule deals only with the requirement that services or supplies provided by rendering/billing providers and suppliers must have been ordered or referred by a provider or supplier with an approved enrollment record in Medicare or the provider or supplier must have validly opted-out of Medicare. Therefore, the commenter's phased-in approach would not work within the context of this rule. However,

Medicare has developed a simplified enrollment process (form CMS-8550) for those who want to enroll in Medicare solely for the purpose of ordering and certifying.

Comment: A commenter stated that the inability of a provider or supplier to identify the correct teaching physician could cause that provider or supplier to choose not to submit a claim for a medically necessary item or service that is already furnished, meaning the provider or supplier would not receive payment to which it is entitled.

Response: We understand that the implementation of new policy requires providers and suppliers to adapt their processes. To assist in this effort, we have modified the provision in this final rule to permit individuals who are enrolled in an accredited graduate medical education program in a State that licenses or otherwise enables such individuals to practice or order and certify services, to enroll in Medicare to order and certify. In situations where States do not license or otherwise permit such individuals to practice or order and certify services, the teaching physician's full legal name and NPI must be included on the claim for services. In this last circumstance, the claim will not be paid unless the ordering and certifying physician, in this case, the teaching physician, is listed on the claim as the ordering or certifying physician.

Comment: Some commenters stated that CMS should sanction or otherwise penalize physicians who do not comply with the request to establish enrollment records in PECOS but who order or refer and cause the claims of other suppliers and providers to fail the ordering or referring provider edits and be rejected by Medicare. Another commenter asked that CMS modify this regulation by stating that beneficiaries and/or DMEPOS suppliers who were adversely affected by a physician's non-compliance should be able to initiate a complaint against the physician and submit evidence in support of the complaint.

Response: As stated previously, in light of our decision to modify the requirement that the ordering or referring providers must have enrollment records in PECOS, we believe the likelihood of claims being denied is greatly reduced because those physicians and eligible professionals in our legacy systems have been able to order and refer during the revalidation process. Further, we will not turn on the ordering and certifying automated edits that will cause a claim not to be paid for the lack of an enrollment record until those entitled to order and certify have

been notified of their need to revalidate. We have been working with suppliers, providers, and beneficiaries to educate them about the requirements of enrollment for ordering and certifying.

The provider or supplier can avoid a situation like the one described by the commenters by ensuring—prior to furnishing the service or item in question—that the physician is enrolled. The relationship that the commenters describe is between the physician and the provider or supplier whose claims were denied. We cannot serve as an intermediary in whatever dispute may arise between these parties concerning the physician's failure to be enrolled. The matter must be resolved between the parties themselves.

Comment: A commenter stated that it could potentially lose referral sources if it does not provide the services referred by physicians who do not have enrollment records in PECOS.

Response: As stated previously, we have changed the enrollment requirement from one mandating enrollment in PECOS to one requiring enrollment in Medicare—including PECOS or other Medicare systems. We believe this modification will largely alleviate the problem raised by the commenter. We will continue to engage in provider and supplier outreach and education on this issue. The Affordable Care Act imposed the ordering and referring requirement in section 6405 and we hope that physicians and eligible professionals will enroll in the interest of being able to order and certify items and services for their Medicare patients. As previously stated, we encourage rendering providers and suppliers to verify the ordering or certifying practitioners' enrollment status prior to rendering services.

Comment: A commenter noted that all of the services furnished by hospital-based radiologists are referred and that they have no way, within the short time frame between publication of the IFC and July 6, 2010, to inform and verify that referring providers have records in PECOS. Commenters also stated that because the billing provider will not be paid if the referring provider is not in PECOS, there will be a huge reduction in payments, resulting in the possibility of missing filing deadlines with insurance plans, and the patient will not be protected, and hospital-based radiology medical groups will have no income, no payroll, and no ability to maintain services for patients.

Response: Due to the comments received, we are removing the ordering or referring provider requirements on claims for physician specialists' services. In-hospital services that are

covered by the hospital inpatient prospective payment system (IPPS) payments will also not be subject to the requirements of this rule. However, in-hospital diagnostic testing services that are not paid as part of PPS (for example, imaging services furnished by an IDTF or another entity) must be ordered by Medicare enrolled providers. We have further clarified that we will provide ample notice to these providers when we decide to activate the edits that will cause a claim not to be paid for the lack of an approved enrollment record in Medicare or valid opt-out record in Medicare.

Comment: Commenters were concerned because pharmacies are required by law to include the name of the prescriber in prescriptions. Commenters described the administrative difficulties that would be present in trying to link a resident to his/her teaching physician in order to comply with the stated requirements in the IFC and the issues with respect to pharmacies that need to record, by law, the actual prescriber, who could be a resident. A commenter stated that not all pharmacy systems may allow the use of more than one identifier in a claim which would be necessary if a resident or intern ordered the item and the teaching physician needs to be identified as the ordering or referring provider. The commenter asked that CMS clarify the logistics and processes for pharmacists and pharmacy systems to identify, verify, and submit claims for intern/resident-generated orders and to identify teaching physician information. A commenter stated that because interns and residents move frequently among rotations, it will be difficult if not impossible for the pharmacies to contact the interns and residents in order to obtain the identity of the teaching physician.

Response: Neither the IFC, nor this final rule places requirements on prescribers identified in claims for drugs. As noted in the IFC, the ordering requirement in this final rule does not apply to Part B or D drugs.

Comment: A commenter stated that CMS should thoroughly consider the implications of new policies such as the ordering or referring provider edits before public release in order to thoroughly identify potential pitfalls beforehand.

Response: We agree with the commenter and have been sharing information with the public about these issues since 2009. In addition, the IFC published May 2010 offered an opportunity to comment on all aspects of the Affordable Care Act requirements. We believe it is important to continue

this kind of communication with the public and will continue to do so. Moreover, we will provide advance notice of the activation of the automated edits pertaining to these claims.

Comment: Commenters stated that nonprofit home health providers will be financially vulnerable because their core mission is to serve all patients regardless of their ability to pay. These commenters stated that nonprofit home health agencies have limited budgets and limited information technology (IT) support and personnel resources; thus, they are unable to quickly compare individuals in the Ordering Referring Report with their own list of ordering physicians or quickly disseminate the PECOS requirement to the physicians who order home health services from them. The commenters further stated that there is inadequate time for nonprofit home health agencies to learn about and efficiently use the “complex PECOS.”

Response: In order to do business with Medicare, all home health agencies, whether or not they are nonprofit, must submit claims that comply with our regulations in order to be paid for the home health services they provide. We believe the commenter is referring to Internet-based PECOS in using the term “the complex PECOS.” We make available at no charge the names and NPIs of those who are permitted to order and certify, who have approved enrollment records in PECOS, and who have validly opted out of the Medicare program. Also, a home health agency can and should ask the ordering/certifying physicians if they are enrolled in Medicare or have opted out of Medicare prior to accepting the order and/or certification.

Comment: Some commenters stated that home health agencies stand to suffer severe financial hardships because of reduced patient admissions and the costs associated with issuing Advanced Beneficiary Notices of Noncoverage (ABNs), causing patient dissatisfaction, which is long-lasting and rebuilding the relationship can take years.

Response: We understand these concerns. However, after consideration of our program integrity needs and the statutory mandate to implement this provision, we are moving forward with this final rule.

Comment: A commenter asked that CMS share the impact of this regulation on all areas of practice—the physicians who order home health, the HHAs, and the patients.

Response: We have interpreted this comment to suggest that we should educate these distinct communities on

how this rule will impact them individually. As stated previously, we will continue to provide additional information, education, resources, and guidance on this final rule across the spectrum of affected parties.

j. Claims Submission and Edits

Comment: Several commenters requested an explanation of potential future claim edits for over-ordering and over-referring items of home health and DMEPOS. The commenters were unaware of any statutory basis for such edits except to identify violations of the Stark law. Another commenter stated CMS should be required to state how it determines whether services are being “over-ordered.”

Response: The commenters are referring to a statement on the middle of page 24444 of the IFC which stated that based on the new NPI requirements, “* * * if appropriate, we could establish edits to check for over-ordering specific items or services * * *” We have removed all references to these edits in the final rule. However, we will continue to utilize our oversight functions that do not involve edits, to monitor statistically anomalous ordering, certifying, and/or billing patterns and investigate when appropriate.

Comment: A commenter asked what is meant by the date of the written order or certification. The commenter asked if it is the date the referral or order was verbally received from the physician, or the date the physician signed the order.

Response: The language in the IFC used the term “date of written order or certification.” We intended that term to mean the date the physician signed the order or certification. Public comment indicated that often times written orders are signed well after the service is provided. We intended to mandate that the ordering and/or certifying practitioner be enrolled at the time the service is performed. Therefore, in response to public comment and for the purposes of this final rule, we have changed our terminology and will use the “date of service”, not the date of written orders or certifications. This change fully captures the purpose of this rule. Additionally, the date of service is much more accurate for claims and record retention purposes.

Comment: A commenter asked if the ordering and referring requirements for the Part B services mentioned in the IFC apply to such services when furnished in hospitals and billed using the Uniform Bill (UB-04). Another commenter asked if the IFC applied to Part A providers, such as hospitals or other entities, such as IDTFs and

freestanding imaging centers which provide services paid under Part B (submitted on the UB-04 claim form).

Response: The requirements in this final rule are applicable to the following ordered or certified items and services billed to Medicare by Part B suppliers of DMEPOS, clinical laboratory and imaging services, and for Part A and Part B home health claims:

- Part A and Part B home health services, submitted in claims from home health agencies to the Part A claims system at fiscal intermediaries and A/B MACs in ANSI X12N 837I or UB-94 formats.

- Part B clinical laboratory services, submitted in claims from independent clinical laboratories to the Part B claims system at carriers and A/B MACs in ANSI X12N 837P or CMS-1500 formats.

- Part B imaging services, submitted in claims from independent diagnostic testing facilities, portable X-ray suppliers, mammography centers, and radiation therapy centers to the Part B claims system at carriers and A/B MACs in ANSI X12N 837P or CMS-1500 formats.

- Part B items of DMEPOS, submitted by DMEPOS suppliers to DME MACs in ANSI X12N 837P, or CMS-1500 formats.

The requirements of this final rule are applicable to the following ordered items billed to Medicare by Medicare beneficiaries:

- Part B clinical laboratory services.
- Part B imaging services.
- Part B items of DMEPOS.

With the exception of claims for home health services that are submitted by home health agencies, this final rule does not affect the following:

- Claims submitted to the Part A claims system at fiscal intermediaries and A/B MACs.

- Claims for drugs.
- Part B claims from physician specialists.

- Claims from beneficiaries for home health services (beneficiaries are not permitted to submit claims for those services).

Comment: Two commenters were concerned that the ordering and referring provider edits on Medicare DMEPOS claims are not item-specific and that there are limitations in the claims processing system which may result in Medicare claims for Part B drugs being denied if the prescribers do not have approved enrollment records or valid opt-out records in PECOS. Specifically, the commenters stated that claims that are submitted in the National Council for the Prescription Drug Programs (NCPDP) 1.1 batch format are not subject to the ordering

and referring provider edits, whereas claims submitted using the allowable ANSI X12N 837P format are subject to the ordering and referring provider edits. The commenter also stated that because the claims are not edited based on the items in the claim, Medicare will reject claims for Part B DMEPOS drugs if the physician who prescribed the Part B DMEPOS drugs does not have an enrollment record in PECOS. The commenter is asking that Medicare not edit the ordering and referring provider (the prescriber) of Part B drugs regardless of which claim format is used.

Response: This final rule does not change the allowances permitted under HIPAA that allow retail pharmacies to submit claims on either the NCPDP format or the 837P format. However, as the commenter correctly points out, claims submitted in the NCPDP standard formats are not subject to the ordering and referring provider edits at this time. If an ANSI X12N 837P claim format is used to report drugs and DMEPOS and there is no EY modifier on the claim or if the claim reports only drugs and no EY modifier on the claim, the claim will be subject to the ordering and referring requirements of this rule. An EY modifier is a specific designation in the 837P format when, for example, the pharmacy knows the claim will be denied so that it may then use the Medicare denial for filing with secondary insurances that may allow for the payment of the item or service. We acknowledge that we will need to adjust claims payment processing to accommodate this rule. We are working towards making these necessary changes. However, in the interim, retail pharmacy claims that combine Part B drugs and DMEPOS supplies may be submitted using the NCPDP format to avoid this situation.

Comment: A commenter indicated that pharmacies that are also DMEPOS suppliers may submit and be reimbursed for claims for ordered or referred items after receiving an indication from the ordering physician that he/she has an enrollment record in PECOS. If it is later determined that the physician did not have an enrollment record in PECOS, will the pharmacy be liable or at risk?

Response: As noted in earlier responses, the Affordable Care Act requires that physicians who order certain items or services must be enrolled in Medicare. It is the billing provider or supplier's responsibility to ensure that the ordering or certifying physician or eligible professional has a valid enrollment record or has validly opted out. We have mentioned

numerous ways billing providers and suppliers can ensure compliance with this rule.

Comment: A commenter asked that pharmacies be provided with the normal Part B timely filing period in order to re-submit claims that fail the requirements of this regulation. The commenter then asks that pharmacies have 1 year in which to re-bill if the failure of the claim to pass the edits was beyond the control of a pharmacy. Another commenter asked that CMS permit suppliers to re-bill claims that were denied for PECOS edits for up to 1 year, and not apply the truncated 120 days normally provided for denied claims. Another commenter stated that when a DMEPOS supplier claim would be rejected for failing to meet the edit that the ordering or referring provider have an enrollment record in PECOS, it would fail a "front end" edit. Failing a front end edit means that the claim does not go to a DME Medicare Administrative Contractor (MAC) for adjudication. As a result, neither a remittance advice nor a Medicare Summary Notice would be produced, and appeal rights are not offered with proof that the ordering or referring provider is currently a Medicare provider. The commenter requested that the regulation be changed to allow (1) beneficiary liability using a proper ABN taking into consideration certain factors; (2) the claim to be processed beyond the "front end" so that the claim can be returned as unprocessable, which could enable the beneficiary community to prompt their physicians or other eligible professionals to establish their enrollment records in PECOS; or (3) deny (not reject) the claim using Adjustment Reason Code 52: "The referring/prescribing/rendering provider is not eligible to refer/prescribe/order/perform the service billed."

Response: Unless specified otherwise, in addressing these comments we are assuming that the commenters are referring to DMEPOS claims. This rule does not change any of the existing requirements for the resubmission of claims for payment. Although the IFC stated that we would reject, not deny, claims from providers and suppliers that do not comply with the requirements that those who order and refer services or supplies must be enrolled in Medicare or validly opt out, we have determined in this final rule that we will deny such claims. As stated in previous responses, we have not yet activated the automated edits that would cause a claim not to be paid because a physician or, where applicable, eligible professional who ordered or certified the service does not

have an approved enrollment record in Medicare, and we will provide ample notice prior to activating the edits. However, the resubmission and payment of a claim by pharmacies would not be possible under the commenter's scenario because the physician or eligible professional was not enrolled in Medicare or did not have a valid opt-out record on the date of service.

Comment: Many commenters requested that CMS generate more meaningful explanations as to why claims failed the ordering and referring provider edits. For example, they want to know if the rejection codes will be different for claims that fail the ordering and referring supplier edits because the ordering or referring supplier is a physician or other eligible professional but does not have an enrollment record in PECOS and claims that fail the ordering or referring supplier edits because the ordering or referring supplier is not a physician or other eligible professional.

Response: We agree with these comments and we are in the process of developing more descriptive informational messages. We will provide new informational messages that provide these details and will describe these new messages to the provider and supplier communities in a Medicare Learning Network article shortly after publication of this final rule.

Comment: A commenter stated that Medicare beneficiaries are limited to the submission of one DMEPOS claim per lifetime. The commenter, therefore, requests that a beneficiary-submitted claim for DMEPOS items be rejected, not denied, if it fails the edits, in order to avoid "wasting" the once-per-lifetime claim benefit.

Response: The permissive, once-in-a-beneficiary's-lifetime, payment of a beneficiary-submitted claim for an item of DME, or of a Medicare-covered supply, is intended to apply only to incidental items that a beneficiary might obtain from an entity that a beneficiary might reasonably assume was enrolled in Medicare but was, in fact, not so enrolled. This limited exception to the general rule furnishes notice to the beneficiary of the supplier enrollment requirement (and the beneficiary's duty to inquire of the supplier's Medicare enrollment status in the future), while holding the beneficiary harmless for his or her ignorance of the rule, this single time. Beneficiaries are able to submit claims from enrolled Medicare suppliers as is necessary, and are not in danger of "wasting" the once in a lifetime benefit under this final rule.

Regardless of the applicability of the comment, claims from beneficiaries will be denied, not rejected, to afford them appeals rights. Under Medicare, a claim is rejected when the claim filing has a defect or impropriety such that it cannot be processed. A claim that was ordered by a non-enrolled physician or eligible professional is a claim where a required element of the furnishing of the item to the beneficiary does not meet Medicare requirements, and it must be denied, not rejected.

Comment: Many commenters stated that home health agency providers would have to discharge many home health patients because the IFC requirement that certifying physicians have enrollment records in PECOS by July 6, 2010 could not be met. The commenter stated that home health patients would then end up in hospitals or other acute facilities. The commenters wanted such home health agencies to be held harmless from claim denials if they submitted claims for their services in order to avoid putting beneficiaries into this situation.

Response: While efforts were underway to enroll physicians and eligible professionals who order and refer prior to the passage of the Affordable Care Act, the implementation date is statutorily mandated. We conducted significant outreach on this effort and will continue to do so when implementing this final rule. As already stated, we have taken steps to help mitigate these circumstances; for instance, we have not yet activated the automated edits that would cause claims for services or supplies not to be paid for lack of an approved enrollment record in Medicare. Consequently, we do not believe it is necessary to hold home health agencies harmless if the ordering/certifying provider reported in their claims is not enrolled in Medicare in an approved status or has not validly opted out of Medicare.

Comment: Several commenters wanted assurance that home health agencies would not face a retroactive recovery based on the application of the "without fault" provision if they submitted claims in good faith, believing that the physician had an approved enrollment record in PECOS or had attempted to enroll in the Medicare program before submitting the claim. They did not want the provision of home health services to patients whose physicians do not have enrollment records in PECOS to be considered a violation of any Medicare rule if the home health agency has documented its efforts to determine if

the physician has an enrollment record in PECOS.

Response: The "without fault" provision under section 1870 of the Act is not applicable in this scenario, as that provision refers to the collection of overpayments. The billing provider has an affirmative responsibility under this final rule to ensure that the physician has a valid enrollment record or has validly opted-out. Additionally, records for the orders and certification of home health must be maintained by the ordering/certifying physician(s) and the home health agency that bills for these services. Submitting a claim in good faith does not meet our requirements and will be denied if the ordering/certifying physicians do not have a valid enrollment or opt-out record. We note that home health payment is always contingent on whether eligibility requirements, including the requirement that a patient be under the care of a physician, continue to be met. Typically, "under the care of a physician" would require active physician involvement with updating orders. It is difficult to envision a scenario where the patient could be under the care of physician unless that physician is able to order services. As such, as part of our eligibility requirements, the patient must be under the care of a Medicare enrolled physician, because only an enrolled physician can order home health services. HHAs are responsible for coordinating patient care, as defined in Conditions of Participation defined in 42 CFR Part 484. They are also responsible for ensuring that all eligibility criteria, such as the need for a patient being under the care of a physician, are met.

Additionally, we have modified the definition of "enrolled in Medicare" to include PECOS and existing legacy Medicare claims payment systems. We have also delayed the automated edits that will cause a claim not to be paid for the lack of an approved enrollment record in Medicare or a valid opt-out status. Of course, such claims are subject to all other Medicare requirements, such as, coverage and medical necessity. These changes will reduce the risk to home health suppliers of having claims denied on the basis of enrollment of the ordering or certifying physician. We have made the Ordering Referring Report, containing the NPIs and legal names of physicians and other eligible professionals who have approved enrollment or valid opt-out records in PECOS, available and are encouraging suppliers to view this report. However, documentation that a home health agency has done so does

not fulfill the requirements of this final rule. We also make available four reports within the Ordering Referring Report that include the following:

- Physicians who are approved to order and refer.
- Other eligible professionals who are approved to order and refer.
- Physicians who have pending Medicare enrollment applications.
- Other eligible professionals who have pending Medicare enrollment applications.

These reports, collectively referred to as the Ordering Referring Report, are available on the Medicare provider/supplier enrollment Web page at (www.cms.gov/MedicareProviderSupEnroll). This information makes it easier for home health agencies to determine the enrollment or opt-out status of physicians who have ordered home health services prior to submitting their claims.

Comment: A commenter indicated that while home health agencies would attempt to secure the NPI of the ordering or referring provider and report that NPI in claims, the information needed to do so is not fully available and will not be provided by CMS in a manner that assures providers and suppliers access to the most up-to-date information when they are determining whether or not to accept a referral from a physician. Other commenters expressed concern that the requirement to report the NPIs of ordering and referring providers and suppliers in claims may penalize billing providers if the ordering or referring provider has not obtained an NPI or does not furnish the NPI to the billing provider, and that such a penalty would disadvantage otherwise compliant billing providers.

Response: If a home health agency provider or a supplier receives an order or a certification from a physician or other eligible professional and the NPI is not on the order or certification, the provider or supplier can ask the physician or other eligible professional to disclose his or her NPI. If that is not feasible, the provider or supplier can use the NPI Registry (<https://nppes.cms.hhs.gov/NPPES/NPIRegistryHome.do>) to obtain the NPI. High-volume providers and suppliers may wish to download the NPPES file each month (http://nppes.viva-it.com/NPI_Files.html) and import it into its claims and/or business processes to pull the NPIs from it and use them in electronic processes. Ultimately, if a billing provider or supplier who furnishes items or services based on orders or certifications is unable to obtain this information from the

ordering and certifying provider, the billing provider should carefully consider, as part of its business policy, whether or not it will accept an order or a certification from a physician or other eligible professional who does not have, or who refuses to obtain, an NPI.

Comment: A few commenters questioned if a full episode of home health care would be paid if a physician terminates enrollment before the end of a 60-day home health episode.

Response: Yes, this regulation requires enrollment in Medicare or a valid opt-out status that would be assessed based upon the date of the order and the date of the certification, for dates of service beginning July 6, 2010. In the situation described by the commenter, Medicare would not deny payment (for the lack of an approved enrollment or opt-out record) for any portion of the full 60 days if the ordering physician were to terminate enrollment or otherwise become not enrolled in Medicare. However, Medicare may deny these claims based upon other factors unrelated to enrollment status of the ordering or certifying supplier.

Comment: A few commenters questioned if Medicare would pay a home health claim if the certifying physician does not have an approved enrollment record or a valid opt-out record in PECOS at the start of care, but does establish such a record during the course of the episode of care and prior to the submission of the claim from the home health agency.

Response: Consistent with the provisions of this final rule, the ordering/certifying physician(s) would have to be enrolled in Medicare in an approved status or have validly opted-out of the Medicare program as of the date of service in order for the home health agency's claim to be paid.

Comment: A few commenters questioned if the ordering and referring provider edit will be on the home health request for anticipated payment (RAP), final claim, or both. A few commenters questioned if a corrected RAP, final claim, or both could be submitted if a provider or supplier submitted an incorrect ordering or referring provider name and NPI in a claim but later learned the correct information.

Response: Home health episodes are paid in two pieces: A anticipated payment amount at the beginning of the 60-day episode, and the balance in the final claim at the end of the 60-day episode. The RAP is the first submission of the claim. Therefore, the ordering/certifying physician(s) must be in compliance with our regulations on the date of service (that is, the date of the

order or certification). A RAP cannot be adjusted once it has been processed, but it can be cancelled and resubmitted with corrected information including provider name or NPI. If a home health agency learned that data on a RAP was in error, the home health agency could cancel the RAP and resubmit it. This is also the case for the home health final claim. Therefore, the edit will apply to both the RAP and the final claim.

Comment: A commenter expressed concern that it is not always possible for a home health agency to know for certain at the start of care which physician will certify home care services. This commenter questions whether only PECOS enrolled physicians will be able to make referrals and certify home health episodes of care.

Response: In most cases the same physician would refer the patient to home health, order the home health services, certify the beneficiary's eligibility to receive Medicare home health services, and sign the Plan of Care. It is the NPI of the ordering/certifying physician that is required on the claim and in the medical record.

However, we recognize that in certain scenarios one physician may not perform all of these functions. An example of such a scenario would be a patient who is admitted to home health upon hospital discharge. While we would still expect that in most cases, a patient's primary care physician would be the physician who refers and orders home health services, certifies eligibility, and signs the plan of care, there are valid circumstances when this is not feasible for the post-acute patient. For example, some post-acute home health patients have no primary care physician. In other cases, the inpatient physician assumes primary responsibility for the patient's care during the acute stay, and may (or may not) follow the patient for a period of time post-acute. In circumstances such as these, it is not uncommon for the inpatient physician to refer a patient to home health, initiate orders and a Plan of Care, and certify the patient's eligibility for home health services. In the patient's hospital discharge plan, if the inpatient physician would not be the one to follow up for the duration of the home health service, he or she would identify the community physician who would be assuming primary care responsibility for the patient upon discharge. It would be appropriate for the physician who assumes responsibility for the patient to sign the plan of care. The patient would thus be considered "under the care" of that community/personal physician

throughout the time the patient is receiving home health services.

In a scenario such as this, if the inpatient physician certifies the patient's home health eligibility and initiates the orders for services, that physician would need to be a Medicare enrolled physician, and that physician's NPI would be in the medical record and on the first home health claim. To be compliant with all Medicare home health coverage and payment rules, the community physician who assumes responsibility for the patient during the home health episode (updating orders, signing the plan of care, etc.) would also need to be a Medicare enrolled provider, and this NPI would also be documented in the medical record and on the appropriate home health claim.

Comment: Given that the process by which home health care services are ordered and because the process used for such referrals (electronic, fax, telephone) almost never includes direct communication from a physician to a home health agency, a commenter suggested that Medicare require only that physicians who certify home health services be required to be enrolled in PECOS. This commenter also asked that claims that lack a PECOS-enrolled physician's NPI be rejected rather than denied.

Response: The statute specifically references orders and certifications for home health services. Therefore, we disagree that only the physician who certifies the home health services be required to be identified in the claim for home health services and meet the requirement to be enrolled in Medicare in an approved status or have validly opted out of Medicare. Claims from home health agencies that do not meet the requirement that the ordering/certifying physician be identified by legal name and NPI will be denied, not rejected, as noted earlier in this final rule.

Comment: Several commenters stated that beneficiary notification of nonpayment for home health services was not addressed in the IFC. The commenter noted that home health agencies are required to notify Medicare beneficiaries of noncoverage of all services through a Notice of Medicare Noncoverage (Expedited Determination Notice), and that home health agencies are required to notify patients of their right to appeal a noncoverage determination while continuing services if orders are in place from a physician through a Home Health Advance Beneficiary Notice (HHABN). The commenters believe that beneficiaries will be prevented from continuing to receive medically necessary services

under self-payment or other payment sources that are secondary to Medicare in cases where expedited appeal decisions are delayed or are not in the beneficiaries' favor. The commenters recommended that CMS permit the HHABN to be used when home health services are not covered because the order was written by a physician who does not have an enrollment record in PECOS.

Response: As the commenter stated, HHABNs are for notification of noncovered services. The home health services themselves are still considered "covered services" if they meet the Medicare medical necessity and benefit requirements, even if the ordering/certifying physician is not enrolled in, or opted out of, Medicare. However, the claim will be denied due to noncompliance with this regulation if the ordering/certifying physician is not enrolled in Medicare or does not have a valid opt-out status. The denial of a claim for lack of an approved enrollment records in Medicare is not a coverage determination; hence the HHABN is not applicable.

k. NPI Data and Requirements

Comment: A commenter asked how CMS would know that an NPI on a claim was put there by a physician who meant to order the test and not by someone who simply downloaded the NPI from the open file.

Response: Our systems are equipped to check for these types of compromised numbers and initiate an investigation based upon the data. While we understand the concerns of the commenter, verification of the NPI is just one tool we use to validate a claim. Access to NPIs and the associated names are crucial pieces of information to individuals providing services and supplies. Penalties for this type of activity can range from false claims liability to other criminal and civil sanctions. CMS and law enforcement actively monitor this type of activity and regularly engage in investigation and follow-up activities, as appropriate.

Comment: A commenter believed that the widespread dissemination of physicians' and other eligible professionals' NPIs could increase the risk of fraudulent use of NPIs and urged CMS to implement procedures to protect practitioners from any unreasonable additional compliance burden that may be incident to the misuse of their NPIs by others.

Response: Providers and suppliers must determine if the ordering and certifying physician or eligible professional is enrolled in Medicare at least to order and certify. Inclusion of

this information on the claim is necessary for the payment of claims. We must provide this information publicly so that service providers can ensure that physicians and eligible professionals are enrolled in Medicare to order and certify. If a health care provider suspects misuse of an NPI, that health care provider should report the issue to law enforcement authorities including, when appropriate, to the DHHS Office of Inspector General (OIG). The OIG Hotline is 1-800-HHS-TIPS (1-800-447-8477). Providers and suppliers can also report suspected misuse of an NPI to 1-800-Medicare.

Comment: Several commenters noted the following:

- There is no required OMB approved form for ordering home health services.
- The plan of care content requirements are based on the Home Health Content of Plan of Care.
- We have removed from our online manual the detailed guidance on the required Content of the Plan of Care.
- Inclusion of the physician's NPI on a Home Health Plan of Care and interim orders has never been a requirement.

Response: The Secretary has adopted a standard electronic referral transaction. However, most health plans have not implemented the adopted electronic referral standard and continue to use their own paper formats and issue their own instructions for the use of the paper referral formats. The absence of the Plan of Care guidance in the online manual does not impact the requirements of this final rule.

Regulation text at § 424.516 currently requires that the NPI of the physician who orders/certifies the home health services be part of the documentation of the service in the medical record. It does not stipulate that the NPI be included on the Plan of Care or certification. Content requirements for the Home Health Plan of Care are detailed in § 484.18(a). So long as the NPI is part of the medical record, and can be provided to CMS or a Medicare contractor upon request, the home health agency will have met this requirement.

l. Legal Name Requirements

Comment: A commenter sought clarification as to whether the IFC required that the provider of the service must also provide its legal name and NPI on the claim.

Response: We are interpreting this question as asking whether the IFC required the billing provider to list its NPI and legal name on the claim. The requirement for the billing or rendering provider to list its NPI was effective March 1, 2008. There is no requirement that the legal business name of the

billing provider be explicitly listed on the CMS-1500 claim form. Note that the IFC established a requirement that the eligible ordering and/or referring supplier's legal name be listed on the claim. Those requirements are now incorporated in § 424.506 (rendering or billing provider NPI on claims) and § 424.507 (ordering and certifying supplier NPI).

Comment: A commenter stated that ordering or referring suppliers do not always write their legal names on their prescriptions or orders, and thus it is a burden on the billing provider to do the research to determine the legal name so that it can be included on the claim.

Response: Providers and suppliers who furnish items and services based on orders or certifications should have business operations in place to ensure that they collect the information necessary to submit a proper claim for payment for those items and services. This would include collecting the legal name of the individual who ordered or certified these items or services.

Comment: A commenter stated that several medical practices have contacted CMS about the name of the ordering or referring supplier reported in their claim not matching CMS records, and were told that the name on the claim had to match the name in NPES. Several other commenters stated that the NPI of the ordering or referring provider should be sufficient to match PECOS records and that the legal name is unnecessary.

Response: The only name that should be used for an enrollment application or on a claim form should be the individual practitioner's legal name that matches the name and NPI of record from NPES. Those records match the practitioner's legal name from the Social Security Administration (SSA). The use of this name will ensure there is no confusion at the time of enrollment and claims processing.

Existing regulations and policies require the reporting of the legal name if the NPI is required to be reported. Requiring the name that corresponds to the NPI further ensures the validity of the ordering or certifying provider and eliminates the indiscriminate and repeated use of any valid NPI simply to enable a claim to pass an edit. The health care claim standard and the Medicare paper claims forms capture three fields for a name: last name, first name, and middle initial. The Medicare provider/supplier enrollment application also captures those same three name fields. For the purposes of this rule only, these three name fields (last name, first name, and middle

initial) constitute an individual's legal name.

Comment: Some commenters stated that CMS should eliminate the first name match because many systems reference a physician by a nickname; and only use the surname and NPI to match.

Response: As previously described, our rules require the full legal name (that is, first name, middle initial, and last name). Reporting a nickname in a Medicare enrollment application will likely cause that enrollment application to fail the social security number verification, which would delay the processing of the enrollment application or cause it to be rejected. Similarly, use of a nickname on claims will likely cause the claim to be denied.

Comment: Another commenter was concerned about name changes, resulting from marriage, in which a physician's surname in PECOS is no longer consistent with the married name being used in orders and referrals.

Response: Any enrolled Medicare provider and supplier whose name changes is required to report that change to the designated Medicare contractor within 90 days of the effective date of the change. Other appropriate files and systems are also updated with any new information.

m. Enrolling in Medicare Just to Order and Refer

Comment: A commenter stated that the PECOS enrollment system does not have flexibility to permit Department of Veterans Affairs (DVA) employed physicians to enroll. Another commenter stated that a representative of a Veterans Affairs hospital stated that their physicians who order and refer items and services for Medicare beneficiaries will not be enrolling in Medicare because they do not send claims to Medicare. Another commenter stated that CMS should develop a simplified enrollment process for dentists and others who do not submit claims to Medicare. Another commenter stated that physicians who care for patients in institutional settings will refer for home care and DMEPOS, as do physicians in training (residents and fellows) who are not eligible to enroll in Medicare. Several commenters suggested that CMS simplify the enrollment process for those who must enroll just to order and refer. Another commenter asked that DVA providers be excluded from the requirement to enroll in PECOS in order to continue to order and refer items and services for Medicare beneficiaries.

Response: We agree with the previous commenters regarding the development

of a simplified process for individuals who enroll just to order and certify. DVA and other professionals cannot be excluded from the enrollment requirement because the statute requires that those who order DMEPOS and who order/certify home health services be enrolled in Medicare. We have had numerous detailed discussions with DVA officials, as well as officials at the Department of Defense (DoD), the United States Public Health Service (PHS), Indian Health Service (IHS), and other Federal agencies whose physician employees order and certify Medicare services or supplies but do not bill Medicare directly.

We have developed the CMS-855O enrollment form for eligible providers and suppliers who wish to enroll only to order and certify. The ordering and certifying suppliers who use the CMS-855O form may not bill Medicare and submit claims. Those suppliers who wish to bill Medicare for services and submit claims must fill out the CMS-855I form. Internet-based PECOS has the capability to handle enrollment applications from these physicians and other eligible professionals who wish to enroll in Medicare just to order and certify. The CMS-855O form has been approved by Office of Management and Budget (OMB) and has been available for use since July 1, 2011. Additionally, information about enrolling only to order and certify is available on the Medicare provider/supplier enrollment Web site (<http://www.cms.gov/MedicareProviderSupEnroll>).

Examples of physicians and other eligible professionals who may wish to enroll in Medicare only to order and certify, and not to submit claims to Medicare for payment, include those who are one of the following:

- Employed by the PHS, DOD, DVA.
- Employed by Medicare-enrolled Federally qualified health centers (FQHCs), rural health clinics (RHCs), and critical access hospitals (CAHs).
- Pediatricians who traditionally have very few Medicare patients and, therefore, only order or certify items for Medicare beneficiaries.
- Doctors of dental medicine or dental surgery whose services are generally not covered by Medicare.
- Residents, as defined in § 413.75 (to include interns and fellows), who are appointed by teaching hospitals and academic medical centers who generally do not enroll in Medicare because their services are not directly billed to Medicare. (Please see the information under the "residents" section of this final rule.)

Comment: A few commenters stated that officials at DVA facilities stated

they were unaware that their physicians needed to enroll in Medicare. Some commenters stated that DVA physicians have told them that they cannot enroll in Medicare until ordered to do so by the DVA.

Response: We have communicated with the DVA and expect that their physicians and other eligible professionals will enroll in Medicare just to order and certify if they wish to continue to order or certify items or services for Medicare beneficiaries.

Comment: Several commenters stated that CMS should consider how best to communicate with physician practices, including those in the PHS, DoD, and DVA, as well as dental and pediatric practice settings and teaching physicians and those who have opted out of Medicare to ensure they understand the new requirements.

Response: We have been in communication with the PHS, DoD, DVA, and the American Dental Association (ADA) about the requirements of the Affordable Care Act that we are implementing with this final rule. We anticipate additional communication in CMS provider/supplier open door forums and in our regular conference calls with national provider/supplier associations and organizations. We will be creating additional outreach documents when we publish this final rule. Largely based on provider and supplier concerns and in an effort to accommodate these concerns we have created a new enrollment form, the CMS-855O. This form is specifically designed for those providers and suppliers who want to enroll in Medicare for the purpose of ordering and certifying only. We believe this shortened form will streamline the enrollment process, especially for this segment of the supplier communities.

Comment: A commenter suggested that there should be a longer phase-in time for dentists and other eligible professionals who rarely refer or order under Medicare.

Response: We have created a streamlined application process that reduces the time it will take for dentists and other professionals to enroll, since they generally do not bill Medicare but who need to enroll in Medicare just to order and certify. The CMS-855O may be used by providers and suppliers who simply wish to order and certify and who do not wish to submit claims to Medicare. These changes, including the new CMS-855O enrollment form, the change from the requirement to be enrolled in PECOS to a requirement to be enrolled in Medicare, and the delay in the activation of the automated edits that would cause a claim to not be paid

due to lack of an approved enrollment record in Medicare, have simplified compliance for these types of professionals.

n. Interns, Residents, Fellows, and Teaching Physicians

Comment: A commenter supported the requirement that interns who are not licensed, and therefore unable to enroll in Medicare should order or refer through the teaching physician. The same commenter also asked that CMS allow licensed residents to order or refer under their own name (not the name of the teaching physician) to avoid artificially increasing the ordering or referring patterns of teaching physicians. The commenter did not believe this would have a negative impact on the Medicare program and would still enable CMS to track ordered and referred items and services. Another commenter stated that many residents are licensed physicians who are qualified to practice independently and who are undergoing specialty training. The commenter believed that these residents should not be limited in their ability to order and refer because of perceived shortcomings with PECOS's ability to accommodate them.

Response: Physicians and eligible professionals must have an appropriate State license in order to enroll in Medicare, and licensure is determined by State laws. Based on provisions included in this final rule, physicians and other eligible professionals who order/certify DMEPOS, home health services, clinical laboratory, and imaging services for Medicare beneficiaries must be enrolled in Medicare or have validly opted out. The term "resident" is defined in § 413.75 as " * * * an intern, resident, or fellow who participates in an approved medical residency program, including programs in osteopathy, dentistry, and podiatry, as required in order to become certified by the appropriate specialty board." Licensed residents, as defined in § 413.75, usually do not enroll in Medicare because they do not bill the Medicare program; their services are included in the hospitals' PPS claims and Medicare reimburses the hospitals. We agree with the concerns expressed by commenters and have modified the requirements of this final rule so that if States allow residents who have a provisional license, or are otherwise permitted by State law to practice or order and certify services, we will permit them to enroll in Medicare to order and certify, at the direction of their teaching institution. In situations where States do not offer licensure or otherwise permit such individuals to

practice or order and certify services, the teaching physician's legal name and NPI must be included on the claim for services. In this latter circumstance, the claims will not be paid unless the ordering and certifying physician, in this case, the teaching physician, is listed on the claim as the ordering or certifying physician.

Comment: Some commenters expressed concern about the amount of resources that would be required by hospitals and academic medical centers to enroll licensed residents and fellows so that they may continue to order and certify. A commenter stated that a hospital-wide process must be developed for residents to note their supervising physician on orders, which adds a significant layer of complexity to hospital operations. Another commenter believed that reporting the teaching physician's name and NPI as the ordering or referring supplier when a resident or intern orders or refers sounds like a practical solution, but the administrative burden placed on teaching hospitals to ensure a proper link between a resident and a teaching physician in order to submit these claims is a huge cultural and administrative paradigm switch that will take time to develop, communicate, and put into operation.

Response: As stated previously, in order to comply with the requirements of section 6405 of the Affordable Care Act, a Medicare-enrolled physician must be identified for orders or certifications for items and services that will be billed to Medicare. As stated in the previous response, we have modified the final rule to accommodate teaching hospitals by providing them the option of either enrolling individuals enrolled in an accredited graduate medical education program (when State law permits) or by identifying the teaching physician in the claim. We have developed these options in an effort to avoid disruption of existing practices in teaching institutions as much as possible.

Comment: A commenter stated that physicians in training work in a cost-efficient fashion under the supervision of attending physicians and that to require that every order in a large teaching service be written by an enrolled physician (an attending physician) or a mid-level practitioner will place a considerable financial burden on teaching hospitals and medical schools, many of which are struggling financially. The commenter stated that these facilities would need to have a large cadre of Medicare-enrolled physicians or mid-level providers available at all hours, and that this

requirement will dilute the training experience of resident physicians because they will be unable to independently order even the simplest diagnostic test.

Another commenter believed that the requirements will make it virtually impossible for resident physicians and fellows to order diagnostic procedures, testing, and consults for Medicare beneficiaries. Residents and fellows who are reasonably well supervised will deliver less costly care than poorly trained residents. The commenter contended that those who have never had to think independently will become very costly suppliers because they will try to compensate for their lack of clinical judgment with over-testing.

Response: We believe that the modifications we made to the final rule should diminish the concerns of the commenter. As stated previously, we have provided options for the teaching hospitals to enroll individuals in an accredited graduate medical education program in Medicare if permitted by State law or regulation.

Comment: Several commenters stated that residents who are licensed physicians should be allowed to enroll in Medicare and order home health services.

Response: Licensed residents are physicians and, as such, are eligible to enroll in Medicare. Medicare regulations state that only physicians who are doctors of medicine, osteopathy, or podiatry may certify home health services.

Comment: Several commenters stated that CMS should consider categorizing fellows who do not bill Medicare to be "residents" so that the teaching physicians would be reported in the claim as the ordering or referring provider. By doing so, the Medicare contractors would have fewer enrollment applications to have to process, which could help reduce their workload.

Response: We agree with the commenters' suggestion and have modified this final rule to permit individuals who are enrolled in an accredited graduate medical education program in a State that licenses or otherwise enables such individuals to practice or order and certify services to enroll in Medicare to order and certify. In situations where States do not license or otherwise permit such individuals to practice or order and certify services, the teaching physician's full legal name and NPI must be included on the claim for services. In this latter circumstance, the claims will not be paid unless the ordering and certifying physician, in this case, the teaching physician, is

listed on the claim as the ordering or certifying physician. Therefore, recategorizing fellows is unnecessary and we defer to State scope of practice laws and regulations on who may order and certify.

Comment: A commenter suggested that CMS allow residents to enroll and to be identified in PECOS as residents. Teaching hospitals could enroll their residents using a new code to reflect this status. Because this would take some time to implement, the commenter suggested that CMS further delay (beyond the commenter's suggested implementation date of January 3, 2011) the requirement that ordering or referring providers have enrollment records in PECOS.

Response: The applicable statutory and regulatory provisions do not permit Medicare to enroll an unlicensed physician. However, if States provide provisional licenses or otherwise permit residents to practice or order and certify services, we are allowing them to enroll to order and certify, consistent with State law. Further, the timing of licensure of a resident is determined by States and because we are now permitting licensed residents to enroll in Medicare, it is not necessary and may be duplicative, to develop an additional code in the enrollment systems.

Comment: Commenters stated that it would be extremely difficult for teaching hospitals to comply with the July 6, 2010 date because of its timing with the start of the new academic year. Teaching hospitals are focused on activities regarding the turnover of what is often 25 percent of their residents and there is no time to suddenly add a new and disruptive component to those ongoing activities. They express concern about ensuring that their graduates are prepared to practice or continue with additional training and that the new residents are appropriately credentialed so they can begin their training on July 1, 2010.

Response: We have been working closely with these institutions to ensure effective compliance with our regulations by the statutorily mandated effective date. We clarified in this final rule the circumstances under which individuals enrolled in accredited graduate medical education programs can enroll in Medicare to order or certify Medicare services. Those residents, as defined in § 413.75, who are licensed may enroll in Medicare to order and certify in the same way other as physicians and other eligible professionals. This final rule states that if State law provides residents, as defined in § 413.75, a provisional license, or otherwise permits them to

practice or order and certify services, we will enroll them to order and certify. If State law does not provide licensure for residents, or otherwise permit them to practice or order and certify services, claims for services provided must identify the teaching physician as the ordering or certifying physician by his or her legal name and NPI. This modification from the IFC will provide these teaching institutions with options to accommodate the policies mandated by the Affordable Care Act and this final rule.

o. Deactivation

Comment: Many commenters noted that physicians and other eligible professionals who will enroll just to order and refer and not to submit claims to Medicare will be deactivated if they fail to send claims to Medicare for 12 consecutive months, and that after deactivation, they would then need to re-enroll in order to continue to order and refer. Some of the commenters indicated that § 424.540 states that CMS "may" deactivate the enrollment of a provider or supplier if no claim is submitted for a year. They suggest that the use of "may," gives CMS discretion. These commenters suggested that CMS use this discretion and exempt from this deactivation process dentists and others who would be enrolling just to order and refer.

Response: Deactivation for non-billing does not apply to those physicians and eligible professionals who have enrolled just to order and certify.

Comment: A commenter asked that CMS terminate NPIs, not Medicare-assigned PTANs, when a physician's billing privileges are deactivated. The commenter pointed out that a physician may have multiple PTANs in his/her PECOS enrollment record, and that if one PTAN is deactivated voluntarily or due to non-billing, that physician is no longer eligible to order and refer although the physician is still enrolled in Medicare and is still sending claims with, or being identified in claims as the rendering provider by his/her NPI. The commenter suggested that the NPI, not the PTAN, should be the driver of ordering and referring eligibility.

Response: The commenter is correct that a physician can have multiple PTANs and currently deactivation for non-billing is driven by PTAN rather than NPI. More than one PTAN may be assigned to a physician if the physician reassigns his Medicare benefits to more than one medical group (a PTAN for each reassignment), or works at multiple/different practice locations (a PTAN for each practice location). Any provider or supplier, including a

physician, whose billing privileges are deactivated for 12 consecutive months of non-billing is deactivated by his or her PTAN. However, the deactivation of one PTAN does not deactivate all PTANs. If the physician or other eligible professional has more than one PTAN, and not all PTANs were deactivated due to non-billing, he or she will remain enrolled in Medicare to bill using the active PTANs and will also remain on the Ordering Referring Report. In this situation, claims in which he or she is identified as the ordering and referring provider would not be denied because of one deactivated PTAN.

p. Validly Opting Out

Comment: A few commenters stated that Medicare contractors do not enter opt-out physicians in PECOS. Another commenter stated that opt-out physicians have records in PECOS only in situations where they were first enrolled in Medicare and then opted out.

Response: Based on the Affordable Care Act provisions requiring that ordering and referring physicians must be enrolled in Medicare, we have instituted a consistent process for entering physicians who opt out into PECOS. When processing an opt-out affidavit, Medicare contractors may require, and the opting out physician or other practitioner must provide, the NPI as well as other information that may be requested by the Medicare contractor. Physicians and other practitioners do not have to enroll in Medicare before opting out. Those who opt out must submit opt-out affidavits every 2 years and all who have opted out of Medicare will have opt-out records in PECOS.

Beneficiaries and other providers and suppliers may visit the Physician Compare Web site at <http://www.medicare.gov/find-a-doctor/provider-search.aspx> to see if their physicians or other practitioners are enrolled in Medicare. If the beneficiary's physician or other practitioner is not enrolled in Medicare and has not opted out, the beneficiary may wish to find another physician or practitioner. For more information on opting out of Medicare, the public may refer to our applicable regulations at § 405.425, titled "Effects of opting-out of Medicare."

Comment: Some commenters requested that CMS make available a list of physicians and other eligible professionals who have opted out of Medicare.

Response: Physicians and other practitioners who have validly opted out of the Medicare program have opt-out records in PECOS. Physicians and

non physician practitioners who have validly opted out of the Medicare program, and elect to order and certify, will be on the Ordering Referring Report. The Ordering Referring Report does not distinguish those who have opted out from those who have approved enrollment records because both, if listed in the Ordering Referring Report, may order and certify items and services for Medicare beneficiaries.

q. Public Comments Outside the Scope of the IFC Provisions Regarding Ordering and Referring Covered Items and Services

Comment: A commenter noted that the preamble in the IFC states that CMS believes its enrollment requirements will promote quality health care services for Medicare beneficiaries because their credentials will have been verified as part of the Medicare enrollment process. The commenter states that physicians' credentials have already been verified by State licensure boards. The commenter believes that additional verification by Medicare is redundant and a waste of taxpayers' money and professionals' time.

Response: While we believe that additional verification is necessary to ensure quality care is provided to Medicare beneficiaries, this comment is outside of the scope of this final rule. This rule does not modify or impose additional screening requirements needed for enrollment in Medicare.

Comment: A commenter stated that dentists, who merely order and refer, may be further burdened if they will be required, as a condition of enrollment, to establish a compliance plan.

Response: Neither the IFC nor this final rule addresses the issue of "compliance plans." This comment is out of scope of this regulation. We solicited comments related to compliance plans in the September 23, 2010 proposed rule (75 FR 58204) titled "Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers."

Comment: A commenter who supports the new requirement to be enrolled in Medicare to order and refer suggested that CMS develop a program that rewards physicians for making appropriate referrals to the lowest cost providers as a good second step in cost containment. The commenter noted that there is no incentive for a physician to consider costs in the referral process.

Response: This comment is outside the scope of this regulation and, as such, is not addressed in this final rule.

Comment: A commenter referenced the professionals listed in the IFC who are permitted to order and refer covered Part B DMEPOS, imaging, laboratory, and specialist items/services and stated that certified registered nurse anesthetists (CRNAs) should be eligible to order and refer some of those items and services. The commenter stated that CRNAs order blood work and electrocardiograms as part of the pre-anesthetic assessment, order medications for the purpose of administering them perioperatively, and also have occasion to order chest X-rays for patients in the recovery room prior to the removal of the patient's breathing tube. The commenter further stated that the November 27, 2006 final rule (71 FR 68683) titled "Hospital Conditions of Participation" acknowledged CRNAs as ordering providers.

Response: This regulation does not change eligibility to order and certify for any provider type and only addresses enrollment for those professionals eligible to order and certify under existing law. Therefore, this suggestion is outside the scope of this final rule.

Comment: A few commenters questioned if enforcement of the enrolled physician requirement would be limited to payment prohibitions for ordered and referred items and services only, or if there would be survey and certification implications for a home health agency that is furnishing home health services based on a certification from a physician who is licensed but who does not have an approved enrollment record or a valid opt-out record in PECOS.

Response: Nothing in the IFC or this final rule changes our current survey and certification policies.

r. Summation and Final Decisions

After reviewing the public comments summarized in this section (section II.B.4. a. through q. of this final rule), we are finalizing the provisions regarding ordering and certifying of covered items and services for Medicare beneficiaries with several modifications. We want to start by clarifying two major modifications to this final rule from the IFC. First, we stated in the IFC that we would reject, not deny, claims from providers and suppliers that do not comply with these ordering and certifying requirements. After reviewing the comments, we have determined that we will deny such claims to provide the suppliers, providers, and beneficiaries with appeal rights. However, until further notice, we will not activate the automated edits that would cause a claim not to be paid for lack of an approved enrollment record in Medicare

or a valid opt-out status. We want to assure the beneficiary, provider, and supplier communities that we will provide advance notice before activating the edits by conducting appropriate outreach through our established channels including listservs, Medicare Learning Network (MLN) articles, and open door forums.

Second, we modified this final rule to permit residents, as defined in § 413.75, who are enrolled in an accredited graduate medical education program in a State that licenses or otherwise enables such individuals to practice or order these items or services to enroll in Medicare to order and certify. In situations where States do not license or otherwise permit such individuals to practice or order and certify services, the teaching physician's full legal name and NPI must be included on the claim as the person who ordered or certified the service. In this latter circumstance, the claims will not be paid unless the ordering and certifying physician, in this case, the teaching physician, is listed on the claim as the ordering or certifying physician. We made this change to assist teaching hospitals, as well as the providers and suppliers who render the items and services in complying with this rule.

Among the other changes to this section and in response to numerous comments received, we have changed the enrollment requirement language from one requiring enrollment in PECOS to one requiring enrollment in Medicare—including PECOS or other Medicare enrollment systems. We believe that this will reduce the number of claims that are denied or rejected and enable more currently enrolled physicians and practitioners to order or certify services.

We clarified our language in this provision to refer to the specific items and services the rule covers. After review of the public comments we received, we removed the language referring to "ordered or referred covered Part B items and services (excluding home health services described in § 424.507(b) and Part B drugs)." In this final rule, we specifically designate the covered items and services as follows: DMEPOS items, clinical laboratory, imaging, and home health services. Note that we have removed specialist services from the requirements of this rule.

We have also clarified our language with respect to the home health provision of this final rule. The IFC stated that physicians who order home health services must be listed on the claim for payment. However, to be technically correct, we have clarified our language in this final rule to state

that those who order/certify must be listed on the claim for payment. A commenter noted that these physicians may be one single physician or separate physicians. To that end, we have clarified our regulatory language to accommodate this public comment. Further, the statutory language at section 6405 of the Affordable Care Act specifically mentions application to the ordering *and* certifying physician. Therefore, we have clarified this language to be precise and more in conformity with the statutory language.

Finally, as more of a technical correction, we have removed all references to beneficiary-submitted home health claims. After considering comments received on this topic, we now agree that home health claims cannot be submitted by beneficiaries and thus, should not be included in this final rule.

C. Requirement for Physicians, Other Suppliers, and Providers to Maintain and Provide Access to Documentation on Referrals to Programs at High Risk of Waste and Abuse

1. Background

We believe it is imperative to establish accountability measures to ensure compliance with the ordering and referring provisions. To this end, the IFC implemented an Affordable Care Act provision by adding a new provision at § 424.516(f) that required providers and suppliers to maintain ordering and referring documentation, including the NPI, received from a physician or eligible non physician practitioner for 7 years from the date of service. The IFC also established in § 424.535(a)(10) that failure to comply with the documentation requirements specified in § 424.516(f) is a reason for revocation.

2. Provisions of the Affordable Care Act

Section 6406 of the Affordable Care Act amended section 1842(h) of the Act by adding a new paragraph which states, "The Secretary may revoke enrollment, for a period of not more than one year for each act, for a physician or supplier under section 1866(j) if such physician or supplier fails to maintain and, upon request of the Secretary, provide access to documentation relating to written orders or requests for payment for durable medical equipment, certifications for home health services, or referrals for other items or services written or ordered by such physician or supplier under this title, as specified by the Secretary."

Section 6406(b)(3) of the Affordable Care Act amends section 1866(a)(1) of the Act to require that providers and suppliers maintain and, upon request, provide to the Secretary, access to written or electronic documentation relating to written orders or requests for payment for durable medical equipment, certifications for home health services, or referrals for other items or services written or ordered by the provider as specified by the Secretary. Section 6406(b)(3) does not limit the authority of the Office of Inspector General to fulfill the Inspector General's responsibilities in accordance with applicable Federal law.

3. Requirements Established by the IFC

The IFC amended paragraph (f) of § 424.516 to require the following:

- A provider or supplier that furnishes covered ordered items of DMEPOS or home health, laboratory, imaging, or specialist services, to maintain written and electronic documentation (to include the NPI of the ordering or referring physician or eligible professional) relating to written orders and requests for payments for those items or services for 7 years from the date of service, and provide CMS or a Medicare contractor access to that documentation.
- A physician who ordered home health services and a physician or an eligible professional who ordered or referred DMEPOS, laboratory, imaging, and specialist services to maintain documentation relating to the written orders and requests for payments for those items or services for 7 years from the date of the order, certification, or referral and, upon request of CMS or a Medicare contractor, provide access to that documentation.

The IFC added paragraph (10) to § 424.535(a) to state that the Secretary may revoke Medicare enrollment and billing privileges for a period of not more than 1 year for each act of noncompliance for failure of a provider or supplier, including physicians and other eligible professionals, to comply with the document retention and access to documentation requirements at § 424.516(f).

4. Summary of and Responses to Public Comments on the Medicare Requirement for Physicians, Other Suppliers, and Providers to Maintain and Provide Access to Documentation on Referrals to Programs at High Risk of Waste and Abuse

a. Document Retention

Comment: A commenter asked if a home health agency would be

considered to have forged documentation if the documentation to be required could not be produced by the physician but could be found in the home health agency's documentation.

Response: This final rule places the responsibility for the maintenance of records on both the ordering and certifying physician and the provider and supplier. We require that a good faith effort is made to comply with this rule. However, we understand that from time to time situations arise that are outside of the control of these custodians. In such a case, we may conduct an analysis based on the specific facts and circumstances involved in a particular case.

Comment: A commenter noted that it will take some time for eligible professionals who will be enrolling in Medicare only to order and refer to fully understand their compliance obligations. In addition, dentists with practice management software and/or electronic records may be required to consult with their vendors and reconfigure their systems in order to comply with the documentation and disclosure requirements.

Response: Dentists and others who will be enrolling only to order should be fully aware of the documentation retention and disclosure requirements beforehand. We have already published considerable information about these requirements and have communicated directly and in numerous open door forums about these requirements. We will publish additional guidance, as appropriate, via a Medicare Learning Network product, messages in our provider/supplier listservs, and presentations at our provider/supplier open door forums. We will also continue to provide information directly to the ADA, DoD, DVA, PHS, and other affected employers of physicians and other eligible professionals who enroll in Medicare just to order and certify.

Comment: A commenter requested that CMS create exceptions to the penalty for non-compliance with the documentation retention and disclosure requirements. The commenter stated that there could be situations where documentation is destroyed or lost prior to the end of the 7-year required retention period, despite a provider's good faith efforts, due to circumstances beyond the provider's control, such as a systems malfunction or a natural disaster. The commenters stated that such providers or suppliers should not be penalized in the same manner as a provider or supplier who intentionally or carelessly disregards the documentation requirements. The commenter noted that the Act gives the

Secretary the authority to modify the penalties, as it states that “* * * the Secretary *may* revoke enrollment, for a period of not more than one year for each act.” (Italics added for emphasis.) The commenter believed that blanket penalties may be inequitable in practice and may create a potential disincentive to participate in Medicare.

Response: Medical documentation must be stored in a manner consistent with applicable security and privacy rules. However, we recognize that there could be circumstances in which an event could occur as indicated by the commenter. Therefore, as provided in § 424.535(a), a revocation action is discretionary and we would base a revocation decision on a complete analysis of the facts and circumstances prior to making a determination.

Comment: A commenter stated that a referral to home health care or for DMEPOS at a hospital or nursing home discharge would typically be retained in that hospital's or nursing home's records, not by the physician in his/her records.

Response: The physician or other eligible professional who signed the order or certification is responsible for maintaining and disclosing the documentation. We will provide further guidance on this after the publication of this final rule.

Comment: A commenter suggested that CMS only require document retention related to billable services for home health services by physicians (that is, the certification documents and, when care plan oversight reimbursement is sought, supporting documentation of time spent on such activities). The commenter stated that the documentation retained by physicians who are employed by providers or suppliers is governed by the requirements of the provider or supplier, not the physician. The commenter also stated that while revocation in Medicare of the physician may be appropriate for evidence of fraud or abuse, it would not be appropriate if a physician's employer lost or misfiled records. Several commenters stated that the added documentation requirements for DMEPOS and home health services are not clear and do not specify the specific kinds of documents that must be retained. Another commenter asked for specifics concerning the preferred format of retained information.

Response: This rule does not address the content or format of documentation that must be maintained and disclosed. However, for purposes of clarification, we suggest that a reasonable approach is for providers and suppliers to retain

documentation that supports the payment of the claim. This could include laboratory or other test results or findings and office visit notes in addition to copies of signed orders and certifications. We note that this documentation requirement applies to paper and electronic documents, as indicated in the statute and this final rule.

Comment: A commenter questioned whether the documentation requirements require that a supplier use electronic medical records. The commenter states that if a supplier is going to be required to use electronic medical records, the financial burden would put many small suppliers out of business.

Response: The requirements at § 424.516 does not require providers and suppliers to use electronic medical records.

Comment: A commenter questioned if the failure of a physician to retain a copy of the CMS-485 could lead to denial of claims and recoupment of prior payments from home health agencies.

Response: As stated earlier, this rule does not modify or address the content requirements for documents to be retained. Therefore, this comment is outside of the scope of this final rule.

Comment: Some commenters requested that CMS to specifically identify the entities or individuals to whom such documentation must be disclosed (for example, CMS or its contractors, an Administrative Law Judge, a DMEPOS supplier, and a beneficiary).

Response: Disclosure is required to be made, upon request, to CMS or CMS contractors. Disclosure may also be requested by DHHS OIG for fulfillment of the Inspector General's responsibilities and under its independent authority. However, this list is not exhaustive and other agencies such as the Department of Justice (DOJ) and the Internal Revenue Service (IRS) have separate authority to request documentation.

Comment: A commenter stated that interns and residents may be responsible for creating, and the dental school clinic may be responsible for retaining, the records required to comply with section § 424.516(f)(2); and that other dentists, such as locum tenens dentists and those who are employed by a government agency or a group practice, may not be capable of maintaining independent documentation of orders and referrals and may not be able to grant CMS or a Medicare contractor access to those records. This commenter asked CMS to

clarify how the requirements in this section would apply to dentists. This commenter also urged that a dentist who is unable to comply with a disclosure request because another person or entity has control over the documentation not be subject to revocation of enrollment and billing privileges in Medicare under § 424.535(a)(10).

Response: The requirements of § 424.516(f)(2) apply to interns, residents, and dentists in the same way they apply to enrolled physicians and to other eligible professionals. We will provide further guidance on this during the implementation of the provisions contained in this final rule.

Comment: Several commenters stated that the document retention requirements vary considerably depending on different parts of the Medicare program. Physicians do not know how long they need to retain certain records. We should provide education to physicians on document retention requirements for various parts of the Medicare program.

Response: This final rule does not address documentation requirements (for example, those found in § 420.300 through § 420.304) for other parts of the Medicare program other than documentation retention and provision requirements related to particular items and services that are ordered and certified. Some aspects of this comment are outside the scope of this final rule. We are requiring that documentation pertaining to ordered and certified services and supplies be retained for 7 years, as specified in § 424.516(f). We will continue to provide educational material to the public as we implement the specific provisions in this final rule.

Comment: Several commenters stated that the documentation requirements should apply only to the imaging facility (the technical component provider) and not the ordering or referring provider or the interpreting physician. To require the ordering or referring provider or the interpreting physician to maintain documentation is unnecessary and is a duplication of effort and expense, and many such providers are currently ill-equipped to do this. Ordering physicians do not differentiate between the technical and professional components of their order; they assume both will occur.

Response: We are not placing documentation requirements on physicians who interpret imaging tests. Section 1866(a)(1)(W) of the Act authorizes the Secretary to extend these requirements to other items and services. Section 424.516(f)(1) and at § 424.535(a)(10) apply to home health

agencies, DMEPOS suppliers, clinical laboratories, imaging centers, and those physicians and other eligible professionals who ordered or certified home health, DMEPOS, clinical laboratory, and imaging services.

Comment: Many commenters stated that § 424.516 should not require maintenance of documentation related to requests by a physician that the patient see another physician. Section 424.516 should apply only to items and services for which Medicare requires a written order or referral (such as DMEPOS, home health, laboratory, and diagnostic tests).

Response: As stated earlier in this preamble, we have removed requirements for specialist services in § 424.507 and § 424.516 from this final rule.

Comment: Several commenters recommended that § 424.535 be revised to reflect less severe penalties for failure to retain and/or disclose documentation of orders and referrals. They suggested that allowing the recovery of applicable Medicare payments and the establishment of and compliance with a corrective action plan be the required penalties for noncompliance.

Response: This regulation implements section 6406 of the Affordable Care Act which amended section 1843(h) of the Act. Section 1842(h)(9) of the Act states,

The Secretary may revoke enrollment, for a period of not more than one year for each act, for a physician or supplier under section 1866(j) if such physician or supplier fails to maintain and, upon request of the Secretary, provide access to documentation relating to written orders or requests for payment for durable medical equipment, certifications for home health services, or referrals for other items or services written or ordered by such physician or supplier under this title, as specified by the Secretary.

We believe that the penalties to be imposed are appropriate and in accordance with the statute.

Comment: A commenter recommended that the stated documentation requirements at § 424.516(f) be revised to limit physician documentation requirements to a copy of the home health Plan of Care and the certification/recertification forms, and not to require retention of interim orders except when they are for added billable services and not to require a physician's NPI on the certification/recertification form or interim orders for added billable services until CMS issues detailed guidance for the content of the Plan of Care, including specific physician's NPI requirements.

Response: As noted in earlier responses, this final rule does not

provide an exhaustive list of the documentation to be retained and produced if requested. However, any documentation that supports the payment of the claim should be retained and must be made available upon request. The NPI of the ordering or certifying provider must be included in the retained documentation.

b. Technical, Administrative, and Procedural Modifications and Corrections

Comment: Several commenters noted that the requirements added at § 424.507 apply to Part B items and services (excluding Part B drugs) and Part A and Part B home health services, whereas the documentation requirements added at § 424.516 apply to a narrower set of services (that is, § 424.516 specifically states DMEPOS, home health, laboratory, imaging, and specialist services). The commenters stated that CMS should apply the document retention requirements and the ordering or referring provider enrollment requirements to the same types of orders and referrals.

Response: We have revised the regulatory text for consistency. The ordering and certifying requirements and the documentation requirements apply to the same items and services, specifically: DMEPOS, imaging and clinical laboratory services, and home health services.

c. Public Comments Outside the Scope of the Requirement To Maintain and Provide Access to Documentation of Referrals

Comment: A commenter stated that the documentation requirement could have a significant impact on patients who present for services or supplies with an order that is not signed. The patient may be delayed in receiving medically necessary care while the provider or supplier who would furnish the item or service requests a signed order. Obtaining the signature places a burden on the provider or supplier who would furnish the service.

Response: We believe this comment is outside of the scope of this final rule because we are not modifying requirements for orders to be signed.

Comment: A commenter stated that the need to produce I-9 forms for foreign born suppliers is administratively burdensome on large provider groups.

Response: Production of an I-9 form for foreign born suppliers is not a requirement of this final rule and therefore outside of the scope of issues to be addressed.

d. Summation and Final Decisions

After review of the all of public comments presented this section (section II.C.4. a. through c. of this final rule), we are finalizing the document retention requirements with several modifications. We are revising the provisions to follow the ordering and certifying provisions' covered items and services to include DMEPOS, laboratory, and imaging services, and home health services. We have also clarified that document maintenance and affording access to documentation, with regard to the home health provision, applies to orders *and* certifications. This provision has been clarified for the same reasons we clarified § 424.507, as described herein.

We have clarified that documents must be retained from the date of service, rather than the date of the order or certification- as specified in the IFC. Specialist services are no longer included in either the ordering and referring provision of § 424.507 or the document retention provision in § 424.516.

Section 424.535 remains unchanged in the fact that a provider or supplier that does not meet the requirements of § 424.516 is subject to revocation for not more than 1 year for each act of noncompliance. Finally, as a technical correction, we removed a provision in § 424.535 that references section 1866(j) of the Act.

III. Provisions of the Final Rule

In this section of the final rule, we discuss the changes made from the IFC. We are finalizing the provisions of the IFC with the modifications based on our response to comments and other statutory and technical changes stated in this section of the final rule.

In section II.A. of this final rule, we discuss the inclusion of the NPI on all Medicare enrollment applications, pursuant to Medicaid provider agreements, and on Medicare and Medicaid claims. We note that the main objectives of that section remain constant from the IFC to this final rule in that providers and suppliers must provide their NPIs as a part of their enrollment record. Furthermore, this NPI must be reported on any claims for payment, along with the NPI of any other provider or supplier listed on the claim form. We made a few modifications to the NPI provisions included in the IFC. In § 424.506, we made the following changes:

- Revised paragraph (b)(1) to include the text of paragraph (b)(2).
- Removed the existing paragraph (b)(2) and redesignated paragraph (b)(3) and paragraph (b)(2).

- Paragraph (c)(1) was revised to insert the word “must” between the words “Medicare” and “include” because the word was inadvertently omitted in this requirement in the IFC.

In section II.B. of this final rule, we discuss our provisions regarding ordering and certifying covered items and services for Medicare beneficiaries. In that section of this final rule, set forth are specific provider and supplier mandates for enrolling in Medicare to order and certify certain, specified items or services including DMEPOS, laboratory and imaging services, and home health services. We stress that this rule finalizes conditions of payment for ordered items and services, and it does not address broader payment policy questions. It neither changes eligibility requirements that permit certain provider types to order or certify, nor does it detail which items or services they are permitted to order or certify. This rule, in its applicable sections, only addresses the enrollment requirements for those eligible professionals who are permitted to order and certify under existing rules. We are making the following modifications regarding ordering and certifying covered items and services for Medicare beneficiaries:

- In § 424.507, we made the following changes:

- ++ Revised the introductory text for paragraph (a) to clarify the items and services to which this paragraph applies (covered Part B DMEPOS items and clinical laboratory and imaging services). We also deleted the reference to specialist services.

- ++ Revised paragraph (a)(1) by inserting the word “claim” between the words “supplier’s” and “must.”

- ++ Revised paragraph (a)(1)(iii) to state that the physician or other eligible professional, when permitted, must be enrolled in Medicare in an approved status or have validly opted- out of the Medicare program.

- ++ Revised paragraph (a)(1)(iv) to require that claims identify the teaching physician as the ordering or certifying provider when an unlicensed resident or a non-enrolled licensed resident orders or certifications. We are also providing the option of enrollment if residents possess a provisional license or are otherwise permitted by their State to practice or order and certify.

- ++ Revised paragraph (a)(2)(iii) to be consistent with paragraph (a)(1)(iii).

- ++ Revised paragraph (a)(2)(iv) to be consistent with paragraph (a)(1)(iv) by requiring that claims identify the teaching physician as the ordering or certifying provider when an unlicensed resident or a non-enrolled licensed

resident orders or certifications. We are also providing the option of enrollment if residents possess a provisional license or are otherwise permitted by their State to practice or order and certify.

- ++ Revised paragraph (b)(3) (formerly paragraph (b)(1)(iii)) to be consistent with paragraph (a)(1)(iii) by requiring that home health claims identify the teaching physician as the ordering/ certifying provider when an unlicensed resident or a non-enrolled licensed resident certifies. We are also providing the option of enrollment if residents possess a provisional license or are otherwise permitted by their State to order/certify or practice.

- ++ Removed the requirements for home health claims submitted by Medicare beneficiaries in paragraph (b)(2). This change resulted in the rewording of the title of paragraph (b) to read: “Conditions for payment of claims from home health providers for covered home health services” and the renumbering of the requirements in paragraph (b).

- ++ Revised paragraph (b) by removing the word “ordered” from the provision. This change will result in the wording as follows: “To receive payment for covered Part A or Part B home health services, a provider’s home health services claim must meet all of the following requirements:”

- ++ Revised paragraph (b)(1) and (b)(2) (formerly paragraph (b)(1)) to include certifications, not simply orders for home health.

- ++ Revised paragraph (c) to state that we will deny a claim from a provider or supplier for covered services described in § 424.507(a) and § 424.507(b) if the claim does not meet the requirements of § 424.507(a)(1) and § 424.507(b), respectively. We also changed the reference from § 424.507(b)(1) to § 424.507(b).

- ++ Revised paragraph (d) to remove the references to sections that relate to home health services and home health claims, as Medicare beneficiaries do not submit claims for home health services.

In section II.C. of this final rule, we discuss the IFC provisions regarding document retention requirements. We are finalizing these requirements with the following modifications:

- In § 424.516, we made the following changes:

- ++ Removed the words “specialist services” in paragraph (f)(1) and we more specifically described the items and services to which the final rule applies.

- ++ Revised paragraph (f)(2) to more specifically describe the items and services to which this final rule applies.

++ Revised paragraphs (f)(1) and (f)(2) to more explicitly describe the home health events to which this final rule applies by specifically referring to orders and certifications.

- In § 424.535(a)(10)(i), we removed the reference to section 1866(j) of the Act.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

A. ICRs Regarding National Provider Identifier (NPI) on All Medicare Enrollment Applications and Claims (§ 424.506)

Section 424.506(b)(1) states that providers and suppliers who are eligible for NPIs be required to report their NPIs on their enrollment applications for Medicare. Similarly, § 424.506 (b)(2) states that if providers or suppliers enrolled in Medicare prior to obtaining NPIs and their NPIs are not in their enrollment records, they must submit enrollment applications containing their NPIs.

The burden associated with the requirements in § 424.506(b) is the time and effort necessary for a provider or a supplier to apply for an NPI and the time and effort necessary to report the NPIs on their enrollment applications for Medicare.

Sections § 424.510 and § 424.515 state that providers and suppliers must submit enrollment information on the applicable enrollment application and update, resubmit, and recertify the accuracy of their enrollment information every 5 years. In addition, § 424.516 lists reporting requirements for providers and suppliers. To submit enrollment information for an initial application (even if enrolling just to

order and certify), a change of information, or to respond to a revalidation request, a provider or supplier must complete and submit the applicable CMS-855 form or complete and submit the form over the Internet using Internet-based PECOS. Although we are unable to quantify the number, we do not believe that a significant number of physicians and eligible professionals will enroll in Medicare just to order and certify. The burden associated with the enrollment requirements found in § 424.510, § 424.515, and § 424.516 is the time and effort necessary to complete and submit applicable Medicare form. While this burden is subject to the PRA, it is currently approved under existing OMB control numbers (OCN). Specifically, the burden associated with obtaining an NPI is currently approved under OCN 0938-0931. The burden associated with submitting initial Medicare enrollment applications and updating Medicare enrollment information to include NPI is approved under OCN 0938-0685 (Applications CMS-855 A, B, I, and R) 0938-1056 (Application CMS-855 S).

Section 424.506(b)(1) states that providers and suppliers who are enrolled in Medicare must report their NPIs and the NPIs of any other providers or suppliers who are required to be identified in their claims on all paper and electronic claims that they send to Medicare. The burden associated with this requirement is the time and effort necessary to complete and submit a claim form. The burden associated with this collection is accounted for under OCN 0938-0999. We are currently seeking reinstatement of the control number.

B. ICRs Regarding Ordering and Referring Covered Items and Services for Medicare Beneficiaries (§ 424.507)

Section 424.507 states that to receive payment for covered Part A or Part B home health services, the claim must contain the legal name and the NPI of the ordering physician; and to receive payment for covered items of DMEPOS, and certain other covered Part B items or services (excluding Part B drugs), the claim must contain the legal name and the NPI of the ordering or certifying physician or eligible professional. The burden associated with these requirements is the time and effort necessary to submit a claim with the required information. The burden associated with this collection is accounted for under OCN 0938-0999. We are currently seeking reinstatement of the control number.

C. ICRs Regarding Additional Provider and Supplier Requirements for Enrolling and Maintaining Active Enrollment Status in the Medicare Program (§ 424.516)

Section 424.516(f)(1) discusses the documentation requirements for providers and suppliers. A provider or supplier is required for 7 years from the date of service to maintain and upon request of CMS or a Medicare contractor, provide access to documentation, including the NPI of the physician or the eligible professional who ordered or certified the item or service, relating to written orders or requests for payments for items of DMEPOS, home health, laboratory, and imaging services. Similarly, § 424.516(f) discusses the documentation requirements for providers and suppliers. At § 424.516(f)(1), providers and suppliers are required for 7 years from the date of service to maintain and, upon request of CMS or a Medicare contractor, provide access to documentation, including the NPI of the physician or the eligible professional who ordered or certified the item or service, relating to written orders or requests for payments for items of DMEPOS, home health, laboratory, and imaging services. At § 424.516(f)(2), physicians and eligible professionals are required for 7 years from the date of service to maintain and, upon request of CMS or a Medicare contractor, provide access to written and electronic documentation relating to written orders or certifications for items of DMEPOS, home health, laboratory, and imaging services.

The burden associated with the requirements in § 424.516(f) is the time and effort necessary to both maintain documentation on file and to furnish the information upon request to CMS or a Medicare contractor. While the requirement is subject to the PRA, we believe the associated burden is exempt. As discussed in the November 19, 2008 final rule (73 FR 69726), we believe the burden associated with maintaining documentation and furnishing it upon request is a usual and customary business practice and thereby exempt from the PRA under 5 CFR 1320.3(b)(2).

D. ICRs Regarding the Reporting of National Provider Identifier by Medicaid Providers (§ 431.107(b)(5))

Section 431.107(b)(5) states that a Medicaid provider has to furnish its NPI (if eligible for an NPI) to its State agency and include its NPI on all claims submitted under the Medicaid program. The burden associated with the Medicaid requirements in

§ 431.107(b)(5) is the time and effort necessary for a provider to report the NPIs to the State agency and on claims submitted to the Medicaid program.

1. Enrollment Applications

We have considered the burden associated with enrollment applications for Medicaid by estimating the number of providers. Specifically—

- There will be 56,250 Medicaid and CHIP providers in a given 12-month period that seek to enroll in Medicaid; and
- According to State Program Integrity Assessment data for FFYs 2007 and 2008, there has been an average of 1,855,070 existing Medicaid and CHIP providers nationally over the 2-year period of FFYs 2007 and 2008. Of these 1,855,070 providers, approximately one-fifth of them, or 371,014 (1,855,070 × .20), would be required to revalidate their enrollment each year under § 431.107(b).

For purposes of this paperwork burden assessment only, we assumed that 427,264 providers (56,250 + 371,014) will either initially enroll in or be required to revalidate their enrollment in Medicaid and, as part of this, be required to report their NPI.

We recognize that not all of these providers will have NPIs to report; a very small percentage of them may be exempt from having to obtain an NPI. We further understand that: (1) Some States may choose to allow (or even require) providers to submit their NPIs via mechanisms that are potentially less burdensome than submitting an initial enrollment or revalidation application; and (2) the previous figures include CHIP providers, who are not subject to the requirements of § 431.107(b). However, we chose to utilize the 427,264 figure and the application reporting mechanism for this paperwork burden assessment, so as not to underestimate the potential burden of this particular requirement. We estimated that it will take an average of

less than 1 minute (or 0.01666 hours) for a medical technician to report a Medicaid provider's NPI to the State agency on an enrollment or reenrollment application. However, we assumed 1 minute for purposes of this burden. This results in an annual hour burden of 7,118 hours (or 427,264 × 0.01666). At a per hour cost of \$14.51, according to the Bureau of Labor Statistics (BLS) for May 2011 for the mean hourly wage of a medical assistant, we projected a total annual cost of \$103,282.

2. Claims

In FY 2008, approximately 2.5 billion Medicaid claims were submitted. This number has remained relatively constant since then.

As of May 23, 2008, and consistent with 45 CFR 162.410, the NPI has been required for all HIPAA-standard transactions. This means that Medicaid providers have been required since that date to disclose their NPI on all HIPAA-standard transactions, which we estimate to represent about 95 percent of all Medicaid claim submissions. We arrived at this percentage because we polled 10 States and using their individual percentage of electronic claims submission compiled an average of 95 percent. We then applied that percentage to the nation since 10 States we polled represent a sample of small and large States as well as States with a low and high Medicaid population and therefore we believe can be considered an adequate sample.

We will not be furnishing an estimated burden for the requirement that a provider furnish its NPI on claims because this requirement already applies to the vast majority of Medicaid claims under § 431.107(b)(5), and 45 CFR 162.410. The burden we estimate here will be for those claims—in general, paper claims—that are not HIPAA-standard transactions but that now must contain the NPI per § 431.107(b)(5). It is true that some

States have been requiring the submission of the NPI on all Medicaid claims, even those that are not subject to § 431.107(b)(5). However, no burden has been prepared for this. We do so in this final rule.

We projected that 5 percent of the 2.5 billion claims previously referenced—or 125 million—will not qualify as HIPAA-standard transactions. These claims will need to contain the provider's NPI. We estimate that it will take the provider/medical assistant less than 1 minute to add the NPI to the claim but for purposes of the burden we estimated 1 minute—or 0.01666 hours—to furnish its NPI on the claim. This results in an annual burden of 2,082,500 hours. At a per hour cost of \$14.51, we project the annual cost of this requirement to add the NPI to paper or non-HIPAA standard transactions to be \$30,317,075. We wish to point out that as a result of this final rule, all claims will be required to have an NPI so as States implement these requirements, the burden will continue to decrease. Of note, while we received no comments on the burden for appending the NPI to the Medicaid provider agreement and/or the Medicaid claims for payment, we have updated these estimates to account for a medical assistant rather than a medical technician, since we believe a medical assistant is more likely to provide administrative support to the provider and to account for the May 2011 BLS mean hourly wage of a medical assistant rather than the 2008 mean hourly wage of the medical technician.

Table 1 indicates the paperwork burden associated with the requirements of this final rule. The only two requirements listed are those involving the Medicaid NPI provisions described in § 431.107(b)(5). The remaining requirements, as explained above, are either exempt from the PRA requirement or the burden for them has been addressed in other PRA packages/assessments.

TABLE 1—ESTIMATED AVERAGE ANNUAL REPORTING/RECORDKEEPING BURDEN

Regulation section	OMB Control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting (\$)	Total labor cost of reporting (\$)	Total capital/maintenance costs (\$)	Total cost (\$)
431.107(b)(5)—Enrollment	0938—New ..	427,264	427,264	0.01666	7,118	14.51	103,282	0	103,282
431.107(b)(5)—Claims	0938—New ..	2,500,000,000	125,000,000	0.01666	2,082,500	14.51	30,217,075	0	30,217,075
Total .....	.....	2,500,427,264	125,427,264	.....	2,089,618	.....	.....	.....	30,320,357

If you comment on these information collection and recordkeeping requirements, please submit your

comments to the Office of Information and Regulatory Affairs, Office of Management and Budget,

Attention: CMS Desk Officer, CMS—6010—F.

Fax: (202) 395—6974; or

Email:

OIRA_submission@omb.eop.gov.

In response to our solicitation of comments on these issues, we received the following comments:

Comment: A commenter believed that CMS should re-estimate the actual burden of completing the CMS-855I enrollment applications with respect to the burden required by this final rule, including contractor processing time and the interruption of Medicare reimbursement for the physician.

Response: With respect to the completion of CMS-855 form pursuant to the final rule, we believe that the overall burden will, in general, be increased only by the number of individuals who are enrolling just to order and certify via the new CMS-855O form, as most other physicians and eligible professionals who order and certify have already enrolled in Medicare via the CMS-855I. In other words, the new burden relates to the CMS-855O, not the CMS-855I. As explained later in this section, the burden associated with completing the new CMS-855O form was addressed in the Paperwork Reduction Act (PRA) package for that form.

Comment: A commenter stated that the costs of preparing and filing correspondence and records (paper, or scanned from paper and put into an electronic record) would be astronomical, with no evidence of benefit in fraud prevention or detection.

Response: This final rule does not address the format, context, or mode of documentation. However, for purposes of clarification, we do not require that paper documentation be converted into electronic format in order to meet the documentation and disclosure requirements of this final rule. Moreover, we believe that such document retention is a normal and customary business practice. As such, we do not foresee additional costs associate with a practice that is already in existence for many providers.

Comment: Several commenters questioned what is meant by the phrase "providing access to that documentation." If this means that physician specialty practices will have to allow CMS or its contractor access to their patient records, it would be burdensome and disruptive to the practices and could create potential patient privacy problems. This would be even more difficult for electronically maintained records.

Response: CMS, its contractors, and/or the DHHS OIG may request access to required documentation. It is the responsibility of the provider and supplier, and of the physician or other

eligible professional, or their provider/supplier employers, where appropriate and as discussed earlier, to determine the method of storage of the required documentation, the location of the stored required documentation, and the means by which it will disclose the required documentation to CMS, its contractors, and/or the DHHS OIG in order to comply with this final rule. Medical practices and other employers that are responsible for the documentation and disclosure requirements must ensure that they can meet these requirements in order to remain active in the Medicare program.

Comment: Several commenters stated that the IFC does not include an adequate analysis of the impact of the expanded documentation requirement for physicians. Repeated audits over a 7-year period of time is not part of a regular administrative work flow and will cause considerable financial burden, absorb staff time, and require investment in the maintenance of documentation. Small medical practices do not have the necessary resources to do this.

Response: We do not foresee providers, suppliers, physicians, etc., being subjected to "repeated" audits. To the contrary, such audits will, in general: (1) Be performed only as an "as needed" basis, and (2) merely involve requests for limited numbers of documents. Moreover, we believe that such infrequent audits are, like documentation retention, normal business practices. It is not altogether uncommon, for example, for a private health insurance plan—as part of an investigation—to request certain documentation from a supplier in order to support the need for a particular service that was provided.

V. Regulatory Impact Analysis

A. Statement of Need

This final rule is necessary to finalize provisions of the May 5, 2010 IFC. As discussed earlier, the IFC implemented several provisions of the Affordable Care Act:

- Section 6402(a), which requires all Medicare and Medicaid providers of medical or other items or services and suppliers that qualify for a National Provider Identifier (NPI) to include the NPI on all Medicaid provider agreements, Medicare enrollment records, and Medicare and Medicaid claims for payment.

- Section 6405, which requires physicians or eligible professionals who order and/or certify Medicare services to be enrolled in Medicare.

- Section 6406, which requires physicians and suppliers to maintain and provide access to documentation relating to written orders or requests for payment for DMEPOS, HHA, and other services as specified by the Secretary.

We also believe that this final rule is needed to help ensure that (1) accurate claims are submitted; (2) the Medicare items and services being ordered and/or certified are valid and necessary; and (3) appropriate records of orders and certifications for Medicare items and services are maintained.

B. Overall Impact

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulations and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104-4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 directs 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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any single year). As discussed in more detail later in this section, we believe that the savings resulting from this final rule will exceed \$100 million in each of the next 10 fiscal years, beginning in fiscal year (FY) 2013. Therefore, this is an economically significant rule based upon section 3(f)(1) of Executive Order 12866.

The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief for small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than \$7.0 million to \$34.5 million in any one year.

Individuals and States are not included in the definition of a small entity. As we stated in the IFC, we do not believe that this rule will have a significant economic impact on a substantial number of small entities. Nonetheless, we recognize that the potential effects of this final rule could impact some providers of covered imaging, clinical laboratory, DMEPOS, and home health items and services. We have therefore, elected to prepare a voluntary RFA analysis. As many of the requirements of the RFA are contained in our RIA, this RIA section also constitutes the RFA. Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act. The Secretary has determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately \$136 million. This final rule does not mandate expenditures by either the governments mentioned or the private sector; therefore, no analysis is required.

Executive Order (EO) 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose significant costs on State or local governments, the requirements of E.O. 13132 are not applicable.

C. Anticipated Effects

As previously stated, we project, based on internal CMS data, that the total savings to the Federal government resulting from this final rule will exceed \$100 million in each of the next 10 fiscal years. The total savings at the end of this 10-year period is estimated to be \$1.59 billion. This figure accounts for our estimates that: (1) Approximately 5 percent of physicians will not be

enrolled; (2) such physicians have only 50 percent as many Medicare enrollees as other physicians; and (3) 10 percent of patients of those physicians will not seek out enrolled physicians. The product of these is inflated by 25 percent to account for other providers who could potentially order services. The net result is roughly a 0.3 percent—or \$1.59 billion—reduction in DMEPOS, imaging and clinical laboratory services, and Part A and Part B home health costs over the next 10 years attributable to patients who will choose not to seek out an enrolled physician to obtain such services. In addition, some claims without proper documentation will be denied, including some fraudulent claims, but we do not have a basis for quantifying the value of such claims.

Table 2 outlines the year-by-year projected savings to the Federal government over the next decade.

TABLE 2—PROJECTED SAVINGS

Fiscal year	Savings * (in \$millions)
2013	110
2014	120
2015	130
2016	140
2017	150
2018	160
2019	180
2020	190
2021	200
2022	210
Total	1,590

* In actual dollars for the years presented.

We believe that the rule's other effects will be minimal. With respect to § 424.506, practically all providers and suppliers that wish to enroll in Medicare and Medicaid programs have already obtained NPIs and are currently meeting requirements regarding the need to report their NPIs on, as applicable, enrollment applications and claims. Regarding § 424.516(f), we believe that most providers and suppliers already retain such documentation as a usual and customary business practice.

D. Alternatives Considered

Since this final rule is a codification of statutory provisions found in the Affordable Care Act, we did not consider alternatives to the overall processes described in the IFC. We did consider the possibility of including additional items and services on the list of those affected by this final rule. However, while we have the authority under section 6405(c) of the Affordable Care Act to expand the requirements of section 6405(a) and (b) of the Affordable

Care Act to all other categories of items or services under Title XVIII of the Act, we chose to expand these requirements only to clinical laboratory and imaging services, rather than to many other types of services. (Specialist services, moreover, are no longer covered by the requirements of this final rule.) We believe that the application of these requirements to limited categories of items and services will ease the overall burden on the provider and supplier communities. Moreover, in response to comments on the IFC, we considered and adopted the following alternatives that we believe will further the impact of these provisions.

First, we state in § 424.507 that in order for a claim to be paid, the ordering physician/practitioner must be enrolled in Medicare in an approved status or must have validly opted-out of the Medicare program. The IFC required that the ordering physician/practitioner have an approved enrollment record in PECOS. However, we have changed the enrollment requirement language from one requiring enrollment in PECOS to one requiring enrollment in Medicare—including PECOS or other Medicare enrollment systems. We believe that this will reduce the number of claims that are denied or rejected and enable more currently enrolled physicians and practitioners to order or certify for services.

Second, we will provide ample advanced notice of our intention to activate the automated edits that would cause a claim to not be paid for the lack of a valid: (1) Enrollment record to order and certify; or (2) a valid opt-out record in Medicare.

For Medicaid, again, we codified the statutory provisions found in the Affordable Care Act. However, we considered alternatives to the statute, since the provision requires all providers of medical or other items or services and supplies to include their NPI on all applications. Medicaid, until recently, had no Federally required process for provider enrollment outside of the requirement to enter into a provider agreement with the State. Further, Medicaid has no Federal process for applications to enroll in the Medicaid program. Thus, in order to comply with the statutory requirement outlined in 6402 of the Affordable Care Act to append the NPI to the application for enrollment, Medicaid considered codifying additional regulatory requirements outlining a Federal process for the application to enroll in Medicaid. Because of the Administration's goal to provide for greater administration simplification, we determined that Medicaid would not

prepare additional regulatory requirements but would provide that the NPI must be appended to the provider agreement. Since entering into a provider agreement with the State is currently a requirement in the Medicaid program, we believe this option provides States and providers with an alternative that is less burdensome.

Again, the main purpose of this final rule is to implement the previously referenced provisions of the Affordable Care Act. However, we also believe that these requirements will help to ensure that Medicare and Medicaid payments are correctly and properly made.

E. Accounting Statement

As required by OMB Circular A-4 (available at link http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf), we have prepared an accounting statement. In calculating the annualized savings in the accounting statement, we applied the 7 and 3 percent discount rates to the full 10-year period assessed.

TABLE 3—ACCOUNTING STATEMENT
[In \$millions]

Category	Primary estimate	Year dollars	Discount rate (percent)	Period covered
Transfers from Providers to the Federal government	\$136.8	2012	7	FYs 2013–2022.
	139.1	2012	3	FYs 2013–2022.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 431

Grant programs—health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services is confirming as final the interim final rule amending 42 CFR parts 424 and 431 that published on May 5, 2010 (75 FR 24437) with the following changes:

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 1. The authority citation for part 424 continues to read as follows:

Authority: Sec. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 424.506 is amended by revising paragraphs (b) and (c)(1) to read as follows:

§ 424.506 National Provider Identifier (NPI) on all enrollment applications and claims.

* * * * *

(b) *Enrollment requirements.* (1) A provider or a supplier that is eligible for an NPI must do the following:

- (i) Report its NPI on its Medicare enrollment application.
- (ii) If the provider or supplier was in the Medicare program before obtaining an NPI and the provider's or the

supplier's NPI is not in the provider's or supplier's Medicare enrollment record, the provider or supplier must update its Medicare enrollment record by submitting its NPI using either of the following:

(A) The applicable paper CMS-855 form.

(B) Internet-based PECOS.

(2) A physician or eligible professional who has validly opted-out of the Medicare program is not required to submit a Medicare enrollment application for any reason, including to order or certify.

(c) * * *

(1) A provider or supplier that is enrolled in Medicare and submits a paper or an electronic claim must include its NPI and the NPI(s) of any other provider(s) or supplier(s) identified on the claim.

* * * * *

■ 3. Section 424.507 is revised to read as follows:

§ 424.507 Ordering covered items and services for Medicare beneficiaries.

(a) *Conditions for payment of claims for ordered covered imaging and clinical laboratory services and items of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS).*

(1) *Ordered covered imaging, clinical laboratory services, and DMEPOS item claims.* To receive payment for ordered imaging, clinical laboratory services, and DMEPOS items (excluding home health services described in § 424.507(b), and Part B drugs), a provider or supplier must meet all of the following requirements:

- (i) The ordered covered imaging, clinical laboratory services, and DMEPOS items (excluding home health services described in paragraph (b) of this section, and Part B drugs) must have been ordered by a physician or,

when permitted, an eligible professional (as defined in § 424.506(a) of this part).

(ii) The claim from the provider or supplier must contain the legal name and the National Provider Identifier (NPI) of the physician or the eligible professional (as defined in § 424.506(a) of this part) who ordered the item or service.

(iii) The physician or, when permitted, other eligible professional, as defined in § 424.506(a), who ordered the item or service must—

(A) Be identified by his or her legal name;

(B) Be identified by his or her NPI; and

(C)(1) Be enrolled in Medicare in an approved status; or

(2) Have validly opted-out of the Medicare program.

(iv) If the item or service is ordered by—

(A) An unlicensed resident (as defined in § 413.75), or by a non-enrolled licensed resident (as defined in § 413.75), the claim must identify a teaching physician, who must be enrolled in Medicare in an approved status, as follows:

(1) As the ordering supplier.

(2) By his or her legal name.

(3) By his/her NPI.

(B) A licensed resident (as defined in § 413.75), he or she must have a provisional license or be otherwise permitted by State law, where the resident is enrolled in an approved graduate medical education program, to practice or order such items and services, the claim must identify by legal name and NPI the—

(1) Resident, who is enrolled in Medicare in an approved status to order; or

(2) Teaching physician, who is enrolled in Medicare in an approved status.

(2) *Part B beneficiary claims.* To receive payment for ordered covered items and services listed at § 424.507(a), a beneficiary's claim must meet all of the following requirements:

(i) The physician or, when permitted, other eligible professional (as defined § 424.506(a)) who ordered the item or service must—

(A) Be identified by his or her legal name; and

(B)(1) Be enrolled in Medicare in an approved status; or

(2) Have validly opted out of the Medicare program.

(ii) If the item or service is ordered by—

(A) An unlicensed resident (as defined in § 413.75) or a non-enrolled licensed resident, (as defined in § 413.75) the claim must identify a teaching physician, who must be enrolled in Medicare in an approved status as follows:

(1) As the ordering supplier.

(2) By his or her legal name.

(B) A licensed resident (as defined in § 413.75), he or she must have a provisional license or are otherwise permitted by State law, where the resident is enrolled in an approved graduate medical education program, to practice or to order such items and services, the claim must identify by legal name the—

(1) Resident, who is enrolled in Medicare in an approved status to order; or

(2) Teaching physician, who is enrolled in Medicare in an approved status.

(b) *Conditions for payment of claims for covered home health services.* To receive payment for covered Part A or Part B home health services, a provider's home health services claim must meet all of the following requirements:

(1) The ordering/certifying physician must meet all of the following requirements:

(i) Be identified by his or her legal name.

(ii) Be identified by his or her NPI.

(iii)(A) Be enrolled in Medicare in an approved status; or

(B) Have validly opted-out of the Medicare program.

(2) If the services were ordered/certified by—

(i) An unlicensed resident, as defined in § 413.75, or by a non-enrolled licensed resident, as defined in § 413.75,

the claim must identify a teaching physician who must be enrolled in Medicare in an approved status—

(A) As the ordering/certifying supplier;

(B) By his or her legal name; and

(C) By his or her NPI.

(ii) A licensed resident (as defined in § 413.75), he or she must have a provisional license or are otherwise permitted by State law, where the resident is enrolled in an approved graduate medical education program, to practice or to order/certify such items and services, the claim must identify by legal name and NPI the—

(A) Resident, who is enrolled in Medicare in an approved status to order; or

(B) Teaching physician, who is enrolled in Medicare in an approved status.

(c) *Denial of provider- or supplier-submitted claims.* Notwithstanding § 424.506(c)(3), a Medicare contractor denies a claim from a provider or a supplier for covered items and services described in paragraph (a) or (b) of this section if the claim does not meet the requirements of paragraphs (a)(1) and (b) of this section, respectively.

(d) *Denial of beneficiary-submitted claims.* A Medicare contractor denies a claim from a Medicare beneficiary for covered items or services described in paragraphs (a) and (b) of this section if the claim does not meet the requirements of paragraph (a)(2) of this section.

■ 4. Section 424.516 is amended by revising paragraphs (f)(1) and (2) to read as follows:

§ 424.516 Additional provider and supplier requirements for enrolling and maintaining active enrollment status in the Medicare program.

* * * * *

(f) * * *

(1)(i) A provider or a supplier that furnishes covered ordered items of DMEPOS, clinical laboratory, imaging services, or covered ordered/certified home health services is required to—

(A) Maintain documentation (as described in paragraph (f)(1)(ii) of this section) for 7 years from the date of service; and

(B) Upon the request of CMS or a Medicare contractor, to provide access to that documentation (as described in paragraph (f)(1)(ii) of this section).

(ii) The documentation includes written and electronic documents

(including the NPI of the physician who ordered/certified the home health services and the NPI of the physician or, when permitted, other eligible professional who ordered items of DMEPOS or clinical laboratory or imaging services) relating to written orders and certifications and requests for payments for items of DMEPOS and clinical laboratory, imaging, and home health services.

(2)(i) A physician who orders/certifies home health services and the physician or, when permitted, other eligible professional who orders items of DMEPOS or clinical laboratory or imaging services is required to—

(A) Maintain documentation (as described in paragraph (f)(2)(ii) of this section) for 7 years from the date of the service; and

(B) Upon request of CMS or a Medicare contractor, to provide access to that documentation (as described in paragraph (f)(2)(ii) of this section).

(ii) The documentation includes written and electronic documents (including the NPI of the physician who ordered/certified the home health services and the NPI of the physician or, when permitted, other eligible professional who ordered the items of DMEPOS or the clinical laboratory or imaging services) relating to written orders or certifications or requests for payments for items of DMEPOS and clinical laboratory, imaging, and home health services.

§ 424.535 [Amended]

■ 5. In § 424.535, paragraph (a)(10)(i) is amended by removing the parenthetical phrase “(as described in section 1866(j) of the Act)”.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program; and Program No. 93.778, Medical Assistance Program)

Dated: January 18, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: March 29, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2012–9994 Filed 4–24–12; 8:45 am]

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Part IV

Commodity Futures Trading Commission

17 CFR Parts 3, 32, and 33

Commodity Options; Final Rule and Interim Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3, 32, and 33

RIN 3038-AD62

Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule and interim final rule.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is issuing a final rule to repeal and replace the Commission’s current regulations concerning commodity options. The Commission is also issuing an interim final rule (with a request for additional comment) that incorporates a trade option exemption into the final rules for commodity options (added § 32.3). For a transaction to be within the trade option exemption, the option, the offeror (seller), and the offeree (buyer), as applicable, must satisfy certain eligibility requirements, including that the option, if exercised, be physically settled, that the option seller meet certain eligibility requirements, and that the option buyer be a commercial user of the commodity underlying the option, and certain other regulatory conditions. Only comments pertaining to the interim final rule will be considered in any further action related to these rules.

DATES: *Effective date:* The effective date for this final rule and the interim final rule June 26, 2012.

Comment date: Comments on § 32.3, the interim final rule portion of this document, must be received on or before June 26, 2012.

Compliance date: For compliance dates for these final rules, see

SUPPLEMENTARY INFORMATION at section IV(D), below.

ADDRESSES: You may submit comments, identified by RIN number 3038-AD62, by any of the following methods:

- *Agency Web site, via its Comments Online process:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.

- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

- *Courier:* Same as mail above.
- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an

English translation. Comments will be posted as received to <http://www.cftc.gov>. You should submit only information that you wish to make available publicly. If you wish the CFTC to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the CFTC’s regulations.¹

The CFTC reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this action will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

Donald Heitman, Senior Special Counsel, (202) 418-5041, dheitman@cftc.gov, Division of Market Oversight; Ryne Miller, Attorney Advisor, (202) 418-5921, rmiller@cftc.gov, Division of Market Oversight; or David Aron, Counsel, (202) 418-6621, daron@cftc.gov, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

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I. Introduction

A. Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act

¹ 17 CFR 145.9.

(“Dodd-Frank Act”).² Title VII of the Dodd-Frank Act³ amended the Commodity Exchange Act (“CEA” or “Act”)⁴ to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers (“SDs”) and major swap participants (“MSPs”); (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission’s rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission’s oversight.

B. Notice of Proposed Rulemaking—February 3, 2011; Final Rule and Interim Final Rule

Section 721 of the Dodd-Frank Act added new section 1a(47) to the CEA, defining “swap” to include not only “any agreement, contract, or transaction commonly known as,” among other things, “a commodity swap,”⁵ but also “[an] option of any kind that is for the purchase or sale, or based on the value, of 1 or more * * * commodities * * *.”⁶ As a result of the Dodd-Frank

changes, on February 3, 2011, the Commission published in the **Federal Register** a notice of proposed rulemaking (“NPRM”) that included proposed regulations for commodity options.⁷ This final rule and interim final rule relates to the commodity options proposal in the NPRM. In particular, the final rule issued herein adopts the Commission’s proposal to generally permit market participants to trade commodity options, which are statutorily defined as swaps,⁸ subject to the same rules applicable to every other swap. The interim final rule adopted herein includes a trade option exemption for physically delivered commodity options purchased by commercial users of the commodities underlying the options, subject to certain conditions. This final rule and interim final rule also renumbers the commodity options rules, as compared to the proposal in the NPRM, and deletes a provision from the proposed rules that the Commission has determined is no longer relevant.

As noted above, because the Dodd-Frank Act definition of swap includes commodity options, the NPRM proposed provisions that would substantially amend the Commission’s regulations regarding such commodity option transactions. The proposed rules for commodity options, including proposed amendments to parts 3, 32, and 33, generally included provisions that would have subjected all commodity options that are swaps to the same rules applicable to any other swap. After thoroughly reviewing the

comments submitted in response to the NPRM, the Commission has determined to issue the commodity options rules proposed in the NPRM as final rules, with certain non-substantive amendments, including the deletion of a “prompt execution” requirement and other requirements that are no longer relevant, as well as minor formatting updates (e.g., renumbering). In addition, and in response to the commenters, this final rulemaking also includes an interim final rule relating to trade options, as discussed in detail below.

II. Commodity Options Background

A. Commission’s Plenary Statutory Authority Over Commodity Options

The CEA provides:

No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is of the character of, or is commonly known to the trade as, an “option”, “privilege”, “indemnity”, “bid”, “offer”, “put”, “call”, “advance guaranty”, or “decline guaranty”, contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe. Any such order, rule, or regulation may be made only after notice and opportunity for hearing, and the Commission may set different terms and conditions for different markets.⁹

Through this provision, Congress has given the Commission jurisdiction and plenary rulemaking authority over all commodity option transactions. Notably, while the Dodd-Frank Act included numerous amendments to the CEA, the plenary options authority provision in CEA section 4c(b) was not amended or otherwise altered by the Dodd-Frank Act. Rather, CEA section 4c(b) has been in the Act in substantially the same form since it was added by the Commodity Futures Trading Commission Act of 1974.¹⁰ The Commission has primarily used its options authority to promulgate the commodity options rules in parts 32 (Regulation of Commodity Option Transactions)¹¹ and 33 (Regulation of Domestic Exchange-Traded Commodity Option Transactions)¹² of the existing regulations, as well as to support the adoption of the swaps rules in part 35.¹³

⁹ See CEA section 4c(b), 7 U.S.C. 6c(b).

¹⁰ Public Law 93–463, October 23, 1974.

¹¹ 17 CFR part 32.

¹² 17 CFR part 33.

¹³ 17 CFR part 35. CEA section 4c(b) was cited as one of the authorizing statutory provisions for original part 35, entitled “Exemption of Swap Agreements.” See Exemption of Swap Agreements, 58 FR 5587, at 5589, Jan. 22, 1993 (noting that: “In enacting this exemptive rule, the Commission is

² See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at <http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm>.

³ Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the “Wall Street Transparency and Accountability Act of 2010.”

⁴ 7 U.S.C. 1 *et seq.*

⁵ 7 U.S.C. 1a(47)(A)(iii)(XXII).

⁶ See 7 U.S.C. 1a(47)(A)(i). Note that the swap definition excludes options on futures (which must be traded on a DCM pursuant to part 33 of the Commission’s regulations) (see CEA section 1a(47)(B)(i), 7 U.S.C. 1a(47)(B)(i)), but it includes options on physical commodities (whether or not traded on a DCM) (see CEA section 1a(47)(A)(i), 7 U.S.C. 1a(47)(A)(i)). Other options excluded from the statutory definition of swap are options on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 and the Securities Exchange Act of 1934 (see CEA section 1a(47)(B)(iii), 7 U.S.C. 1a(47)(B)(iii)) and foreign currency options entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (see CEA section 1a(47)(B)(iv), 7 U.S.C. 1a(47)(B)(iv)). Note also that the Commission’s regulations define a commodity option transaction or commodity option as “any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to be of the character of, or is commonly known to the trade as, an ‘option,’ ‘privilege,’ ‘indemnity,’ ‘bid,’ ‘offer,’ ‘call,’ ‘put,’ ‘advance guaranty’ or ‘decline guaranty.’” 17 CFR 1.3(hh).

For purposes of this release, the Commission uses the term “commodity options” to apply solely to commodity options not excluded from the swap definition set forth in CEA section 1a(47)(A), 7 U.S.C. 1a(47)(A). As will be discussed in greater detail below, the Commission is undertaking a definitions rulemaking in conjunction with the Securities and Exchange Commission (“SEC”) to further define, among other things, the term “swap.” See Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 FR 29818, May 23, 2011 (“Product Definitions NPRM”). The final rule and interpretations that result from the Product Definitions NPRM will address the determination of whether a commodity option or a transaction with optionality is subject to the swap definition in the first instance. If a commodity option or a transaction with optionality is excluded from the scope of the swap definition, as further defined by the Commission and the SEC, the final rule and/or interim final rule adopted herein are not applicable.

⁷ Commodity Options and Agricultural Swaps, 76 FR 6095, Feb. 3, 2011. Note that in addition to proposed commodity options rules, the NPRM also included proposed rules for agricultural swaps. The agricultural swaps rules were adopted by the Commission via a final rulemaking published on August 10, 2011 and are not addressed herein. See Agricultural Swaps, 76 FR 49291, Aug. 10, 2011 (“Final Agricultural Swaps Rules”).

⁸ See note 6, above.

B. The NPRM Proposed an Overhaul of Existing Commodity Options Regulations

As explained in the introduction, the Dodd-Frank Act includes a definition of swap that encompasses commodity options.¹⁴ The Commission proposed the commodity options rules in the NPRM to address the fact that the existing rules applicable to commodity options¹⁵ pre-date the Dodd-Frank Act provisions applicable to all other swaps and, therefore, do not consider or incorporate such provisions.¹⁶ Therefore, the rules in the NPRM would have amended part 32 to essentially permit commodity options to trade subject to the same rules applicable to any other swap. The NPRM contains a detailed description of the historical development of part 32 and the proposed changes.¹⁷ The NPRM also includes proposed updates to part 33, which currently applies to any option traded on a designated contract market (“DCM”) (whether an option on a future or an option on a physical). In order to place all options that are swaps under a single part of title 17 of the Code of Federal Regulations (“CFR”),¹⁸ the NPRM proposed to remove from part 33 any reference to an “option on a physical,”¹⁹ leaving part 33 applicable only to exchange-traded options on futures, and allowing part 32 to serve as the sole relevant regulation for all other commodity options (including both exchange-traded options on physical commodities and all off-exchange

also acting under its plenary authority under section 4c(b) of the Act with respect to swap agreements that may be regarded as commodity options.”). In addition, when the Commission recently repealed original part 35 and replaced it with new part 35, entitled “Agricultural Swaps,” CEA section 4c(b) was again cited as one of the authorizing statutory provisions. See Final Agricultural Swaps Rules, 76 FR at 49295–49296, n.36, Aug. 10, 2011 (“The Commission is clarifying now that the new part 35, which will apply only to swaps in agricultural commodities, is similarly adopted pursuant to the authorities found in CEA sections 4(c) and 4c(b).”).

¹⁴ See note 6, above.

¹⁵ Those existing rules encompassed primarily parts 32 and 33, but also original part 35, which was a general swap exemption applicable to, among other things, commodity options that did not qualify for the trade option exemption.

¹⁶ In some cases, the pre Dodd-Frank commodity options rules are inconsistent with certain Dodd-Frank Act provisions, such as the lack of a requirement in pre Dodd-Frank § 32.4 (17 CFR 32.4) that counterparties to trade options be eligible contract participants (“ECPs”). In contrast, section 2(e) of the CEA, 7 U.S.C. 2(e), as amended by the Dodd-Frank Act, requires that counterparties to all swaps not conducted on or subject to the rules of a designated contract market be ECPs.

¹⁷ See NPRM, 76 FR 6095, at 6097–6098; 6101–6103, Feb. 3, 2011.

¹⁸ The Commission’s regulations are set forth in title 17 of the CFR.

¹⁹ See NPRM, 76 FR at 6103, Feb. 3, 2011.

commodity options). In addition, the NPRM proposed repealing the swap exemption in original part 35 and replacing it with rules for agricultural swaps pursuant to Dodd-Frank’s mandate that agricultural swaps only be permitted pursuant to rules set by the Commission.²⁰

Under the NPRM, proposed new part 32 would have governed all commodity options that fall under the Dodd-Frank swap definition²¹ by permitting such commodity options to be transacted subject to the same laws and rules applicable to any other swap—without distinguishing between trade options and non-trade options. An additional element of new part 32, as proposed in the NPRM, was the elimination of the historical distinction between the treatment of options on the enumerated agricultural commodities and options on all other commodities. As proposed in the NPRM, new part 32 would treat options on both enumerated and non-enumerated agricultural commodities the same as all other commodity options. Finally, the NPRM included, at proposed § 32.5, a grandfather clause providing that “[n]othing contained in this part shall be construed to affect any lawful activities prior to the effective date of this part.” That grandfather provision is retained unaltered in this final rule.

III. Comments on the Commodity Options Proposal in the NPRM

A. Request for Comment on the NPRM

In the NPRM, the Commission requested specific input on the following questions related to the commodity options proposal:

- Generally, will the rule changes and amendments proposed herein provide an appropriate regulatory framework for the transacting of trade options on all commodities?

- Regarding the proposed revisions to part 32, and specifically the revised § 32.4 trade option exemption, will such revisions significantly affect hedging opportunities available to currently active users of the trade options market? In other words, is there any reason not to revise § 32.4 as proposed? In particular, are there persons who offer or purchase trade options on non-enumerated agricultural commodities (e.g., coffee, sugar, cocoa) under current § 32.4 who would not qualify as ECPs and would therefore be ineligible to

²⁰ See section 723(c)(3) of the Dodd-Frank Act. As explained in note 7, above, the proposals in the NPRM related to part 35 and agricultural swaps have already been adopted by the Commission as final rules.

²¹ See note 6, above.

participate in such options under revised § 32.4? If so, should such participants be exempted from the general requirement that all swaps participants must be ECPs unless the transaction takes place on a DCM?

- Regarding the proposed withdrawal of § 32.12 (the dealer option provision) in its entirety, would such action (in conjunction with the adoption of the new rules proposed herein) prejudice or otherwise harm any person, group of persons, or class of transactions? In other words, is there any reason not to withdraw § 32.12 as proposed?

- Similarly, and regarding the proposed withdrawal of § 32.13 (the agricultural trade option provision) in its entirety, would such action (in conjunction with the adoption of the new rules proposed herein) prejudice or otherwise harm any person, group of persons, or class of transactions? In other words, is there any reason not to withdraw § 32.13 as proposed?

- Do the proposals as they relate to part 33 appropriately limit the scope of part 33 to DCM-traded options on futures, leaving DCM-traded options on physical commodities subject to part 32?

- Do the proposals outlined herein omit or fail to appropriately consider any other areas of concern regarding options in any commodity?

B. Summary of Comments on the NPRM

1. General Overview

Approximately 39 comment letters were submitted that substantively addressed the NPRM,²² representing a

²² The public comment file for the NPRM is available at: <http://comments.cftc.gov/PublicComments/CommentList.aspx?id=968>. This comment summary references each of the comments that substantively addressed the commodity options proposal in the NPRM, whether submitted in response to the original NPRM, in response to the Commission’s general reopening of the comment period for multiple Dodd-Frank rule proposals (See Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR 25274, May 4, 2011 (“Dodd-Frank General Reopening”)), or in response to the joint CFTC and SEC Product Definitions NPRM. Note that none of the comments submitted in response to Dodd-Frank General Reopening specifically addressed the commodity options proposal in the NPRM, and so they are not discussed in detail herein. In addition, certain comments submitted on this rulemaking may also be addressed by the final rule implementing the proposals in the Product Definitions NPRM. Finally, the public comment file for the NPRM also includes multiple comments that did not directly address the commodity options proposal (for example, see the comments from Majed El Zein, B.J. D’Milli, Maryknoll Office for Global Concerns, Maryknoll Fathers and Brothers, J.C. Hoyt, and Jon Pike), other comments that only addressed the proposed agricultural swaps rules, and four records of meetings or communications between Commission staff and interested industry groups.

broad range of interests, including agricultural producers, merchants, SDs, commodity funds, futures industry organizations, academics and think tanks, a U.S. government agency, and private individuals. Twenty-one different commenters, through various letters, specifically addressed the commodity options proposal. Commodity options comments on the NPRM were filed by entities including: The Financial Services Roundtable ("FSR"); CME Group, Inc. ("CME Group" or "CME"); Futures Industry Association and International Swaps and Derivatives Association ("FIA & ISDA"); Edison Electric Institute and Electric Power Supply Association ("EIA-EPSA"); National Grain and Feed Association ("NGFA"); staff of the Federal Energy Regulatory Commission ("FERC Staff"); American Public Gas Association ("APGA"); Air Transport Association of America ("ATA"); Amcot; Coalition of Physical Energy Companies ("COPE"); Gavilon Group, LLC ("Gavilon"), which submitted two letters; a joint letter from National Rural Electric Cooperative Association, American Public Power Association, and Large Public Power Council (together, the "Power Coalition"); Working Group of Commercial Energy Firms ("Energy Working Group"); Commodity Markets Council ("CMC"); Hess Corporation ("Hess"); a commodity options and agricultural swaps working group that includes Barclays Capital, Citigroup, Credit Suisse Securities (USA) LLC, JPMorgan Chase & Co., Morgan Stanley, and Wells Fargo & Company (together, "Commodity Options and Agricultural Swaps Working Group"); and American Gas Association ("AGA"). Commodity options comments filed on the Product Definitions NPRM included a joint letter from Natural Gas Supply Association and National Corn Growers Association ("NGSA & NCGA"); a second letter from COPE; a letter from Just Energy Group ("Just Energy"); a letter from American Petroleum Institute ("API"); a second letter from the Energy Working Group; a letter from BG Americas & Global LNG ("BGA"); and a second letter from the Power Coalition.

2. Comments on the Commodity Options Proposal

The commodity options comments generally focused on the following substantive areas as they related to the commodity options proposal in the NPRM.

a. Whether the Definition of Swap Includes Commodity Options

Multiple commenters expressed the opinion that treating options as swaps, as set forth in the NPRM, was premature and should await the Commission's joint rulemaking with the SEC on the further definition of a swap.²³ In particular, FIA-ISDA expressed the opinion that the definitions rulemaking "is the proper place to address whether physical commodity options of any kind, including agricultural commodity options, should be treated as swaps" and thus urged the Commission to defer the commodity options rulemaking until such time as it issues a final rulemaking further defining a swap. *See* FIA & ISDA at 4. Similar sentiments were expressed by NextEra, EIA-EPSA, the Power Coalition, and the Energy Working Group. For example:

As a threshold matter, the Proposed Rule is premature insofar as it would treat options on physical commodities as swaps before the Commission has even proposed the definition of what constitutes a swap pursuant to Section 712(d) of the Dodd-Frank Act. * * * To avoid inconsistent outcomes and ensure consideration of an integrated and complete record on transactions to be regulated as swaps, the Commission should stay this proceeding insofar as it would define commodity options as swaps.

EIA-EPSA at 1-2.

[T]he Working Group respectfully requests that the Commission stay the instant proceeding until such time that the mandatory final rule further defining the term 'swap' set forth in new Section 1a(47) of the [CEA] is jointly issued by the Commission and the [SEC]. Until the full scope and application of the definition of 'swap' is known and understood, the Working Group is unable to fully evaluate the potential implications of the Proposed Rule, or comment meaningfully on how the proposed regulation of Physical Options could ultimately affect its members.

Energy Working Group at 2.

Beyond the requests to delay the commodity options final rulemaking, some commenters disagreed with the interpretation that the Dodd-Frank swap definition was intended to include all commodity options. The following comments illustrate this view:

Simply put, a commodity option is not a swap * * * COPE requests that the Commission find that, unlike swap options, commodity options are not swaps.

COPE at 4-5.

²³ *See* Product Definitions NPRM, 76 FR 29818, May 23, 2011. The Commission notes that, where applicable, the definitions-based comments are also being considered in conjunction with its effort, jointly with the SEC, to further define certain products, including the term "swap," pursuant to § 712(d) of the Dodd-Frank Act.

The text and structure of the Dodd-Frank Act indicates that Congress only intended to include options that require financial settlement and other financial products in the definition of 'swap.'

Gavilon 4/4/11 letter at 4.

Physical Options meet the criteria of the so-called 'forward contract exclusion' under section 1a(47)(B)(ii) of the CEA and therefore must be excluded from the definition of a 'swap' under section 1a(47).

NGSA & NCGA letter at 3.²⁴ *See also*, letters from AGA and API.

The Energy Working Group acknowledged that the swap definition likely included options, but argued that the Commission should take action to avoid that result:

Although Congress included Physical Options in the definition of 'swap,' it also vested the Commission with the statutory authority [referencing CEA section 4c(b)] to regulate options, including Physical Options, in a manner different than swaps. The Working Group's members consider Physical Options as distinct from other 'swaps,' and more akin to physically-settled forward contracts, and believe that there are substantive policy reasons to treat these types of transactions in a similar manner. Regulating Physical Options as swaps under Title VII of the Act would have a substantial negative effect on not only the market for such options, but also more broadly on physical energy markets and participants in such markets that rely on physical energy commodities during their normal course of business.

Energy Working Group at 4.

The Energy Working Group letter went on to provide several examples of "transactions that energy market participants do not historically consider options, but nonetheless contain an element of optionality * * * and should not be regulated as swaps." Their letter described contracts called daily natural gas calls, wholesale full requirements contracts for power, tolling agreements in organized wholesale electricity markets, physical daily heat rate call options, and capacity contracts. *See* Energy Working Group at Exhibit A. APGA and ATA also requested that the Commission clarify that certain variable amount delivery contracts that are common in the energy sector be excluded from the definition of a swap. CMC requested that the Commission clarify that certain other types of transactions fall within the definition of an excluded forward contract rather than the definition of a swap. CMC specifically commented that cash

²⁴ As discussed below, the NGSA & NCGA letter supported, in the alternative, multiple different approaches to their end goal of exempting or excluding physically settled commodity options from swap regulation.

forward contracts with embedded options and certain cash transaction book-outs should not be treated as “swaps.” CMC at 1. Amcot requested clarification that “equity trades” or “options to redeem” cotton from the U.S. Department of Agriculture’s Commodity Credit Corporation marketing loan program would not be considered swaps.²⁵

Regarding those comments describing specific transactions, and in particular CMC’s comments, the Commission notes that the proposed further definition of swap included a discussion of the applicability of the swap definition to both forwards with embedded options and book-out transactions.²⁶ The Commission further notes that, in response to both the NPRM and the Product Definitions NPRM, several comments were submitted regarding “volumetric options” in particular (*i.e.*, optionality in a contract settling by physical delivery that is used to meet varying demand for a commodity). The final further definition of the term swap to be issued by the Commission and the SEC will address the applicability of the swap definition (and thus, the applicability of this final rule and interim final rule) to such volumetric options.²⁷

b. Trade Option Exemption

While the commodity options rules proposed in the NPRM would have removed the trade option exemption that is currently at 17 CFR 32.4,²⁸ the vast majority of commenters who expressed an opinion on the topic

²⁵ After CFTC staff reviewed the “options to redeem” with both USDA staff members responsible for managing the cotton marketing loan program and industry representatives from Amcot (an association of US cotton marketing cooperatives), the Commission has concluded that the “options to redeem” under USDA’s cotton marketing loan program constitute the producer’s contractual right to repay the marketing loan and “redeem” the collateral (the cotton), to sell in the open market. As such, the “option” to redeem cotton under USDA Commodity Credit Corporation’s marketing loan program is a standard loan repayment term and does not constitute a commodity option within the meaning of the CEA and CFTC regulations.

²⁶ See Product Definition NPRM, 76 FR at 29827–29830, May 23, 2011.

²⁷ See note 6, above.

²⁸ Current 17 CFR 32.4(a) provides: “* * * the [prohibition on off-exchange commodity options contained in 17 CFR 32.11] shall not apply to a commodity option offered by a person which has a reasonable basis to believe that the option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or by-products thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such.”

supported retaining a trade option exemption, in one form or another, for options that require physical delivery if exercised, and were opposed to treating such options as swaps subject to all applicable Dodd-Frank swaps regulatory requirements. The current trade option exemption is an exemption from the existing prohibition against off-exchange commodity option transactions in 17 CFR 32.11. In contrast, the commenters requested a trade option exemption for the purpose of being exempt from (1) the swap definition, and/or (2) any final rules that would treat commodity options the same as any other swap. The following statement from Hess Corporation illustrates this view that certain options should not be regulated as swaps:

Treating all options, financial and physical, as swaps will result in significant unintended consequences for Hess and other commercial entities that rely on physical options to manage their business risk. Hess does not believe Congress intended such a result. On the contrary, Hess believes that the Dodd-Frank Act defines ‘swap’ in a manner that plainly distinguishes between financial and physical transactions. Accordingly, Hess urges the Commission to regulate options in a similar manner by excluding options that are intended to be physically settled once exercised from the definition of ‘swap.’

Hess Corporation at 1. Similar sentiments were expressed by the Power Coalition, the Energy Working Group, Gavilon, APGA, ATA, NGS& NCGA, AGA, API, and COPE. For example:

If the Commission proposes rules to discard the ‘trade option exemption,’ it should concurrently replace it with a ‘trade option exemption for nonfinancial commodities’ to the defined term ‘swap.’

Power Coalition at 15.

Gavilon urges the Commission to issue an order pursuant to CEA Section 4c(b) that allows commercial entities to enter into Physical Options subject only to conditions that are comparable to the requirements in current Part 32.4.

Gavilon April 4, 2011 letter at 6–7.

[R]egulation of Physical Options as ‘swaps’ would cause serious harm to the natural gas and other physical commodity markets, without providing significant benefits * * *. For these reasons, the Commission must recognize, in its final rule, either in the definition of a ‘swap’ or by preserving the trade option exemption, that Physical Options are excluded, or are eligible for exemption, from regulation as swaps.

NGS& NCGA at 4–5.

[I]f the Commission determines to move forward with the [Options NPRM], it must make clear that no physically settled agreements are covered [or] included in any rule pertaining to swaps.

COPE at 5. CME expressed the opinion that “[We believe that] Congress did not necessarily intend for the Commission to treat all options on commodities as ‘swaps’ * * * but we have no objection to this outcome.” CME at 3.

c. Eligible Contract Participants and Trade Options

The energy industry commenters expressed concerns regarding the fact that treating commodity options as swaps would require all trade options counterparties to be ECPs—because trade options are typically bilateral, off-exchange transactions, and CEA section 2(e) permits only ECPs to transact swaps other than on or subject to the rules of a DCM. The commenters noted that there are many non-ECP market participants who currently rely on the trade option exemption for option transactions in a wide range of commodities. For example:

If the Commission eliminates the ability of the NFP Electric End Users to engage in energy and energy-related commodity options, or conditions the use of such trade options on the NFP Electric End Users qualifying as eligible contract participants, it will have a significant and detrimental effect on the NFP Electric End Users’ ability to hedge their commercial risk in a cost effective way.

Power Coalition at 14.

The Commodity Options NOPR states that, ‘based on its review [of the history of the Commission’s development of commodity options regulation], the Commission has determined that there would be little practical effect and no detrimental consequences in adopting the proposed revisions to the existing commodity options regime in part 32.’ [citing NPRM at 76 FR 6101]. The Coalition disagrees strongly with the Commission’s determination * * *. We consider the Commission’s Proposed Rule to be highly detrimental to the NFP Electric End Users’ ability to provide affordable electric energy to American businesses and consumers.

Power Coalition at 16.

Since, in general, market participants must meet certain net worth thresholds to qualify as an ‘eligible contract participant’ [footnote omitted] and many Physical Options used by small end users are customized or illiquid and thus not traded on exchanges, the ability of small end users to transact in Physical Options would be limited to on-exchange contracts that do not exist or do not match their needs.

NGS& NCGA at 4.

Similarly, the FSR pointed out, in a comment primarily addressing the proposed definition of ECP,²⁹ that there

²⁹ See: Further Definition of “Swap Dealer,” “Security-Based Swap Dealer,” “Major Swap Participant,” “Major Security-Based Swap

may be issues with the fact that the proposal in the NPRM to modify the trade option exemption would eliminate the availability of the trade option exemption for non-ECPs. See FSR at 26, n.18.

d. FERC-Regulated Transactions

FERC Staff noted that “depending on how broadly the term ‘swap’ is construed, CFTC regulation of swaps could lead to inconsistent regulation of participants and transactions subject to FERC jurisdiction, and in particular the organized electricity markets.” FERC Staff at 1. The energy and electricity commenters also expressed concerns about the jurisdictional overlap. One commenter specifically noted that, “[Physical Options] in the natural gas market are already subject to certain regulatory oversight by [FERC] and state public utility commissions with respect to price, prudence, and manipulation.” NGS&A & NCGA at 5.

e. Deleting the Dealer Option Provisions

FIA-ISDA supported the proposed withdrawal of regulation 32.12 (pertaining to the grandfathering of certain dealer options). In particular, FIA-ISDA concurred with the Commission’s assertion that “the dealer option business has not existed since the early 1990s” and thus there is no longer a need for this grandfathering provision. See FIA-ISDA at 6.

f. Deleting the Agricultural Trade Option Provisions

There was only one comment related to eliminating the Agricultural Trade Option (ATO) Merchant provisions in part 32. Specifically, NGFA supported eliminating the provisions, observing:

[NGFA] long has believed that an effective ATO regulatory structure could benefit agricultural producers and the agribusinesses with which they work to develop marketing strategies and market their crops. However, the rules in place have been unwieldy and, consequently, the ATO merchant registration regime has been largely unused * * *. The NGFA believes the redefinition of ATOs as swaps, subject to conditions under Dodd-Frank (notably the Eligible Contract Participant rules), will result in enhanced development and use of products that formerly would have been categorized as agricultural trade options and a broader range of risk management tools.

NGFA at 2.

Participant” and “Eligible Contract Participant,” 75 FR 80174, Dec. 21, 2010 (joint rulemaking with SEC; the comment period originally closed on February 22, 2011, and was extended to June 3, 2011).

g. Options Fraud Provisions

The proposed rules for commodity options in the NPRM would have retained the existing enforcement provisions in part 32, *i.e.*, § 32.8 (“Unlawful representations; execution of orders”) and § 32.9 (“Fraud in connection with commodity option transactions”). EEI-EPSA requested a modification of § 32.9, regarding fraud in connection with commodity option transactions, to include a “requisite intent” requirement. EEI-EPSA at 11.

As noted above, in the final rule issued herein, the Commission is retaining § 32.9 (“Fraud in connection with commodity option transactions”), which has been renumbered as § 32.4, but not otherwise changed. The Commission is not including the requisite intent standard requested by EEI-EPSA, because it would narrow the scienter standard for fraud established by Commission precedent, which is “intentionally or with reckless disregard.”³⁰ Moreover, in first promulgating its option fraud regulation, the Commission did “not use the concept of willful behavior” in the regulation text out of concern regarding the potential for courts to take a restrictive view of the Commission’s antifraud authority.³¹ The final rule does not retain § 32.8 (“Unlawful representations; execution of orders”). That provision was originally intended to apply to the retail over-the-counter (“OTC”) options market. Such retail OTC options transactions have been prohibited since the adoption of the general options prohibition at § 32.11 in 1978.³² Thus § 32.8 is no longer necessary, particularly since the violations listed in § 32.8 are either irrelevant (in that they apply to intermediated transactions, whereas trade options are generally principal-to-

³⁰ See *In re Oslar*, CFTC Docket No. 00-5, 2001 WL 138975 (CFTC Feb. 15, 2001) (finding options fraud in violation of regulations 32.9 and 33.10; “A person acts with scienter if he acts intentionally, or with reckless disregard for his duties under the Act.” (citing *Hammond v. Smith Barney Harris Upham & Co.*, [1987-1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,617 at 36,659 (CFTC March 1, 1990)).

³¹ See Part 30—*Fraud in Connection with Commodity Transactions*, 40 FR 26504, at 26505 and note 2, June 24, 1975 (adopting final rules in connection with commodity options and certain other transactions; “by adopting rules patterned by antifraud provisions that Congress has approved as part of the statutory scheme of the Commodity Exchange Act [in section 4b], the Commission can fairly expect that the courts will adopt a consistent and uniform approach to the prevention of fraudulent and deceptive acts and practices under the Commodity Exchange Act”).

³² See *Suspension of the Offer and Sale of Commodity Options*, 43 FR 16153, Apr. 17, 1978.

principal transactions) or are subsumed by the general antifraud rule, or both.

IV. Explanation of the Final Rule and Interim Final Rule for Commodity Options

A. Introduction

After considering the complete record in this matter, including all comments to the NPRM, the Commission is now adopting and issuing this final rule and interim final rule for commodity options. Broadly speaking, the final rule would implement the commodity option rules as proposed in the NPRM, whereby commodity options are permitted subject to the same rules as all other swaps, with additional minor revisions to part 32. In addition, the interim final rule includes a new trade option exemption from certain swaps regulations.

B. Sections Unchanged From the NPRM

The final rule as it relates to revisions to part 3 and to part 33 of the Commission’s regulations is the same as in the NPRM.³³

C. New Part 32

1. Final Rule

The Commission is publishing this final rule in order to provide increased regulatory certainty to market participants transacting commodity options, along with an interim final rule to permit additional public comment on a new trade option exemption. The final rule issued herein generally adopts the commodity options proposal as set forth in the NPRM. That is, under this final rule, commodity options will be permitted to transact subject to the same rules applicable to any other swap. This general authorization is necessary because the Commission’s plenary rulemaking authority over commodity options provides that: “[n]o person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is [a commodity option transaction], contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.”³⁴ By adopting this final rule, the Commission provides the required general authorization for commodity options that are subject to the swap

³³ For the purposes of part 33, as amended herein, the Commission clarifies that an option on a futures contract is an option that, upon exercise, results in a futures position.

³⁴ See CEA section 4c(b).

definition,³⁵ and removes any uncertainty as to whether CEA section 4c(b) would otherwise prohibit such commodity options.

The remainder of the final rule (*i.e.*, everything else in new part 32) largely tracks the commodity options language proposed in the NPRM, with a few minor revisions, including formatting and renumbering changes. For example, the final rule renumbers the sections of new part 32 to delete (rather than reserve, as had been proposed in the NPRM) the provisions in existing part 32 that are being deleted. A second difference is that the proposal in the NRPM would have retained existing § 32.8, entitled “Unlawful representations; execution of orders,” while this final rule deletes that provision, as discussed above. Moreover, this commodity options final rule retains the strong options antifraud language that was proposed in the NPRM at § 32.9 (now renumbered as § 32.4).³⁶ In addition, the general commodity options authorization, proposed as § 32.4 and renumbered herein as § 32.2, has been reformatted and updated to include a reference to the interim final rule, *i.e.*, the new § 32.3 trade option exemption, which is described in detail, below.

2. Interim Final Rule; Trade Option Exemption

a. Exemption From General Swaps Rules

The interim final rule incorporates a new § 32.3 into part 32, providing an exemption from certain swaps regulations for trade options on exempt and agricultural commodities as between certain commercial and sophisticated counterparties. This trade option exemption will operate as an alternative to the general commodity options authorization in § 32.2. Pursuant to the trade option exemption issued as an interim final rule herein, if the offeror,³⁷ the offeree,³⁸ and the characteristics of the option transaction meet the requirements of the trade option exemption, such option transaction will be exempt from the general Dodd-Frank swaps regime,³⁹

subject to specified ongoing conditions and compliance requirements discussed below, as applicable.

b. Offeror

Under the terms of the interim final rule, the offeror must fall into one of two categories. The offeror may be an ECP, which assures that option grantors will have some minimal level of financial resources and sophistication in order to minimize the risk that a seller would not be able to perform its obligations under a commodity option.⁴⁰ Alternatively, the offeror may be a producer, processor, or commercial user of, or a merchant handling the commodity which is the subject of the commodity option transaction, or the products or by-products thereof, and be offering or entering into the transaction solely for purposes related to its business as such. Because the trade option exemption generally is intended to permit parties to hedge or otherwise enter into transactions for commercial purposes, and because certain commercial parties prefer to transact primarily with other commercial parties, the trade option exemption set forth in the interim final rule specifically authorizes commercials who may not be ECPs to act as trade option offerors. In either instance, the trade option offeror may only offer or enter into the contract if it reasonably believes, consistent with the standard in the existing trade option exemption, that the offeree meets the offeree requirements specified below.

c. Offeree

The offeree must meet the same basic requirements as under the existing trade option exemption. That is, the option buyer must be a producer, processor, or commercial user of, or a merchant handling the commodity which is the subject of the commodity option transaction, or the products or by-products thereof, and be entering into the transaction solely for purposes related to its business as such. Note that there is no ECP requirement or other financial eligibility standard for the offeree. The purpose of requiring the trade option buyer to be a commercial, and of not imposing an ECP or other financial eligibility standard, is to ensure that hedging opportunities for

exempt from the rules related to real-time reporting of swaps transactions. The provisions identified in this footnote are not intended to constitute an exclusive or exhaustive list of the swaps requirements from which trade options are exempt.

⁴⁰ The existing trade option exemption, which the interim final rule trade option exemption would replace, includes no standards or requirements for option offerors.

commercial entities, for physically delivered transactions used for purposes related to their business as such, remain available regardless of the size or sophistication of the commercial entity.

d. Physical Commodity Option

The third element of the trade option exemption is that both parties must intend that the commodity option be physically settled, so that, if exercised, the option would result in the sale of an exempt or agricultural (*i.e.*, non-financial) commodity for immediate (spot)⁴¹ or deferred (forward) shipment or delivery. To assist parties in determining whether the sale of the exempt or agricultural commodity is intended to be physically settled, the Commission refers parties to the forward contract exclusion guidance as provided in the Product Definition NPRM,⁴² or such other guidance as ultimately may be adopted in the final product definition rulemaking. That is, to the extent the obligations that remain (or are created) upon the exercise of a commodity option are spot transactions or fall within the forward contract exclusion from the swap definition, such commodity option is eligible for the trade option exemption.

e. Trade Option Exemption Conditions

While the trade option exemption issued herein would operate as a general exemption from the rules otherwise applicable to other swaps (*i.e.*, the Dodd-Frank swaps regime), the trade option exemption is subject to certain

⁴¹ If not specified by law (*see, e.g.*, CEA section 2(c)(2)(C)(i)(II)(bb)(AA), 7 U.S.C. 2(c)(2)(C)(i)(II)(bb)(AA)) or cash market practice, to be a spot transaction, rather than a forward transaction, delivery must occur “within a reasonable time [after the contract is executed] in accordance with prevailing cash market practice.” Regulation of Noncompetitive Transactions Executed on or Subject to the Rules of a Contract Market, 63 FR 3708, 3711, Jan. 26, 1998 (concept release). Delivery under a spot contract usually occurs within a few days of the trade date. *See* CFTC Interpretative Letter 98-73, available at <http://www.cftc.gov/ucm/groups/public/@lrlettergeneral/documents/letter/98-73.pdf> (October 1998), stating that “[i]n a spot transaction, immediate delivery of the product and immediate payment for the products are expected on or within a few days of the trade date” and citing CFTC Interpretative Letter No. 97-01, 1996-98 Transfer Binder Comm. Fut. L. Rep. (CCH) ¶ 26,937 at p. 44,520 (December 12, 1996), in turn citing Timothy J. Snider, Regulation of the Commodities Futures and Options Markets, Vol. 1, § 9.01 (2ed. 1995). However, under cash market practices in some markets, delivery can occur more than a few days after the trade date. *See* CFTC, Division of Trade and Markets: Report on Exchange of Futures for Physicals 51, 65, 124-147 (1987) (noting that under then-prevailing cash market practices, transactions in crude oil and sugar called for delivery in 30 and 75 days, respectively, while foreign currency spot transactions settled in 2 days).

⁴² *See* Product Definition NPRM, 76 FR at 29827-29830, May 23, 2011.

³⁵ *See* note 6, above.

³⁶ This provision is the same antifraud language used in part 32 prior to the adoption of this final rule and interim final rule.

³⁷ The offeror, sometimes also called the grantor, is the seller of a commodity option.

³⁸ The offeree, sometimes also called the grantee, is the buyer of a commodity option.

³⁹ For example: Trade options would not contribute to, or be a factor in, the determination of whether a market participant is an SD or MSP; trade options would be exempt from the rules on mandatory clearing; and trade options would be

conditions. The conditions are primarily intended to preserve a level of market visibility for the Commission while reducing the regulatory compliance burden for market participants.

i. Recordkeeping Pursuant to Part 45

These conditions include a recordkeeping requirement for any trade options activity, *i.e.*, the recordkeeping requirements of 17 CFR 45.2.⁴³ Such records must be maintained by all trade option participants pursuant to § 45.2 and made available to the Commission as specified therein.⁴⁴ Section 45.2 applies different recordkeeping requirements, depending on the nature of the counterparty. For example, if a trade option counterparty is an SD or MSP, it would be subject to the provisions of § 45.2(a). If a counterparty is neither an SD nor an MSP, it would be subject to the less stringent recordkeeping requirements of § 45.2(b). This recordkeeping condition will ensure that trade options market participants are able to provide pertinent information regarding their trade options activity to the Commission, if requested.

ii. Reporting Pursuant to Part 45

In addition to part 45 recordkeeping (which applies in some form to all trade options and trade option participants), the interim final rule requires certain trade options to be reported pursuant to part 45's reporting provisions. Under the interim final rule, the determination as to whether a trade option is required to be reported pursuant to part 45 is based on the parties to the trade option and whether or not they have previously reported swaps pursuant to part 45. Specifically, *if* any trade option involves

at least one counterparty (whether as buyer or seller) that has (1) Become obligated to comply with the reporting requirements of part 45, (2) as a reporting party, (3) during the twelve month period preceding the date on which the trade option is entered into, (4) in connection with any non-trade option swap trading activity, *then* such trade option must also be reported pursuant to the reporting requirements of part 45. If only one counterparty to a trade option has previously complied with the part 45 reporting provisions, as described above, then that counterparty shall be the part 45 reporting entity for the trade option. If both counterparties have previously complied with the part 45 reporting provisions, as described above, then the part 45 rules for determining the reporting party will apply.⁴⁵

By applying the part 45 reporting requirements to trade options in this manner, the Commission will obtain greater transparency and improved oversight of the swaps markets, both of which are primary statutory objectives of Title VII of the Dodd-Frank Act. The Commission believes, however, that greater transparency regarding the trade options market must be balanced against the burdens of frequent and near-instantaneous reporting required under part 45 of the Commission's regulations on counterparties who are not otherwise obligated to report because they do not have other reportable swap activity. Accordingly, if neither counterparty to a trade option already is complying with the reporting requirements of part 45 as a reporting party in connection with its non-trade option swap trading activities as described above,⁴⁶ then such trade option is not required to be reported pursuant to the reporting requirements of part 45.⁴⁷

iii. Annual Notice Filing Alternative to Part 45 Reporting; Form TO

To the extent that neither counterparty to a trade option has previously submitted reports to an SDR as a result of its swap trading activities as described above, the Commission recognizes that requiring these entities to report trade options to an SDR under part 45 of the Commission's regulations solely with respect to their trade options

activity would be costly and time consuming. As an alternative, the interim final rule requires any counterparty to an otherwise unreported trade option to submit an annual filing to the Commission for the purpose of providing notice that it has entered into one or more unreported trade options in the prior calendar year. Unlike with trade options subject to the part 45 reporting requirement, wherein only one counterparty to the trade option reports the transaction to an SDR, the notice filing requirement applies to both counterparties to an unreported trade option. Because the purpose of the notice filing requirement is to identify to the Commission those market participants engaging in unreported trade options, the notice filing requirement applies whether or not such counterparty has also been a non-reporting counterparty to a reported trade option in the twelve months preceding the date on which the unreported trade option was entered into. Market participants will satisfy the annual notice filing requirement by completing and submitting a new Commission form, Form TO, by March 1 following the end of any calendar year during which the market participant entered into one or more unreported trade options.

Form TO requires an unreported trade option counterparty to: (1) Provide name and contact information, (2) identify the categories of commodities (agricultural metals, energy, or other) underlying one or more unreported trade options which it entered into during the prior calendar year, and (3) for each commodity category, identify the approximate aggregate value of the underlying physical commodities that it either delivered or received in connection with the exercise of unreported trade options during the prior calendar year. For the purposes of item (3), a reporting counterparty should not include the value of commodities that were the subject of trade options that remained open at the end of the calendar year or any trade options that expired unexercised during the prior calendar year.

Pursuant to the interim final rule, Form TO is an annual filing requirement. The form must be submitted to the Commission no later than March 1 for the prior calendar year. For example, if a market participant enters into one or more unreported trade options between January 1, 2013 and December 31, 2013 (as will be discussed in the effective date and compliance date discussion, below, the first calendar year for which a Form TO will be due to the Commission is 2013), the

⁴³ The Commission recently adopted final swap data recordkeeping rules. See Swap Data Recordkeeping and Reporting Requirements 77 FR 2136, at 2198, Jan. 13, 2012.

⁴⁴ 17 CFR 45.2(h) provides that: [a]ll records required to be kept pursuant to this section [17 CFR 45.2] by any registrant or its affiliates or by any non-SD/MSP counterparty subject to the jurisdiction of the Commission shall be open to inspection upon request by any representative of the Commission, the United States Department of Justice, or the [SEC], or by any representative of a prudential regulator as authorized by the Commission. Copies of all such records shall be provided, at the expense of the entity or person required to keep the record, to any representative of the Commission upon request. Copies of records required to be kept by any registrant shall be provided either by electronic means, in hard copy, or both, as requested by the Commission, with the sole exception that copies of records originally created and exclusively maintained in paper form may be provided in hard copy only. Copies of records required to be kept by any non-SD/MSP counterparty subject to the jurisdiction of the Commission that is not a Commission registrant shall be provided in the form, whether electronic or paper, in which the records are kept.

⁴⁵ See 17 CFR 45.8.

⁴⁶ That is, neither counterparty to the trade option has previously reported, as the reporting party, non-trade option swap trading activity during the twelve months preceding the date on which the trade option is entered into.

⁴⁷ By taking this approach, the Commission ensures that no market participant is compelled to comply with part 45's reporting requirements based solely on its trade options activity.

market participant must submit a completed Form TO to the Commission on or before March 1, 2014. Form TO is set out in appendix A to part 32 of the Commission's regulations and will be available electronically on the Commission's Web site at least ninety days before the first compliance date for filing of that form, March 1, 2014. The Form TO filing requirement will provide the Commission a minimally intrusive level of visibility into the unreported trade options market, will guide the Commission's efforts to collect additional information through its authority to obtain copies of books or records required to be kept pursuant to the Act⁴⁸ should market circumstances dictate, and will enable the Commission to determine whether these counterparties should be subject to more frequent and comprehensive reporting obligations in the future.

iv. Specific Request for Comment on Trade Option Reporting and/or Notice Filing Requirements

The Commission is specifically requesting comment on including these part 45 recordkeeping and reporting compliance conditions, and the Form TO filing requirement for counterparties to unreported trade options, in connection with the interim final rule's trade option exemption. For example, what are the trade-offs between (1) reducing or removing the reporting requirement and/or notice filing requirement (and attendant costs) for smaller end-user and commercial entities and (2) the Commission's goals of maintaining market visibility and eliminating incentives or opportunities to avoid regulation? In their comments, market participants should identify alternatives, if any, to the part 45 recordkeeping and reporting requirements and/or the Form TO filing requirement as applicable to trade options participants. Commenters should explain how such alternatives may be able to provide the Commission with the equivalent market information and visibility it would receive pursuant to the part 45 requirements and/or the Form TO filing requirement, as applicable under the interim final rule, while lowering the compliance burden on market participants.

v. Swaps Large Trader Reporting; Position Limits

The interim final rule's trade option exemption also includes certain conditions referencing various other swaps rules, which rules shall remain applicable to trade options under this

interim final rule. Specifically, the following conditions, as set forth in interim final rule § 32.3(c), would apply to trade options (and trade option participants) to the same extent that such conditions would apply to any other swap (and swap counterparty): (1) Large trader reporting under part 20 (*i.e.*, reporting entities under part 20—SDs and clearing members—must consider their counterparty's trade option positions just as they would consider any other swap position for the purpose of determining whether a particular counterparty has a consolidated account with a reportable position, as set forth therein);⁴⁹ and (2) position limits under part 151 (to the extent a trade option position would otherwise be subject to the position limit rules).⁵⁰

vi. SD/MSP Conditions

In addition, § 32.3(c) provides that certain provisions of subpart F and subpart J of part 23, relating to recordkeeping, reporting, and risk management duties of SDs and MSPs would apply to trade options.⁵¹ SDs and MSPs participating in trade options will also remain subject to CEA section 4s(e), which addresses capital and margin requirements for SDs and MSPs. Each of these SD and MSP conditions simply confirms that an SD and/or MSP may not avoid certain requirements or obligations by structuring its swap transactions as trade options. SDs and MSPs may participate in trade options when they meet the underlying trade option offeror or offeree eligibility requirements, as applicable. But they will remain subject to the SD/MSP conditions identified in the interim final rule. As with the part 20 and part 151 conditions applicable to all trade options and trade options participants,

⁴⁹ 17 CFR part 20. Note that swap large trader reporting obligations apply only to SDs and clearing members. Trade option sellers and buyers (unless they fall within one of the part 20 reporting party categories) would not be responsible for filing large trader reports.

⁵⁰ 17 CFR part 151. Note that position limits apply only to speculative positions in those referenced contracts specified in part 151. Trade options, which are commonly used as hedging instruments or in connection with some commercial function, would normally qualify as hedges, exempt from the speculative position limit rules.

⁵¹ Swap Dealer and Major Swap Participant Recordkeeping and Reporting, Duties, and Conflicts of Interest Policies and Procedures; Futures Commission Merchant and Introducing Broker Conflicts of Interest Policies and Procedures; Swap Dealer, Major Swap Participant, and Futures Commission Merchant Chief Compliance Officer, 77 FR 20128, Apr. 3, 2012. Note that these part 23 provisions, like the part 20 provisions, would only apply to certain large sophisticated entities—in this case, SDs and MSPs.

the SD/MSP conditions only apply in the context of trade options to the extent they would otherwise apply to the transaction as any other kind of swap (*i.e.*, as a non-trade option).

vii. Enforcement Provisions

Finally, at § 32.3(d), the interim final rule also retains for trade options the antifraud and anti-manipulation rules under part 180,⁵² § 23.410,⁵³ the specific options antifraud provisions of pre-Dodd-Frank § 32.9 (renumbered herein as § 32.4), and any other general antifraud, anti-manipulation, and enforcement provisions of the CEA, including but not limited to, CEA sections 2, 4b, 4c, 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6, 6c, 6d, 9, and 13.

viii. General Exemptive Authority Retained

The trade option exemption also contains general exemptive language that would permit the Commission, upon written request or upon its own motion, to exempt any other person, either unconditionally or on a temporary or other conditional basis, from any provisions of part 32 (other than the antifraud, anti-manipulation, and enforcement rules), or from the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap, if the Commission finds, in its discretion, that it would not be contrary to the public interest to grant such exemption. This supplemental language tracks the general exemptive provision in the existing trade option exemption, and it will provide the Commission with the flexibility to receive and consider any concerns from market participants regarding the scope or implementation of the interim final rule trade option exemption.

D. Effective Date; Compliance Date

The commodity options final rule and interim final rule issued herein shall become effective 60 days after the publication of this document in the **Federal Register**.

The compliance date for the final rule and the interim final rule shall be 60 days after the term "swap" is further defined pursuant to section 721 of the Dodd-Frank Act (*i.e.*, 60 days after the further definition of "swap" is adopted by the Commission and the SEC and published in the **Federal Register**). However, for the purpose of complying with (1) final rule § 32.2(a), which permits entering into commodity options transactions in compliance with

⁵² 17 CFR part 180.

⁵³ 17 CFR 23.410.

⁴⁸ See 17 CFR 1.31(a)(2) and 17 CFR 45.2(h).

and subject to the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap, and (2) the conditions and provisions of the interim final rule trade option exemption under § 32.3, the compliance date for this final rule and interim final rule shall be the compliance date associated with any such swaps rules. That is, notwithstanding the effective or compliance dates identified herein, commodity options market participants need not comply with any applicable condition referencing a swap rule, regulation, or order, until such time as the rule, regulation, or order is applicable to any other swap. In addition, the first relevant compliance date for the Form TO notice filing requirement will be for the calendar year beginning January 1, 2013. That is, counterparties to unreported trade options are required to submit a Form TO in connection with their unreported trade options entered into between January 1 and December 31, 2013 on or before March 1, 2014. There is no Form TO filing requirement for unreported trade options entered into between the effective date of this rule and December 31, 2012.

V. Interim Final Rule Matters

This document implements regulations addressing the inclusion of commodity options in the Dodd-Frank Act definition of “swap.” Section 721 of the Dodd-Frank Act defines the term “swap” to include an option of any kind that is for the purchase or sale, or based on the value, of one or more commodities. The existing trade option exemption exempts certain trade options from the CEA almost entirely and was enacted pursuant to section 4c(b) of the CEA, which provides the CFTC with plenary authority to issue regulations related to commodity options. Such authority was not amended by the Dodd-Frank Act, and therefore, Congress continues to vest the Commission with plenary authority over commodity options. Prior to the Dodd-Frank Act, CFTC regulations provided for a trade option exemption, permitting the trading of qualifying transactions subject only to antifraud, anti-manipulation, and enforcement rules.⁵⁴ As discussed above, the Dodd-Frank Act defined commodity options as swaps. Accordingly, the CFTC proposed to amend the commodity options rules generally, and to specifically withdraw the trade option exemption, thereby providing that commodity options could transact subject to the same laws, rules,

regulations, and orders otherwise applicable to all other swaps, consistent with the Dodd-Frank Act. As explained in the comment summary above, the proposal requested comment regarding trade options and multiple commenters requested that the CFTC retain some form of a trade option exemption, particularly for physically delivered options. Therefore, in response to comments, and pursuant to its plenary authority over commodity options, the CFTC is implementing a revised trade option exemption, with certain conditions described above, through this interim final rule.

The CFTC nevertheless invites comments on this interim final rule and, when assessing whether to amend the interim final trade option exemption, will consider all timely comments submitted during the public comment period as described in the following section.

VI. Request for Comment on Interim Final Rule

In connection with the interim final rule’s trade option exemption in § 32.3 adopted herein, the Commission requests comment on the following questions:

1. Generally, does the interim final rule issued herein provide an appropriate regulatory framework for trade options?

2. Regarding the trade option exemption, will such provision preserve appropriate hedging opportunities for current users of the trade options market? Is there any reason not to retain the trade option exemption as issued herein?

a. What types of entities offer trade options pursuant to the existing trade option exemption? Is the scope of the trade option exemption offeror requirement in the interim final rule (*i.e.*, offerors must be ECPs or commercials) appropriate? Alternatively, is this offeror requirement either too broad or too narrow?

b. Is the scope of the trade option exemption offeree requirement in the interim final rule (*i.e.*, offerees must be commercials) appropriate? Alternatively, is this offeree requirement either too broad or too narrow? Should ECPs that are not commercials be permitted as offerees? Why or why not?

c. Is the list of commercials described in the interim final rule (*i.e.*, a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof) appropriate? Alternatively, is this description of

commercials either too broad or too narrow?

d. Is the range of commodity option transactions that would qualify for the trade option exemption appropriate?

i. By requiring that a trade option, when exercised, must result in the immediate (spot) or deferred (forward) shipment or delivery of an exempt or agricultural commodity, would the interim final rule improperly exclude other commodity option transactions, including other transactions with optionality, that should be eligible for a trade option exemption?

ii. In the alternative, is this physical delivery requirement of the trade option exemption too broad?

e. Should the interim final rule retain the general exemptive authority at § 32.3(e)?

f. In connection with § 32.3:

i. Is the requirement to comply with the part 45 recordkeeping rules for all trade option participants appropriate?

ii. Is the requirement that certain trade options be reported pursuant to the reporting provisions of part 45 appropriate?

1. Alternatively, should there be a *de minimis* threshold below which part 45 reporting would not apply to a trade option transaction and its participants (unless they are SDs/MSPs)?

2. If the response to the foregoing question is yes, should the *de minimis* threshold be based on the underlying transactions (volume, value, or some other measure), the participant characteristics, both, or some other measure? Where practicable, please identify a specific level at which a *de minimis* threshold may be set.

iii. In § 32.3(b)(1)(i), the Commission provides that trade options reporting for commodity options is required for counterparties that have become obligated to comply with the reporting requirements of part 45. The Commission understands that in some circumstances a counterparty that transacts trade options may not, itself, be obligated to report under part 45, but may be affiliated, at the enterprise or group level, with another entity that complies with part 45. There may be circumstances, therefore, where the obligation to report trade options would be more appropriately based on trade options activity and part 45 reporting at the enterprise or group level.

1. How often do cases occur in which a person that is subject to part 45 receives, in the ordinary course of business, transaction-level trade options information from a trade option counterparty affiliate that is not subject to part 45?

⁵⁴ See prior 17 CFR 32.4.

2. Should § 32.3(b)(1) be revised to account for such situations and, if so, how?⁵⁵

iv. Is the requirement that counterparties to unreported trade options submit an annual notice filing, via Form TO, for the purpose of notifying the Commission that such counterparty entered into one or more unreported trade in the prior calendar year appropriate?

1. Alternatively, should these trade options be reported pursuant to part 45, notwithstanding that these counterparties do not otherwise comply with those requirements in connection with their swap trading activities? What would be the costs and benefits of this alternative condition? Please provide data and estimates to support your comments.

2. Should Form TO be required to be submitted more often (e.g., quarterly or monthly) and/or to require additional data fields (e.g., expired and/or open trade options and transaction specific data for each unreported trade option)? What would be the costs associated with requiring more frequent and/or more detailed filings? Please provide data and estimates to support your comments.

v. Is the swaps large trader reporting condition (part 20) appropriate for the trade option exemption?

vi. Is the position limit condition (part 151) appropriate for the trade option exemption?

vii. Are the SD and MSP recordkeeping, reporting, and risk management conditions, as applied via part 23, appropriate for SDs and MSPs transacting under the trade option exemption?

⁵⁵ For example, should the requirement in § 32.3(b)(1)(i) to report trade options extend to trade options counterparties that have become obligated to comply with the reporting requirements of part 45, or are affiliated with a person that is required to comply with the reporting requirements of part 45, provided that such an affiliate obtains through the ordinary course of business transaction-level information on the trade options entered into by the counterparty? An “affiliate” is a person that is either commonly owned or commonly controlled, consistent with existing CFTC affiliate rules. Two persons would be commonly owned affiliates if one party directly or indirectly holds a majority ownership interest in the other, or if a third party directly or indirectly holds a majority interest in both, based on holding a majority of the equity securities of an entity, or the right to receive upon dissolution the contribution of a majority of the capital of a partnership. Two persons are commonly controlled affiliates if either (1) one person possesses the power, directly or indirectly, to direct or cause the direction of the management and policies of the other person whether through the ownership of voting securities, by contract or otherwise or (2) a third person possesses the power, directly or indirectly, to direct or cause the direction of the management and policies of both persons whether through the ownership of voting securities, by contract or otherwise.

viii. Is the condition retaining the applicability of CEA section 4s(e) (Capital and Margin Requirements for SDs and MSPs) appropriate?

ix. Are the antifraud, anti-manipulation, and enforcement related conditions appropriate for the trade option exemption?

x. Since trade options have to be physically delivered and may only be offered to commercials for use in their business as such, does it make sense to exclude trade options from the calculation of whether or not a market participant is required to register as an SD or MSP? Alternatively, is there any reason to include trade options in the calculation of whether or not a market participant is required to register as an SD or MSP?

3. Does the interim final rule issued herein omit or fail to appropriately consider any other areas of concern regarding commodity options?

4. The Commission also invites comments on the costs and benefits considerations of the interim final rule under CEA section 15a, below. The Commission specifically requests that commenters quantify the costs and benefits, where practical.

Comments on these questions and the interim final rule must be submitted to the Commission, pursuant to the instructions provided above, on or before June 26, 2012.

VII. Related Matters

A. Cost Benefit Considerations

1. Background

Prior to the passage of the Dodd-Frank Act, the Commission’s regulations permitted certain commodity option transactions, including “trade options.” As described above and in the NPRM, trade options are used by commercial entities entering into the commodity option transactions solely for purposes related to their business involving the commodity.⁵⁶ Buyers and sellers of trade options transact bilaterally off-exchange.⁵⁷

Under the pre-Dodd-Frank regulatory construct, neither the buyer nor the seller of a commodity trade option were

⁵⁶ 76 FR 6095, 6102, Feb. 3, 2011 (*citing* 17 CFR 32.4(a)), which exempts a commodity option when it is offered to “a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or by-products thereof, and that such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such”).

⁵⁷ See 17 CFR 32.4. See also 17 CFR part 35 as in effect prior to December 31, 2011. In addition, there was a stand-alone regulatory regime for agricultural trade options set forth in pre Dodd-Frank 17 CFR 32.13.

required to register with the Commission, maintain books and records, or report their transactions to the Commission in connection with their trade options activity. As a result, the current trade option market is opaque, affording virtually no regulatory visibility into its composition and scope.⁵⁸

Congress altered the foundation for this regulatory construct in passing the Dodd-Frank Act, by, among other things, determining that the definition of “swap” would include, among other products, commodity options. Section 721 of the Dodd-Frank Act added section 1a(47) to the CEA, defining “swap” to include not only “any agreement, contract, or transaction commonly known as,” among other things, “a commodity swap,” but also “[an] option of any kind that is for the purchase or sale, or based on the value, of 1 or more * * * commodities * * *.”⁵⁹ In addition, the Dodd-Frank Act mandated substantial changes in the swaps regulatory regime to reduce risk, increase transparency, and promote market integrity within the financial system.

This legislative act implicitly required the Commission to revisit its historical treatment of commodity options, including trade options. In so doing, the Commission is mindful that one of the purposes of the Dodd-Frank Act is to increase transparency of the financial markets, including the commodity options markets.

In response to the Dodd-Frank Act’s definition of “swap” to include options, on February 3, 2011, the Commission published in the **Federal Register** a Notice of Proposed Rulemaking (“NPRM”) that proposed to treat all commodity options (other than options on futures) as swaps. In the NPRM, the Commission proposed to require that all such commodity option transactions, including trade options, comply with the requirements that apply to swaps generally. While the NPRM received significant public comment, no commenter provided any quantitative data on costs or benefits.

Comments to the NPRM from the Energy Working Group typified commenters’ concern that treating options on physical commodities like

⁵⁸ As discussed further below, as a consequence, the Commission is without reliable data from which to assess the size of the commodity options market or the number or types of market participants in it, which in turn makes quantification of the costs and benefits of this rulemaking largely impracticable.

⁵⁹ Section 1(a)(47) specifically excludes from the definition of “swap” any option on a contract of sale of a commodity for future delivery (i.e., options on futures traded on designated contract markets). See CEA section 1(a)(47)(B)(i).

any other swaps would impose significant costs:

Treating Physical Options transacted in such markets as “swaps” would create uncertainty and impose costly and duplicative regulatory requirements.⁶⁰

[T]he Working Group sees no reason the Commission should not continue to treat Physical Options entered into by a commercial entity as commercial transactions exempt from the majority of the provisions of the CEA.⁶¹

And in specific response to the NPRM’s removal of the trade option exemption provided for in pre-Dodd-Frank § 32.4 of the Commission’s regulations, commenters urged the Commission to reconsider, as exemplified by the following comments from APGA and EEI–EPSA, respectively:

Although the Commission concludes that removal of the trade option exemption will have limited impact on market participants because of the swap end-user exemption, the regulatory requirements which would apply if these cash contracts are treated as though they are options would be enormous. First, characterizing these contracts as options would require compliance with all of the swap rules, including possibly requiring a natural gas producer whose only business is selling the physical product to register as a swap dealer.⁶²

Regulations that make effective risk management tools and physical supply more costly for end-users of swaps and commodity options will result in higher and more volatile energy prices for retail, commercial, and industrial customers.⁶³

The Commission also received specific comments requesting a trade option exemption for options that, if exercised, result in physical delivery.⁶⁴ Commenters also explained the need to retain a trade option exemption in the context of agricultural trade options.⁶⁵

In this final rulemaking, the Commission is repealing and replacing the Commission’s regulations concerning commodity options. Upon consideration of the comments to the NPRM, the Commission also is adopting an interim final rule that incorporates an exemption for “trade options.”

In the discussion that follows, the Commission considers the costs and benefits of, and alternatives to, amending the regulations applicable to commodity options, including the trade option exemption that makes up the interim final rule, § 32.3; this interim final rule, the § 32.3 trade option

exemption, will operate as an alternative to the general commodity options authorization in § 32.2. The Commission considers these costs and benefits of its actions in the discussion that follows.

2. Statutory Mandate To Consider the Costs and Benefits of the Commission’s Action: CEA Section 15(a)

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its own discretionary determinations with respect to the section 15(a) factors.

The costs and benefits associated with the inclusion of commodity options in the definition of swap in the Dodd-Frank Act are attributable to Congress, and therefore beyond the scope of the consideration of costs and benefits required by CEA section 15(a). The Commission considers the costs and benefits attributable to its actions in this rulemaking against the basic framework provided by the statute—in which options are swaps subject to all of the requirements attendant to that definition under the Dodd-Frank Act and the CEA (as amended by Dodd-Frank Act).

In proposing the rules, the Commission requested comment on all aspects of its cost benefit analysis, including the identification and assessment of any costs and benefits not discussed in our analysis, and data relevant to these costs and benefits. Several commenters provided comments on the costs and benefits of the proposal in qualitative terms, but none provided data from which to quantify costs and benefits.

The opacity with which trade options historically have been transacted affords the Commission no meaningful visibility with respect to the composition and scope of trade option activities necessary to quantify costs and benefits of this rulemaking. The lack of quantification in comments reinforces this conclusion and further demonstrates that there is no reasoned basis for determining how many commercials engage in commodity

options or, more specifically, trade options. In other words, there is no reliable information from which to assess the number of commercials that transact in commodity options today, or will do so in the future. There is also no way determine the number or type of entities that would choose to avail themselves of the trade option exemption that is the subject of this interim final rule. Notwithstanding these limitations, based on the comments received, it is apparent that commercials place great importance on the continued availability of a trade option exemption.

3. Benefits and Costs of the Final Rule

a. Benefits

The purpose and primary benefit of the final rule is to align the Commission’s general commodity options provisions in part 32 with the Dodd-Frank swaps regime by providing, in general, that commodity options that are swaps (*i.e.*, commodity options other than options on futures) will be treated the same as all other swaps, with one exception: commodity options satisfying the terms of a revised trade option exemption. The final rule is permissive and administrative in nature, necessitated by the Commission’s plenary rulemaking authority over commodity options, which provides that: “No person shall offer to enter into, enter into or confirm the execution of, any transaction involving any commodity regulated under this chapter which is [a commodity option transaction], contrary to any rule, regulation, or order of the Commission prohibiting any such transaction or allowing any such transaction under such terms and conditions as the Commission shall prescribe.”⁶⁶ As discussed above, the final rule also permits DCM-traded options on underlying commodities, albeit under the provisions of new part 32 rather than existing part 33. New part 32 permits commodity options to trade subject to the same rules applicable to any other swap, and the Dodd-Frank Act permits swaps to be transacted on a DCM. These changes will further the public benefits Congress intended by applying the swaps statutory and regulatory regimes to commodity options generally.

b. Costs

The Commission does not believe there are significant, if any, costs associated with the final rule relative to the requirements imposed by statute.

⁶⁶ See CEA section 4c(b).

⁶⁰ Energy Working Group at 2.

⁶¹ Energy Working group at 11.

⁶² APGA at 4.

⁶³ EEI–EPSA at 3.

⁶⁴ EEI–EPSA at 7–8.

⁶⁵ Commodity Options and Agricultural Swaps Working Group at 3–4.

This is so because the final rule does not, by itself, impose any substantive or administrative requirements on commodity option market participants. Rather, by adopting this final rule, the Commission provides the required general authorization for commodity options that are subject to the swap definition, and removes any uncertainty as to whether CEA section 4c(b) would otherwise prohibit such commodity options. This is not to say that there are no significant costs associated with transacting commodity options. Although not specific to this final rule, there are costs attendant to the various regulations applicable to transacting in commodity options, including the costs of recordkeeping and reporting requirements. Those costs, however, are discussed in the various swaps rules that impose the substantive requirements.⁶⁷

4. Interim Final Rule Benefits and Costs

a. Benefits

Under the CEA, as amended by the Dodd-Frank Act, the Commission is under no statutory obligation to issue an exemption for trade options. In fact, a plain reading of section 721 of the Dodd-Frank Act makes clear that all commodity options are swaps, without any special treatment of trade options. However, in light of the comments received, the Commission believes that retaining a trade option exemption is in the public interest.

The purpose and primary benefit of the interim final rule is that it preserves a means for hedging by commercial market participants through physically delivered options, albeit with important conditions and modifications from the existing trade option exemption. More specifically, the interim final rule provides a benefit (relative to the statutory requirements) in the form of a cost-saving exemption from certain swaps regulations for trade options on exempt and agricultural commodities as between certain commercial and financially-sophisticated counterparties. Additionally, the interim final rule benefits market participants that meet the conditions of the trade option exemption by eliminating the costs and inefficiencies that could result if the Commission were to pursue the

alternative of requiring entity- or product-specific requests for exemptive orders.⁶⁸

b. Costs

Although we consider certain costs that may result from the interim final rule, and make comparisons to various alternatives, the Commission does not believe that the interim final rule will impose mandatory costs on any entity because the rule is exemptive, rather than prescriptive, and entities are not required to rely on it. Therefore, the Commission assumes that an entity will rely on the exemption only if the anticipated benefits warrant the costs attendant to the conditions the Commission is attaching to the exemption. Notwithstanding this assumption, the conditions on the trade option exemption may impose some costs on entities that choose to rely on it.

The interim final rule conditions the ability to transact trade options under the exemption on the following: offerors must be ECPs or commercials; offerees must be commercials; and the trade option, if exercised, must result in physical delivery.

Under the interim final rule, those relying on the trade option exemption must comply with certain regulatory requirements, including: Recordkeeping and reporting; position limits; and large trader reporting. While the conditions applicable to entities availing themselves of the trade option exemption—for example, compliance with position limits and large trader reporting, and subjection to the various enforcement provisions⁶⁹—are part of this Commission action, most of the costs and benefits of those requirements are discussed in other rulemakings, or are otherwise not expected to be significant. The costs and benefits of the recordkeeping and reporting obligations are discussed elsewhere.⁷⁰ Moreover, reporting pursuant to the swaps large trader rules in part 20 will only be required for SDs and clearing members, and, based on the comments received on the NPRM, few trade option buyers are likely to fall within either of these categories. The speculative position limit rules of part 151 will only apply to trade options that involve “referenced

contracts” pursuant to the terms of part 151, and the Commission expects that most trade options entered into by commercial parties would be exempt from position limits in any event based on a position limit exemption for bona fide hedging transactions. The SD and MSP-specific conditions in the trade option exemption, which incorporate certain provisions from part 23, similarly do not impose any additional cost burden on SDs/MSPs beyond the retention of existing rules applicable to SDs/MSPs.

The costs attributable to the Commission’s exercise of discretion in this rulemaking—and that have not been considered in other rulemakings—are those generated by the reporting and recordkeeping requirements imposed upon commercials transacting in trade options but not otherwise reporting their transactions. This action should reduce costs relative to the basic statutory requirements (with no further action by the Commission) which would have subjected all trade options to the full array of regulatory requirements for swaps, including but not limited to part 45. However, the Commission requests information and estimates about the costs and benefits to market participants and the public that would result from requiring market participants to report on their trade options at two levels: (1) the enterprise or group level (as described in section VI, question 2(f)(iii), above), and (2) the person level as is provided for in the interim final rule at § 32.3(b)(1)(i).

c. Costs and Benefits as Compared to Alternatives

The range of alternative conditions available to the Commission with respect to who may transact trade options is wide—that is, the Commission could have decided that anyone or no one could be an offeror or offeree. Either of these extremes, however, would render almost meaningless either the exemption (if no one could be an offeror or an offeree) or the option element of the swap definition (if anyone could be an offeror or an offeree). Therefore, in striving to achieve the optimal balance of allowing those with a commercial need to hedge the price risk of a physical commodity while ensuring that there are enough market participants to provide the necessary liquidity to hedge that risk, the Commission determined to allow ECPs and non-ECP commercials to be offerors. On the offeror side, excluding commercial non-ECPs would have limited hedging opportunities available to non-ECPs who are active users of trade options as both buyers and sellers,

⁶⁷ *E.g.*, Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851, Sept. 20, 2011; Position Limits for Futures and Swaps, 76 FR 71626, Nov. 18, 2011; and Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128, Apr. 3, 2012.

⁶⁸ Nevertheless, the Interim Final Rule does permit individuals to request exemptive orders on a case-by-case basis.

⁶⁹ *See, e.g.*, Prohibition on the Employment, or Attempted Employment, of Manipulative and Deceptive Devices and Prohibition on Price Manipulation, 76 FR 41398, July 14, 2011.

⁷⁰ *See* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, Jan. 13, 2012 (“Recordkeeping and Reporting Rules”).

depending on their commercial need. On the offeree side, the Commission considered it important to preserve the integrity of the trade options market for use by commercial users. If the rule had allowed entities other than commercial users to be buyers, the trade option market would be indistinguishable, arguably, from the general swaps market; there would be no connection between a buyer's purchase of a trade option, the trade option buyer's underlying commercial functions, and the buyer's commercial need to make and take delivery.

Similarly, the Commission could have elected to make the exemption available for trade options that, if exercised, result in either physical or financial settlement of the option. The Commission limited the condition to physical settlement out of a concern that if it allowed financial settlement, parties could evade the requirements otherwise applicable to swaps by merely labeling their transaction a trade option even though it was unrelated to their business as a commercial. The Commission notes, as did commenters, that the trade option exemption is rooted in a need by commercials to hedge the price risk of physical commodities, including but not limited to agricultural and energy commodities. Permitting financially-settled trade options would make this market, which is used for making or taking delivery of physical commodities needed for a commercial function, indistinguishable from the financial world of swaps and futures. In addition, and as noted above, commenters focused on the need for a trade option exemption specifically for physically delivered options. The Commission did not receive similar comments regarding financially settled transactions.

The Commission also had a range of alternatives with respect to regulatory requirements applicable to trade option transactions. For commercials, the Commission considered alternatives, ranging from requiring full compliance with part 45 to no requirements in light of its special call authority to request and obtain information. Given that one of the purposes of the Dodd-Frank Act is to increase market transparency and regulatory visibility into OTC markets, however, the Commission does not believe an exemption with no attendant recordkeeping or reporting requirements for commercials is a reasonable alternative.⁷¹ At the same time, the

Commission believes that requiring full compliance with part 45's recordkeeping and reporting requirements by commercials would be unnecessary to achieve the desired and expected benefits of the interim final rule. Therefore, to mitigate the costs of compliance for otherwise non-reporting counterparties, the Commission is only requiring such counterparties to keep basic business records regarding their trade options transactions and to file an annual report with the Commission.⁷²

The Commission believes that the recordkeeping requirement in the interim final rule may result in additional costs for commercials that currently do not maintain the now-required records. However, the Commission believes that most, if not all, commercials already retain the basic business records required by the new rule as a matter of good business practice. With respect to reporting, the Commission believes the form prescribed by the Commission for annual reports will entail some administrative and legal costs for such commercials.

Additionally, because the Commission believes that a distinction between agricultural commodities and other physical commodities is unwarranted, it is permitting agricultural trade options to rely on the revised general trade option exemption. The Commission declined to adopt the alternative that would have maintained this historically distinct treatment of trade options on agricultural commodities because, as commenter NGFA stated, the distinction was unwieldy and, consequently, the agricultural trade option (ATO) regime was largely unused.⁷³ The Commission also did not elect to carry over the \$10 million net worth restriction under the existing ATO exemption in § 32.13(g). The Commission anticipates that the new trade option exemption will create new hedging opportunities for a wide range of agricultural commercial market participants that have heretofore been precluded from entering into trade

effective market oversight and prosecution of violations by the Commission and other regulators" and that "[e]xperience with recordkeeping requirements in the context of futures suggests that all market participants are able to retain such records").

⁷² The annual report would require counterparties to unreported trade options to provide: name and contact information; commodity categories (agricultural, metals, energy, or other); and approximate value (under \$10 million, \$10–100 million, over \$100 million) of commodities purchased or delivered in connection with options exercised during the prior calendar year.

⁷³ NGFA at 2.

options for agricultural commodities by that net worth restriction.

5. Section 15(a) Factors (of the Final Rule and Interim Final Rule, as a Whole)

As noted above, in this final rule and interim final rule, the Commission considers the costs and benefits that result from the regulations issued herein.

a. Protection of Market Participants and the Public

The interim final rule trade option exemption will further the protection of market participants and the public by ensuring that trade options continue to be authorized, subject to recordkeeping and reporting requirements, large trader reporting and position limit requirements, certain SD/MSP rules, and explicit antifraud, anti-manipulation, and enforcement protections. These requirements will provide the Commission and the public with increased visibility into this marketplace and will protect market participants from fraudulent conduct by others. In the same way, the final rule permits commodity options, generally, subject to the rules and protections applicable to every other swap pursuant to the Dodd-Frank Act (and its related rulemakings).

b. Efficiency, Competitiveness, and Financial Integrity of the Markets

The trade option exemption provides an important hedging and risk management tool for commercial market participants, while also providing the Commission with vital visibility tools (*i.e.*, the recordkeeping and reporting requirements as well as the large trader reporting requirement) to help ensure the integrity of these markets. By permitting these valuable hedging and risk management tools, the Commission is facilitating the ability of market participants to hedge their risks more efficiently, since participants will have a larger set of hedging mechanisms available to them. In addition, providing a revised trade option exemption enhances competitiveness by continuing to provide market participants with a range of risk management choices. Finally, requiring option offerors to be ECPs or commercials enhances financial integrity by helping to assure that option grantors will have some minimal level of financial resources and sophistication, or will be commercial in nature, in order to reduce the risk that a seller would not be able to perform its obligations under a commodity option.

⁷¹ See Recordkeeping and Reporting Rules, 77 FR at 2141, Jan. 13, 2012 (explaining that "[c]omplete records regarding each swap should be required from all counterparties, including non-SD/MSP counterparties to physical commodity swaps and other swaps, because such records are essential for

c. Price Discovery

The trade options marketplace will continue to augment the exchange-traded financial markets in serving their price discovery function for a subject commodity. The Commission notes that there will be less price discovery for those trade options that are not otherwise required to meet the part 45 reporting requirements. Nevertheless, the Commission believes that the conditions discussed above should allow the trade options market to continue functioning in a manner that provides enough visibility to regulators. In addition, the Commission would have the authority to request and obtain additional information from trade option counterparties under its special call authority.

d. Sound Risk Management Procedures

The comments received on the NPRM (discussed above) highlighted trade options as a fundamental risk management tool for commercial users of many physical commodities. By issuing the interim final rule trade option exemption, the Commission is facilitating the use of trade options by these commercial market participants in conjunction with the general Dodd-Frank swaps regime. Specifically, when exchange-traded products do not provide the appropriate coverage or scope in connection with a hedging need for a commercial market operation, the trade option exemption will allow for agreements to be tailored by the parties on a transaction-by-transaction basis in order to meet the physical delivery needs of a commodity for a given commercial purpose. As noted above, the final rule provides an equally important component of the derivatives market (and a tool for risk management) by retaining a general authority for commodity options that are not trade options.

e. Other Public Interest Considerations

The Commission believes that providing the revised trade option exemption, in conjunction with the general authorization for all commodity options, is consistent with the public interest (particularly as demonstrated by the commenters) in providing effective and efficient risk management tools to commercial market participants, as well as in providing a strong legal framework for the trade options and general options market. The Commission acknowledges that the revised trade option exemption will remove those swaps that fall within it from certain aspects of the Dodd-Frank regime to which they otherwise would be subject. Nevertheless, based

on its historical experience regulating commodity options, and the proven past utility of a trade option exemption for physical delivery options used by commercial parties, the Commission believes that exercise of its CEA section 4c(b) plenary authority to exempt trade options in the interim final rule is appropriate and benefits the public interest. In addition, the recordkeeping and reporting requirements, as well as the other conditions discussed above, should allow the trade options market to continue functioning in a manner that provides sufficient visibility to regulators.

6. Request for Comment on CBC in Connection With Interim Final Rule

After considering the section 15(a) factors, the Commission has determined to issue part 32 and the amendments to part 33 as described herein. The Commission invites public comment on its cost-benefit considerations in connection with the interim final rule trade option exemption. Commenters are encouraged to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the interim final rule trade option exemption with their comment letters. In addition, the Commission seeks comment on whether the offeror requirement imposes any additional costs, particularly when compared with the general Dodd-Frank swaps regime, which does not otherwise provide for the trade option classification, and whether limiting the trade option exemption to physically delivered contracts (and requiring all other commodity options to transact under the general swaps rules) imposes any significant or unreasonable cost on market participants.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act ("RFA") requires that agencies consider whether the rules they issue will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.⁷⁴ The final rule, in amending part 33, would affect entities that currently engage in options on physical commodities on a DCM, and the final rule and interim final rule, in replacing part 32, would affect those entities that currently engage in options under § 32.4 and § 32.13(g). By generally mandating that commodity options be treated as all other swaps, with one exemption for trade options, the effect of the rules has the potential to affect designated

contract markets ("DCMs"), derivatives clearing organizations ("DCOs"), futures commission merchants ("FCMs"), large traders and eligible contract participants ("ECPs"), as well as SDs, MSPs, commodity pool operators ("CPOs"), swap execution facilities ("SEFs"), swap data repositories ("SDRs"), and certain non-ECP commercial market participants that enter into trade options.

1. DCMs, DCOs, FCMs, CPOs, large traders, ECPs, and ESP

The Commission has previously determined that DCMs, DCOs, FCMs, CPOs, large traders, ECPs, and eligible swap participants ("ESPs") are not small entities for purposes of the Regulatory Flexibility Act.⁷⁵ Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the final and interim final rules adopted herein will not have a significant economic impact on a substantial number of small entities with respect to these entities.

The Commission received one comment from the Power Coalition asserting that certain of its member entities may both be ECPs under the CEA and small businesses under the RFA. These members, as the Commission understands, have been determined to be small entities by the Small Business Administration ("SBA") because they are "primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and [their] total electric output for the preceding fiscal year did not exceed 4 million megawatt hours."⁷⁶ For all entities that may both be ECPs and have been determined by the SBA to be small businesses under the RFA, the initial regulatory flexibility analysis in the proposed rulemaking and the final regulatory flexibility analysis, in subsection "5" below, discusses the impact of the rulemaking on small entities.

2. SDs, MSPs, SEFs, and SDRs

SDs, MSPs, SEFs, and SDRs are new categories of registrant under the Dodd-Frank Act. Pursuant to various Dodd-Frank rulemakings, the Commission has determined that SDs, MSPs, SEFs, and SDRs are not "small entities" for purposes of the RFA.⁷⁷ Accordingly, the

⁷⁵ See, respectively and as indicated, 47 FR 18618, 18619, Apr. 30, 1982 (DCMs, CPOs, FCMs, and large traders); 66 FR 45604, 45609, Aug. 29, 2001 (DCOs); 66 FR 20740, 20743, Apr. 25, 2001 (ECPs); and 57 FR 53627, 53630, Nov. 12, 1992 and 58 FR 5587, 5593, Jan. 22, 1993 (ESPs).

⁷⁶ Small Business Administration, *Table of Small Business Size Standards*, (Nov. 5, 2010).

⁷⁷ See respectively, Registration of Swap Dealers and Major Swap Participants, 77 FR 2613, 2620,

⁷⁴ See 5 U.S.C. 601 *et seq.*

Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the final and interim final rules adopted herein, with respect to SDs, MSPs, SEFs, and SDRs, will not have a significant impact on a substantial number of small entities.

3. Entities Eligible To Engage in Options on Physical Commodities on DCMs Under Part 33

Under the current part 33, there is no regulatory financial threshold that must be met in order to engage in options on underlying commodities on a DCM, so small entities would be eligible to engage in such transactions. In fact, there is no regulatory financial threshold that must be met in order to engage in any type of transaction on a DCM. As noted above, new CEA section 1a(47) provides that options, other than options on futures, are swaps. New CEA section 2(e) provides that non-ECPs may enter into swaps, if the swaps are entered into on a DCM. Therefore, even though an option on an underlying commodity is defined to be a swap under the Dodd-Frank Act, small entities will continue to be eligible to enter into such options on a DCM under the rules issued herein, just as they are eligible to enter into such options on a DCM under the current part 33. Thus, the final and interim final rules will have no effect on the eligibility of small entities to enter into an option on an underlying commodity on a DCM. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the final and interim final rules will not have a significant economic impact on a substantial number of small entities with respect to entities eligible to engage in options on underlying commodities on DCMs under part 33.

4. Entities Engaged in Options Under § 32.13(g)

The Commission addressed the question of whether entities engaged in agricultural trade options under § 32.13(g) are, in fact, “small entities” for purposes of the RFA in the NPRM. In the NPRM, the Commission determined that entities engaged in options under § 32.13(g) were not small entities.⁷⁸ As noted above, the Commission previously has determined that ECPs are not small entities for the

purpose of the RFA based upon, among other things, the financial and institutional requirements contained in the definition. Also as noted above, the exemption at § 32.13(g) allows for options on the enumerated agricultural commodities to be sold when: (1) The option is offered to a commercial (“a producer, processor, or commercial user of, or a merchant handling” the underlying commodity); (2) the commercial enters the transaction solely for purposes related to its business as such; and (3) each party to the option contract has a net worth of not less than \$10 million. There are two analogous provisions in the ECP definition, new CEA sections 1a(18)(A)(v)(III) and 1a(18)(A)(xi)(II). New CEA section 1a(18)(A)(v)(III) provides that an ECP includes a corporation, partnership, proprietorship, organization, trust, or other entity that has a net worth exceeding \$1,000,000 and enters into a swap in connection with the entity’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity’s business. New CEA section 1a(18)(A)(xi)(II) provides that an ECP includes an individual who has assets invested on a discretionary basis, the aggregate of which is in excess of \$5,000,000 and who enters the swap in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual. The participation requirements of § 32.13(g)(1) are similar to, if not more restrictive than, the analogous ECP provisions.

For purposes of the RFA in this rulemaking, the Commission is hereby determining that entities engaged in options under § 32.13(g) are not considered to be “small entities” for essentially the same reasons that ECPs have previously been determined not to be small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the final and interim final rules, with respect to entities engaged in options under § 32.13(g), will not have a significant impact on a substantial number of small entities.

5. Entities Engaged in Options Under Existing § 32.4

In the NPRM, the Commission initially addressed the question of whether entities engaged in trade options under the existing trade options rule are, in fact, “small entities” for purposes of the RFA.⁷⁹ As noted above,

under the existing trade options rule, an option must be offered to a producer, processor, or commercial user of, or a merchant handling, the commodity, who enters into the commodity option transaction solely for purposes related to its business as such. The existing trade option exemption does not include any net worth requirement.

Because there is no net worth requirement in the existing trade option rule, thus allowing commercial entities of any economic status to enter into trade option transactions, the Commission is not in a position to determine whether entities engaged in options under the existing trade option rule include a substantial number of small entities on which the rule would have a significant economic impact. Therefore, the Commission provided an initial regulatory flexibility analysis in the NPRM addressing the proposed withdrawal of the existing trade option exemption on small entities. In the NPRM, the Commission identified the small entities that would be affected by the proposed withdrawal as any commercial small entity that would be smaller than an ECP and additionally would have annual receipts of less than \$750,000.⁸⁰

As referenced above, the Commission received a comment from the Power Coalition that may indicate that certain of their members, in particular entities that are “primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and [their] total electric output for the preceding fiscal year did not exceed 4 million megawatt hours,” have been determined by the SBA to be small entities. Such entities may enter into option transactions, though the Commission does not have sufficient information to determine that any such entities would constitute a substantial number of small entities for purposes of the RFA.

Moreover, for those entities that may enter into option transactions that would be ECPs with annual receipts greater than \$750,000, but that also may be small entities as determined by SBA, it was not indicated in comments to the initial regulatory flexibility analysis that the effect of the proposed rulemaking would be any greater for these entities than for the smaller entities the Commission identified in the initial analysis. Indeed, on a relative basis, the larger the entity, the less of an effect the rulemaking should have. Critically, unlike a non-ECP, which will be unable to engage in option transactions except

⁸⁰ 5 U.S.C. 601(6) (threshold for certain agricultural entities under the RFA).

Jan. 19, 2012 (swap dealers and major swap participants); Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest, 75 FR 63732, 63745, Oct. 18, 2010 (SEFs); and Swap Data Repositories, 75 FR 80898, 80926, Dec. 23, 2010 (SDRs).

⁷⁸ See 76 FR 6095, at 6107, Feb. 3, 2011.

⁷⁹ See 76 FR 6095, at 6017–6018, Feb. 3, 2011.

on a DCM, and (if a commercial) through trade options, an entity that is both an ECP, as that term is defined in the CEA, and a small entity, as determined by the SBA, will not be so restricted.

Therefore, the Commission offers, pursuant to 5 U.S.C. 604, the following final regulatory flexibility analysis:

- A description of the reasons why action by the agency is being considered.

The Commission is taking this regulatory action to withdraw the existing trade option exemption because the Dodd-Frank Act has defined the term “swap” to include options. This new definition renders the existing trade option exemption obsolete in its current form. Responding to comments received on its NPRM, a revised trade option exemption is being issued as interim final rule § 32.3.

- A succinct statement of the objectives of, and legal basis for, the rule.

The objective for issuing interim final rule § 32.3, is to make the Commission’s regulations comport with the CEA as revised by the Dodd-Frank Act. As stated previously, the legal basis for the rule is the CEA definition of swap, section 1a(47)(A)(i), and the Commission’s plenary options authority, CEA section 4c(b).

- A description of and, where feasible, an estimate of the number of small entities to which the rule will apply.

The small entities to which the withdrawal of the trade option exemption and issuance of the final rule may apply are those commercial small entities that would be smaller than an ECP and additionally would have annual receipts of less than \$750,000, or those commercial entities that would be an ECP with annual receipts of greater than \$750,000 but that have been determined by SBA to be a small entity by virtue of the level of total electric output for the preceding fiscal year or equivalent metrics that would result in the entity being a small entity under the RFA.⁸¹ Because there are no reporting or registration requirements in the existing trade option exemption, it is difficult to quantify the exact number of small entities, if any, to which the rule may apply, and whether such entities in the aggregate would constitute a substantial number of small entities compared to the universe of entities to which the rule

could apply. However, the impact, if any, is largely mitigated by the inclusion of interim final rule § 32.3, a revised trade option exemption that will continue to be available for small entities that are, generally speaking, commercial actors entering into a commodity option for commercial purposes—including non-ECPs.

- A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The withdrawal of the existing trade option exemption does not impose any reporting, recordkeeping, or other compliance requirements. However, because the Dodd-Frank Act provides that options are swaps, the swaps rules being promulgated under the Dodd-Frank Act in other rulemakings will contain reporting, recordkeeping, and other compliance requirements. In addition, the interim final rule trade option exemption at § 32.3, issued herein, includes certain compliance obligations. However, those conditions do not impose any significant burden or requirement on a small entity that has not been or will not be imposed through another rulemaking, for which the Commission has, in its discretion, addressed RFA compliance separately,⁸² or by self-execution of the CEA as amended by the Dodd-Frank Act.

For example, the large trader reporting condition references part 20, and would only fall on part 20 reporting entities, SDs and clearing members, and not on any small entity. The position limits condition would only apply part 151 position limits to the same extent they would apply to any other swap transaction entered into by the small entity. The SD/MSP rules from part 23 only apply to SDs and MSPs and not to any small entity. The antifraud and anti-manipulation condition has and will always apply to every entity transacting under the Commission’s jurisdiction. In addition, the part 45 recordkeeping and reporting requirements in the trade option exemption generally only require recordkeeping and reporting to the same extent that such rules apply to any other swap, which the Commission has determined does not constitute a significant new burden as applied in the context of this rulemaking.

The new Form TO annual notice filing requirement further mitigates the burden of the reporting requirement for counterparties who only engage in

unreported trade options. The form is necessary to give the Commission at least a general overview, for market surveillance purposes, of the counterparties engaging in otherwise unreported trade options, and the types and approximate value of the commodities involved in such options. The form also provides contact information in case Commission surveillance staff needs to contact trade option counterparties to seek more detailed information regarding market events. While Form TO is a new form, and thus a new requirement for those required to file, it is a single annual filing, seeking very general and easily accessible information. The alternative to using form TO would be to apply the full part 45 reporting regulations.

- An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.

Small entities that do not qualify as ECPs will be unable to engage in options transactions except on a DCM under an existing regulatory scheme, or if commercials, pursuant to the new trade option exemption in interim final rule § 32.3. The trade option exemption at interim final rule § 32.3 may be relied upon by a non-ECP that is a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof, and that is offering or entering into the commodity option transaction solely for purposes related to its business as such. This provision will continue to permit many transactions that currently transact pursuant to the existing trade option exemption. The primary significant new requirement for trade options participants is the application of the recordkeeping and reporting requirement of part 45 (as well as the other trade option conditions, discussed above), and/or the Form TO notice filing requirement. Accordingly, there will be no rules applicable to the small entities, under the interim final rule trade option exemption, that duplicate, overlap, or conflict with any other Federal rules.

- Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities.

These may include, for example: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and

⁸¹ 5 U.S.C. 601(6). See also note 76, above, which relates to the Power Coalition’s concern that certain entities that meet or exceed the CEA’s ECP thresholds may still be small entities for purposes of the RFA. This initial regulatory flexibility analysis applies equally to such entities.

⁸² See 5 U.S.C. 605(c).

reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

A potential alternative to limiting trade options under the existing trade option exemption to the requirements under interim final rule § 32.3 (*i.e.*, commercial participants and physically settled options) would be to either (1) delete the existing trade option and not replace it, or (2) create a special rule to allow any non-ECP to engage in such transactions and to allow such transactions to be either physically or financially settled. As explained in this document, and as stressed by the commenters, to adopt option (1) as a final rule (deleting the trade option provision altogether) would have been prohibitively costly and would have had a significant negative impact on hedging opportunities available to small entities. With regard to option (2), and as described above, interim final rule § 32.3 provides an exemption for certain commercial parties entering into physical commodity options for commercial purposes. Based on the comments received in response to the NPRM, discussed above, the Commission has determined that to treat all trade options in the same manner as any other swap (including permitting commodity options for all participants on a DCM), with the addition of the trade option exemption at § 32.3, will provide an appropriate and flexible framework for the overwhelming majority of commodity options participants that will seek to rely on the trade option exemption. In addition, to retain a trade option exemption with no participant requirements and no physical delivery requirement would potentially undermine many of the market and consumer protections embodied in the swaps provisions of the Dodd-Frank Act.

C. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (“PRA”) are, among other things, to minimize the paperwork burden to the private sector, ensure that any collection of information by a government agency is put to the greatest possible uses, and minimize duplicative information collections across the government.⁸³ The PRA applies to all information, “regardless of form or format,” whenever the government is “obtaining, causing to be obtained [or] soliciting” information, and includes

required “disclosure to third parties or the public, of facts or opinions,” when the information collection calls for “answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons.”⁸⁴ The PRA requirements have been determined to include not only mandatory but also voluntary information collections, and include both written and oral communications.⁸⁵ Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (“OMB”). With the exception of the new Form TO annual notice filing requirement, discussed below, the Commission believes that these rules will not impose any new information collection requirements that require approval of OMB under the PRA. The Commission notes that these rules will involve the withdrawal of certain provisions related to Commission forms, and will ultimately result in the expiration, cancellation, or removal of such forms.⁸⁶ Because the rules would ultimately result in removing or deleting form filing and/or recordkeeping burdens, they will not result in the creation of any new information collection subject to OMB review or approval under the PRA, except for the new Form TO annual notice filing requirement discussed below. As a general matter, these rules would allow commodity options to trade under the same terms and conditions as all other swaps and these rules do not, by themselves, impose any new information collection requirements other than those that exist or have been proposed in the Commission’s general swap-related Dodd-Frank rulemakings. The same analysis applies with respect to the general conditions applicable under the trade option exemption in § 32.3(b)—which conditions would only apply to the same extent they would apply to any other swap. Similarly, the application of the part 45 recordkeeping and reporting requirements to trade options, via interim final rule § 32.3(b), only imposes such requirements to the same extent they would apply to any other swap. That is, these specific recordkeeping and reporting costs have been accounted for in the information

collection prepared by the Commission with respect to its part 45 rules. Also, collections of information that may be associated with engaging in commodity options or trade options are, or will be, addressed within each of the general swap-related rulemakings implementing the Dodd-Frank Act.⁸⁷ To avoid creating duplicative PRA estimates, the Commission is not accounting again for those costs with respect to this rulemaking. Therefore, this final rule and interim final rule do not constitute a new collection of information by the Commission, other than those that may be associated with the new Form TO annual notice filing requirement.

As noted above, the interim final rule imposes a new Form TO annual notice filing requirement on counterparties to unreported trade options, which requirement is considered to be a collection of information within the meaning of the PRA. The Commission therefore is required to submit to OMB an information collection request for review and approval in accordance with 44 U.S.C. 3506(c)(2)(A) and 5 CFR 1320.8(d). The Commission will, by separate action, publish in the **Federal Register** a notice and request for comment on the paperwork burden associated with the interim final rule’s Form TO annual notice filing requirement in accordance with 5 CFR 1320.8 and 1320.10. If approved, this new collection of information will be mandatory. As noted above, the Form TO annual notice filing would not be due to the Commission for the first time until March 1, 2014, for counterparties that enter into one or more unreported trade options during the 2013 calendar year.

The Commission specifically invites public comment on the accuracy of its estimate that no additional information collection requirements or changes to existing collection requirements, other than Form TO, would result from the interim final rule trade option exemption issued herein.

⁸⁷ See, e.g., Position Limits for Futures and Swaps, 76 FR 71626 at 71680–71683, Nov. 18, 2011; Large Trader Reporting for Physical Commodity Swaps, 76 FR 43851 at 43860–43862, July 22, 2011; Swap Data Recordkeeping and Reporting Requirements 77 FR 2136, at 2171–2176, Jan. 13, 2012; and Swap Dealer and Major Swap Participant Recordkeeping and Reporting, Duties, and Conflicts of Interest Policies and Procedures; Futures Commission Merchant and Introducing Broker Conflicts of Interest Policies and Procedures; Swap Dealer, Major Swap Participant, and Futures Commission Merchant Chief Compliance Officer, 77 FR 20128, Apr. 3, 2012.

⁸⁴ See 44 U.S.C. 3502.

⁸⁵ See 5 CFR 1320.3(c)(1).

⁸⁶ This includes any forms that relate to the agricultural trade option rules in current 17 CFR 32.13 and the dealer option rules in current 17 CFR 32.12.

⁸³ See 44 U.S.C. 3501.

VIII. Final Rule and Interim Final Rule**List of Subjects***17 CFR Part 3*

Administrative practice and procedure, Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 32

Commodity futures, Consumer protection, Fraud, Reporting and recordkeeping requirements.

17 CFR Part 33

Commodity futures, Consumer protection, Fraud, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Act, as indicated herein, the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

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

Authority: 5 U.S.C. 522, 522b; 7 U.S.C. 1a, 2, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 6s, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, and 23, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010).

§ 3.13 [Removed and Reserved]

■ 2. Remove and reserve § 3.13.

■ 3. Revise part 32 to read as follows:

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

Sec.

32.1 Scope.

32.2 Commodity option transactions; general authorization.

32.3 Trade options.

32.4 Fraud in connection with commodity option transactions.

32.5 Option transactions entered into prior to the effective date of this part.

Appendix A to 17 CFR Part 32

Authority: 7 U.S.C. 1a, 2, 6c, and 12a, unless otherwise noted.

§ 32.1 Scope.

The provisions of this part shall apply to all commodity option transactions, except for commodity option transactions on a contract of sale of a commodity for future delivery conducted or executed on or subject to the rules of either a designated contract market or a foreign board of trade.

§ 32.2 Commodity option transactions; general authorization.

Subject to §§ 32.1, 32.4, and 32.5, which shall in any event apply to all

commodity option transactions, it shall be unlawful for any person or group of persons to offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to any transaction in interstate commerce that is a commodity option transaction, unless:

(a) Such transaction is conducted in compliance with and subject to the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap, or

(b) Such transaction is conducted pursuant to § 32.3.

§ 32.3 Trade options.

(a) Subject to paragraphs (b), (c), and (d) of this section, the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap shall not apply to, and any person or group of persons may offer to enter into, enter into, confirm the execution of, maintain a position in, or otherwise conduct activity related to, any transaction in interstate commerce that is a commodity option transaction, *provided that*:

(1) Such commodity option transaction must be offered by a person that has a reasonable basis to believe that the transaction is offered to an offeree as described in paragraph (a)(2) of this section. In addition, the offeror must be either:

(i) An eligible contract participant, as defined in section 1a(18) of the Act, as further jointly defined or interpreted by the Commission and the Securities and Exchange Commission or expanded by the Commission pursuant to section 1a(18)(C) of the Act; or

(ii) A producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof, and such offeror is offering or entering into the commodity option transaction solely for purposes related to its business as such;

(2) The offeree must be a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the commodity option transaction, or the products or by-products thereof, and such offeree is offered or entering into the commodity option transaction solely for purposes related to its business as such; and

(3) The commodity option must be intended to be physically settled, so that, if exercised, the option would result in the sale of an exempt or agricultural commodity for immediate or deferred shipment or delivery.

(b) In connection with any commodity option transaction entered into pursuant to paragraph (a) of this section, every counterparty shall comply with the swap data recordkeeping requirements of part 45 of this chapter, as otherwise applicable to any swap transaction, and shall:

(1) Comply with the swap data reporting requirements of part 45 of this chapter to the extent that the commodity option involves at least one counterparty (whether as offeror or offeree) that has—

(i) Become obligated to comply with the reporting requirements of part 45,

(ii) As a reporting party,

(iii) During the twelve month period preceding the date on which the trade option is entered into,

(iv) In connection with any non-trade option swap trading activity; or

(2) For any counterparty that enters into one or more commodity options pursuant to § 32.3(a) in a calendar year that do not involve a counterparty described in paragraph (b)(1) of this section, file with the Commission by March 1 of the following year an

“Annual Notice Filing for Counterparties to Unreported Trade Options” on Form TO, as set forth in Appendix A to this part, to be completed and submitted in accordance with the instructions thereto and as further directed by the Commission.

(c) In connection with any commodity option transaction entered into pursuant to paragraph (a) of this section, the following provisions shall apply to every trade option counterparty to the same extent that such provisions would apply to such person in connection with any other swap:

(1) Part 20 (Swaps Large Trader Reporting) of this chapter;

(2) Part 151 (Position Limits) of this chapter;

(3) Subpart J of part 23 (Duties of Swap Dealers and Major Swap Participants) of this chapter;

(4) Sections 23.200, 23.201, 23.203, and 23.204 of subpart F of part 23 (Reporting and Recordkeeping Requirements for Swap Dealers and Major Swap Participants) of this chapter; and

(5) Section 4s(e) of the Act (Capital and Margin Requirements for Swap Dealers and Major Swap Participants).

(d) In addition, any person or group of persons offering to enter into, entering into, confirming the execution of, maintaining a position in, or otherwise conducting activity related to a commodity option transaction in interstate commerce pursuant to paragraph (a) of this section shall remain subject to part 180 (Prohibition

Against Manipulation) and § 23.410 (Prohibition on Fraud, Manipulation, and other Abusive Practices) of this chapter and the antifraud, anti-manipulation, and enforcement provisions of CEA sections 2, 4b, 4c, 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6, 6c, 6d, 9, and 13.

(e) The Commission may, by order, upon written request or upon its own motion, exempt any person, either unconditionally or on a temporary or other conditional basis, from any provisions of this part, and the provisions of the Act, including any Commission rule, regulation, or order thereunder, otherwise applicable to any other swap, other than § 32.4, part 180 (Prohibition Against Manipulation), and

§ 23.410 (Prohibition on Fraud, Manipulation, and other Abusive Practices) of this chapter, and the antifraud, anti-manipulation, and enforcement provisions of CEA sections 2, 4b, 4c, 4o, 4s(h)(1)(A), 4s(h)(4)(A), 6, 6c, 6d, 9, 13, if it finds, in its discretion, that it would not be contrary to the public interest to grant such exemption.

§ 32.4 Fraud in connection with commodity option transactions.

In or in connection with an offer to enter into, the entry into, or the confirmation of the execution of, any commodity option transaction, it shall be unlawful for any person directly or indirectly:

(a) To cheat or defraud or attempt to cheat or defraud any other person;

(b) To make or cause to be made to any other person any false report or statement thereof or cause to be entered for any person any false record thereof; or

(c) To deceive or attempt to deceive any other person by any means whatsoever.

§ 32.5 Option transactions entered into prior to the effective date of this part.

Nothing contained in this part shall be construed to affect any lawful activities that occurred prior to the effective date of this part.

Appendix A to 17 CFR Part 32

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CFTC FORM TO

Annual Notice Filing for Counterparties to Unreported Trade Options⁸⁸



NOTICE: Failure to file a report required by the Commodity Exchange Act (“CEA” or the “Act”)⁸⁹ and the regulations thereunder,⁹⁰ or the filing of a report with the Commodity Futures Trading Commission (“CFTC” or “Commission”) that includes a false, misleading or fraudulent statement or omits material facts that are required to be reported therein or are necessary to make the report not misleading, may (a) constitute a violation of section 6(c)(2) of the Act (7 USC 9, 15), section 9(a)(3) of the Act (7 USC 13(a)(3)), and/or section 1001 of Title 18, Crimes and Criminal Procedure (18 USC 1001) and (b) result in punishment by fine or imprisonment, or both.

PRIVACY ACT NOTICE

The Commission’s authority for soliciting this information is granted in sections 4c(b) and 8 of the CEA and related regulations (see, e.g., 17 CFR § 32.3(b)). The information solicited from entities and individuals engaged in activities covered by the CEA is required to be provided to the CFTC, and failure to comply may result in the imposition of criminal or administrative sanctions (see, e.g., 7 U.S.C. §§ 9 and 13a-1, and/or 18 U.S.C. 1001). The information requested is most commonly used in the Commission’s market and trade practice surveillance activities to provide information concerning the size and composition of the commodity derivatives markets. The requested information may be used by the Commission in the conduct of investigations and litigation and, in limited circumstances, may be made public on an aggregate basis in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies to meet responsibilities assigned to them by law. The information will be maintained in, and any additional disclosures will be made in accordance with, the CFTC System of Records Notices, available on www.cftc.gov.⁹¹

⁸⁸ A trade option is generally a commodity option purchased by a commercial party that, upon exercise, results in the sale of a physical commodity for immediate (spot) or deferred (forward) shipment or delivery. See CFTC regulation 32.3(a) (17 CFR 32.3(a)) for more details. An unreported trade option is a trade option that is not required to be reported to a swap data repository by either counterparty pursuant to CFTC regulation 32.3(b)(1) and part 45 of the Commission’s regulations (17 CFR 32.3(b)(1); 17 CFR part 45).

⁸⁹ 7 U.S.C. section 1, *et seq.*

⁹⁰ Unless otherwise noted, the rules and regulations referenced in this notice are found in chapter 1 of title 17 of the Code of Federal Regulations; 17 CFR Chapter 1 *et seq.*

⁹¹ Note that, under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget.

GENERAL INSTRUCTIONS

Who Must File a Form TO – 17 CFR § 32.3(b)(2) requires every counterparty to an unreported trade option to submit an annual filing to the Commission for the purpose of providing notice that it has entered into one or more unreported trade options in the prior calendar year. As noted above, an unreported trade option is a trade option that is not required to be reported to a swap data repository by either counterparty pursuant to CFTC regulation 32.3(b)(1) and part 45 of the Commission's regulations.

When to file – Form TO is an annual filing requirement due to the Commission no later than March 1 for the prior calendar year. For example, if a market participant enters into one or more unreported trade options between January 1, 2013 and December 31, 2013, the market participant must submit a completed Form TO to the Commission on or before March 1, 2014.

Where to file – Generally, Form TO should be submitted via the CFTC's web based Form TO submission process at <http://www.cftc.gov/>, or as otherwise instructed by the Commission or its designee. If submission through the web-based Form TO is impossible, the reporting counterparty shall contact the Commission at [techsupport@cftc.gov] or 202-418-5000 for further instructions.

What to File – All reporting counterparties filing a Form TO must complete all questions.

Signature – Each Form TO submitted to the Commission must be signed or otherwise authenticated by either (1) the reporting counterparty submitting the form or (2) an individual that is duly authorized by the reporting counterparty to provide the information and representations contained in the form.

CFTC FORM TO

Name and Contact Information for Reporting Counterparty:

1. Reporting Counterparty

Name and Address (including City, State, Country, Zip/Postal Code):

Reporting Counterparty website (if any):

Reporting Counterparty Unique Identifier (if any):

<input type="checkbox"/> Legal Entity Identifier "LEI" (if any)	
<input type="checkbox"/> National Futures Association ID Number (if any)	
<input type="checkbox"/> Other Party Identifier (Please Specify)	

2. Reporting Counterparty Contact Person⁹²

Name and Job Title and/or Relationship with Reporting Counterparty:

Phone Number and Email Address:

Commodity Category Indication:

3. In the prior calendar year, the Reporting Counterparty entered into one or more unreported trade options in the following commodity categories:

Agricultural ⁹³	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Metals ⁹⁴	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Energy ⁹⁵	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO
Other (Please Specify)	<input type="checkbox"/>	YES	<input type="checkbox"/>	NO

Approximate Size of Unreported Trade Options Exercised in the Prior Calendar Year:

4. Please indicate, by commodity category, the approximate total value (quantity received/delivered multiplied by price paid/received) of physical commodities that the reporting counterparty purchased and/or delivered in connection with the exercise of unreported trade options in the prior calendar year:⁹⁶

⁹² This should be an individual able to answer specific questions about the reporting counterparty's unreported trade options activity if contacted by Commission staff.

⁹³ Agricultural commodity is defined in the Commission's regulations at 17 CFR 1.3(zz).

⁹⁴ Including, but not limited to, gold, silver, platinum, palladium, copper, aluminum, and rare earth metals.

⁹⁵ Including, but not limited to, petroleum products, natural gas, and electricity.

⁹⁶ For the purposes of answering this question, a reporting counterparty should not include the value of commodities that were the subject of trade options that remained open at the end of the prior calendar year or any trade options that expired unexercised during the prior calendar year.

5.

Agricultural	<input type="checkbox"/> None	<input type="checkbox"/> Under \$10M	<input type="checkbox"/> \$10M to \$100M	<input type="checkbox"/> Over \$100M
Metals	<input type="checkbox"/> None	<input type="checkbox"/> Under \$10M	<input type="checkbox"/> \$10M to \$100M	<input type="checkbox"/> Over \$100M
Energy	<input type="checkbox"/> None	<input type="checkbox"/> Under \$10M	<input type="checkbox"/> \$10M to \$100M	<input type="checkbox"/> Over \$100M
Other	<input type="checkbox"/> None	<input type="checkbox"/> Under \$10M	<input type="checkbox"/> \$10M to \$100M	<input type="checkbox"/> Over \$100M

Signature/Authentication, Name, and Date

By checking this box and submitting this Form TO (or by clicking “submit,” “send,” or any other analogous transmission command if transmitting electronically), I certify that I am duly authorized by the reporting counterparty identified below to provide the information and representations submitted on this Form TO, and that the information and representations are true and correct.

Reporting Counterparty Authorized Representative (Name and Position):

_____ (Name)

_____ (Position)

Submitted on behalf of:

_____ (Reporting Counterparty)

Date of Submission:

BILLING CODE C

PART 33—REGULATION OF COMMODITY OPTION TRANSACTIONS THAT ARE OPTIONS ON CONTRACTS OF SALE OF A COMMODITY FOR FUTURE DELIVERY

■ 4. The authority citation for part 33 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 11, 12a, 12c, 13a, 13a–1, 13b, 19, and 21, otherwise noted.

■ 5. Revise the part heading to read as set forth above.

■ 6. In § 33.2, revise paragraph (b) to read as follows:

§ 33.2 Applicability of Act and rules; scope of part 33.

* * * * *

(b) The provisions of this part apply to commodity option transactions that are options on contracts of sale of a

commodity for future delivery except for commodity option transactions that are options on contracts of sale of a commodity for future delivery conducted or executed on or subject to the rules of a foreign board of trade.

* * * * *

§ 33.4 [Amended]

■ 7. Amend § 33.4 as follows:

- a. Remove the words “or for options on physicals in any commodity regulated under the Act,” in the introductory text;
- b. Remove and reserve paragraphs (a)(4) and (a)(5)(iv);
- c. Remove the phrase “or underlying physical” from paragraph (b)(1)(iii); and
- d. Remove the phrase “, options on physicals,” from paragraph (d)(3).

■ 8. In § 33.7:

- a. Amend paragraph (b) introductory text by revising the second paragraph of the Options Disclosure Statement;

- b. Remove the phrase “or underlying physical commodity” wherever it appears in paragraph (b)(1) including its undesignated paragraphs;
- c. Remove the phrase “(e.g., commitment to sell the physical)” from the fourth undesignated paragraph under paragraph (b)(1);
- d. Revise the fifth undesignated paragraph under paragraph (b)(1);
- e. Remove the phrase “or physical commodity” from paragraph (b)(2) introductory text and paragraph (b)(2)(i);
- f. Remove the phrase “or underlying physical commodity” from paragraph (b)(5) both times it appears;
- j. Revise the undesignated paragraph following paragraph (b)(5);
- k. Remove the phrase “or underlying physical commodity” from paragraph (b)(6);
- l. Remove the phrase “or the physical commodity” and the phrase “or underlying physical commodity” from paragraph (b)(7)(ii);

- m. Remove and reserve paragraph (b)(7)(iv); and
- o. Remove the phrase “or underlying physical commodity” from paragraphs (b)(7)(v) and (x).

The revisions read as follows:

§ 33.7 Disclosure.

* * * * *

(b) * * *

Options Disclosure Statement

* * * * *

BOTH THE PURCHASER AND THE GRANTOR SHOULD KNOW THAT THE OPTION IF EXERCISED, RESULTS IN THE ESTABLISHMENT OF A FUTURES CONTRACT (AN “OPTION ON A FUTURES CONTRACT”).

* * * * *

(1) * * *

The grantor of a put option on a futures contract who has a short position in the underlying futures contract is subject to the full risk of a rise in the price in the underlying position reduced by the premium received for granting the put. In exchange for the premium received for granting a put option on a futures contract, the option grantor gives up all of the potential gain resulting from a

decrease in the price of the underlying futures contract below the option strike price upon exercise or expiration of the option.

* * * * *

(5) * * *

Also, an option customer should be aware of the risk that the futures price prevailing at the opening of the next trading day may be substantially different from the futures price which prevailed when the option was exercised.

* * * * *

Issued in Washington, DC, on April 18, 2012, by the Commission.

David A. Stawick,
Secretary of the Commission.

Appendices to Commodity Options Final Rule and Interim Final Rule—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Sommers, Chilton, O’Malia,

and Wetjen voted in the affirmative; no commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rules on Commodity Options. The Dodd-Frank Wall Street Reform and Consumer Protection Act includes commodity options within the statutory definition of “swap.” The final rule confirms that the same rules apply to commodity options as are applicable to other swaps, just as the law directs. In addition, the Commodity Futures Trading Commission will consider and seek comment on an interim final rule to provide a trade option exemption for certain commodity options that are physically delivered.

We received a lot of feedback from commercial market participants that commodity options used by commercial entities to deliver or receive physical commodities in connection with their business don’t need the same level of oversight as swaps. However, trade options will still be subject to position limits, appropriate reporting and recordkeeping requirements, and anti-fraud and anti-manipulation rules. The Commission is seeking additional comments on the trade option exemption, but the interim final rule makes the relief immediate.

[FR Doc. 2012–9888 Filed 4–26–12; 8:45 am]

BILLING CODE P



FEDERAL REGISTER

Vol. 77

Friday,

No. 82

April 27, 2012

Part V

The President

Proclamation 8804—National Crime Victims' Rights Week, 2012

Presidential Documents

Title 3—

Proclamation 8804 of April 23, 2012

The President

National Crime Victims' Rights Week, 2012

By the President of the United States of America

A Proclamation

For more than three decades, advocates from every corner of America have worked to reinforce rights, services, and support for victims of crime. Our Nation stands stronger for their efforts. Today, thousands of victim assistance programs empower survivors with the tools to rebuild their lives. Yet, when only about half of all violent crimes are reported to the police and many victims struggle to secure the help they need, we know we must do more. This week, we rededicate ourselves to securing the full measure of justice for every crime victim, resolving disparities in our criminal justice system, and preventing crimes before they occur.

The incidence of crime in the United States is an affront to our national conscience and cannot be ignored. Millions of Americans experience violent or property crime victimization every year, and still more are impacted as they help a loved one in their hour of need. Sadly, children, seniors, persons with disabilities, immigrants, and traditionally underserved communities continue to experience disproportionately high rates of victimization. Moreover, women suffer the vast majority of intimate partner violence, sexual assault, and rape. These outcomes are deplorable, and we must come together to build communities where all people have the opportunity to live in safety and security.

My Administration is committed to realizing that vision. With leadership from the Department of Justice, we are investing in programs to prevent crime, drug abuse, and violence in communities across our Nation. We are partnering with organizations and agencies at every level of government to develop robust victim services, support law enforcement, and strengthen our criminal justice system. We issued a revised definition of rape that will shed new light on how often this crime occurs, and we continue to combat sexual violence and expand support for survivors. From disrupting human trafficking networks, to fighting financial fraud, to empowering the millions who are affected by crime every year, my Administration is working to bring more Americans the services and protection they deserve. For additional information, resources, and assistance, visit www.CrimeVictims.gov.

During National Crime Victims' Rights Week, we commemorate the efforts of all who bring hope to crime victims during their darkest hour. As we reflect on the progress we have made toward ensuring fair treatment and full support for all crime victims, let us renew that fundamental American impulse to stand with those in need.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 22 through April 28, 2012, as National Crime Victims' Rights Week. I call upon all Americans to observe this week by participating in events that raise awareness of victims' rights and services, and by volunteering to serve victims in their time of need.

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

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

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Federal Register

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H.R. 473/P.L. 112-103

Help to Access Land for the Education of Scouts (Apr. 2, 2012; 126 Stat. 284)

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